

PUBLIC

AUG 2 1995

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 95-168-CC
Fiduciary Trust
Global Fund
File No. 132-3

By letter dated July 31, 1995, you request assurance that the staff would not recommend enforcement action to the Commission under Section 7(d) of the Investment Company Act of 1940 (the "Investment Company Act") if Fiduciary Trust Global Fund (the "Fund") offers and sells its shares ("Units") in compliance with the requirements of Regulation S under the Securities Act of 1933 (the "Securities Act") to certain accounts that are excluded from the definition of "U.S. person" by Section 902(o)(2) of Regulation S, without counting such accounts towards the 100 U.S. securityholder limit of Section 3(c)(1) of the Investment Company Act.

The Fund is an open-end investment fund organized as a unit trust under the laws of Ireland. You state that the only persons recognized by the Fund as having any title or ownership interest in Units are those whose ownership is reflected on the Unit register of the Fund. No Units are issued in bearer form or are convertible into Units in bearer form. You represent that each purchaser of a Unit must represent that it is not a U.S. person (as defined in Regulation S) and is not holding and will not hold Units on behalf of a U.S. person. For as long as a purchaser holds any Units, it must notify the Fund immediately if it becomes a U.S. person or holds on behalf of a U.S. person. The Fund's governing documents prohibit the registration of any transfer of Units to, the redemption of any Units held by, or the payment of any dividends or distributions to, any U.S. person at any time.

Section 7(d) prohibits a foreign investment company from publicly offering its shares in the United States unless the Commission issues an order permitting the company to register under the Investment Company Act. Under Section 3(c)(1), any issuer that has no more than 100 beneficial owners, and which is not making and does not propose to make a public offering of its securities, is excluded from the definition of investment company and, therefore, from registration and regulation under the Act. The staff has interpreted Section 7(d) with reference to Section 3(c)(1), and therefore has not objected if an unregistered foreign investment company makes a private offering in the U.S., provided that after the private offering the investment company has no more than 100 beneficial owners resident in the United States. 1/

1/ Touche Remnant & Co. (pub. avail. Aug. 27, 1984). See also Securities Act Release No. 6862 (Apr. 23, 1990) (adopting Rule 144A under the Securities Act of 1933).

Regulation S generally provides that offers and sales of securities that occur outside the U.S. are not subject to the registration requirements under the Securities Act. Under Section 902(o)(2), certain discretionary accounts or similar accounts held for the benefit or account of non-U.S. persons by dealers or other professional fiduciaries organized, incorporated or, if individuals, resident in the U.S. ("Accounts") are excluded from the definition of U.S. person under Regulation S. Sales to the Accounts, therefore, are considered to be sales outside of the U.S. for purposes of the registration requirement under the Securities Act.

You are concerned that, because the Accounts may be considered to be located in the U.S., the Fund's offer and sale of Units to the Accounts, while in compliance with the requirements of Regulation S, might be prohibited under Section 7(d). 2/ You believe, however, that the same considerations for determining whether the Accounts should be subject to the Securities Act apply to whether they should be subject to the Investment Company Act.

When it adopted Regulation S, the Commission determined that subjecting U.S. discretionary accounts held for non-U.S. persons to the registration requirements of the Securities Act might result in a competitive disadvantage for U.S. fiduciaries, and therefore excepted these accounts from the Regulation's definition of U.S. person. 3/ You believe that the same type of competitive harm to U.S. fiduciaries would result if these accounts are considered to be U.S. residents for purposes of the Investment Company Act. You therefore maintain that the Fund's offer and sale of Units to the Accounts does not present a significant regulatory interest under the Investment Company Act, and should not implicate Section 7(d).

We would not recommend enforcement action to the Commission under Section 7(d) of the Investment Company Act if the Fund offers and sells Units to the Accounts as described in your letter without counting such Accounts towards the 100 U.S. securityholder limit. Because this position is based on the facts and representations made in your letter, you should note

2/ You state that for some of the Accounts, U.S. investment advisers will have discretionary authority but will not have possession of the certificates representing the securities held in the account, which instead will be held in the name of a bank or other professional custodian organized or incorporated in the U.S.

3/ Securities Act Release No. 6863 (Apr. 24, 1990) (adopting Regulation S).

that any different facts or circumstances might require a different conclusion.

A handwritten signature in black ink, appearing to read "Alison E. Baur", with a long horizontal flourish extending to the right.

Alison E. Baur
Senior Counsel

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WILLIAM F. BAVINGER III
PARTNER

(202) 508-6037

July 31, 1995

ACT 104 of 1940
SECTION 7(d)
RULE _____
PUBLIC
AVAILABILITY 8/2/95

VIA HAND DELIVERY

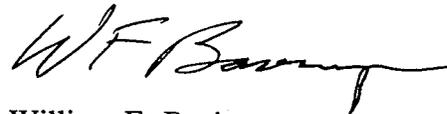
John V. O'Hanlon
Special Counsel
Division of Investment Management
Securities and Exchange Commission
Washington, D. C. 20549

Re: Fiduciary Trust Global Fund

Dear John:

Enclosed is an original and seven copies of the no action letter request, revised in accordance with our discussion.

Very truly yours,



William F. Bavinger

WFB:lmc

Enclosures (8)

1150072

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Investment Company Act of 1940
Sections 7(d), 3(c)(1)

July 31, 1995

VIA HAND DELIVERY

Office of Associate Director (Chief Counsel)
Division of Investment Management
Securities and Exchange Commission
Washington, D. C. 20549

Re: Fiduciary Trust Global Fund

Dear Madam or Sir:

On behalf of our client, Fiduciary Trust Global Fund (the "Fund"), we request your assurance that the staff (the "Staff") of the Securities and Exchange Commission (the "Commission") will not recommend any enforcement action to the Commission under Section 7(d) of the Investment Company Act of 1940, as amended (the "1940 Act"), under the circumstances described below.

The Fund is an open-end investment fund organized as a unit trust under the laws of Ireland, and is not registered under the 1940 Act. Investors in the Fund will purchase units in the Fund (the "Units").

The offices of the Fund are located in Dublin, Ireland. The trustee of the Fund (the "Trustee") is Chemical Ireland Custody and Trustee Services Limited, an Irish resident company, as is the manager of the Fund, Chemical Ireland Fund Administrators Limited (the "Manager"). The Manager has engaged two investment advisors for the Fund (the "Advisors"), each of which will provide investment advisory services to one or more of

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Office of Associate Director (Chief Counsel)

July 31, 1995

Page 2

the sub-funds in the Fund. One of these Advisors is Fiduciary Trust Company International, a New York state chartered bank, which will provide advisory services to three of the sub-funds. The other Advisor is Fiduciary Trust International Limited, an English company, which will provide advisory services to the other ten sub-funds. The assets of the Fund, which consist solely of investment securities, will be held by the Trustee in Ireland.

Units may be issued in certificated and non-certificated form. The only persons recognized by the Fund as having any title or ownership interest in Units are those whose ownership is reflected on the Unit register of the Fund. No Units are issued in bearer form or are convertible into Units in bearer form. All subscriptions for Units and all requests for redemption or transfer of Units on the Unit register are submitted to and accepted or rejected by the Manager.

The Fund will be offering and selling the Units in various jurisdictions located outside the United States in compliance with the requirements of Regulation S. These jurisdictions presently include the United Kingdom, Germany, Sweden and Switzerland. The Units will be sold directly by the Advisors and their affiliates and indirectly through independent dealers located in certain European countries selected by the Manager.

Each purchaser of a Unit must represent that it is not a U.S. Person (as defined in Regulation S) and is not holding and will not hold Units on behalf of a U.S. Person. For as long as a purchaser holds any Units, it must notify the Fund immediately if it becomes a U.S. Person or holds on behalf of a U.S. Person. The Fund's governing documents will prohibit the registration of any transfer of Units to, the redemption of any Units held by, or the payment of any dividends or distributions to, any U.S. Person at any time.

The Fund proposes to offer and sell Units, by use of the mails and other jurisdictional means, to certain discretionary accounts or similar accounts (other than estates or trusts) held for the benefit or account of non-U.S. Persons by dealers or other professional fiduciaries organized, incorporated or, if individuals, resident in the U.S. Such accounts are excluded from the definition of U.S. Person by Section 902(o)(2) of Regulation S, and are referred to herein as "discretionary NRA accounts."¹ Each such account that purchases Units will be required to represent that it will not transfer the Units to any U.S. Person, and

¹ For some of these accounts, U. S. investment advisors will have discretionary authority but will not have possession of the certificates representing the securities held in the account, which instead will be held in the name of a bank or other professional custodian organized or incorporated in the U. S.

BRYAN CAVE LLP

Office of Associate Director (Chief Counsel)

July 31, 1995

Page 3

any certificates representing such Units will bear a legend stating that the Units may not be transferred to any U.S. Person.

There will be no advertising, general mailings or other form of general solicitation in connection with such offers and sales. The Fund intends to establish direct relationships with certain foreign banks that have branches in the U.S. and with certain other financial professionals in the U.S. who act on behalf of non-U.S. Persons. The Fund does not presently intend to make any public offering of its securities other than as outlined above.

Section 7(d) of the 1940 Act provides, in relevant part:

No investment company, unless organized or otherwise created under the laws of the United States or of a State, and no depositor or trustee of or underwriter for such a company not so organized or created, shall make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, any security of which such company is the issuer.

In Touche, Remnant & Co. (U. K.) (publicly available August 27, 1984), the Staff recognized that a foreign investment company can make a private offering in the United States contemporaneously with a public offering abroad without violating Section 7(d) of the 1940 Act, so long its securities are not owned beneficially by more than 100 persons who are resident in the U.S. The Staff observed that Section 3(c)(1) of the 1940 Act excepts from the definition of an investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons resident in the U.S. and who is not engaged in a public offering of its securities, and explained that Section 7(d) should be read "in the light of . . . the policy expressed in Section 3(c)(1)." The Staff has not yet stated, however, whether a discretionary NRA account which holds a foreign investment company's securities should be counted as a person resident in the U.S. for this purpose.

For the following reasons, we believe that the Staff should take the position that discretionary NRA accounts should not be counted as U.S. residents for purposes of Section 7(d) of the 1940 Act. The exclusion of such accounts from the definition of U.S. Person in Section 902(o)(2) of Regulation S evidenced the Commission's recognition of the fact that the registration requirements of the Securities Act of 1933 (the "1933 Act") were not intended for the protection of such accounts, and of "the serious competitive disadvantage that might be faced by U.S. professional fiduciaries." Securities Act Release No. 6863 (April 24, 1990). If offers and sales to such accounts would trigger the registration requirements of the 1933 Act, U.S. investment advisors would likely be excluded from such offerings and have difficulty competing for the advisory business of non-U.S. Persons.

BRYAN CAVE LLP

Office of Associate Director (Chief Counsel)

July 31, 1995

Page 4

The same considerations apply with respect to Section 7(d) of the 1940 Act. Although U.S. investment advisors exercise discretion with respect to these accounts, the accounts are maintained for the benefit of non-resident aliens. No significant regulatory interest arises under the 1940 Act with respect to a foreign investment company simply because its securities are owned by such accounts, and the same type of competitive harm to U.S. investment advisors would result if the accounts are counted as U.S. residents. As a practical matter, U.S. investment advisors would have difficulty competing for the advisory business of non-U.S. persons if they must be excluded from offerings of securities of foreign investment companies in order to avoid registration by such companies under the 1940 Act. Significantly, in *G. T. Global Financial Services, Inc.* (publicly available August 2, 1988), the Staff recognized that sales by a foreign investment company to apparently non-discretionary accounts maintained by U.S. brokers for the benefit of nonresident aliens need not be counted in determining whether the securities of the foreign investment company are beneficially owned by more than 100 persons who are resident in the United States.

We would appreciate confirmation that the Staff will not recommend any enforcement action to the Commission under Section 7(d) of the 1940 Act if the Fund offers and sells Units to more than 100 discretionary NRA accounts in the manner and under the circumstances described above. We are satisfied that the Fund's proposed activities do not require registration under the 1933 Act and are not requesting any interpretive or no-action position from the Staff under Section 5 of the 1933 Act.

This will confirm that all offering materials and documents used by the Fund (except for press releases) will include statements that the Units are not registered under the 1933 Act and the 1940 Act and may not be offered or sold in the U.S. or to any U.S. Person, except for sales in the U.S. to discretionary NRA accounts (as defined in Regulation S).

In the event that you reach a preliminary conclusion that you will be unable to take the no-action position we are requesting, we would appreciate your so advising us so that we may discuss the matter with you further. Please let me know if you have any questions regarding the matters referred to in this letter. Thank you for your consideration of this request.

Very truly yours,



William F. Bavinger

WFB:lmc

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