ROPES & GRAY LLP
1211 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-8704
WWW.ROPESGRAY.COM

November 1, 2010

rule-comments@sec.gov
U.S. Securities and Exchange Commission
Public Comment File

Re: Exemptions for Certain Advisers under the Private Fund Investment Advisers Registration Act of 2010

Ladies and Gentlemen:

The Private Fund Investment Advisers Registration Act of 2010 (the "Registration Act") will require the registration under the Investment Advisers Act of 1940 (as amended, the "Advisers Act") of many non-U.S. advisers to non-U.S. private funds with U.S. investors. In that connection and in connection with the Commission's undertaking to issue new rules under the Advisers Act, and further to the letter dated September 14, 2010 submitted to the Commission by Katten Munchin Rosenman LLP, we ask the Commission to confirm its position laid out in prior Staff guidance and no-action letters that the substantive provisions of the Advisers Act do not apply to non-U.S. investment advisers with respect to such advisers' dealings with non-U.S. investment funds and other non-U.S. clients to the extent described in such guidance and no-action letters.[1]

In addition, we also ask the Commission to address the extent to which "participating affiliates" of registered investment advisers that solely advise non-U.S. private fund clients will have to register and comply with the Advisers Act. We represent a number of non-U.S. private fund advisers, many of whom have implemented operating structures to comply with the Staff's guidance under *Unibanco* and similar SEC no-action letters in that they have established and maintain subsidiaries or affiliates that are registered under the Advisers Act to provide advice to U.S. clients while maintaining other unregistered non-U.S. advisory entities to service clients for whom registration is not needed. Often, in the private fund context, such institutions operate a number of affiliated entities organized in various jurisdictions to advise their non-U.S. private funds, and as a result such private fund clients receive advisory services from multiple advisers. On its face, the Registration Act would seem to require each such affiliated adviser to register under the Advisers Act to the extent their non-U.S. private fund clients have 15 or more U.S. investors (and absent any other available exemptions). Such a requirement would have little utility to the Commission and U.S.

[1] *See e.g.*, Uniao de Bancos de Brasileiros S.A., SEC Staff No-Action Letter (July 28, 1992) ("*Unibanco*"), and ABA Subcommittee on Private Investment Entities, SEC Staff No-Action Letter (August 10, 1996).

investors in non-U.S. private funds so long as at least one of the non-U.S. private fund's advisers is registered and subject to Advisers Act compliance as set forth under *Unibanco* and similar SEC no-action letters.

Finally, in light of the enhanced record-keeping and reporting requirements for private fund investment advisers (which includes registered advisers to non-U.S. private funds) required by the Registration Act, we ask that the Commission confirm that such record-keeping and reporting requirements will not extend to non-U.S. investors in such non-U.S. private funds managed by a registered investment adviser, except to the extent it involves conduct in the United States or has effects on U.S. clients and markets, and that the identities of such non-U.S. investors will not have to be disclosed. We believe this position would be consistent with requirements under the Registration Act and the principles that underpin the Staff's position in *Unibanco* and similar SEC no-action letters. If information specific to non-U.S. investors (*e.g.*, investor identity) is subject to involuntary disclosure to the Commission, it is likely that non-U.S. investment advisers will severely limit access to U.S. investors in the non-U.S. private funds that they manage. Such a result would not be in the interest of the Commission or U.S. investors seeking investment opportunities in foreign markets through offshore private funds.

Thank you.

Respectfully submitted,

Mark J. Tannenbaum Cameron S. Fairall