

SEC Grants No-Action Relief Permitting German-based Strategy Consulting Firm to Engage in M&A Activities with U.S. Targets without Registering as Broker-Dealer

The SEC has granted no-action relief to Roland Berger Strategy Consultants (“Roland Berger” or the “Firm”) stating that it would not recommend enforcement action under Section 15(a) of the Exchange Act if Roland Berger were to engage in certain activities without registering as a broker or dealer.

Roland Berger is an independent strategy consultancy firm based in Germany that engages in a wide range of services on behalf of non-U.S. clients. The majority of services that Roland Berger provides do not qualify as “broker” activities, but the Firm is occasionally involved in international M&A activities that may require registration as a broker-dealer under the Exchange Act.

Specifically, Roland Berger sought no-action relief from the SEC for engagements in which the Firm is retained outside of the U.S. by non-U.S. clients in connection with buy-side or sell-side M&A transactions. These, transactions may involve the proposed acquisition or disposal of operations of a company or a division of a company, the proposed acquisition or sale of a company or division through an equity securities transaction or the proposed acquisition or sale of a company or division through a combination asset and securities transaction. In such situations, Roland Berger identifies potential buyers or sellers on behalf of its client and

initiates contact with the prospective target. This contact may take place in the form of telephone calls, e-mail correspondence, or mailings. As part of the process of contacting potential target buyers or sellers, Roland Berger may contact one or more U.S.-based entities or non-U.S. based entities that have U.S.-based parents involved in the investment decision of the non-U.S. entity ("U.S. Targets"). If a potential buyer or seller becomes interested in a transaction with Roland Berger's client, the Firm manages the information process, conducts negotiations on behalf of its client, and advises its client on how best to proceed. Roland Berger's compensation is based on a monthly retainer, and if a deal is consummated, the Firm will be entitled to an additional flat fee or variable fee.

Roland Berger's request to the SEC was for assurances that these services, including contacting U.S. Targets and managing the deal on behalf of its non-U.S. clients, would not subject it to the Exchange Act and regulations requiring the Firm to register as a broker-dealer. Roland Berger's specific request to the SEC included permission to initiate contact with U.S. Targets, to assess the U.S. Targets' interest in the M&A transaction, and to identify the U.S. Targets' investment bankers, or expert personnel, if the U.S. Target expressed interest in the transaction. Roland Berger further requests assurances that the SEC would not recommend enforcement action if after making initial contact with U.S. Targets, it were to engage in additional activities where it interacts with a U.S. Target that is using internal or group level personnel with relevant M&A experience (via in-person meetings or through other direct contacts) to negotiate a transaction, if the internal or group level personnel described above are not associated with a U.S.-registered broker-dealer or a U.S. Target that is using the services of an external advisor, such as a broker-dealer, attorney or other professional with relevant experience.

Accompanying its request for no-action relief, Roland Berger acknowledged that (1) it would not receive, acquire, or hold funds or securities in connection with any transaction it engaged in with a U.S. Target; (2) it would not represent or advise the U.S. Targets in any regard with respect to the proposed transaction; and (3) the granting of no-action relief would not relieve Roland Berger of any obligations it had to comply with the antifraud provisions of the U.S. securities laws.

The SEC determined that it would not recommended enforcement action against Roland Berger for engaging in the M&A activities described in its letter. The SEC made it clear in taking its position, the fact that Roland Berger will not represent or advise any U.S. Target and will not receive, acquire or hold funds or securities was of particular importance.

In addition, in a footnote the SEC noted that while Roland Berger does not have an office in the U.S., it has an affiliate that is located in the U.S. that provides many of the same consultancy services that Roland Berger provides. The SEC stated that it is not providing any relief with respect to the activities of the U.S. affiliate in the no-action letter.

Please click [here](#) for the full version of the SEC's no-action letter to Roland Berger.