



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

ACT ICA-40  
SECTION 17(f)  
RULE 17f-5  
PUBLIC  
AVAILABILITY 2/25/97

February 25, 1997

VIA FACSIMILE AND AIR MAIL

Mr. Pratip Kar  
Executive Director  
Securities and Exchange Board of India  
Mittal Court  
'B' Wing, 224  
Nariman Point, Mumbai-400 021  
INDIA

Dear Mr. Kar:

Your letter to Mr. Paul Leder dated January 16, 1997 was referred to the Division of Investment Management (the "Division") for response. The Division is primarily responsible for the regulation of investment companies in the United States.

In your letter, you state that the National Securities Depository Ltd. ("NSDL") has been organized under The Depositories Act, 1996 and the Securities and Exchange Board of India (Depositories and Participants) Regulations 1996 ("Regulations"). You further note that U.S.-based institutional investors have advised you that before they will use NSDL as a foreign custodian, the United States Securities and Exchange Commission ("SEC") must issue a "no-action" letter to NSDL. You specifically request information regarding any formalities NSDL would have to complete in order to obtain a "no-action" letter.

Section 17(f) of the Investment Company Act of 1940 ("1940 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 that have more than \$200 million shareholders' equity; majority-owned subsidiaries of U.S. banks that have more than \$100 million shareholders' equity; certain centralized securities depositories and clearing agencies; and transnational foreign securities depositories and clearing agencies.

Based upon your characterization of NSDL, subparagraphs (c)(2)(iii) and (c)(2)(iv) of Rule 17f-5 seem most relevant to your inquiry. Rule 17f-5(c)(2)(iii) defines the term "eligible

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foreign custodian" to include a "securities depository or clearing agency, incorporated or organized under the laws of a country other than the United States, which operates the central system for handling of securities or equivalent book-entries in that country."<sup>1</sup> Rule 17f-5(c)(2)(iv) defines an eligible foreign custodian as a "securities depository or clearing agency, incorporated or organized under the laws of a country other than the United States which operates a transnational system for the central handling of securities or equivalent book-entries."

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 SEC before serving as an eligible foreign custodian for U.S.-registered funds. Thus, if the NSDL is the only central depository for handling securities or equivalent book-entries in India, it falls within the definition of eligible foreign custodian and does not need the approval of the SEC to provide custodial services to U.S. funds. After reviewing the materials you forwarded with your letter, it is not immediately apparent whether the NSDL qualifies as an "eligible foreign custodian." Specifically, you do not state whether the NSDL operates the central system for handling of securities or equivalent book-entries in India.

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<sup>1</sup> Section 3(a)(23)(A) of the Securities Exchange Act of 1934 defines "clearing agency" generally as an intermediary that makes payments or deliveries in connection with transactions in securities. The term includes any entity, such as a securities depository, that (1) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of an issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping without physical delivery of securities certificates, or (2) otherwise permits or facilitates the settlement of securities without physical delivery of securities certificates.

Rule 17f-4 defines a "securities depository" 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 securities."

Rule 17f-5(c)(2)(iii) refers to both securities depositories and clearing agencies because a foreign securities depository may be known as a "clearing agency" in certain countries. See Investment Company Act Rel. No. 13724 at n. 31 (Jan. 17, 1984) (reproposing Rule 17f-5).

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Foreign custody arrangements with foreign securities depositories or clearing agencies that do not operate the central system for handling securities or equivalent book-entries in a given country are evaluated on a case-by-case basis.<sup>2</sup> If the NSDL does not satisfy the "eligible foreign custodian" requirements under Rule 17f-5, we suggest that the NSDL consult an attorney familiar with the U.S. federal securities laws.

On July 27, 1995, the SEC proposed for public comment amendments to Rule 17f-5 that would, among other things, amend the definition of "eligible foreign custodian." I am sending with this letter a copy of current Rule 17f-5, a copy of the release proposing the amendments, copies of Rule 17f-4 and Section 3(a)(23)(A) of the Securities Exchange Act of 1934, and three no-action letters, Jardine Fleming China Region Fund, Inc., Malaysian Central Depository Sdn. Bhd., and Intersettle Swiss Corporation for International Securities Settlements as examples of case-by-case evaluations.

If you have any further questions, please contact me at (202) 942-0660 or [FAX] (202) 942-9659.

Sincerely,



John V. O'Hanlon  
Assistant Chief Counsel

Attachments (with airmail copy)

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<sup>2</sup> See, e.g., Malaysian Central Depository Sdn. Bhd. (pub. avail. May 19, 1993); Jardine Fleming China Region Fund, Inc. and Custody of B Shares Trading on the Shenzhen and Shanghai Securities Exchanges (both pub. avail. Apr. 26, 1993); Camara de Liquidacao e Custodia S/A and Bolsa de Valores de Sao Paulo (both pub. avail. Oct. 28, 1992); and Intersettle Swiss Corporation For International Securities Settlements (pub. avail. Dec. 12, 1996) (transnational depository).



PRATIP KAR  
EXECUTIVE DIRECTOR

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Securities and Exchange  
Board of India

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John O'K  
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IIMARP/ 91 /1997  
January 16, 1997

Dear Mr Leder,

As you may be aware, the National Securities Depository Ltd (NSDL) has been set up and has started operations in November 1996 for dematerialisation and book entry transfer of securities. NSDL has been set up under the Depositories Act, 1996 and SEBI (Depositories and participants) Regulations 1996. NSDL has been registered with SEBI as required by the Depositories Act and the SEBI regulations. NSDL has framed bye-laws and business rules, which have been approved by SEBI. Copies of the Depositories Act, Regulations, bye-laws and business rules are enclosed for your reference. As you would note, Sub-section (3) of Section (3) of the Depository Act, 1996 and regulation 13 of the SEBI (Depositories and Participants) Regulations, 1996 provide for adequate safeguards to be taken by the depository.

Foreign Institutional Investors (FIIs) based in the US, such as pension funds and mutual funds and global custodians of such funds have advised us that for them to be able use NSDL, a 'no action' letter would need to be granted by the US SEC. As we are keen to see foreign investors participate in the depository as speedily as possible, we request that a 'no action' letter be issued in respect of NSDL.

It may be recalled that this issue was raised by our Chairman, Mr D.R. Mehta during our meeting with Chairman Levitt and Mr Micheal Mann, then Director of the Office of International Affairs, and we were informed that US SEC would look at the request for a 'no action' letter favourably. We would be grateful if you could let us know at the earliest regarding any formalities to be completed by us or by NSDL to obtain this letter from the US SEC.

With regards,

Yours sincerely,

PRATIP KAR

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Mr Paul Leder  
Acting Director of the  
Office of International Affairs  
US Securities and Exchange C  
Washington DC 20549  
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