

Investment Company Act of 1940 – Section 7(d)  
ASA (Bermuda) Limited

December 13, 2006

RESPONSE OF THE OFFICE OF  
INVESTMENT COMPANY REGULATION  
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 2006-2-ICR  
ASA (Bermuda) Limited

Your letter of December 12, 2006 requests our assurance that we would not recommend that the Securities and Exchange Commission (the “Commission”) take any enforcement action against ASA (Bermuda) Limited (“ASAB”) under section 7(d) of the Investment Company Act of 1940 (the “Act”) if, under the circumstances described below, ASAB continues to rely on an existing order issued to it and its predecessor, ASA Limited (“ASA”), in 2004 (the “Existing Order”).<sup>1</sup> The Existing Order permitted ASA, which was incorporated in South Africa, to reorganize into ASAB, which was organized in Bermuda; allowed ASAB to register under the Act; and permitted ASA to amend its custodian agreement with JPMorgan Chase Bank, N.A. (“JPMorgan Chase”) and ASAB to enter into a virtually identical agreement with JPMorgan Chase. JPMorgan Chase now proposes to replace The Standard Bank of South Africa Limited (“Standard Bank”), the entity specifically designated in the terms and conditions of the Existing Order as JPMorgan Chase’s subcustodian with respect to ASAB’s assets in South Africa, with First National Bank (“First National”), a division of FirstRand Bank Limited (“FirstRand”) and to amend Schedule 1 of the custodian agreement between ASAB and JPMorgan Chase solely in order to reflect such substitution. In addition, FirstRand proposes to irrevocably designate CT Corporation System (“CT Corp”) as its agent in the United States to accept service of process (“U.S. Service Agent”), instead of ASAB’s custodian, JPMorgan Chase, who was identified in the terms and conditions of the Existing Order as the entity that would serve as U.S. Service Agent for Standard Bank.

#### Substitution of Subcustodian

You state that the services provided by First National pursuant to the subcustodian agreement between JPMorgan Chase and FirstRand (the “New Subcustodian Agreement”) with respect to the assets of ASAB will be substantially the same as those currently provided by Standard Bank.<sup>2</sup> You represent that First National’s assumption of these subcustodian duties will

---

<sup>1</sup> ASA Limited, et al., Investment Company Act Release Nos. 26582 (Aug. 27, 2004) (notice) and 26602 (Sept. 20, 2004) (order).

<sup>2</sup> You state that First National is a leading custody provider in South Africa. Like Standard Bank, First National is a full participant (“CSD Participant”) in the central securities depository of South Africa (“CSD”). You represent that to become a full CSD Participant, an entity must meet all of the CSD’s entry criteria, which include the maintenance of a minimum level of capitalization, maintenance of an account at the South African Reserve Bank, adequate systems, procedures, personnel, facilities and technical capacity to fulfill its obligations and operational requirements as a CSD Participant, and certain other requirements relating to protection of information, insurance and corporate governance. CSD Participants are regulated either by the Financial Services Board (“FSB”), an agency of the South African government that supervises the activities of South African financial services

not result in any significant change in the nature or scope of services provided to ASAB. Further, upon assumption of its duties as JPMorgan Chase's subcustodian with respect to ASAB's assets in South Africa, First National will serve as ASAB's CSD Participant in place of Standard Bank.

You state that ASAB will continue to comply with rule 17f-5 under the Act as if it were a registered management investment company organized or incorporated in the U.S. with respect to any of its assets held by eligible foreign custodians (including First National) or overseas branches of U.S. banks (including JPMorgan Chase) outside the U.S. You state that the New Subcustodian Agreement meets the requirements of rule 17f-5(c)(2) under the Act. You further state that ASAB's board of directors has complied with the requirements of rule 17f-5 under the Act in considering the approval of First National as subcustodian and will continue to comply with all the duties imposed upon it as foreign custody manager (as that term is defined in rule 17f-5(a)(3) under the Act), including monitoring the corresponding custody arrangements.

You represent that ASAB and JPMorgan Chase will continue to comply with the terms and conditions of the Existing Order, except that First National will take the place of Standard Bank as custodian of ASAB's assets in South Africa. You further represent that First National and FirstRand will comply with the terms and conditions of the Existing Order applicable to Standard Bank as though First National were the subcustodian contemplated by the Existing Order, except that FirstRand will appoint CT Corp instead of JPMorgan Chase as its U.S. Service Agent with respect to First National's activities as ASAB's South African subcustodian. You state that ASAB and JPMorgan Chase will amend the custodian agreement solely by revising Schedule 1 to such agreement to reflect the substitution of First National in place of Standard Bank as JPMorgan Chase's subcustodian with respect to ASAB's assets in South Africa.

#### U.S. Service Agent for Subcustodian

You also seek assurances with respect to FirstRand's irrevocable designation of CT Corp, instead of JPMorgan Chase, as FirstRand's U.S. Service Agent in connection with the activities of First National as ASAB's South African subcustodian. As specified under the terms and conditions of the Existing Order, you state that JPMorgan Chase has served as a U.S. Service Agent for Standard Bank. You represent that JPMorgan Chase is not willing, however, to serve as a U.S. Service Agent any longer.

You state that FirstRand and JPMorgan Chase have entered into an amendment to the New Subcustodian Agreement in which FirstRand irrevocably designated and appointed CT Corp as its U.S. Service Agent to accept service of process in any suit, action, or proceeding (collectively, "Proceeding") before the Commission or any appropriate court to enforce the provisions of the laws administered by the Commission in connection with the New Subcustodian Agreement, or to enforce any right or liability based on the New Subcustodian Agreement or which alleges a liability on the part of FirstRand arising out of its services, acts or transactions under the New Subcustodian Agreement and relating to ASAB's assets. CT Corp, a leading registered agent in the U.S., has agreed to such designation and appointment. You also

---

institutions, or by the South African Reserve Bank. You state that First National meets all of the CSD's criteria and is regulated by the FSB.

state that FirstRand has agreed to take all actions as may be necessary to continue the designation and appointment of CT Corp in full force and effect for so long as First National continues to act as subcustodian for ASAB's assets<sup>3</sup> and, upon First National ceasing to act as subcustodian for ASAB's assets, until the statute of limitations for the initiation of any Proceeding has lapsed, but in that case only with respect to a Proceeding or a liability based on any action or inaction of First National prior to its having ceased holding such assets. You also state that the CT Corp office designated to accept service of process for FirstRand will be located in the same state as the office of JPMorgan Chase in its role as ASAB's custodian.<sup>4</sup>

### Analysis and Conclusion

Under the circumstances discussed above, you assert that it would be consistent with the public interest and the protection of investors and consistent with the terms and conditions of the Existing Order to allow ASAB to continue to rely on the Existing Order after First National has assumed subcustodian responsibilities for ASAB's assets in South Africa and after FirstRand has designated CT Corp as its U.S. Service Agent in any Proceeding relating to the activities of First National as ASAB's South African subcustodian. You represent that it will remain both legally and practically feasible effectively to enforce the provisions of the Act against ASAB after First National has assumed these subcustodian responsibilities and after FirstRand has designated CT Corp as its U.S. Service Agent. You further represent that the proposed appointment of CT Corp, rather than JPMorgan Chase, as FirstRand's U.S. Service Agent under the terms and conditions of the Existing Order will not impair the likelihood that there is a court of competent jurisdiction that would be an appropriate forum for a Proceeding. You state that personal jurisdiction over FirstRand will continue to exist in the same location as ASAB's custodian and U.S. assets. You also state that you do not believe that having a registered agent for service of process in Manhattan, rather than Brooklyn, should meaningfully affect a federal or state court's analysis when considering whether to dismiss a Proceeding against FirstRand on the grounds of forum non conveniens.

Based on the facts and representations made in your letter, we would not recommend enforcement action to the Commission against ASAB under section 7(d) of the Act if First National acts as JPMorgan Chase's subcustodian with respect to ASAB's assets in South Africa and if FirstRand designates CT Corp as its U.S. Service Agent in any Proceeding before the Commission or any appropriate court relating to the activities of First National as ASAB's South African subcustodian. This response expresses our views on enforcement action only and does not express any legal conclusions on the issues presented. Because our position is based on the facts and representations in your letter, you should note that any different facts or representations may require a different conclusion.

Shannon Conaty

---

<sup>3</sup> You state that ASAB, not FirstRand, will be responsible for the payment of CT Corp's fees for its services as FirstRand's U.S. Service Agent.

<sup>4</sup> You represent that the CT Corp office designated to accept service of process for FirstRand is located in Manhattan (New York County) while JPMorgan in its role as custodian for ASAB is located in Brooklyn (Kings County).

Senior Counsel  
Office of Investment Company Regulation  
December 13, 2006

**INCOMING LETTER:**



**Kirkpatrick & Lockhart Nicholson Graham LLP**

1601 K Street, N.W.  
Washington, DC 20006-1600  
202.778.9000  
Fax 202.778.9100  
[www.klmg.com](http://www.klmg.com)

Investment Company Act of 1940  
Section 7(d)

December 12, 2006

Nadya B. Roytblat, Esq.  
Assistant Director  
Office of Investment Company Regulation  
Division of Investment Management  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Re: ASA Limited and ASA (Bermuda) Limited – Exemptive Order,  
dated September 20, 2004 (File No. 812-12970; Release No. IC-26602)

Dear Ms. Roytblat:

On behalf of ASA (Bermuda) Limited, a Bermuda exempted limited liability company (“ASAB”), we respectfully request assurance that the staff of the Division of Investment Management (the “Staff”) will not recommend that the Securities and Exchange Commission (the “Commission”) take enforcement action against ASAB under section 7(d) of the Investment Company Act of 1940, as amended (the “1940 Act”), if, under the circumstances described below, ASAB continues to rely on the exemptive order granted in Release No. IC- 26602 (September 20, 2004) (the “Existing Order”). Capitalized terms not defined herein have the meanings set forth in the application for the Existing Order filed with the Commission on August 13, 2004.

ASAB has been informed by its custodian, JPMorgan Chase Bank, N.A. (“JPMorgan”), that JPMorgan proposes to change ASAB’s South African subcustodian designated in the Existing Order from The Standard Bank of South Africa Limited (“Standard Bank”) to First National Bank (“First National”), a division of FirstRand Bank Limited (“FirstRand”) and to

amend Schedule 1 of the custodian agreement between ASAB and JPMorgan solely in order to reflect such substitution.<sup>5</sup> First National is a CSD Participant. Effective June 23, 2006, First National began to serve as the custody provider in South Africa for all of JPMorgan's clients, except ASAB.<sup>6</sup> In carrying out its duties as JPMorgan's subcustodian in South Africa, First National will operate pursuant to the subcustodian agreement, dated June 13, 2006, between JPMorgan and FirstRand (the "New Subcustodian Agreement") that meets the requirements of rule 17f-5(c)(2) under the 1940 Act and will perform substantially the same services currently provided by Standard Bank as ASAB's South African subcustodian. JPMorgan has also informed ASAB that JPMorgan is not willing to serve as an agent in the United States to accept service of process ("U.S. Service Agent") for FirstRand in any suit, action, or proceeding (collectively, "Proceeding") before the Commission or any appropriate court to enforce the provisions of the laws administered by the Commission in connection with the New Subcustodian Agreement, or to enforce any right or liability ("Liability") based on such agreement or which alleges a liability on the part of First National arising out of its services, acts or transactions under the New Subcustodian Agreement relating to ASAB's assets. JPMorgan, as ASAB's custodian, had been specifically designated as such U.S. Service Agent under the terms and conditions of the Existing Order and has served in this capacity for Standard Bank. To satisfy this condition of the Existing Order, ASAB requests that the Staff permit FirstRand to irrevocably designate CT Corporation System ("CT Corp") as its U.S. Service Agent in any Proceeding before the Commission or any appropriate court relating to the activities of First National as ASAB's South African subcustodian. CT Corp, a leading registered agent in the United States, has been in the business of providing registered agent services for over 100 years.

ASAB does not believe that the proposed change of subcustodian and such subcustodian's U.S. Service Agent will have any effect on the special circumstances and arrangements underlying the Existing Order. ASAB believes that it will remain both legally and practically feasible effectively to enforce the provisions of the 1940 Act against ASAB. ASAB and JPMorgan will continue to comply with the terms and conditions set forth in the Existing Order, except that First National will take the place of Standard Bank as custodian of ASAB's assets in South Africa. First National and FirstRand will comply with the terms and conditions of the Existing Order applicable to Standard Bank as though First National were the subcustodian contemplated by the Existing Order, except that FirstRand will appoint CT Corp instead of JPMorgan as its U.S. Service Agent with respect to First National's activities as ASAB's South African subcustodian. As required by the Existing Order, ASAB's Board of Directors (the "Board") acting as foreign custody manager (as that term is defined in rule 17f-5(a)(3) under the 1940 Act) ("Foreign Custody Manager") has complied with the requirements of rule 17f-5 under the 1940 Act in considering and approving the proposed custody arrangements with First National and the New Subcustodian Agreement. The Board will continue to comply

---

<sup>5</sup> In 2000, ASA Limited ("ASA"), the South African predecessor of ASAB, received an order under section 7(d) of the 1940 Act permitting ASA to maintain its portfolio securities in the central securities depository ("CSD") in South Africa that commenced operations on November 1, 1999. See Investment Company Act Release Nos. 24321 (Feb. 29, 2000) (notice) and 24367 (Mar. 27, 2000) (order). Standard Bank is a participant in the CSD (a "CSD Participant").

<sup>6</sup> JPMorgan has agreed to continue to maintain ASAB's South African assets with Standard Bank for a limited time pending the Staff's review of this request for relief.

with all of the duties imposed upon it as Foreign Custody Manager, including monitoring these custody arrangements. In our view, under the circumstances described above, permitting First National to serve as JPMorgan's subcustodian for ASAB's assets in South Africa and CT Corp to serve as U.S. Service Agent for FirstRand would be consistent with the public interest and the protection of investors and consistent with the terms and conditions of the Existing Order.

### Background Information

On September 20, 2004, ASA and ASAB received the Existing Order to: (i) permit ASA to change its country of incorporation from the Republic of South Africa to Bermuda by reorganizing itself into ASAB, a newly-formed limited liability company in Bermuda, (ii) allow ASAB to register as an investment company under Section 8 of the 1940 Act and (iii) permit ASA to amend its custodian agreement with JPMorgan and ASAB to enter into a virtually identical agreement with JPMorgan. The Existing Order was granted, as relevant here, upon the following conditions:

- JPMorgan will serve as ASAB's custodian and will continue to meet the qualifications of a custodian under section 17(f) of the 1940 Act, and Standard Bank will serve as JPMorgan's subcustodian in South Africa. As long as Standard Bank holds ASAB's assets, Standard Bank will designate JPMorgan as its agent for service of process in the United States;
- ASAB will comply with rule 17f-5 under the 1940 Act as if it were a registered management investment company organized or incorporated in the United States with respect to any of its assets held by eligible foreign custodians (including Standard Bank) or overseas branches of U.S. banks (including JPMorgan) outside the United States;
- The Board will serve as foreign custody manager and will not delegate such functions to its custodian or any other person;
- ASAB will seek an order of the Commission prior to any amendment of its custodian agreement with its custodian;
- ASAB will file with the Commission a copy of the subcustodian agreement that irrevocably designates ASAB's custodian as U.S. Service Agent in any Proceeding before the Commission or any appropriate court to enforce the provisions of the laws administered by the Commission in connection with the subcustodian agreement with Standard Bank ("Existing Subcustodian Agreement"), or to enforce any right or liability based on the Existing Subcustodian Agreement or which alleges a liability on the part of Standard Bank arising out of its services, acts, or transactions under the Existing Subcustodian Agreement relating to ASAB's assets;
- If an "eligible foreign custodian" or an overseas branch of the custodian is to be appointed as subcustodian, ASAB will comply with the requirements of

rule 17f-5 under the 1940 Act prior to the purchase of securities on an Established Exchange; and

- ASAB will withdraw its assets from the care of a subcustodian as soon as practicable, and in any event within 180 days of the date when a majority of the Board makes the determination that a particular subcustodian may no longer be considered eligible under rule 17f-5 under the 1940 Act or may no longer be considered an overseas branch of the custodian, or that continuance of the subcustodian arrangement would not be consistent with the best interests of ASAB and its shareholders.

Effective June 23, 2006, JPMorgan appointed First National as JPMorgan's custody provider in South Africa for all of JPMorgan's clients, except ASAB. First National is a division of FirstRand, an indirect wholly-owned subsidiary of FirstRand Limited, one of the largest financial service groups in South Africa. First National is a leading custody provider in South Africa. Like Standard Bank, First National is a full CSD Participant. To become a full CSD Participant, an entity must meet all of the CSD's entry criteria, which include: the maintenance of a minimum level of capitalization; the maintenance of an account at the South African Reserve Bank; adequate systems, procedures, personnel, facilities and technical capacity to fulfill its obligations and operational requirements as a CSD Participant; and certain other requirements relating to protection of information, insurance and corporate governance. CSD Participants are regulated either by the Financial Services Board ("FSB"), an agency of the South African government that supervises the activities of South African financial services institutions, or by the South African Reserve Bank. First National meets all of the CSD's criteria and is regulated by the FSB. JPMorgan decided to transfer its business from Standard Bank to First National after a determination that First National was best positioned to meet the immediate and long-term service and product needs of JPMorgan and its clients.<sup>7</sup>

On June 21, 2006, the Board acting as Foreign Custody Manager approved the proposed custody arrangements and determined that ASAB's assets held by First National will be subject to reasonable care, based upon the standards applicable to custodians in South Africa and taking into account the factors set forth in rule 17f-5(c)(1) under the 1940 Act.<sup>8</sup> The Board also determined that the New Subcustodian Agreement satisfies the requirements of rule 17f-5(c)(2) under the 1940 Act.<sup>9</sup> If the Staff grants the no-action assurance requested hereby, upon

---

<sup>7</sup> The proposed change of subcustodian is not the result of a Board determination that Standard Bank should no longer be considered eligible under rule 17f-5 under the 1940 Act. Nor has the Board determined that continuance of the existing subcustodian arrangement with Standard Bank would not be consistent with the best interests of ASAB and its shareholders.

<sup>8</sup> Rule 17f-5(c)(1) requires the Board to consider (i) First National's practices, procedures, and internal controls, including security and data protection practices and method of keeping custodial records, (ii) its financial strength, (iii) its general reputation and (iv) ASAB's ability to enforce judgments against First National, such as by virtue of the existence of offices in the United States or consent to service of process in the United States.

<sup>9</sup> Rule 17f-5(c)(2) requires the New Subcustodian Agreement to provide that (i) ASAB will be adequately indemnified or its assets adequately insured (or any combination) to protect against the risk of loss; (ii) ASAB's assets will not be subject to any right, charge, security interest, lien, or claim of any kind in favor of First National or its creditors, except a claim of payment for their safe custody or administration, or, in the case of cash deposits, liens

assumption of its duties as JPMorgan's subcustodian with respect to ASAB's assets in South Africa, First National will serve as ASAB's CSD Participant in place of Standard Bank.

### Discussion

We believe that permitting First National to serve as subcustodian for ASAB's assets in South Africa and permitting CT Corp to serve as U.S. Service Agent for FirstRand in any Proceeding relating to the activities of First National as ASAB's South African subcustodian would be consistent with the public interest and the protection of investors and with the terms and conditions of the Existing Order because First National would essentially be "standing in the shoes" of Standard Bank and CT Corp would essentially be "standing in the shoes" of JPMorgan in its role as U.S. Service Agent. We also believe that it will remain both legally and practically feasible effectively to enforce the provisions of the 1940 Act against ASAB after First National has assumed subcustodian responsibilities for ASAB's assets in South Africa and after FirstRand has designated CT Corp as its U.S. Service Agent.

The services provided by First National to JPMorgan with respect to assets of ASAB will be substantially the same as those currently provided by Standard Bank and will be consistent with the terms and conditions of the Existing Order. First National's assumption of subcustodian duties for ASAB's assets in South Africa will not result in any significant change in the nature or scope of the services provided to ASAB. The New Subcustodian Agreement contains provisions necessary to satisfy the requirements of rule 17f-5(c)(2) under the 1940 Act. ASAB and JPMorgan will amend the custodian agreement solely by revising Schedule 1 to such agreement to reflect the substitution of First National in place of Standard Bank as JPMorgan's subcustodian with respect to ASAB's assets in South Africa. After receipt of the requested relief, ASAB will file with the Commission a copy of the subcustodian agreement that, with respect to assets of ASAB held pursuant to the New Subcustodian Agreement, irrevocably designates CT Corp as a U.S. Service Agent for FirstRand in any Proceeding before the Commission or any appropriate court to enforce the provisions of the laws administered by the Commission in connection with the New Subcustodian Agreement. Thus, except with respect to its designation of CT Corp as U.S. Service Agent, First National and FirstRand will comply with the terms and conditions in the Existing Order applicable to Standard Bank as though First National were the subcustodian contemplated by the Existing Order.

The appointment of CT Corp as U.S. Service Agent for FirstRand will not lessen the ability of the Commission to conduct any Proceeding against FirstRand arising out of services, acts or transactions effected under the New Subcustodian Agreement which relate to ASAB's assets. FirstRand and JPMorgan entered into an amendment to the New Subcustodian Agreement in which, with respect to ASAB's assets held under the New Subcustodian

---

or rights in favor of creditors of the custodian arising under bankruptcy, insolvency, or similar laws; (iii) beneficial ownership of ASAB's assets will be freely transferable without the payment of money or value other than for safe custody or administration; (iv) adequate records will be maintained identifying the assets as belonging to ASAB or as being held by a third party for the benefit of ASAB; (v) ASAB's independent public accountants will be given access to those records or confirmation of the content of those records; and (vi) ASAB will receive periodic reports with respect to the safekeeping of its assets, including, but not limited to, notification of any transfer to or from ASAB's account or a third party account containing assets held for the benefit of ASAB.

Agreement, FirstRand irrevocably designated and appointed CT Corp as its U.S. Service Agent to accept service of process in any Proceeding before the Commission or any appropriate court to enforce the provisions of the laws administered by the Commission in connection with the New Subcustodian Agreement, or to enforce any right or liability based on the New Subcustodian Agreement or which alleges a liability on the part of FirstRand arising out of its services, acts or transactions under the New Subcustodian Agreement. CT Corp has agreed to such designation and appointment. Like the duration of the designation and appointment by Standard Bank of JPMorgan, the duration of the designation and appointment by FirstRand of CT Corp complies with the terms and conditions of the Existing Order. Such designation and appointment automatically terminates upon First National ceasing to be ASAB's South African subcustodian, except as to a Proceeding or a Liability based on an action or inaction of First National prior to First National having ceased serving as subcustodian. FirstRand has agreed to take all actions as may be necessary to continue the designation and appointment of CT Corp in full force and effect for so long as First National continues to act as subcustodian for ASAB's assets<sup>10</sup> and, upon First National ceasing to act as subcustodian for ASAB's assets, until the statute of limitations for the initiation of any Proceeding has lapsed, but in that case only with respect to a Proceeding or a Liability based on any action or inaction of First National prior to its having ceased holding such assets. We believe that the proposed appointment of CT Corp, rather than JPMorgan, as FirstRand's U.S. Service Agent under the terms and conditions of the Existing Order will not impair the likelihood that there is a court of competent jurisdiction that would be an appropriate forum for a Proceeding. Personal jurisdiction over FirstRand will continue to exist in the same location as ASAB's custodian and U.S. assets. While the CT Corp office designated to accept service of process for FirstRand will not be located in the same city and county as the office of JPMorgan in its role as custodian for ASAB,<sup>11</sup> service on a registered agent anywhere in the State of New York is sufficient to confer personal jurisdiction over FirstRand in any federal or state court in the State of New York with respect to any Proceeding arising out of FirstRand's services or acts with respect to ASAB's assets.<sup>12</sup> The question of whether a federal or state court possesses subject matter jurisdiction would not depend on the New York city or county in which FirstRand's registered agent is located. We do not believe that having a registered agent for service of process in Manhattan, rather than Brooklyn, should meaningfully affect a federal or state court's analysis when considering whether to dismiss a Proceeding against FirstRand on the grounds of forum non conveniens.

ASAB will continue to comply with the terms and conditions of the Existing Order, including the requirement that it comply with rule 17f-5 under the 1940 Act as if it were a registered management investment company organized or incorporated in the United States with respect to any of its assets held by eligible foreign custodians (including First National) or overseas branches of U.S. banks (including JPMorgan) outside the United States. The Board will serve as Foreign Custody Manager and will not delegate such functions to its custodian or

---

<sup>10</sup> ASAB, not FirstRand, will be responsible for the payment of CT Corp's fees for its services as FirstRand's U.S. Service Agent.

<sup>11</sup> The CT Corp office designated to accept service of process for FirstRand is located in Manhattan (New York County) while JPMorgan in its role as custodian for ASAB is located in Brooklyn (Kings County).

<sup>12</sup> See Fed. R. Civ. P. 4(k) and N.Y. C.P.L.R. 301, 311.

any other person. The Board has established a system to monitor its foreign custody arrangements and, at least annually, will review the continued appropriateness of its arrangements with First National and monitor performance of the New Subcustodian Agreement. Thus, ASAB's foreign custody arrangements will meet the same standards as those that are applicable to continued custody by Standard Bank and will be subject to the same Board oversight.

### Conclusion

As discussed above, the special circumstances and arrangements underlying the Existing Order will still exist, and the terms and conditions upon which the Existing Order was granted will continue to be satisfied after the proposed transfer of South African subcustodian duties to First National and the proposed substitution of CT Corp as U.S. Service Agent. Accordingly, we respectfully submit that granting the requested no-action relief would be consistent with the provisions, policies, and purposes of the 1940 Act and with the Staff's prior no-action positions.<sup>13</sup> We therefore respectfully request assurance that the Staff will not recommend enforcement action against ASAB if it continues to rely on the Existing Order while First National serves as subcustodian of its assets in South Africa and CT Corp serves as U.S. Service Agent for FirstRand. ASAB acknowledges that any subsequent change to ASAB's subcustodian in South Africa or to the designation of CT Corp as U.S. Service Agent for ASAB's South African subcustodian will require ASAB to seek further relief from the Commission or its Staff.

In compliance with the procedures set forth in Investment Company Act Release Nos. 6220 (Oct. 29, 1970) and 6330 (Jan. 27, 1971) two copies of this letter are submitted herewith, and the specific subsection of the particular statute to which this letter pertains is indicated in the upper-right-hand corner of the first page of this letter and each copy. Please do not hesitate to contact me at (202) 778-9298 or Yoon Choo at (202) 778-9340 if you have any questions or need any additional information regarding this request.

Sincerely,

R. Darrell Mounts

cc: Janet M. Grossnickle, Esq., Branch Chief  
Shannon E. Conaty, Esq., Senior Counsel  
Robert J.A. Irwin  
Paul K. Wustrack, Jr., Esq.

---

<sup>13</sup> We note that the Staff has granted similar no-action relief in the past, allowing investment companies to continue to rely on existing orders where service providers that were not expressly contemplated by the previous orders performed substantially the same services and complied with all the terms and conditions of the prior orders. See UAM Funds Inc., SEC No-Action Letter (Sept. 24, 2001); AHA Investment Funds, Inc., SEC No-Action Letter (Mar. 8, 2001). See also AIM Advisor Funds, Inc., SEC No-Action Letter (Feb. 12, 2002); Morgan Stanley Co. Inc., et al., SEC No-Action Letter (Sept. 24, 1998).