



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

DIVISION OF
INVESTMENT MANAGEMENT

January 30, 1998

Via Facsimile and Air Mail

Mr. N.R. Menger
Acting Senior Manager
Settlement and Registry Services
Reserve Bank of Australia
65 Martin Place
GPO Box 3947
Sydney NSW 2001
AUSTRALIA

ACT ICA OF 1940
SECTION 17(f)
RULE 17f-5
PUBLIC
AVAILABILITY JAN. 30, 1998

Dear Mr. Menger:

Your letter dated December 9, 1997 requests confirmation that recent amendments¹ to Rule 17f-5 under of the Investment Company Act of 1940 (the "1940 Act") do not affect the status of the Reserve Bank of Australia (the "Bank") as an "eligible foreign custodian" under that rule. The staff previously issued a letter stating that it would not recommend enforcement action to the Commission if the Bank acted as an eligible foreign custodian pursuant to subparagraph (c)(2)(iii) of Rule 17f-5.²

As you are aware, Section 17(f) of the 1940 Act sets forth the custodial requirements for U.S.-registered investment companies ("funds"). Rule 17f-5 permits funds to maintain certain assets with "eligible foreign custodians." Prior to the amendments, a foreign securities depository could act as an eligible foreign custodian if it operated the only system for the central handling of securities or equivalent book-entries in a country (the "only system requirement"). The only system requirement was designed to provide assurance that the country would have an interest in establishing and maintaining a depository's integrity. The only system requirement called into question the ability of some foreign entities, such as the Bank, to act as eligible foreign custodians under the terms of the rule. As a result, many of these entities, including the Bank, sought assurance that the staff would not recommend enforcement action to the Commission if they operated as eligible foreign custodians.

¹ Investment Company Act Release No. 22658 (May 12, 1997). The amendments became effective on June 16, 1997.

² See Reserve Bank of Australia (pub. avail. Sep. 2, 1992) ("1992 Letter"). Terms used in this letter and not defined have the same meaning as terms used in the 1992 Letter. The staff issued a letter to the Bank on March 20, 1997 ("1997 Letter"), stating that the operation of the RITS system by Austraclear under contract with the Bank would not affect the position taken by the staff in the 1992 Letter.

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The amendments to Rule 17f-5 were intended to provide funds with greater flexibility in managing their foreign custody arrangements, consistent with the safekeeping of fund assets. Under paragraph (a)(1)(ii) of the amended rule, an eligible foreign custodian includes "[a] securities depository . . . 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 [1940] Act."³ The Commission eliminated the only system requirement from the rule because it believes that foreign regulation of a securities depository demonstrates a country's interest in the depository's safety, thus achieving the Commission's objective.⁴

As a result of the amendments, some entities that previously relied on no-action letters to act as eligible foreign custodians may now be able to rely on the rule itself. 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 funds. Based upon your representations in the 1992 Letter and the 1997 Letter that the Bank is a securities depository and clearing agency for Commonwealth Government Securities, RITS is the central system for the handling of Commonwealth Government securities in Australia, and that the Bank is regulated with respect to those activities as an agency of the Commonwealth Government of Australia, the Bank would appear to meet the definition of "eligible foreign custodian" set forth in Rule 17f-5(a)(1)(ii) as amended.

³ Under Section 2(a)(50)(A) of the 1940 Act, a foreign financial regulatory authority includes any foreign securities authority or other governmental body empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities.

Rule 17f-4 under the Act defines "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 the securities."

⁴ See supra note 1.

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Please contact me at (202) 942-0660 or [fax] (202) 942-9659 if you have further questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brendan C. Fox". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Brendan C. Fox
Attorney



65 Martin Place
GPO Box 3947
SYDNEY NSW 2001
Telephone (02) 9551 8370

RESERVE BANK OF AUSTRALIA

Banking and Settlement Services Department

Facsimile (02) 9551 8000

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9 December 1997

Mr Brendan C Fox
Attorney, Office of the Chief Counsel
Division of Investment Management
United States Securities Exchange Commission
450 Fifth Street North West
WASHINGTON DC 20549 USA

Dear Mr Fox

RESERVE BANK INFORMATION AND TRANSFER SYSTEM (RITS)

The Securities and Exchange Commission (SEC) advised in a letter to the Reserve Bank, dated 2 September 1992, that the SEC would not take enforcement action under Section 17(f) of the Investment Company Act of 1940, or Rule 17f-5 thereunder, if the Reserve Bank acts as an eligible foreign custodian, as defined in rule 17f-5(c)(2)(iii), for Commonwealth Government securities (CGS) in RITS.

That advice also noted that any different facts or representations might require a different conclusion. The Reserve Bank wrote to the SEC again on 24 February 1997 to ensure changes to the operation of RITS as a result of the program to introduce real-time gross settlement had no implications for the SEC's conclusion. Your letter of 20 March 1997 confirmed this.

We understand that section 17f has been amended. More specifically, that section 17f-5(c)(2)(iii), under which the Reserve Bank acts as an eligible foreign custodian, has been repealed. We now seek your confirmation that the amendment to Rule 17f-5 does not alter our position with the SEC.

Please contact me on (612) 9551 8370 if you require further information.

Yours sincerely

NR Menger
Acting Senior Manager
Settlement and Registry Services