

PUBLIC

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RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 93-229-CC
Reserve Bank of
New Zealand
File No. 132-3

Your letter of April 19, 1993 requests our assurance that we would not recommend enforcement action to the Commission under Section 17(f) of the Investment Company Act of 1940 ("1940 Act") or Rule 17f-5 thereunder if the Reserve Bank of New Zealand (the "Bank") serves as an eligible foreign custodian under subparagraph (c)(2)(iii) of Rule 17f-5 for all types of securities in New Zealand. 1/

The Reserve Bank is New Zealand's central bank and an agency of the Government of New Zealand. Since June 25, 1990, the Bank has operated the Austraclear New Zealand System (the "System"). The System is a securities depository and clearing system organized under New Zealand law. The System records obligations between wholesale market participants and achieves the electronic transfer, settlement, and clearance of all of the securities deposited in the System. The System's depository accepts all types of securities issued in New Zealand and is the only central depository in New Zealand. 2/

1/ Section 17(f) provides that every registered management investment company shall maintain its securities and similar investments in the custody of (1) a bank meeting certain requirements, (2) a member of a national securities exchange, (3) the company itself, in accordance with Commission rules, or (4) a system for the central handling of securities pursuant to which 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 such securities, in accordance with Commission rules. Rule 17f-5 provides an exemption from Section 17(f) to allow a registered management investment company to deposit foreign securities in the custody of an "eligible foreign custodian." Rule 17f-5(c)(2)(iii) defines the term "eligible 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."

2/ Securities deposited in the System are held on a fungible basis. There is no other securities depository in New Zealand, although banks and brokers, among others, do hold securities for their clients (on a non-fungible basis) as their custodian. Telephone conversation with S.J. Anderson on May 20, 1993.

Securities may be held outside of the System by individual investors. With the exception of transactions involving the New Zealand Stock Exchange FASTER System ("FASTER"), settlement of transactions for securities outside of the System requires physical delivery of the securities themselves or, in the case of book-entry only securities, physical delivery of a signed transfer document.

FASTER is a system for electronically recording and completing transfers of shares and other securities listed on the New Zealand Stock Exchange. FASTER is not a depository, and there is no depository associated with FASTER. All transfers of securities are made directly on the registers of the various issuers, and securities are held directly in the name of the investor. Securities do not come to rest in FASTER at any stage of the transfer process. 3/

In Reserve Bank of New Zealand (pub. avail. Nov. 15, 1990), the staff granted no-action relief to the Bank under Rule 17f-5(c)(2)(iii) on the basis that it operated the only book-entry system for securities in New Zealand. At the time that letter was issued, the System's depository accepted only debt securities. On January 11, 1993, however, the System's depository began accepting equity securities. Consequently, you have requested no-action relief for the Bank under Rule 17f-5(c)(2)(iii) based on this change in circumstances.

On the basis of the facts and representations contained in your letter, particularly your representation that the Bank operates the only central depository in New Zealand, we would not recommend that the Commission take any enforcement action under Section 17(f) of the 1940 Act, or Rule 17f-5 thereunder, if the Bank serves as an eligible foreign custodian, as defined in Rule 17f-5(c)(2)(iii), for all types of securities in New Zealand.

Julia S. Ulstrup

Julia S. Ulstrup
Senior Counsel

3/ Since FASTER is not a depository (and does not have an associated depository) and securities do not come to rest in FASTER at any stage of the transfer process, we do not believe that FASTER operates a central system for the handling of securities within the meaning of subparagraph (c)(2)(iii) of Rule 17f-5.

19 April 1993

Mr T S Harman
 Chief Counsel
 Division of Investment Management
 United States Securities and Exchange Commission
 450 Fifth Street North West
 Washington DC 20549
UNITED STATES OF AMERICA

Act	ICA of 1940
Section	
Rule	17f-5(c)(2)(iii)
Public Availability	5/24/93

Dear Mr Harman

Investment Company Act 1940, Section 17(f), Rule 17f-5:
Reserve Bank of New Zealand

The Reserve Bank of New Zealand seeks a declaration from the Division of Investment Management that the Division would not recommend enforcement action under Section 17(f) or Rule 17f-5 if the Bank serves as an eligible foreign custodian under Rule 17f-5(c)(2)(iii).

1. Introduction

On 15 November 1990, the Division issued a "no action" declaration to the Reserve Bank of New Zealand. This related to the operation of the Austraclear New Zealand System depository operated by the Bank. At that time, the Austraclear New Zealand System depository held only debt securities. From 11 January 1993, the Austraclear New Zealand System depository has also held equity securities. This change in circumstances (i.e., the addition of equity securities to the Austraclear New Zealand System Depository) has led to this new application for a "no action" declaration.

2. Representations

The Reserve Bank of New Zealand is New Zealand's central bank. It is an agency of Government established and governed by the Reserve Bank of New Zealand Act 1989.

As part of its activities, the Bank operates the Austraclear New Zealand System. It has operated this system since 25 June 1990.

The Austraclear New Zealand System is a securities depository and clearing system organised under the laws of New Zealand.

The Austraclear New Zealand System's role is to record obligations between wholesale market participants and achieve the electronic transfer, settlement and clearance of the securities deposited in the System. The Austraclear depository has accepted all types of debt securities since 25 June 1990 and has accepted equity securities from 11 January 1993. It now accepts into the depository all types of securities issued in the New Zealand market and is the only central depository in New Zealand.

Membership of the System is governed by the Reserve Bank and is open to any participants in the New Zealand financial markets provided they are organisations of good standing. The relationships between the members of the System are governed by a mutual contract entered into by each of the members. The Bank is also a party to that contract.

Securities may be held outside of the Austraclear New Zealand System by individual investors but with the exception of the New Zealand Stock Exchange FASTER System, settlement of transactions for securities outside of Austraclear New Zealand requires physical delivery of the securities themselves or, in the case of book entry only securities, physical delivery of a signed transfer document.

The New Zealand Stock Exchange FASTER System is a system for electronically recording and completing transfers of shares and other securities listed on the New Zealand Stock Exchange. Transfers of shares and other securities are entered by brokers onto the computer systems of each registry. Subject to checking by the registry's own computer programme for accuracy and correctness, a transfer instigated by a broker will be recorded in the register.

In a typical transaction involving the sale of shares, a selling broker will receive instructions from a seller, complete a sale through the Exchange and send out a contract note to the seller recording the details of the transaction. FASTER will then be utilised to transfer the ownership of the shares from the seller to the buyer. The buyer of the shares will then be issued a share certificate by the share registry and the transaction will have been completed.

FASTER is not a depository and there is no depository associated with the FASTER System. All transfers of securities are made directly on the registers of the various issuers and securities are held directly in the name of the investor. Securities do not come to rest in FASTER at any stage of the transfer process.

3. Application

The Reserve Bank of New Zealand seeks a declaration from the Division of Investment Management of the United States Securities and Exchange Commission that the Division would not recommend enforcement action under Section 17(f) or Rule 17f-5 of the Investment Company Act 1940 if the Bank serves as an eligible foreign custodian under Rule 17f-5(c)(2)(iii) for all types of securities in New Zealand.

3.

The Bank, as operator of the Austraclear New Zealand System, believes it fulfils the requirements to serve as an eligible foreign custodian under Rule 17f-5(c)(2)(iii) because it operates the central depository for securities in New Zealand.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. J. Anderson', with a long horizontal stroke extending to the right.

S. J. Anderson
Chief Manager