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U.S. SECURITIES AND EXCHANGE COMMISSION

REMARKS BEFORE THE

THE SECOND ANNUAL INTERNATIONAL FORUM ON STRUCTURING, SERVICING & MARKETING OFFSHORE FUNDS

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Needless to say, these are exciting times in the world of international finance. Now, more than ever before, Americans and their elected representatives in Washington are firmly focused on investment and business opportunities beyond the borders of the U.S. The NAFTA debate generated prime-time interest among vast segments of the population that previously gave little thought to international trade issues, and this momentum has carried over to the recent round of GATT talks. Moreover, Americans continue to pour huge sums of money into foreign securities at a pace that is off the chart -- and shows little sign of slowing down. In the second quarter of 1993, U.S. investors bought a record $13.2 billion in foreign stocks, and a record $27.3 in foreign bonds.

The intersection of these two trends leads directly to your doorstep. American investors are demanding greater access to foreign investment opportunities and foreign investment expertise. And the U.S. government continues to press forward with its efforts to knock down those regulatory barriers that prevent the free flow of goods and services cross-border -- including capital.

As a regulator considering the means to achieve both of these goals, the question no longer seems to be one of "How," but "How soon."

Certainly, the SEC continues to explore all possible avenues to facilitate the free flow of capital throughout the world. As the global economy continues to grow, so too will its hunger for capital – creating even more international investment opportunities, and more potential international customers, for investment companies around the world.

From Latin America, to Eastern Europe, to Southeast Asia, nations are rebuilding their economies by opening markets, privatizing state-run companies and encouraging entrepreneurship. Investment companies provide a fitting investment vehicle to allow people to share in the prosperity fostered by innovative companies and promising countries.

Unfortunately, due to the many differing regulatory schemes present in the international marketplace, there is no simple solution that allows for the cross-border marketing and distribution of mutual funds on a global basis. In-roads, however, are being made. Day-by-day and step-by-step, we are moving closer to an environment where investors world-wide can be adequately protected and also enjoy unfettered access to investment opportunities and investment advice regardless of the location of the

investment adviser or the domicile of the fund. And I like to think that the SEC is helping to lead the way towards the realization of this dream.

For example, over the past 18 months, the SEC has demonstrated its willingness to open up American markets somewhat by making it easier for foreign investment advisers to offer their services to U.S. clients.

Under the old standards, if a U.S. registered foreign investment adviser shared common employees with a foreign affiliate, the affiliate would also have to register and subject itself to U.S. law. This was true even if the non-registered affiliate only serviced non-U.S. clients. Additionally, if a U.S. registered foreign adviser offered advice to both U.S. and non-U.S. clients, it had to comply with U.S. law, even with regard to the advice given to its non-U.S. clients. These factors created a huge incentive for foreign investment advisers to keep their best personnel at home, or perhaps not even offer advice to U.S. clients.

But now things are changing. In July of 1992, the SEC took a significant step when it approved the Unibanco no-action letter, which narrowed the application of the Advisers Act to foreign investment advisers. As a result, a U.S. registered foreign adviser may now render advice to non-U.S. clients pursuant to its home country's laws, without any need to comply

with U.S. law. Moreover, foreign investment advisers have much greater flexibility in forming U.S. subsidiaries, and staffing them with their best and brightest local talent. Of course, to protect U.S. investors, foreign advisers and their affiliates involved in advising U.S. clients will have to maintain certain trading and other records for SEC inspection, and make their personnel available for testimony in SEC investigations; however, customer identities would not have to be revealed.

In March of this year, the SEC staff further explained the Unibanco approach in the National Mutual Group letter. Unibanco addressed the problems of reconciling U.S. regulation with a foreign investment adviser's home country regulation, and the National Mutual letter applied this analysis on a global scale to registered advisers domiciled abroad.

Certain foreign advisers in The National Mutual Group, which includes companies in Europe, Japan, Asia, Australia and the U.S., sought to register under the Adviser's Act. Their goal was to provide investment advisory services directly to U.S. clients, based principally on each company's expertise in a particular local market. Moreover, these companies also sought to allocate assets of U.S. clients among other companies within the group, which would act as sub-advisers. The catch, however, is that these

U.S.-registered advisers sought to conduct their dealings with non-U.S. clients under local, rather than U.S., law.

In response, the SEC's Division of Investment Management issued a no-action letter granting the requested relief. Today, multi-national advisory complexes may register under the Advisers Act and give advice directly to U.S. clients – without subjecting the foreign advisers to U.S. law with regard to their non-U.S. clients.

Even more importantly, the National Mutual letter specifically lists those sections of the Advisers Act that would not apply to the foreign advisers' relationships with their non-U.S. clients. The sections noted include not only those dealing with what client records must be maintained, but also to those relating to performance fees, prohibitions on securities transactions with clients, and the custody or possession of client funds and securities. For example, charging a performance fee to a non-U.S. client is no longer automatically taboo for a U.S.-registered adviser located abroad. Once again, the SEC staff is clearly spelling out that in certain instances where local laws conflict with U.S. regulation, U.S. laws need not be applied to non-U.S. clients.

Just one month after the National Mutual letter, the SEC staff went a step further and issued the Mercury Asset Management no-action letter. Under that letter, affiliates of U.S.-registered foreign advisers will be allowed to give advice to U.S. clients without registering, provided the advice is given through the registered entity. In other words, a multi-national organization can rely on an unregistered portfolio manager in a different jurisdiction, as long as the portfolio manager's activities with respect to U.S. clients are directed through and under the supervision of the registered entity. This represents a flexible approach that allows a U.S. registered adviser to draw on the personnel and expertise of its multinational affiliates. Just as with the Unibanco letter, the relief was granted on the condition that the SEC have access to certain records and employees.

These letters should be viewed as a beginning, not an end. The SEC staff will issue more letters in this area in the near future. This continuing effort should greatly facilitate the ability of foreign investment advisers to conduct their business on a global basis.

But foreign investment advisers aren't the only winners as a result of our action. U.S. investors also won because they now will have greater access to the very best foreign investment advice. Still, despite these obvious benefits, the final decision could only be made after a framework had been

established to guarantee that the interests of U.S. investors would still be adequately protected.

As progress in this one area shows, we are moving ahead. But the many differing regulatory schemes present in the international marketplace have created major hurdles on the road to success. For those foreign funds seeking access to the U.S. market, Section 7(d) of the Investment Company Act presents an often insurmountable barrier. And for U.S. funds seeking to sell abroad, closed markets and tight-knit distribution channels have made large-scale expansion efforts difficult.

The SEC has always had the power to issue 7(d) orders to allow foreign funds to register and sell shares in the U.S. But the problem has been making sure that those obtaining orders had sufficient safeguards in place to protect the interests of U.S. investors. Since this problem has yet to be solved, today, as you well know, section 7(d) essentially prevents foreign funds from selling shares in the U.S., unless they operate as a U.S. investment company. In fact, the last 7(d) order was issued almost 20 years ago.

While the regulatory climate in the U.S. is now more conducive to foreign investment advisers, the fact remains that seeking legislation to

amend section 7(d) of the Investment Company Act is still a necessary step if foreign funds are to have broad access to American markets. Certainly, the SEC could ask Congress to amend section 7(d) to provide for more flexibility than is currently available. But practically speaking, obtaining congressional approval for any legislation will depend ultimately on the willingness of foreign regulators to open up their markets.

Until these roadblocks can be cleared, those seeking to expand their businesses internationally must pursue other avenues. As you heard this morning, the U.S. fund industry has developed one alternative for U.S. fund managers seeking access to foreign markets: an international master-feeder fund structure.

The SEC has already seen at least one fund manager take this approach. Swiss Bank, a U.S. registered adviser, established the Swiss Key Funds, which has both U.S. and Cayman Island feeder funds that invest in a master fund registered under the Investment Company Act. To avoid unfavorable U.S. tax consequences, the master fund is organized under New York state law, but conducts its business off shore so as to not run afoul of the "ten commandments." But this structure only works because the master fund is a U.S. registered investment company. The SEC staff has repeatedly

stated that trying to organize a non-U.S. master fund and market it through U.S. spokes would violate Section 7(d).

Of course, once a master fund is registered as a U.S. investment company, the presence of non-U.S. feeder funds does not cause the SEC staff to treat this structure any differently during the comment process. The focus remains on the disclosure issues involved, and the primary concern is that the domestic feeder funds disclose material information regarding the existence of other feeder funds.

However, this may change slightly in the future. As many of you know, the disclosure required for other feeders in a master-feeder structure is more limited than that needed for different classes in a multiple class fund structure. The SEC staff has long been concerned with this disparate treatment. On Wednesday, the Commission will consider whether to issue new proposals calling for changes to the rules applied to multiple class funds as well as additional disclosure requirements for master-feeder funds.

For me, the interesting part of the Swiss Key Funds structure is that it allows shares to be simultaneously sold in the U.S. and the Cayman Islands. The next step would be to have a similar structure, but with feeders in additional jurisdictions. European feeders are an obvious choice, except that

most European countries have prohibitions on funds owning shares of other funds, thanks in large part to the lingering shadow cast by Bernie Cornfeld. So establishing a feeder in England, France or even Ireland or Luxembourg remains problematic.

However, if European regulators could be convinced to view the structure not as a fund of funds, but rather as simply a structure that divides the distribution and portfolio services that a complex traditionally provides, perhaps headway could be made. Of course, moving ahead one country at a time is not the ultimate answer. The structure is ideally suited to have feeders in several countries where customer services and distribution efforts could be specifically targeted to particular investors with different needs but similar investment objectives. Unfortunately, the analysis can become quite complicated if you want to qualify a feeder as a UCITS, though one would hope that this format could be utilized to achieve this worthy goal.

I do note, however, that the competition among the off-shore jurisdictions is becoming particularly fierce, and I wonder if sooner or later Ireland and Luxembourg will be forced to consider changing their regulation to keep pace with the others. In today's global economy, competition can be an amazing motivating force for government officials, particularly when jobs, tax revenues and eventually votes are involved.

Which brings me back to the U.S., and the potential for Congressional action to eliminate some of the barriers all fund operators face trying to expand their operations. As I said earlier, the prospects to amend section 7(d) are not good, particularly in the absence of efforts by other countries to find ways to facilitate open and competitive markets. My view is that for Congress to act, U.S. fund managers will need more than an empty promise to enter a foreign market, but also have a fighting chance to effectively market and distribute their shares abroad.

Some in the U.S. Senate, however, are already cognizant of the barriers U.S. fund operators face in trying to market U.S. shares to foreign investors. I'm specifically talking about U.S. tax policy, which as many of you know, subjects a foreign investor in a U.S. fund to U.S. withholding taxes that are not imposed if the investor purchases U.S. securities either directly or through a foreign fund. In essence, our laws impose a prohibitive export tax on foreign investors simply for choosing U.S. mutual funds as their preferred investment vehicle.

Recently, Senator Max Baucus, with two co-sponsors, introduced the "Investment Competitiveness Act of 1993," which proposes to remove these unnecessary tax barriers that confront foreign investors seeking to invest in

U.S. mutual funds. A similar version of this bill passed the Senate previously, so I am hopeful that this legislation will also be approved. The U.S. domestic mutual fund industry is truly an American success story. One really has to question why anyone in our government would want to provide significant disincentives to any foreign investor seeking to purchase this industry's products.

Of course, it is easy to paint this proposal as simply a move to help the U.S. domestic mutual fund industry. But it also lays the foundation for further legislative initiatives. As the NAFTA vote showed, where meaningful benefits are obtainable, Congress is prepared to act. Certainly, if foreign regulators show similar flexibility, amendments to Section 7(d) are not out of the realm of possibility.

Conclusion

In closing, it's important to note that capital is rapidly becoming the most valuable commodity in the world. Technological advancements have shrunk the international financial community into a global village where investors around the world can, with one simple phone call, invest and share in the growth and development of other nations. Because of the rapidly changing financial landscape, regulators world-wide must step back and

assess the effects of the market forces that have been gyrating through our financial markets over the last two decades.

Clearly, as the world grows smaller, the demand for international investments will continue to increase. As we have witnessed over the past two years, Americans have no hesitation to move into investment opportunities outside the U.S., and U.S. regulators will have little choice but to try and make this move easier and cheaper. Similarly, I can only hope that in the same spirit that Mexico, Canada and the U.S. joined together on NAFTA, other foreign governments will act to harness the advantages a competitive domestic mutual fund industry provides. As the recent growth of the off-shore fund industry clearly illustrates, where there is demand, supply is sure to follow.

I'm pleased to see so many of you here working towards satisfying the demands of the marketplace. Perhaps, as time passes, your success will further illuminate the need for regulators and legislators around the world to re-assess what regulations are truly necessary to best serve the public interest and to protect investors. And seen in a new light, the globalization of the mutual fund industry can proceed more rapidly on a level playing field, to the benefit of all nations. I wish you continued good luck in your future endeavors. Thank you.