

PUBLIC

20 OCT 1994

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 94-313-CC
Warsaw Stock Exchange
File No. 132-3

Your letters of September 15, 1993 and May 13, 1994, as supplemented by telephone conversations on June 14, 1994 and September 2, 1994, request our assurance that we would not recommend enforcement action to the Commission under Rule 17f-5(c)(2)(iii) under the Investment Company Act of 1940 ("1940 Act") if the National Securities Depository ("National Depository"), currently an unincorporated division of the Warsaw Stock Exchange ("WSE"), acts as an eligible foreign custodian for U.S. registered investment companies. 1/

You state that the WSE is the only stock exchange, and the National Depository is the only central facility for clearing and settlement of securities, in Poland. Both the WSE and the National Depository were established pursuant to the Act on Public Trading in Securities and Trust Funds ("Securities Act"). The government of Poland owns over 98% of the WSE's equity; member banks and non-bank brokerages own the remainder of the WSE's equity. Although the National Depository currently is an unincorporated division of the WSE, it will become an independent, non-profit corporation by November 1994 pursuant to recent amendments to the Securities Act. Banks, brokerages, exchanges, and investment funds will be eligible shareholders of the National Depository, but its significant shareholders initially are expected to be the WSE and the Polish government.

The amendments to the Securities Act require that any issue admitted to public trading by the Polish Securities Commission

1/ Section 17(f) of the 1940 Act 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."

("PSC") must be deposited with the National Depository. Virtually all non-governmental issuers must apply to the PSC for admission to public trading. Governmental issuers are not required to apply to the PSC for admission to public trading, and thus are not required to deposit their securities with the National Depository. 2/

All securities traded on the WSE, principally equities and Polish Treasury debt, 3/ are cleared and settled through the National Depository. 4/ Although the Polish government may authorize additional securities exchanges, the Securities Act requires that all securities traded on any exchange in Poland be deposited with the National Depository. 5/ While there is no

2/ Telephone conversation on September 2, 1994 between Kevin Fogarty and Monica Parry.

3/ Trades in Treasury debt over 10 billion zlotys (approximately US \$440,000) may be effected off the WSE. Because Treasury debt securities are not required to be admitted to public trading by the PSC, they are not required to be deposited at the National Depository. These securities, however, are in fact deposited with the National Depository and thus they must clear through the Depository.

Treasury debt instruments with a maturity of less than one year from issue to maturity do not trade on the WSE, do not clear and settle through the Depository, and are not within the scope of the Securities Act. There is no central depository for short term Treasury debt; settlement is effected through physical delivery or interbank transfers.

4/ While the National Depository remains an unincorporated division of the WSE, creditors of the WSE can not reach securities deposited with it.

5/ You note that certain securities issued in connection with the "Mass Privatization Program" may not be required to be deposited with the National Depository for a limited period of time. It is expected that in 1994, about 450 state-owned enterprises will be privatized, resulting in the issuance of up to 27,000,000 physical certificates to adult citizens who are permanent residents of Poland. One physical certificate can be redeemed at the National Depository for a share in each of seventeen closed-end funds listed on the WSE which will serve as the direct owners of the privatized enterprises. Physical certificates deposited with the National Depository for redemption for fund shares, or brokered trading, will be dematerialized. Holders also can trade their physical certificates off-exchange, or can trade them in dematerialized form on the WSE. If holders

over-the-counter market in Poland, if such a market is created, securities traded over-the-counter that are admitted to public trading by the PSC would be required to be deposited with the National Depository.

The PSC supervises the WSE and will separately supervise the National Depository when it becomes independent. The PSC may inspect the WSE, seek withdrawal of the WSE's license in case of legal violations, and must approve all rule changes. The PSC chairman has the powers of a civil prosecutor in cases involving securities trading violations. An independent accounting firm audits the WSE annually. The Polish government will issue operating principles to govern the National Depository when it becomes an independent corporation. At that time, the National Depository also will be able to adopt its own rules. The PSC will continue to have inspection and enforcement authority over the National Depository, and may challenge the acts of the National Depository's supervisory board or its general shareholders meetings. The PSC will have the right to have a representative present at meetings of the National Depository and its shareholders.

Issuers deposit a global certificate with the National Depository; the certificate is the physical representation of all shares of the issue admitted to trading. The shares so represented are fungible and trade on the WSE in book-entry form only. The National Depository maintains security deposit accounts for participants, settles transactions between participants, and issues depository receipts to beneficial owners. 6/ The National Depository also reconciles cash accounts and supervises the procedures of Bank Slaski, which acts as the clearing bank for all transactions effected on the WSE. Participants have a securities account in the National Depository and a cash account with Bank Slaski. When a trade is effected, the National Depository clears and settles the trade by amending

trade their certificates off-exchange, they would not necessarily be required to deposit their certificates with the National Depository. Physical certificates will have a life span not to exceed ten years; at the end of that period, holders who have not redeemed their certificates for fund shares will be required to do so, and those remaining certificates will be dematerialized.

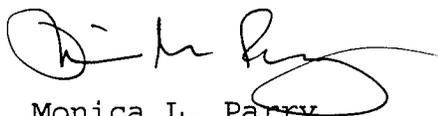
6/ You state that National Depository participants are WSE members, financial institutions, and the issuers of securities listed on the WSE.

Depository receipts are not negotiable and are not used in the settlement of securities transactions.

its records to reflect the change in ownership, and Bank Slaski transfers funds from the buyer's account to the seller's account. The Amendments to the Securities Act permit the National Depository to perform cash settlement functions. The National Depository intends to bring this function in-house within the next four to nine months.

You state that the National Depository is the only central facility for clearing and settlement of securities in Poland, and that it is unlikely that a second central depository will be created. You also state that the Securities Act, as amended, mandates that all securities admitted by the PSC to public trading in Poland be deposited with the National Depository. You believe that the National Depository meets the definition of "eligible foreign custodian" in Rule 17f-5(c)(2)(iii) because it is the only central securities depository in Poland for all securities admitted by the PSC to public trading.

We would not recommend that the Commission take enforcement action against the WSE if the National Depository acts as an eligible foreign custodian for U.S. registered investment companies. ^{7/} This position is based on the facts and representations in your letters and telephone conversations; any different facts or representations may require a different conclusion. This letter expresses the Division's position on enforcement action only and does not purport to express any legal conclusions on the issues presented.



Monica L. Parry
Senior Counsel

^{7/} See The Stock Exchange of Thailand (pub. avail. Aug. 26, 1993) and Malaysian Central Depository Sdn. Bhd. (pub. avail. May 19, 1993).



May 13, 1994

WARSAW STOCK EXCHANGE

Ms. Monica Parry
Attorney, Division of Investment Management
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549
United States of America

ACT ICA 1940
SECTION _____
RULE 17f-5(c)(2)(iii)
PUBLIC
AVAILABILITY 10/20/94

RE: Up-date of Request for No-Action Position under Rule 17f-5 for
Warsaw Stock Exchange/National Securities Depository

Dear Ms. Parry:

This letter is to supplement my letter of September 15, 1993, requesting that the Division staff take a no-action position in the above-referenced matter. I will include an up-date concerning recent changes in Polish law, as well as address specific areas in which the staff sought additional detail.

Statutory Amendments

Amendments to The Law on Public Trading in Securities and Trust Funds (the "Securities Act") came into effect in February of this year. Among other things, they tend to strengthen the powers of the Polish Securities Commission ("PSC") and to consolidate the position of the National Securities Depository (the "National Depository" or "Depository") as the central clearing and depository agency for securities in Poland. The following changes in particular are relevant to the material covered in my last letter:

- 1) The National Depository, currently an unincorporated division of the Warsaw Stock Exchange ("WSE"), is now under statutory mandate to become an independent, nonprofit corporation by mid-November. It will be established as such by the Ministry of Privatization and the WSE. Eligible shareholders will include exchanges, brokerages, investment funds, banks (including the National Bank of Poland), and the State Treasury (Polish government); at the outset, however, there will be no significant owners besides the government and the WSE.
- 2) The National Depository's basic operational principles will again be promulgated by the Council of Ministers of the Polish government. Within these limits, the Depository's internal governing bodies will issue more detailed regulations. While the PSC will have no advance veto power over the latter regulations, it will continue to wield enforcement powers with respect to securities law compliance, including, in Art. 71b §3, the specific right to challenge the acts of the Depository's Supervisory Board and general meeting of shareholders; it also will have an explicit right to inspect the Depository under Art.



71b §1 of the amended Securities Act; and it will have an explicit right, under Art. 71b §2, to have its representative present at meetings of the Depository's Supervisory Board, as well as at the general meeting of shareholders;

- 3) The amended Securities Act addresses in more detail the development of an over-the-counter market in Poland; it states in Art. 50a §2 that once the PSC has admitted an issue to public trading (and virtually all non-government securities require PSC permission for public trading), the securities must be deposited with the National Depository. There is no distinction between exchange versus OTC trading or between or among exchanges; by virtue of a regulation from the Council of Ministers, money market instruments remain outside the general regulatory scheme, provided the PSC is advised of their issuance and maturity;
- 4) Under the authority of the amended Securities Act, the National Depository expects to bring in-house the settlement of the cash side of transactions, a function currently performed through Bank Slaski, the WSE's clearing bank. The change would be likely to occur within the next four to nine months.

Areas of Specific Inquiry

The staff requested elaboration on the physical certificates issued pursuant to Poland's Mass Privatization Program that may be traded over-the-counter. Mass Privatization will result in the issuance of up to 27,000,000 physical certificates ("certificates") in bearer form. As noted in my previous letter, one certificate will be redeemable at the National Depository for a share in each of the closed-end funds (there will be up to seventeen of these "National Investment Funds") being established to serve as the direct owners of the enterprises being privatized under the Program. There should be approximately 450 such enterprises, with an aggregate equity book value estimated at \$4 to 6 billion, several times the combined current market capitalization all WSE-listed companies. The fund shares will be listed on the WSE and trades cleared and settled through the National Depository.

Once deposited with the National Depository, whether for conversion into fund shares or for brokered trading, the physical certificate will be destroyed. Thereafter, it or the fund shares redeemed with it, will exist only in electronic book-entry form on the customer's account. The verification and dematerialization process will actually take place at the National Depository, in the new "Fiscal Agent" department to be established and which will carry out those functions associated with transfer agent activity in the United States.

All physical certificates will have a limited life span not exceeding ten years, the exact figure to be determined by the Ministry of Privatization after implementation of the Program. At the end of this period, all holders who have not already done so will be required to exchange their certificates for fund shares. Accordingly, while Poland is introducing temporary physical certificates, these will have limited life-spans and will ultimately be dematerialized.



The staff also sought clarification on whether the National Depository were the only place shares could be deposited. It is the only place publicly traded securities of non-governmental issuers can be deposited. A non-public company may, of course, issue securities to investors or employees, but the securities cannot be listed or publicly traded until they have been immobilized. Banks and brokerages have competed for the business of domiciling shares in privately held companies, but these must be deposited with the National Depository once the PSC has approved the application to admit the shares to public trading.

The next staff inquiry concerned the drafting, review and approval of Depository rules by the PSC. The Depository, presently a division of the Warsaw Stock Exchange, is governed in a very basic sense by the Securities Act, and in further detail by an executive regulation promulgated by the Polish Government's Council of Ministers. The PSC, of course, has access to both these but no legal power to alter or veto them. The Depository is governed in further detail by the internal "statut" and "regulamin" of the Warsaw Stock Exchange. The PSC reviews these, and they cannot be altered without the PSC's permission. At the most detailed level, the Depository is administered according to the Resolutions and Instructions of the WSE's Supervisory Board and its Management. The PSC may also review these directives, but has no advance veto over them. In cases of inconsistency with the law or applicable regulation, the PSC could apply to the Chairman of the Council of Ministers (the Prime Minister) for a suspension of the WSE's license. The PSC's own chairman can also bring legal action as a civil prosecutor in cases arising from public trading in securities.

Removing any possible doubt about the PSC's review authority, the February amendments added specific paragraphs (Securities Act, Art.61a(2) and (3)) stating that the PSC has the right to have representatives present at general meetings of the WSE shareholders and at meetings of the WSE Supervisory Board, and to appeal any resolutions of those bodies that contravene the WSE's own "statut" or the law.

As noted above, when the Depository becomes independent of the WSE, it will continue to be governed by an executive regulation of the Council of Ministers (as well as by the Securities Act). It will have its own internal "statut" and "regulamin," which will not require the formal approval of the PSC for either their initial adoption or subsequent amendment, although the Minister of Privatization, as a statutory co-founder (with the WSE) of the independent Depository and as the officer responsible for exercising the State Treasury's share in the Depository, will have a more direct influence. Nonetheless, the PSC Chairman will continue to have civil prosecutorial powers (Securities Act, Art. 13); and, as with the WSE, the PSC will be entitled to be present at meetings of the independent Depository's Supervisory Board and at its shareholder's meeting (Securities Act, Art.71b(2)); and it will be specifically authorized to appeal the decisions of those bodies in case of inconsistency with law or with the Depository's governing "statut" (Securities Act, Art. 71b(3)).



The staff further inquired whether the audit of the WSE included a specific audit of the Depository such as might identify specific problems at the Depository. Since the Depository is currently an integral part of the WSE, no special audit breaking out the expense of the Depository is made. Rather, the annual financial audit of the WSE covers all financials, including those of the Depository. The Depository is not currently treated as either a profit center or a cost center. The Depository does not take both sides in the process of trade clearance and settlement, unlike the clearing process in the U.S., and so the fiscal "health" of the Depository does not directly affect the health of the market. The Depository does administer a Guarantee Fund to finance the completion of trades. The size of the Fund is monitored and reported on a regular basis (daily), and its size adjusted monthly to reflect any significant changes in market activity.

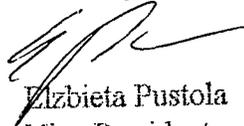
The staff also requested more detail on the PSC's inspection powers, with respect to the Depository specifically. The PSC has always had authority to inspect the WSE, including the Depository because the Depository was and, for the next few months, will continue to be a part of the WSE. When the PSC has sought information from the WSE in the past, it normally has gone directly to the office or division of interest. (The PSC has not conducted a full-scale examination of the WSE, itself a government-controlled corporation, since the latter's opening in 1991.)

The February amendments, however, have made the PSC's authority more explicit. In parallel provisions relating to the WSE and to the independent National Depository, (Securities Act, Arts.61a(1) and 71b(1), respectively), the Securities Act states that the PSC may enter, may review books, documents and other records, and may obtain copies and receive required information. If violations are found, the PSC has, as noted above, civil enforcement powers.

Finally, the staff asked whether this no-action request would apply only to Exchange-traded securities or to all securities deposited at the Depository. We believe that the no-action position should extend to all deposited securities, since there are no differences among them relevant to Depository's status as an eligible foreign custodian or to the purposes of Rule 17f-5.

I hope I have been able to answer your questions. If there is any further information I can provide, please feel free to contact me.

Sincerely,



Elzbieta Pustola
Vice-President
National Depository



WARSAW STOCK EXCHANGE

September 15, 1993

Mr. Robert Carroll, Esq.
Division of Investment Management
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549
United States of America

RE: Request on behalf of Warsaw Stock Exchange for a
No-Action Position under Rule 17f-5

Dear Mr. Carroll;

This letter is to seek assurance that the staff of the Division of Investment Management would not recommend that the Commission take enforcement action under Section 17(f) of the Investment Company Act of 1940 ("the 1940 Act") or Rule 17f-5 thereunder if the National Securities Depository ("National Depository") of the Warsaw Stock Exchange ("WSE") acts as an eligible foreign custodian pursuant to subparagraph (c)(2)(iii) of Rule 17f-5.

Section 17(f) of the 1940 Act regulates custody of the investments of management investment companies registered under the Act. Rule 17f-5 thereunder allows the investment company to deposit foreign securities in the custody of an "eligible foreign custodian." Among these is, under subparagraph (c)(2)(iii) of the Rule,

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.

The National Depository is an unincorporated division of the WSE, the only securities exchange in Poland. The WSE is owned by member banks and non-bank brokerages and by the Polish government. It was established pursuant to Article 68 of the Act of 22 March 1991, The Act on Public Trading in Securities and Trust Funds ("the Securities Act"). The government presently owns over 98% of the WSE's equity, although it cannot use this interest to effect corporate action without the consent of at least one of the WSE's 23 members. The WSE is a non-profit, self-regulatory corporation supervised by the Polish Securities Commission, the agency of the Polish government which, subject to regulations of the Securities Act, is responsible for supervision of public trading in securities. The WSE is audited annually by an independent accounting firm, and the audit report is provided to the WSE's board, its shareholders and governmental authorities. A second report is made available to the general public.

The Securities Commission may conduct inspections of the WSE on its own initiative, may seek a suspension of the Exchange's license in case of legal violations and must approve all rule changes proposed by the WSE. The Chairman of the Commission possesses the powers of a civil prosecutor in cases arising from public trading in securities.

The National Depository was organized pursuant to Article 71 of the Securities Act, which sets forth the Depository's functions and provides that it will be administered by the WSE according to operational principles prescribed by the Chairman of the Council of Ministers. Like the rest of the WSE, the National Depository also is subject to inspection and oversight by the Securities Commission, and any rule changes affecting its operation are similarly subject to Commission approval. Although the National Depository is not separately incorporated from the WSE, securities deposited with it are not reachable by the WSE's creditors.

The National Depository is the only central facility for clearing and settlement of securities in Poland. All trades on the WSE clear and settle through it, and the WSE currently provides the nation's sole market for secondary public trading in non-governmental securities. Moreover, although the WSE is currently the only securities exchange in Poland, the Securities Act provides that all securities admitted to exchange trading anywhere in Poland must be deposited with the National Depository. Although there presently is no public secondary market in corporate bonds, the Securities Act does not distinguish between stocks and bonds with respect to the National Depository requirement. Accordingly, should other securities exchanges be established here in the future, transactions in all securities traded on those exchanges would also settle through the National Depository. There also is no separate, central clearing or depository facility for over-the-counter trading. There is at present, in fact, no over-the-counter market for secondary public trading in non-government securities at all. Under Article 54 of the Securities Act, any such market would be subject to regulations promulgated by the Council of Ministers. Although no such market exists and no such regulation has yet been promulgated, it is expected that such a regulation would call for deposit of publicly traded OTC securities, whether debt or equity, in the National Depository.¹ Certainly no creation of a second central depository is likely.

In addition to providing a market for the securities of non-governmental issuers, the WSE has, since September 1, 1992, traded Polish Treasury debt. As with equities, Treasury debt traded on the WSE is deposited with the National Depository, and transactions are cleared and settled there. Although Treasury debt transactions exceeding 10,000,000,000 PZL in value can be

¹ This may not be the case with the street trading in bearer share certificates to be issued in connection with Mass Privatization - see Law of April 30th, 1993 on National Investment Funds and Their Privatization ("Mass Privatization Law"). Under this program, expected to go into operation in 1994, shares of state-owned enterprises will be distributed among a number of closed-end investment companies ("funds"). In return, the State will take shares in the funds. It will then issue physical bearer certificates to be made available at modest cost (and in some cases free of charge) to all adult citizens who are permanent residents of Poland. The certificates will be bearer securities exchangeable at the National Depository for a bundle of (dematerialized) WSE-listed shares in the various funds. There will thus be two new types of securities: the redeemable certificate and the actual fund shares. While the fund share will have no special status under the Securities Act, the certificates are specifically exempted from the requirements that public trading be conducted through brokerage houses and that secondary public trading occur on an Exchange. Although the certificates will be entitled by law to be traded on the WSE in dematerialized form through brokerages (and be deposited for such trading in the National Depository), the Mass Privatization Law also anticipates street trading of these bearer certificates among natural persons and would not require deposit of these physical bearer certificates with a central depository or any other entity for street trading to occur..

conducted outside the WSE, these too must clear through the National Depository, unless they involve instruments with less than a year from issue to maturity. The latter do not clear or settle through the National Depository system and do not trade on the WSE: such trades are not guaranteed by any central entity and are settled through physical delivery of certificates and computerized interbank funds transfers. Debt obligations with maturities of less than a year, essentially money market instruments, are not within the scope of Poland's Securities Act, nor is there any central clearing or depository system covering them. The only longer-term Treasury debt not settled through the National Depository or traded on the WSE is for one issue distributed prior to the passage of the Securities Act. There is no central clearing or depository facility for this issue.

The mechanics of clearing and settlement are as follows. Securities are deposited with the National Depository in the form of a global certificate. The certificate is the physical representation of all shares of the issue admitted to trading. The shares so represented are fungible. The certificate is held in the National Depository's vault on the premises of the WSE. (Although the owners of securities can be issued depository receipts for shares of deposited securities that they own, such receipts are not negotiable and are not used in the settlement of securities transactions.)² After a trade, amounts owing and owed, as well as securities owing and owed, are determined by the National Depository based upon compared contract notes from the parties to the trade. Settlement is on a delivery versus payment basis and is completed within three business days following the trade date (T+3). Investors hold a security account and a cash account with their brokers. The broker, in turn, holds a securities account in the National Depository and a cash account with a clearing bank, currently Bank Slaski for all National Depository participants.³ Settlements are effected through the transfer of funds in clearing bank accounts and the amendment of the securities register of the National Depository to reflect passage of the securities from one Depository participant to another. Corresponding entries are made by brokers on their own records for the accounts of specific beneficial owners.

The National Depository's functions may be summarized as follows: it holds global securities certificates; keeps security deposit accounts for participants; settles securities transactions between participants; prepares settlement of financial transactions between participants; reconciles cash accounts and supervises the procedures of the clearing bank; registers volumes of issued securities in WSE trading; collects interest, dividends and redemptions; issues depository receipts to owners of securities for whom it hold deposit accounts; and establishes the

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A shareholder also may arrange to have his shares taken out of bearer form, registered and delivered to him in the form of a traditional stock certificate. This is accomplished by transferring bearer shares from the investor's account to the account of the issuer at the National Depository and then having the issuer deliver registered shares to the investor. These shares, however, may not be publicly traded without rdeposit at the National Depository and retransfer into bearer form. While this type of bearer-to-registered-to-bearer procedure is a legal possibility, it is largely unknown in practice. Shares in issues that are not publicly traded, however, and for which, therefore, no global certificate exists at the National Depository, are frequently held in registered or traditional certificated form.

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Bank Slaski was selected as clearing bank by the WSE board. It is one of Poland's largest banks, being among nine regional banks spun off by the National Bank of Poland when it decided to withdraw from general commercial banking and concentrate on central banking functions. Although selection of a substitute clearing bank or banks is within the discretion of the WSE board, it is not expected that the WSE would use more than one clearing bank at any given time.

principles of deposit account-keeping for participants. The Depository's participants are financial institutions as well as all members of the WSE and the issuers of securities listed on the WSE.

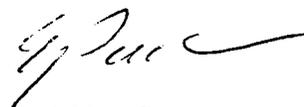
We believe that a no-action position for the WSE's National Depository is amply warranted by the terms of the Rule and in view of the no-action positions the staff has taken in similar cases. See, e.g., Korea Securities Depository Corp. (pub. May 14, 1993). As with the WSE's National Depository, the Korea Securities Depository Corp. ("KSD") operated a centralized clearing and depository system based on fungible securities represented by immobilized certificates on deposit in the depository's vault. KSD-eligible securities included all securities listed with the Korea Stock Exchange, those equity securities registered with the Korea Securities Dealers Association (the "KSDA," Korea's OTC dealers), and certain other securities. But while the KSD's potential reach may thus have extended to nearly as much of the existing public secondary market (at least in non-government issues) as does the National Depository's, only a portion of the eligible securities actually used the system: a little over half of the listed shares and a minority of listed bonds and KSDA-registered shares.

The crucial point, however, is that the KSD clearly met the standard of Rule 17f-5: it clearly operated "the central system for the handling of securities or equivalent book-entries in that country." It thus satisfied the only criterion that the Rule states for depositories and clearing agencies organized under foreign law. KSD did not have the whole market, but it had no rivals. We think there can be little doubt on the facts stated above that the Polish National Depository satisfies that sole criterion, in that it does have the whole existing market (with the one government bond issue exception noted above) and it has no rivals.

What is clear from the KSD letter and the words of the Rule should be unmistakable from a variety of no-action positions in cases where the relevant institutions status as "the central system" for handling securities was less clear-cut than in either this case or the case of the KSD. See, e.g., Malaysian Central Depository Sdn. Bhd. (pub. May 19, 1993) (the entity was the sole central "depository system" but would not handle all exchange-traded securities for three to five years and existed side-by-side with separate clearing system for handling securities), Bolsa de Valores de Sao Paulo (pub. Oct. 28, 1992) (two interfaced clearing and depository entities for exchange-traded equities, two others for fixed-income securities), Reserve Bank of Australia (pub. Sept. 2, 1992) (government bank handles government debt, second entity for non-government debt, third entity contemplated for equity), S.D. Indeva, S.A. (pub. Oct. 19, 1990) (Separate system for clearance of transactions in government securities maintained by central bank), KAS -- Associate, N.V. (pub. May 15, 1989) (three integrated entities).

We hope the facts and authorities outlined above will enable the staff to act favorably on this request. Please contact us, however, if we can provide any further information or assistance in this matter.

Sincerely,



Elzbieta Pustola
Vice-President
National Depository