CREDIT SUISSE

CREDIT SUISSE SECURITIES (USA) LLC
One Madison Avenue
New York, NY 10010-3629
Direct 212 325 2772
Fax 212 325 5167
Desk Fax 917 326 7884
www.credit-suisse.com

September 12, 2008

Joan Caridi
Managing Director
Legal and Compliance - Private Banking
joan.caridi@credit-suisse.com

Submitted Electronically

Ms. Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Rule for Exemption of Certain Foreign Brokers or Dealers (Release No. 34-58047; File No. S7-16-08)

Dear Ms. Harmon:

This letter is being submitted in response to the request of the Securities and Exchange Commission (the "Commission") for comments regarding the Commission's proposed amendments (the "Proposed Amendments") to Rule 15a-6 ("Rule 15a-6" or the "Rule") under the Securities Exchange Act of 1934 (the "Exchange Act"). Rather than commenting more generally on the Proposed Amendments, this letter focuses solely on the issue of "global custody", a service that is of great and ever-increasing importance to U.S. investors that invest in global securities markets.

We recognize that the Proposed Amendments do address certain aspects of the custody issue by proposing that a foreign broker-dealer be permitted to custody those securities that are the subject of transactions between the foreign broker-dealer and a U.S. "qualified investor" (as such term is defined in the Proposed Amendments) where such transactions are effected in accordance with the proposed exemption to be provided by paragraph (A)(1) of the revised Rule (so-called Exemption (A)(1)). The Proposed Amendments do not, however, address the broader issue of "global custody".

Indeed, the Proposed Amendments would establish significant obstacles to the promotion of global custody relationships and the benefits and efficiencies that such relationships can provide to U.S. investors. In particular, the Rule, as proposed to be amended, arguably would not permit a foreign broker-dealer to custody securities owned by a qualified investor that were the subject of transactions effected by the qualified investor with other broker-dealers or banks, so that the qualified investor could maintain,

if it so chooses, a single global custody account. By tying custody to execution, the Rule proposal simultaneously eliminates investor access to the efficiencies of trans-market custody and establishes investor incentives that do not necessarily promote the selection of executing brokers based on best execution capabilities or market expertise. Additionally, the Proposed Amendments would preclude the provision by a foreign broker-dealer of custody services in respect of any securities effected in transactions executed in reliance on proposed Exemption (A)(2).

Moreover, although we endorse the "qualified investor" threshold where, as contemplated by Exemption (A)(1), the foreign broker-dealer directly effects the transaction pursuant to which the custodied security is initially acquired or sold, we believe that U.S. investors more generally (such as, *e.g.*, "accredited investors" and "qualified purchasers", as such terms are defined, respectively, in Rule 501(a) under the Securities Act of 1933 and Section 2(a)(51) of the Investment Company Act of 1940) should also be permitted to custody their securities with, and receive related custody services from, a foreign broker-dealer where the acquisition or disposition of the custodied security is effected in accordance with the additional requirements of proposed Exemption (A)(2), or is effected directly by a U.S. registered broker-dealer or U.S. bank (either in accordance with paragraph (a)(4)(i) of the Rule or in a transaction entirely outside the scope of Rule 15a-6).

I. Background

Credit Suisse is a non-U.S. bank headquartered in Zurich, Switzerland that, among other activities, provides "global custody" services to investors. In general, "global custody" refers to the provision of "multi-currency custody, settlement and reporting services which extend beyond the global custodian's and custodial customer's base region and currency, and encompasses all classes of financial instruments."[1]

U.S. investors may choose to custody their assets with Credit Suisse or other non-U.S. financial institution for a variety of reasons, including (among others) the following:

- A U.S. investor may choose to custody some or all of its assets outside the United States as a means to diversify its "jurisdictional risk".
- Certain U.S. investors choosing to custody assets outside the United States may, although resident in the United States or situated in the United States for an extended or indefinite period of time, be citizens of other countries who wish to maintain, develop or re-establish custodial relationships outside the United States.
- Many jurisdictions require that locally-issued securities (and/or securities denominated in local currency) be held in central depositories located

---

1 Report on Global Custody Risks (International Securities Services Association, May 1992).

CREDIT SUISSE

within that jurisdiction and also restrict membership in such depositories to participants resident in that jurisdiction.[2] Having a direct global custody arrangement with a local participant may reduce costs and minimize administrative errors created through cascading participant and sub-participant holdings.

Global custody services typically include traditional safekeeping of securities and other assets, securities settlement services (often through a network of subcustodians), securities lending, management of post-trade corporate actions (such as the collection and reinvestment of interest and dividends, capital increases, reductions in par value, share splits and exchange offers), short-term investment and reinvestment of custodied funds, reclaiming/relief from withholding tax, and a wide choice of portfolio valuation services. It is essential that custodians be permitted to perform these incidental services because only the custodian has the requisite access to information and the securities necessary to provide these services efficiently and cost effectively. Moreover, for U.S. investors to take advantage of these efficiency and cost reduction benefits, and to allow U.S. investors with jurisdictionally diversified portfolios to consolidate their assets and receive accurate, up-to-date and comprehensive portfolio reports, it is critical that global custodians be permitted to hold all of the client's assets (including both U.S. and non-U.S. securities). The importance of this capability was recognized by the Commission in 2003 when it adopted amendments to Rule 206(4)-2 under the U.S. Investment Advisers Act of 1940 allowing non-U.S. financial institutions to act as qualified custodians for clients of U.S. registered investment advisers in respect of all of such clients' assets.[3]

Certain of the activities described above, however, which are incidental to the global custody function, arguably involve "effecting transactions in securities" and, as a consequence, the provider of those services may fall within the definitions of "broker" and/or "dealer" under the Exchange Act and, absent an applicable exemption, be required to register with the Commission under Section 15(a) of the Exchange Act.

---

[2] *See, e.g.*, Morgan Stanley India Securities Pvt. Ld, SEC No-Action Letter (avail. Dec. 20, 1996) (the "India Letter"). In the India Letter, the Staff granted no-action relief to Morgan Stanley with respect to broker-dealer registration requirements due to Indian law restrictions applicable to transactions executed through local broker-dealers. The India Letter expressly acknowledges that a U.S. customer of Morgan Stanley wishing to effect transactions in Indian securities will be required to have its own custodian located in India, and that such custodian may either be retained directly by the customer or by a Morgan Stanley affiliate as a subcustodian.

[3] *See* Release No. IA-2044 (July 18, 2002) and Release No. IA-2176 (Sept. 25, 2003) (the "Custody Release"). We note that, after considering industry comments on the proposed rule change, which comments were primarily grounded in principles of comity and a recognition of the increasing globalization of the world's securities markets, the Commission determined to codify a definition of "qualified custodian" that did not place restrictions on the scope of custodial services that may be provided by non-U.S. financial institutions U.S. registered investment advisers or their clients (including U.S. based clients). The Commission also acknowledged in the Custody Release that the investment adviser's clients themselves (rather than investment advisers acting on their clients' behalf) may choose to engage the services of non-U.S. financial institutions as their custodians. We believe this acknowledgment was based on the recognition that custody services are part of customary banking relationships and that non-U.S. financial institutions should be permitted to provide such services to U.S. investors.

In order to clarify that U.S. banks were not foreclosed from providing traditional custody services, including incidental securities-related activities such as clearance and settlement, securities lending, processing corporate actions and certain other activities (collectively referred to hereinafter as "incidental custody services"), specific exceptions and exemptions were adopted as part of the Gramm-Leach-Bliley Act of 1999 and the Commission's recently adopted Regulation R to ensure that U.S. banks that perform incidental custody services as part of their custodial activities would not fall within the definitions of (or be required to become registered as) "brokers" or "dealers" under the Exchange Act. However, the ability of non-U.S. financial institutions to provide those same incidental custody services to U.S. investors has become subject to uncertainty because of the lack of a comparable, explicit safe harbor exemption for such entities where U.S. jurisdictional means are used.

As a practical matter, an effective framework to foster global investment activity and jurisdictional diversity cannot be established without also addressing global custody. We believe that the Commission's Proposed Amendments to Rule 15a-6 is the most appropriate venue in which to address this issue.[4]

II. Request for Clarification of the Exemption for Incidental Custody Services in Rule 15a-6

The Commission states in the release discussing the Proposed Amendments that the revised Rule would "reduce and streamline the obligations of the U.S. registered broker-dealer ... and, in certain situations, permit a foreign broker-dealer to provide full-service brokerage by effecting securities transactions on behalf of qualified investors and maintaining custody of qualified investor funds and securities relating to any resulting transactions."[5] In other situations, however – in particular, in connection with transactions effected under proposed Exemption (A)(2) – a foreign broker-dealer would not be permitted to custody a qualified investor's securities and other assets and it is contemplated that such qualified investor would instead custody its securities and other assets with a U.S. registered broker-dealer.

The ability of a foreign broker-dealer to provide certain custody services in connection with proposed Exemption (A)(1), and the inability to provide such custody services in connection with proposed Exemption (A)(2), are both premised on the notion

---

4 In this regard, it is important to emphasize that our comments and request for clarification are directed solely to the provision of incidental custody services as part of the global custody function. We do not believe there is any question that a foreign broker-dealer is permitted (subject to authority to engage in those activities in accordance with local law registration, licensing and/or qualification requirements) to provide so-called "pure custody" services (*i.e.*, custody services that do not include the performance of activities that could be construed to include "effecting transactions in securities") to U.S. investors. Use of the terms "global custody" and "global custodian" in this letter are intended to refer to the provision of custody services that include incidental custody services.

5 Release No. 34-58047 (June 27, 2008) (the "Proposing Release").

that the provision of custody services is an integral part of the ability to perform full service brokerage. Although full service broker-dealers do generally offer a broad range of custody services to their customers, it is important to remember that custody is a separate, post-trade execution service, and the decision to engage an entity as a global custodian is typically made on a far different basis than the selection of a broker-dealer to execute a particular securities transaction.

Moreover, by linking custody capability to the brokerage function, the Commission is also inadvertently denying U.S. investors the ability to obtain the benefits and operational efficiencies of maintaining a global custody account with the provider (or providers) of their choice. Indeed, because a foreign broker-dealer would be permitted, under the Proposed Amendments, to custody only those securities that are the subject of transactions effected by it with a qualified investor, a qualified investor that wanted a single custody account for all its securities would be forced to use a single foreign broker-dealer to effect all of its securities transactions. Alternatively, if a qualified investor wanted the ability to choose to engage multiple broker-dealers to effect its various securities transactions (based on local market expertise or other best execution criteria), the qualified investor would similarly be forced to open multiple custody accounts.

A global custodian is able to offer its clients the ability to realize savings, both in terms of time and cost, through the receipt of comprehensive and richly detailed account statements and other analytics in the currency or currencies of their choice, robust and real time valuation services for all of their asset classes, efficient processing of corporate actions and other post-trade events, and, significantly, the avoidance of material foreign exchange expenses associated with "U.S. dollar-only" reporting of foreign currency denominated assets. In addition, because a firm's custody operation is typically separate from its sales and trading and advisory operations, custodial clients are able to receive focused attention from a staff of dedicated custody professionals who are responsible for ensuring that their clients' portfolios are well-maintained and that clients' guidelines and objectives are complied with in a timely and efficient manner. Nevertheless, a firm chosen to meet an investor's custodial needs may not be the best firm to engage in respect of a particular transaction in a particular market. In order to provide qualified investors with the freedom to choose the best service providers to execute particular securities transactions, as well as the best service providers to perform the custody function, we believe the Commission should de-link custody from brokerage in the Proposed Amendments.

Further, as noted above, we believe that under circumstances affording appropriate protections a broader category of U.S. investors should be permitted to engage a foreign broker-dealer to act as such investor's global custodian than those satisfying the definition of "qualified investor". In particular, we believe the qualified investor standard is appropriate where the foreign broker-dealer acting as custodian also directly effects, pursuant to proposed Exemption (A)(1), the transaction in the custodied security. We also believe, however, that it would be appropriate and in the public interest to permit a broader range of U.S. investors (such as, *e.g.*, accredited investors and

qualified purchasers) to custody their securities with, and receive incidental custody services from, a foreign broker-dealer where the acquisition or disposition of the custodied security is effected in accordance with the additional requirements of proposed Exemption (A)(2), or is directly effected by a U.S. registered broker-dealer or U.S. bank (either in accordance with paragraph (a)(4)(i) of the Rule or in a transaction entirely outside the scope of Rule 15a-6).

In our view, clarification of the ability of a foreign broker-dealer to perform incidental custody services for qualifying U.S. investors could best be accomplished by moving the entire custody provision to a separate subsection of the Rule (perhaps designated as new "Rule 15a-6(a)(6)"). Our proposed language for this provision is attached to this letter as "Annex A".

Finally, we urge that the Commission work with the Department of the Treasury to ensure that comparable modifications are made to the Government Securities Act of 1986, as amended,[6] as well as with the various U.S. states and territories and the North American Securities Administrators Association to ensure that comparable exemptions for foreign broker-dealers are adopted under state law.

* * *

---

[6] *See* Section 401.9 (Exemption for certain foreign government securities brokers or dealers).

CREDIT SUISSE

As the Commission recognized in the Proposing Release, it is time to update and expand the scope of Rule 15a-6 to "reflect increasing internationalization in the securities markets and advancements in technology and communication services." We believe clarification of the ability of foreign broker-dealers to perform incidental custody services for qualifying U.S. investors, in accordance with the disclosure and other requirements of the Rule, is essential to achieving that stated goal and promoting the public interest objectives of the Proposed Amendments.

If you have any questions or would like any additional information in connection with this comment letter, please do not hesitate to contact me (at 212-325-2772), or Edward J. Rosen and Dana G. Fleischman of Cleary Gottlieb Steen & Hamilton LLP (at 212-225-2000).

Sincerely,

Joan Caridi
Legal and Compliance Department
Credit Suisse Securities (USA) LLC

cc: Chairman Christopher Cox, Securities and Exchange Commission
Commissioner Kathleen L. Casey, Securities and Exchange Commission
Commissioner Elisse B. Walter, Securities and Exchange Commission
Commissioner Luis A. Aguilar, Securities and Exchange Commission
Commissioner Troy A. Paredes, Securities and Exchange Commission
Erik R. Sirri, Director, Division of Trading and Markets, Securities and Exchange Commission
Robert L.D. Colby, Deputy Director, Division of Trading and Markets, Securities and Exchange Commission
James Brigagliano, Associate Director for Trading Practices and Processing and Acting Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission

Annex A

Proposed Custody Provision

[Rule 15a-6(a)(6)]

(6) *Custody Services*. The foreign broker or dealer induces or attempts to induce the opening and maintenance of a custody account by a qualified custodial client with the foreign broker or dealer, and in connection therewith as custodian performs incidental custody services, provided the following conditions are satisfied:

(i) The foreign broker or dealer:

(A) Complies with the requirements set forth in paragraph (a)(3)(i)(A) of this section, except that the reference therein to "transactions under paragraph (a)(3) of this section" shall be deemed to refer instead to "incidental custody services effected for qualified custodial clients in accordance with this paragraph (a)(6)";

(B) Complies with the requirements set forth in paragraph (a)(3)(i)(B) of this section, except that the reference therein to "effecting transactions with the qualified investor" shall be deemed to refer instead to "performing incidental custody services for qualified custodial clients in accordance with this paragraph (a)(6)";

(C) Has in its files, and will make available upon request by the Commission, the types of information specified in § 240.17a–3(a)(12), provided that the information required by paragraph (a)(12)(i)(D) of § 240.17a–3 shall include sanctions imposed by foreign securities authorities, foreign exchanges, or foreign associations, including without limitation those described in section 3(a)(39) of the Act;

(D) Discloses to the qualified custodial client: *(1)* that the foreign broker or dealer is regulated by a foreign securities authority and not by the Commission; and *(2)* that U.S. segregation requirements, U.S. bankruptcy protections and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the foreign broker or dealer on behalf of the qualified custodial client;

(E) Agrees that *(1)* any securities held as custodian on behalf of a qualified custodial client in accordance with this paragraph (a)(6) will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the foreign broker or dealer except for their safe custody or administration, and *(2)* the beneficial ownership of such securities will be freely transferable without the payment of money or value other than for safe custody or administration.

(ii) The foreign associated person[1] of the foreign broker or dealer performing incidental custody services for the qualified custodial client conducts all such activities from outside the United States, except that the foreign associated person may conduct visits to qualified custodial clients within the United States, provided that such visits pertain solely to the opening or maintenance of a custody account by the qualified custodial client with the foreign broker or dealer, or to incidental custody services to be performed at the direction of the qualified custodial client (or the qualified custodial client's authorized representative), except to the extent that such visits or securities transaction-related activities are effected in accordance with another exemption under this section.

(iii) For purposes of this paragraph (a)(6):[2]

(1) The term *incidental custody services* shall mean those services described in Section 3(a)(4)(B)(viii)(I) of the Securities Exchange Act of 1934, provided that the term *incidental custody services* shall not include any services that could not be performed by a bank under 17 C.F.R. § 247.760.

(2) The term *qualified custodial client* shall mean, (i) a qualified investor, where the acquisition or disposition of the custodied security is effected by the foreign broker or dealer pursuant to paragraph (a)(3)(iii)(A)(1) of this section; or (ii) an accredited investor (as defined in Rule 501(a) under the Securities Act of 1933), a qualified purchaser (as defined in Section 2(a)(51) of the Investment Company Act of 1940) or a qualified investor where the acquisition or disposition of the custodied security is effected in accordance with paragraph (a)(3)(iii)(A)(2), or is effected directly by a registered broker or dealer or a bank (either in accordance with paragraph (a)(4)(i) of the Rule or in a transaction entirely outside the scope of Rule 15a-6).

---

1 Note the definition of "foreign associated person" should be modified as follows:

"The term *foreign associated person* shall mean any natural person domiciled outside the United States who is an associated person, as defined in section 3(a)(18) of the Act, of the foreign broker or dealer and who participates in the solicitation of a qualified investor under paragraph (a)(3) of this section or who solicits or performs incidental custody services for qualified custodial customers under paragraph (a)(6) of this section."

2 Alternatively, include these definitions under Rule 15a-6(b).