

**MEAG MUNICH ERGO (by Herrick, Feinstein, LLP)**

Investment Advisers Act of 1940 - Section 203(a)

February 14, 2014

RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF INVESTMENT MANAGEMENT  
IM Ref. No. 20142111522

MEAG MUNICH ERGO

Your letter dated February 14, 2014 requests our assurance that we would not recommend enforcement action to the Securities and Exchange Commission (the "Commission") under section 203(a) of the Investment Advisers Act of 1940 (the "Advisers Act") against MEAG MUNICH ERGO Asset Management GmbH ("MEAG"), an asset management company organized under the laws of the Federal Republic of Germany, if MEAG does not register with the Commission as an investment adviser under the Advisers Act.

In your letter, you assert, among other things, that MEAG is not engaged in the business of "advising others."/1 Based on the facts and representations set forth in your letter, we would not recommend enforcement action to the Commission against MEAG under section 203(a) of the Advisers Act if MEAG does not register as an investment adviser under the Advisers Act./2 Our position is based particularly on your representations that:

MEAG is a wholly owned subsidiary of Muenchener Rueckversicherungs-Gesellschaft Aktiengesellschaft in Muenchen (the "Parent"), a global reinsurance company with its principal place of business in Germany. MEAG performs asset management and investment advisory services for insurance companies, and for holding companies for insurance companies, which in each case are direct or indirect wholly owned subsidiaries of the Parent (the Parent and each of its direct and indirect wholly owned subsidiaries are hereinafter referred to as the "Munich Re Group");

MEAG does not hold itself out to the public as an investment adviser, and provides investment advice only to the Munich Re Group companies; and

The Munich Re Group companies beneficially own, directly or indirectly, 100% of the assets for which MEAG provides investment advice

This response expresses our view on enforcement action only and does not express any legal or interpretive position on the issues presented. Because our position is based upon all of the facts and representations, any different facts or representations may require a different conclusion./3

Michael S. Didiuk  
Senior Counsel

**Footnotes**

1/ Section 202(a)(11) of the Advisers Act defines "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities."

2/ See Allianz of America, Inc., SEC Staff No-Action Letter (May 25, 2012); see also, Zenkyoren Asset Management of America Inc., SEC Staff No-Action Letter (June 30, 2011).

3/ This relief would not apply if, for example, the Parent or any Munich Re Group company were a private fund as defined in section 202(a)(29) of the Advisers Act.

**INCOMING LETTER**

**Herrick, Feinstein, LLP  
Patrick D. Sweeney, Partner  
2 Park Avenue, New York, NY 10016**

**February 14, 2014**

**VIA EMAIL**

**Division of Investment Management  
Securities and Exchange Commission  
200 F Street, N.E.  
Washington, D.C. 20549-0504**

Attention: Douglas J. Scheidt, Associate Director and Chief Counsel

Re: Request for No Action Assurance

Dear Ladies and Gentlemen:

We are writing on behalf of MEAG MUNICH ERGO Asset Management GmbH ("MEAG"), an asset management company organized under the laws of the Federal Republic of Germany, with its principal place of business in Munich, Germany. MEAG seeks assurance from the staff of the Division of Investment Management (the "Staff") that it will not recommend enforcement action to the U.S. Securities and Exchange Commission (the "Commission") under Section 203(a) of the Investment Advisers Act of 1940, as amended (the "Advisers Act"), if MEAG does not register with the Commission as an investment adviser under the Advisers Act. Based on the Staff's prior positions, we do not believe that MEAG is in the business of "advising others."

**Factual Background**

MEAG is a wholly-owned subsidiary of Muenchener Rueckversicherungs-Gesellschaft Aktiengesellschaft in Muenchen ("Munich Re"), a global reinsurance company organized under the laws of the Federal Republic of Germany, with its principal place of business in Munich, Germany.

MEAG performs asset management and investment advisory services for insurance companies, and for holding companies for insurance companies, which in each case are direct or indirect Wholly owned subsidiaries of Munich Re and are controlled/1 by Munich Re. These subsidiaries are located globally. In the future, MEAG may advise additional subsidiaries of Munich Re which are engaged in different business activities. Munich Re and its direct and indirect wholly owned subsidiaries are hereinafter referred to as the "Munich Re Group".

MEAG advises only members of the Munich Re Group. Each of MEAG's advisory clients, therefore, is an "affiliate" of MEAG within the meaning of the federal securities laws /2.

Munich Re Group companies beneficially own, directly or indirectly, 100% of the assets for which MEAG provides investment advice. Neither Munich Re nor MEAG has received any investment directive from any Munich Re Group insured or any unaffiliated third party.

MEAG has not held itself out to the public as an investment adviser since 2008. MEAG is not listed in any phone book under "investment advisory services" or on the world wide web as a U.S.

investment adviser, does not attend investment management conferences as a provider of investment advisory services and does not engage in any advertising or conduct any marketing activities with respect to its investment advisory activities.

MEAG does not provide any investment advisory services to the general public. MEAG does not provide, and does not intend to provide in the future, investment advisory services to any unaffiliated third party.

MEAG New York Corporation, a corporation organized under the laws of the State of Delaware with its principal place of business in New York City ("MEAG New York"), is a member of the Munich Re Group and an affiliate of MEAG. MEAG New York is an investment adviser registered under the Advisers Act. MEAG New York provides investment advice to members of the Munich Re Group located in the United States. MEAG provides certain "back-office" or administrative services for MEAG New York. However, the offices and personnel of MEAG are maintained separate from the offices and personnel of MEAG New York.

Formerly, MEAG provided investment advice to members of the Munich Re Group located in the United States, primarily through subadvisory relationships with MEAG New York. MEAG did not maintain offices or personnel in the United States. MEAG did not hold itself out to the public in the United States as an investment adviser.

In conducting investment advisory activities in the United States, MEAG relied upon the "private investment adviser exemption" from registration as an investment adviser under Section 203(b)(3) of the Advisers Act, which was eliminated by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. /3 MEAG discontinued its investment advisory activities in the United States when the private adviser exemption was eliminated.

MEAG would like to resume its role as investment adviser to members of the Munich Re Group located in the United States. MEAG would like to enter into direct advisory relationships with these members of the Munich Re Group. Consistent with its current practices, MEAG would not hold itself out to the public in the United States as an investment adviser. MEAG would not maintain offices or personnel in the United States. MEAG's investment advice would be rendered to its affiliates in the United States separate and apart from investment advice given to them by MEAG New York. MEAG's offices and personnel would be maintained separate from the offices and personnel of MEAG New York. MEAG would render its investment advice solely to members of the Munich Re Group. All of the investment assets managed by MEAG in the United States would be beneficially owned by members of the Munich Re Group. MEAG would not take direction from any unaffiliated third party, including any insured of members of the Munich Re Group, with respect to its investment advice.

#### Discussion

Section 202(a)(11) of the Advisers Act defines "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or Who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities." This definition includes three essential elements. An "investment adviser" generally includes any person that: (1) for compensation, (2) is engaged in the business of (3) providing advice to others or issuing reports or analyses regarding securities. A person must satisfy all three elements to fall within the definition of "investment adviser. /4

We do not believe MEAG satisfies the third prong of this test as it is not providing investment advice to "others" regarding securities. Rather, MEAG provides investment management services solely to members of the Munich Re Group.

The Staff has granted no-action relief and the Commission has granted exemptive relief in analogous situations. In Allianz of America, Inc., Allianz of America, Inc. ("AZOA") was a wholly owned subsidiary of Allianz SE (the "Parent"), a German Societas Europaea. /5 AZOA was established for the purpose of serving as a holding company for various U.S.-based subsidiaries of the Parent, and was operated for this purpose and for the purpose of providing investment advisory services to U.S.-based and foreign insurance companies that were direct and indirect wholly owned subsidiaries of the Parent (each, an "Allianz Group Company") and to their direct and indirect wholly owned subsidiaries. AZOA did not hold itself out to the public as an investment adviser, and provided investment advice only to the Allianz Group Companies and to their direct and indirect wholly owned subsidiaries. The Allianz Group Companies beneficially owned, directly or indirectly, 100% of the assets for which AZOA provided investment advice. AZOA sought and received assurance that the Staff would not recommend an enforcement action under Section 203(a) of the Advisers Act if AZOA did not register with the Commission as an investment adviser under the Advisers Act after the elimination of the "private adviser" exemption in Section 203(b)(3) of the Advisers Act on which it had previously relied.

In Zenkyoren Asset Management of America Inc., Zenkyoren Asset Management of America Inc. ("ZAMA") was a wholly owned subsidiary of National Mutual Insurance Federation of Agricultural Cooperatives ("NMIFAC"), a Japanese insurance federation.<sup>6</sup> ZAMA asserted that it was established and has been operated for the sole purpose of providing investment advisory services to four foreign funds in which NMIFAC was the only investor. ZAMA did not hold itself out to the public as an investment adviser, provided investment advice only to NMIFAC via the four foreign funds and the four foreign funds (Which only included NMIFAC's assets) were established and operated solely for the benefit of NMIFAC in order to enable NMIFAC to pool and invest its premium proceeds in order to meet short, medium and long term claim obligations and other operating costs of its insurance business. ZAMA sought and received assurance that the Staff would not recommend an enforcement action under Section 203(a) of the Advisers Act if ZAMA did not register with the Commission as an investment adviser under the Advisers Act after the elimination of the "private adviser" exemption in Section 203(b)(3) of the Advisers Act on which it had previously relied.

In Lockheed Martin Investment Management Co., Lockheed Martin Investment Management Company ("LMIMCo"), a wholly-owned subsidiary of Lockheed Martin Corporation ("Lockheed"), was a registered investment adviser that did not hold itself out to the public as an investment adviser. /7 LMIMCo's sole purpose was to provide investment advisory services to various employee benefit plans and trusts of Lockheed and certain of its affiliates. /8 LMIMCo asserted that it was not in the business of providing investment advice to others concerning securities. LMIMCo sought and received assurance that the Staff would not recommend an enforcement action under Section 203(a) of the Advisers Act as a result of LMIMCo withdrawing its registration as an investment adviser under the Advisers Act.

In CSX Financial Management Inc., CSX Financial Management Inc. ("CSX Financial"), an indirect wholly-owned subsidiary of CSX Corporation ("CSX"), was a registered investment adviser and existed solely to provide investment advisory services to CSX and certain of its subsidiaries. /9 CSX Financial did not hold itself out to the public as an investment adviser. CSX Financial submitted that its advisory services to CSX and its subsidiaries should not be considered services to "others" regarding securities. CSX Financial requested and received an order under Section 202(a)(11)(F) (now Section 202(a)(11)(H)) of the Advisers Act declaring CSX Financial to be a person not within the intent of Section 202(a)(11) of the Advisers Act.

Further, we do not believe that there is any public policy basis for deeming MEAG to be in the business of providing investment advice to others. MEAG is a wholly-owned subsidiary of Munich Re and provides investment advisory services solely to Munich Re Group companies. MEAG does not hold itself out to the public as an investment adviser, and MEAG advises only the Munich Re Group. MEAG does not provide investment advice for any assets not owned beneficially, directly or indirectly, by Munich Re Group companies.

## Conclusion

Based on the above, we do not believe that MEAG is in the business of "advising others." We hereby request that the Staff give its assurance that it will not recommend that the Commission take enforcement action under Section 203(a) of the Advisers Act against MEAG if MEAG does not register with the Commission as an investment adviser under the Advisers Act.

Very truly yours,

Patrick D. Sweeney

PDS:lac

## Footnotes

1 The term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. 17 CFR §230.405.

2 An "affiliate" of, or a person "affiliated with", a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified. 17 CFR §230,405.

3 Pub. L, No. 111-203, 124 Stat. 1376 (2010).

4 See Investment Advisers Act Release No. 1092 (Oct. 8, 1987).

5 See Allianz of America, Inc., SEC Staff No-Action Letter (May 25, 2012).

6 See Zenkyoren Asset Management of America, Inc., SEC Staff No-Action Letter (Jun. 30, 2011).

7 See Lockheed Martin Investment Management Co., SEC Staff No-Action Letter (Jun. 5, 2006).

8 Among other things, LMIMCo monitored Lockheed common stock held by a third party trustee of a non-qualified trust and directed the trustee to make certain decisions with respect to the trust. The presence of the third party trustee was not an impediment to LMIMCo's obtaining no-action relief.

9 See CSX Financial Management, Inc., File No. 803434, Release Nos. IA-1805 (Jun, 23, 1999) (notice) and IA-1808 (Jul. 20, 1999) (order).