

March 24, 2017

## SEC's Information Update for Advisers Relying on the Unibanco No-Action Letters

Recently, the SEC's Division of Investment Management published a four-page [Information Update for Advisers Relying on the Unibanco No-Action Letters](#) (the "Update"). The stated purpose of the Update is to inform multi-national financial firms that rely on the Unibanco letters (as defined below) about what information, if any, should be submitted to the SEC to address the representations and undertakings required by the Unibanco letters.

**Background.** Generally, an investment adviser, whether located within the U.S. or abroad, must be registered with the SEC to provide advice to U.S. clients. In *Uniao de Bancos de Brasileiros S.A.* ("Unibanco"),<sup>1</sup> the SEC staff provided assurance with respect to a registered adviser's non-U.S. affiliate (a "participating affiliate") sharing personnel with the registered adviser and/or providing investment advice to U.S. clients through the registered adviser, without the participating affiliate registering under the Advisers Act.<sup>2</sup>

The Unibanco letters, which consist of *Unibanco* and subsequent no-action letters,<sup>3</sup> describe multiple conditions required for a registered adviser and its participating affiliate to rely on the Unibanco letters, which include various conditions that would allow the SEC to examine and enforce the Advisers Act in relation to the non-U.S. affiliate's activities for U.S. clients.

**The Update.** The Update, which is an Information Update and not a *Guidance* Update, briefly summarizes the general conditions that a registered adviser and its participating affiliate must satisfy to rely on the Unibanco letters. The substantive portion of the Update focuses exclusively on documentation affecting "the staff's ability to monitor the conduct of participating affiliates."

According to the Update, over the years, the SEC has received a variety of documents from advisers seeking to rely on the Unibanco letters. Based upon a review of these documents, the SEC staff lists certain items – including documentation of a participating affiliate's consent to U.S. and SEC jurisdiction and evidence that the participating affiliate has appointed a U.S. agent for service of process – as "address[ing] most clearly" the staff's monitoring of participating affiliates. The list is reproduced in the [attachment](#) to this Alert (the "Jurisdictional Documents").

**Submission of Jurisdictional Documents.** The Update also provides an SEC email address to which Jurisdictional Documents, including any amendments to previously submitted documents, can be sent (without explicitly stating that such documents must be submitted before a registered adviser and a participating affiliate may rely on the Unibanco letters). The most likely reason for this silence is that the Unibanco letters themselves are not clear on whether all of the required conditions must be documented and, if so, whether such documents must be submitted to the SEC. If the SEC staff believed that the Unibanco letters unambiguously required a participating affiliate to submit Jurisdictional Documents, it might have said as much in a Guidance Update. While there are certainly arguments that such a submission is not required by the Unibanco letters (or even the Update), the SEC exam staff may examine whether such a submission has been made and include the absence of a submission in a deficiency letter. As a result, it may take less time and involve less expense simply to document and submit Jurisdictional Documents for each participating affiliate.

If you would like to learn more about the issues in this Alert, please contact your usual Ropes & Gray attorney. Additional background and analysis of the Update is available [here](#).