November 21, 1997

VIA ELECTRONIC MAIL AND AIRMAIL

ACT __I C A__

SECTION _____

RULE __17f-5, 17f-4__

PUBLIC
AVAILABILITY __11/21/97__

K.K. Rajendran
A1-2-301, I.O.C. Residential Complex
Suchidham, Film City Road
Malad (East), Mumbai - 400 097
India

Dear K.K. Rajendran:

This is in response to your electronic mail message to the Division of Market Regulation dated October 30, 1997, which was forwarded to the Division of Investment Management. This Division is responsible for the regulation of investment companies and investment advisers. In your message, you state that India has established the National Securities Depository Ltd. ("NSDL"). You request clarification on several points regarding foreign custodians of U.S. investment companies.

You ask whether the capital adequacy requirements in Rule 17f-5 under the Investment Company Act of 1940 (the "Investment Company Act") apply to participants in the NSDL. You also ask whether a U.S. investment company may appoint a participant of the NSDL even if that participant does not have capital of $200 million. Finally, you ask if all participants of NSDL may offer their services to U.S. investment companies if NSDL is approved or exempted by the Commission.

Section 17(f) of the Investment Company Act sets forth the custodial requirements for U.S.-registered management investment companies ("funds"). Rule 17f-5 thereunder permits funds to maintain their assets with certain categories of "eligible foreign custodians." Generally, these include foreign banks; majority-owned subsidiaries of U.S. banks; certain foreign centralized securities depositories and clearing agencies; and transnational foreign securities depositories and clearing agencies. The Commission recently amended Rule 17f-5 to provide funds with greater flexibility in managing their foreign custody arrangements, consistent with the safekeeping of fund assets.[1] Most of the minimum capital requirements have been

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[1] *See* Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 22658 (May 12, 1997). The amendments became effective on June 16, 1997.

eliminated from the rule, including those that applied to foreign banks or majority owned subsidiaries of U.S. banks. A copy of amended Rule 17f-5 is enclosed.

Whether a participant of NSDL may act as a foreign custodian to a U.S. fund depends on the nature of the participant, and whether it complies with the applicable requirements of Rule 17f-5. With respect to whether NSDL may act as a foreign custodian, under paragraph (a)(1)(ii) of the rule, an eligible foreign custodian includes "[a] securities depository or clearing agency that acts as a system for the central handling of securities or equivalent book-entries in the country that is regulated by a foreign financial regulatory authority as defined under Section 2(a)(50) of the [Investment Company] Act."[2] A "securities depository" is defined in Rule 17f-4 under the Investment Company Act as "a system for the central handling of securities where all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of the securities." No capital requirement applies to this type of custodian.

Rule 17f-5 is self-operative and does not require any foreign institution that satisfies the definition of "eligible foreign custodian" to obtain the prior approval of the Commission before serving as an eligible foreign custodian for U.S.-registered investment companies.

Thank you for your inquiry. If you have additional questions, please contact this office by telephone at (202) 942-0660, or by facsimile at (202) 942-9659.

Sincerely,

Sarah A. Buescher

Sarah A. Buescher
Senior Counsel
Office of Chief Counsel

Enclosure

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[2]   Under Section 2(a)(50)(A) of the Investment Company Act, a "foreign financial regulatory authority" is defined to include a foreign securities authority.