UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

DIVISION OF
TRADING AND MARKETS

May 28, 2013

Amy Natterson Kroll, Esq.
Bingham McCutchen LLP
2020 K Street NW
Washington, DC 20006-1806

Re: **Roland Berger Strategy Consultants**

Dear Ms. Kroll:

In your letter dated May 28, 2013, on behalf of your client, Roland Berger Strategy Consultants ("Roland Berger"), you request assurances from the staff of the Division of Trading and Markets ("Staff") that it would not recommend enforcement action to the Securities and Exchange Commission ("Commission") under Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") if Roland Berger were to engage in the activities described in your letter without registering as a broker-dealer under Section 15(b) of the Exchange Act.

Based on your letter, I understand the facts to be as follows.

Roland Berger is an independent strategy consultancy firm based in Germany, the ultimate parent company of which is Roland Berger Strategy Consultants Holding GmbH, a limited liability company registered in Munich.[1] Roland Berger provides certain strategy consultancy services on behalf of non-U.S. clients including: (1) corporate and other entities domiciled outside the United States and (2) agencies or branches of U.S. entities permanently located outside the United States ("Non-U.S. Clients").[2]

In certain situations, Roland Berger may be retained outside the United States by Non-U.S. Clients in connection with either buy-side or sell-side merger and acquisition ("M&A") transactions. These transactions may involve the proposed acquisition or disposal of operations of a company or division of a company (*e.g.*, an asset sale), 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.

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1 You note that while Roland Berger does not have an office in the United States, it has an affiliate, Roland Berger Strategy Consultants LLC ("U.S. affiliate"), that is located in the United States. The U.S. affiliate provides many of the same consultancy services that Roland Berger provides. You acknowledge in your letter that if the U.S. affiliate or its personnel provided the services described in your letter, the U.S. affiliate could become subject to U.S. broker-dealer regulation. Roland Berger has not requested, and we are not providing in this letter, any relief with respect to the activities of the U.S. affiliate.

2 For the limited purpose of this letter, an agency or branch of a U.S. entity includes a bona fide division of a U.S. operating company.

During the course of developing a proposed transaction, Roland Berger, on behalf of its Non-U.S. Client, typically will identify potential target buyers or sellers and make an initial contact with the targets to assess interest in a proposed transaction. These contacts would include, for example, telephone calls, emails, and related mailings of general pitch materials regarding the proposed transaction.

Roland Berger, as part of its process of contacting potential target buyers or sellers in connection with M&A transactions, may contact one or more U.S.-based entities or non-U.S.-based entities that have U.S.-based parents involved in investment decisions of the non-U.S. entity (each such U.S.-based entity and each U.S.-based parent, a "U.S. Target"). You represent that any U.S. Target approached by Roland Berger on behalf of its Non-U.S. Client would fall within the meaning of the term "Major U.S. Institutional Investor" as defined in Rule 15a-6(b)(4) under the Exchange Act and further developed in subsequent no-action letters.[3]

You state that if a potential buyer or seller becomes interested in a transaction with a Non-U.S. Client, Roland Berger will, among other things, develop and manage the data room and the information process, conduct negotiations on behalf of the Non-U.S. Client and advise the Non-U.S. Client on the terms of the transaction.

You request assurances that the Staff would not recommend enforcement action to the Commission if Roland Berger were to initiate contact directly with potential U.S. Targets in the manner described above. You further request assurances that the Staff would not recommend enforcement action to the Commission if Roland Berger, after making initial contact with one or more potential U.S. Targets, were to engage in the additional activities described above in connection with U.S. Targets in situations where it interacts with either:

(1) a U.S. Target that is using internal or group level personnel with relevant M&A experience[4] (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, provided that Roland Berger personnel engaged in any contacts with U.S. Targets in the United States are limited to persons whom Roland Berger would have determined satisfy the requirements for "foreign associated persons" in Rule 15a-6(a)(3)(ii)(B); or

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[3] *See* Letter from Richard R. Lindsey, Director, Division of Market Regulation, SEC, to Giovanni P. Prezioso, Esq., Cleary, Gottlieb, Steen & Hamilton, Re: Securities Activities of U.S.-Affiliated Foreign Dealers (April 9, 1997), as supplemented by Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to Giovanni P. Prezioso, Esq., Cleary, Gottlieb, Steen & Hamilton, Re: Securities Activities of U.S.-Affiliated Foreign Dealers (April 28, 1997). *See also*, Letter from David W. Blass, Chief Counsel, Division of Trading and Markets, SEC, to D. Grant Vingoe, Esq., Arnold & Porter LLP, Re: Merger and Acquisition Activities of Foreign Firms in Reliance on Rule 15a-6 (July 12, 2012).

[4] You explain in your letter that many companies and corporate families in the United States meeting the Major U.S. Institutional Investor threshold have established internal or group corporate investment banking groups or experts who handle many transactions for the companies and their affiliates.

(2) 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.[5]

In furtherance of this request, Roland Berger states that: (1) it would not receive, acquire or hold funds or securities in connection with any transaction it engages in with a U.S. Target in reliance on the requested no-action relief; (2) it would not represent or advise the U.S. Target in any regard with respect to the proposed transactions; and (3) the granting of the requested no-action relief would not relieve Roland Berger of any obligations it has to comply with the antifraud provisions of the U.S. securities laws.

Response:

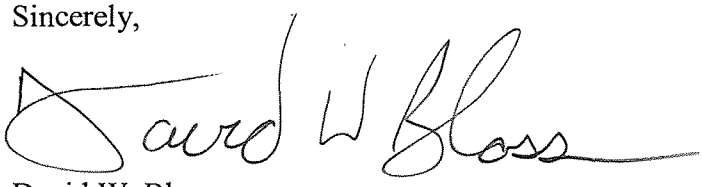
Based on the facts and representations contained in your letter, the Staff will not recommend enforcement action to the Commission under Section 15(a)(1) of the Exchange Act against Roland Berger for engaging in the M&A activities described in your letter without registering as a broker-dealer in accordance with Section 15(b) of the Exchange Act.

In taking this position, we note in particular that, for any transaction with a U.S. Target in reliance on this relief, Roland Berger will not represent or advise any U.S. Target and will not receive, acquire or hold funds or securities.

This position is based strictly on the facts and representations you have made in your letter and any different facts and circumstances may require a different response. This response, furthermore, expresses the Staff position regarding enforcement action only and does not purport to express any legal conclusions on the question presented. The Staff expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal or state laws, or self-regulatory organization rules.

If you have any questions regarding this letter, please call Joseph Furey, Assistant Chief Counsel, Andrew Bernstein, Branch Chief, or me at (202) 551-5550.

Sincerely,



David W. Blass
Chief Counsel

cc: Margaret R. Blake, Esq., Bingham McCutchen LLP

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[5] Any person representing a U.S. Target would have its own independent obligation to determine whether it must register with the Commission as a broker-dealer in accordance with Section 15(b) of the Exchange Act.

BINGHAM

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May 28, 2013

David W. Blass
Chief Counsel
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington DC 20549

Re: Roland Berger Strategy Consultants: Request for No-Action Relief

Dear Mr. Blass:

On behalf of our client, Roland Berger Strategy Consultants ("Roland Berger" or "Firm"), we respectfully request your assurance that the staff of the Division of Trading and Markets (the "Staff") of the U.S. Securities and Exchange Commission (the "SEC" or "Commission") would not recommend enforcement action under Section 15(a) of the Securities Exchange Act of 1934 (the "Exchange Act") against Roland Berger if Roland Berger were to engage in the activities described below without registering as a broker or dealer under Section 15 of the Exchange Act.

Description of Roland Berger and its Activities

Roland Berger is an independent strategy consultancy firm based in Germany, the ultimate parent company of which is Roland Berger Strategy Consultants Holding GmbH, a limited liability company registered in Munich. Roland Berger has offices or affiliates in 36 countries.[1] Roland Berger engages in a wide range of strategy consultancy services on behalf of non-U.S. clients including: (1) corporate and other entities domiciled outside the United States, and (2) agencies or branches of U.S. entities permanently located outside the United States ("Non-U.S. Clients").[2] The majority of strategy consulting services Roland Berger provides do not qualify as "broker" activities, however, the consulting services provided by the Firm, from time to time, include advice in connection

[1] While Roland Berger does not have an office in the United States it has an affiliate, Roland Berger Strategy Consultants LLC ("U.S. affiliate"), that is located in the United States and that provides many of the same consultancy services that Roland Berger provides. The Firm and its U.S. affiliate are aware that if the U.S. affiliate or its personnel provided the services described in this letter, the U.S. affiliate could become subject to U.S. broker-dealer regulation. The Firm is not requesting any relief with respect to the activities of the Firm's U.S. affiliate.

[2] For the limited purpose of this letter, an agency or branch could include a bona fide division of a U.S. operating company.

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with cross border merger and acquisition ("M&A") activities that, depending on how and where they are provided, might be viewed as activities of a "broker" as that term is defined in section 3(a)(4) of the Exchange Act.

In the scenarios for which the Firm seeks no-action relief, Roland Berger is retained outside the United States by Non-U.S. Clients in connection with either buy-side or sell-side M&A transactions. For purposes of the activities described in this letter, Roland Berger's Non-U.S. Clients are limited to foreign private issuers that may or may not have a listing in the United States, non-U.S. companies owned by private equity firms based outside the United States that are managed by advisers also outside the United States, and other similarly situated issuers. The transactions on which Roland Berger is retained may involve the proposed acquisition or disposal of operations of a company or division of a company (*e.g.*, asset sale), 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.

During the course of developing a proposed transaction, Roland Berger, on behalf of its Non-U.S. Client, will identify potential target buyers or sellers and make an initial contact with such targets to assess interest in the proposed transaction. These contacts would include, for example, telephone calls, email correspondence, and related mailings of general pitch materials regarding the proposed transaction. Roland Berger requests no-action relief for those situations when these target buyers or sellers include, in addition to non-U.S. entities, one or more U.S.-based entities, or non-U.S.-based entities that have U.S.-based parents involved in investment decisions of the non-US subsidiary (both U.S.-based entities and the U.S. parents of non-U.S.-based entities referred to herein individually as "U.S. Target" or collectively as "U.S. Targets").

U.S. Targets approached by Roland Berger on behalf of its client(s) would be limited to Major U.S. Institutional Investors as defined in Rule 15a-6(b)(4) under the Exchange Act of 1934 ("Exchange Act") and further developed in subsequent no-action letters.[3] Once a U.S. Target is approached about a proposed transaction and indicates an interest, it may retain its own broker-dealer or other advisor (*i.e.*, law firm or other professional) to represent it in the potential transaction. Alternatively, the U.S. Target, in some instances,

[3] *See* Letter from Richard R. Lindsey, Director, Division of Market Regulation, SEC, to Giovanni P. Prezioso, Esq., Cleary, Gottlieb, Steen & Hamilton, Re: Securities Activities of U.S.-Affiliated Foreign Dealers (April 9, 1997) ("Nine-Firms Letter"), as supplemented by Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to Giovanni P. Prezioso, Esq., Cleary, Gottlieb, Steen & Hamilton, Re: Securities Activities of U.S.-Affiliated Foreign Dealers (April 28, 1997). *See also*, Letter from David W. Blass, Chief Counsel, Division of Trading and Markets, SEC, to D. Grant Vingoe, Esq., Arnold & Porter LLP, Re: Merger and Acquisition Activities of Foreign Firms in Reliance on Rule 15a-6 (July 12, 2012).

may not use an external advisor, but rather may choose or be required by internal policy to manage the transaction internally.[4]

If a potential buyer or seller becomes interested in a transaction with a Non-U.S. Client of Roland Berger, the Firm will, among other things, develop and manage the data room and the information process, conduct negotiations on behalf of the Non-U.S. Client and advise the Non-U.S. Client on the terms of the transaction.

Roland Berger's compensation in M&A engagements usually is based on a monthly retainer fee, and in the case of a successful transaction, an additional flat fee agreed upon at the beginning of the transaction, or a variable fee based on the ultimate size of the deal.

Potential Issues Under the Exchange Act

Section 15(a) of the Exchange Act generally provides that persons that satisfy the definition of "broker" or "dealer" in Sections 3(a)(4) and (5) of the Exchange Act are required to register with the Commission if they make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security.[5] Pursuant to SEC guidance, communications aimed at inducing sales, coupled with other "badges" of broker-dealer activity, such as receipt of transaction-based compensation, are indicative that a person is acting as a broker-dealer. Generally, M&A engagements that will result in a transfer of ownership of securities, or a financing of a transaction using debt securities, are considered the activities of a "broker" or "dealer" as well.[6] If an entity engages in

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[4] Many companies and corporate families in the United States meeting the Major U.S. Institutional Investor threshold have established internal or group corporate investment banking groups or experts who handle many transactions for the companies and their affiliates, in lieu of external investment bankers. These personnel often have previously worked at a registered broker-dealer, and/or are experienced members of the companies' financial and business development groups.

[5] The SEC stated in the Adopting Release for Rule 15a-6 that it:

> [G]enerally views "solicitation" in the context of broker-dealer regulation as including any affirmative effort by a broker or dealer intended to induce transactional business for the broker-dealer…Solicitation includes efforts to induce a single transaction…Conduct deemed to be solicitation includes telephone calls to a customer encouraging use of the broker-dealer to effect transactions, as well as advertising one's function as a broker [or dealer] in [media] in the United States…or directed into the United States. A broker-dealer also would solicit…by, among other things, recommending the purchase or sale of particular securities, with the anticipation that the customer will execute the recommended trade through the broker-dealer.

Registration Requirements for Foreign Broker-Dealers, 54 Fed. Reg. 30013, notes 53-56 (July 13, 1989) (the "Adopting Release").

[6] Sections 3(a)(4) and 3(a)(5) of the Exchange Act. *See also Landreth Timber Co. v. Landreth,* 471 U.S. 681 (1985), where the U.S. Supreme Court held that, among other things, a purchaser may reasonably conclude that the federal securities laws apply to the purchase of an instrument in

broker-dealer activity described above involving a U.S. Target, it must either register as a U.S. broker-dealer or limit its activities to remain within an exemption or safe harbor from registration. The entity also may seek to obtain no-action relief or may rely on no-action relief previously issued to another entity, as allowable.

The SEC, in 1989, adopted Rule 15a-6 under the Exchange Act, in order to permit non-U.S. broker-dealers engaging in activities that might otherwise require registration in the United States to conduct such activities under limited exemptions from broker-dealer registration and regulation. M&A activities are not expressly addressed in Rule 15a-6 or in the SEC's accompanying Adopting Release, and the application of Rule 15a-6 to M&A advisory activity has proven difficult for many non-U.S. firms because Rule 15a-6 was drafted to apply to more "traditional" brokerage activity. However, non-U.S. firms providing M&A advisory services in the United States, or through U.S. jurisdictional means, generally understand that it is necessary to conform their activities to the exemptions provided in Rule 15a-6 (or another available exemption, if applicable), regardless of how difficult it is to fit squarely therein.

Based on the Adopting Release and guidance thereunder, we understand that U.S. broker-dealer regulation could apply when a non-U.S. entity provides certain M&A advisory services to Non-U.S. Clients, such as contacting one or more U.S. Targets in order to propose a transaction with a Non-U.S. Client or managing certain aspects of the proposed M&A transaction with the U.S. Target on behalf of the Non-U.S. Client. This appears to be the view, even though the non-U.S. advisor is not seeking to advise the U.S. Target at any point in the transaction.

It also is possible that U.S. broker-dealer regulation could apply to a non-U.S. entity, such as Roland Berger, if it participates in negotiations on behalf of its Non-U.S. Client where the counterparty in the transaction is a U.S. Target that is not advised by a registered U.S. broker-dealer.

In order to be certain that an exemption is available under Rule 15a-6, Roland Berger would have to either (1) deal only with a registered broker-dealer (or U.S. bank acting in a broker-dealer capacity) acting on behalf of a U.S. Target pursuant to Rule 15a-6(a)(4)(i), or (2) enter into an agreement with a U.S. registered broker-dealer pursuant to Rule 15a-6(a)(3) under which the U.S. registered broker-dealer would assume certain responsibilities for the transaction, to the extent a U.S. Target is involved or U.S. jurisdictional means are used, even though Roland Berger would not be representing a U.S. Target.

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the sale of a business, where the instrument is called a "stock" and has the characteristics typically associated with a security. Therefore, *Landreth* leads to the conclusion that an intermediary assisting in the sale of a business structured as a sale of securities would have to be a registered broker-dealer (or operating pursuant to an exemption from registration) if it uses U.S. jurisdictional means when engaging in such activity, absent an available exemption.

With respect to Rule 15a-6(a)(4)(i), in many instances, a U.S. Target might not retain a registered broker-dealer for M&A transactions until the U.S. Target is seriously considering entering into a proposed transaction. Alternatively, the U.S. Target may, as described above, use internal or group-level personnel, or an external advisor, not limited to a broker-dealer, for some or all of its M&A transactions.

When a U.S. Target has experienced internal or group level personnel, as discussed above, the practical result is equivalent to retaining a registered broker-dealer. Rule 15a-6(a)(4)(i), however, only provides an exemption from registration if a non-U.S. broker-dealer interacts with registered broker-dealers, or banks acting in a broker-dealer capacity. Therefore, reliance on Rule 15a-6(a)(4)(i) may not be possible for Roland Berger if it wishes to contact and interact directly with U.S. Targets as prospective buyers or sellers in transactions with its Non-U.S. Clients.

In Rule 15a-6(a)(3) and the Adopting Release, the SEC (and its Staff later in the Nine Firms Letter), expressly acknowledged - in the context of secondary market trading - that Major U.S. Institutional Investors could choose to interact directly with non-U.S. broker-dealers under certain circumstances, either chaperoned or unchaperoned, provided that the resulting transactions ultimately were "booked" by a registered broker-dealer and certain other conditions were satisfied. Some non-U.S. M&A advisors have sought to fit their activities on behalf of non-U.S. Clients within the requirements of the Rule 15a-6(a)(3) exemption when a U.S. Target is under consideration. Industry experience suggests that the results of such a scenario can be cumbersome and difficult to administer.[7]

Requested Relief

Roland Berger requests that the Staff grant no-action relief to permit the Firm to act on behalf of its Non-U.S. Clients in M&A transactions with U.S. Targets without requiring the Firm to register as a broker-dealer pursuant to Section 15 of the Exchange Act as follows.

Roland Berger first requests no-action relief to allow the Firm, on behalf of its Non-U.S. Clients, to initiate contact directly with potential U.S. Targets to introduce a proposed M&A transaction, to assess the U.S. Targets' interest in the transaction and to identify the U.S. Targets' investment bankers, or expert personnel if the U.S. Target expresses interest in the proposed transaction. Such contacts would include, but not be limited to, telephone calls, email correspondence, and related mailings (either of hard copy or by

[7] If Roland Berger anticipated representing U.S. Targets as clients, it would enter into an agreement with a U.S. registered broker-dealer (either by registering an affiliate, or identifying an unrelated third party willing to enter into such an agreement) to satisfy the requirements of the exemption provided in Rule 15a-6(a)(3).

email) of general pitch materials, regarding the proposed transaction and the Non-U.S. Client involved.

In addition, Roland Berger requests that the Staff grant no-action relief to the Firm when **either** (1) 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, provided that Roland Berger personnel engaged in any contacts with U.S. Targets in the United States are limited to persons whom Roland Berger would have determined satisfy the requirements for "foreign associated persons" in Rule 15a-6(a)(3)(ii)(B); **or** (2) it interacts with 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.

Finally, in connection with the receipt of the requested no-action relief, Roland Berger acknowledges (1) that it would not receive, acquire or hold funds or securities in connection with any transaction it engages in with a U.S. Target in reliance on the requested no-action relief, (2) that it would not represent or advise the U.S. Targets in any regard with respect to the proposed transactions, and (3) that the granting of the requested no-action relief would not relieve Roland Berger of any obligations it has to comply with the antifraud provisions of the U.S. securities laws (including, but not limited to, the Exchange Act).

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If you have any questions regarding this request, please do not hesitate to contact me (202-373-6118) or Peggy Blake (202-373-6296).

Best regards,

Amy Natterson Kroll

cc: Matthias Rueckriegel, Principal
Roland Berger Strategy Consultants GmbH