



1940 Act Section 17(1)
1940 Act Section 26(a)

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VIA FEDERAL EXPRESS

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U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0504

Re: Depository Trust Company of Delaware, LLC dba Delaware Depository

Dear Mr. Scheidt:

I write on behalf of Depository Trust Company of Delaware, LLC dba Delaware Depository (hereinafter, "Delaware Depository" or "Company"), a privately-held limited liability company organized and existing under the laws of the State of Delaware. Delaware Depository provides Precious Metals Bullion¹ custody, accounting, and distribution services within the United States.

Delaware Depository is a limited purpose trust company² that is supervised and examined by the State of Delaware, Office of the State Bank Commissioner ("Delaware Bank Commissioner"). Delaware Depository, however, is not a "bank," as defined in Sections 17(f)(1) or 26(a) of the Investment Company Act of 1940, as amended (the "1940 Act"), because the "[exercise of] fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of Currency" is outside the scope of Delaware Depository's current lines of business.³

The Company respectfully requests that the staff of the Division of Investment Management (the "Staff") advise the Company that the Staff will not recommend that the Securities and Exchange Commission (the "Commission") take enforcement action under Section 17(f)(1) against any investment company registered under the 1940 Act (each, a "Fund") due to the fact that the Fund places and maintains custody of its gold or silver bullion⁴ in a vault or other secure custody facility operated by Delaware Depository in the United States.

¹ "Precious Metals Bullion" or "Precious Metals" is a term of art used herein to describe gold, silver, and platinum group metals (i.e., platinum, palladium, rhodium, ruthenium, iridium, and osmium) existing in the form of a coin, bar, ingot, plate, or sponge which: (1) has a market value that is derived from its intrinsic metal content, and not from its age, design, subject matter, limited mintage, or rarity; and (2) is not held as an investment in the dollar value denomination that is ascribed to a certain gold or silver coin by federal law, see, e.g., 31 U.S.C. § 5112(a)(7) - (11) (setting forth the diameter, weight, and metal content of certain dollar-amount coins that the U.S. Treasury is authorized to mint and issue).

² In the State of Delaware, limited purpose trust companies such as Delaware Depository have all the powers, rights, and privileges of a trust company (including fiduciary powers), except that they are prohibited from receiving cash deposits, issuing certificates of deposit, or making loans to customers. See, 5 Del.C. § 773(4) (trust company powers).

³ 15 U.S.C § 80a-2(a)(5)

⁴ Any gold or silver bullion that is held in custody by the Company for a Fund is investment property that will be based on the intrinsic value of its metal content.

As described more fully below, Delaware Depository believes that permitting the Company to serve as a Fund's custodian of gold and silver bullion: (i) satisfies the concerns that Congress sought to address in adopting Section 17(f)(1) of the 1940 Act; (ii) would enhance competition among custodians that provide Precious Metals custody services to registered investment companies, and provide traditional benefits of competition, including a wider selection of custody providers, improved quality and delivery of services amongst custodians, and potential cost savings; and (iii) provide registered investment companies with the ability to geographically diversify their storage of gold and silver bullion outside vaults in New York City and London, thereby mitigating market and operational risks associated with concentrated physical storage of bullion assets in one or two cities that have been impacted by terrorist attacks and weather-related disasters.

I. THE STATUTORY PROVISIONS AND REGULATORY POLICY

1. Section 17(f)(1) and Delaware Depository

As noted above, Delaware Depository provides Precious Metals Bullion custody, accounting, and distribution services. Delaware Depository provides these services to national and state banks, trust companies and nonbank trustees approved by the Department of the Treasury (including custodians of individual retirement accounts), government agencies, investment banks, and Precious Metals dealers. Delaware Depository would like to act as a custodian of Precious Metals Bullion for registered investment companies.

In relevant part, Section 17(f)(1) of the 1940 Act states that:

[e]very registered management company shall place and maintain its securities *and similar investments* in the custody of (A) a bank or banks [satisfying the qualifications specified within Section 26(a)(1) of the 1940 Act] . . . or (B) a company which is a member of a national securities exchange . . . ; or (C) such registered company, but only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors.⁵

Section 26(a)(1) of the 1940 Act requires a Fund's custodian to "have at all times aggregate capital, surplus, and undivided profits, which shall not be less than \$500,000."⁶

In form, Delaware Depository is a "bank," because it is a "trust company...doing business under the laws of any State or of the United States."⁷ However, Delaware Depository does not meet the functional definition of a "bank" under the 1940 Act, because the Company's exclusive focus upon Precious Metals Bullion custody services is not in alignment with the statutory requirement that a "substantial portion of [its] business***[consist] of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency."⁸ In sum, Delaware Depository is not a "bank" under the 1940 Act, despite the fact that it is a state-chartered limited purpose trust company and its net capital greatly exceeds the minimum capital requirement of Section 26(a)(1) of the 1940 Act⁹ (i.e., currently, Company and its parent company have an amount of shareholder equity and surplus that is approximately 100 times greater than is required under Sections 17(f)(1) and 26(a)(1)).

⁵ 15 U.S. Code § 80a-17(f)(1) (emphasis added). *See also*, 26 U.S.C. § 408(n)(3) (as a limited purpose trust company, Delaware Depository qualifies as a "bank" under the Internal Revenue Code)

⁶ 15 U.S.C. § 80a-26(a)(1)

⁷ 15 U.S.C. § 80a-2(a)(5)(C)

⁸ *Id.*

⁹ 5 Del. C. § 745 (under Delaware's banking laws, the Company is required to maintain, at all times, "not less than \$500,000" in net capital)

It is respectfully submitted that the Company's Precious Metals Bullion safekeeping service is at least as secure and competent as the same services available through any entity that would qualify under Section 17(f) of the 1940 Act. As such, and based on the facts and representations set forth below, Delaware Depository seeks the Staff's assurance that it will not recommend enforcement action against a Fund due to the fact that the Fund places and maintains custody of its gold or silver bullion in a vault or other secure facility operated by Delaware Depository.

2. Delaware Depository's Request is Consistent with the Investor Protection Objectives of Section 17(f)(1)

The legislative history of Section 17(f) of the 1940 Act evidences a Congressional objective of ensuring that fund assets are held by a financially secure entity with sufficient safeguards against misappropriation.¹⁰ Delaware Depository believes that it would provide a Fund with levels of financial security and investment asset safekeeping that are commensurate with what Congress envisioned when it enacted Section 17(f). In particular, the Company believes that its Precious Metals Bullion custody, accounting, and distribution services are at least as secure and competent as the same services that are made available by an entity that would qualify as a "bank" under Section 17(f)(1) of the 1940 Act.

In the United States, federal banking regulations do not expressly require a bank to design and maintain certain security devices or implement internal controls in carrying out the safekeeping activities of a Precious Metals custodian. In the Precious Metals custodian industry in which Delaware Depository competes with banks and nonbanks, customer demand and loss insurer requirements converge to impose evolving security, quality assurance, internal control, and audit standards upon custodians in: (a) designing and maintaining vaults and secure facilities for the safekeeping of Precious Metals; (b) designing, implementing, and auditing internal controls over the custodian's operation; and (c) affirmatively seeking direct and indirect federal and/or state regulatory oversight of a custodian's operations. These forces apply equally to Delaware Depository and to any bank.

A. Express U.S. Bank Security Requirements

Under the Bank Protection Act of 1968 ("BPA"), federal banking regulators require banks to: (1) establish minimum standards for bank security; and (2) implement procedures to discourage crime against banks.¹¹ The BPA applies to federal banks regulated by the Office of the Comptroller of the Currency (OCC), state-chartered banks regulated by the Board of Governors of the Federal Reserve System (FRB), and state-chartered banks regulated by Federal Deposit Insurance Corporation (FDIC).¹²

In addressing the "security measures" to be undertaken by a bank, the BPA states:

¹⁰ Investment Trusts and Investment Companies: Hearings on S 3580 before a Subcomm. of the Senate Comm. On Banking and Currency, 76th Cong., 3d Sess. 264 (1940); See also, Securities and Exchange Commission, Release Nos. IC-23201; IS-1136; File No. S7-23-95, RIN 3235-AE98 ("[t]he legislative history and requirements of section 17(f) indicate that Congress intended fund assets to be kept by financially secure entities that have sufficient safeguards against misappropriation.")

¹¹ 12 U.S.C. § 1881, *et seq.*

¹² 12 U.S.C. § 1813

Within six months from July 7, 1968, each Federal supervisory agency shall promulgate rules establishing minimum standards with which each bank or savings association must comply with respect to the installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts... The rules shall establish the time limits within which banks and savings associations shall comply with the standards.¹³

The initial regulations promulgated in 1969 by the OCC, FRB, and FDIC required bank vaults to maintain the following physical barriers and security devices:

Vault walls, roof and floor contracted for after February 15, 1969, should be made of steel-reinforced concrete, at least 18 inches thick; vault doors should be made of steel or other drill- and torch-resistant material, at least 3 ½ inches thick, and be equipped with a dial combination lock and a time lock and a substantial, lockable day-gate; or vaults and vault doors should be constructed of materials that afford at least equivalent burglary-resistance.¹⁴

In 1991, the OCC sought to amend the initial regulations. The Proposed Rules included the OCC's proposal "to delete references to specific security devices which, due to technological advances, are likely to become obsolete."¹⁵ The OCC's objective was to "avoid frequent updates of the list of required security devices" for bank security programs.¹⁶ The OCC proposal was adopted and it is currently in effect. Thus, today, the Final Rule states, in relevant part, that banks must have the following security devices:

- (1) A means of protecting cash or other liquid assets, such as a vault, safe, or other secure space;
- (2) A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the banking office;
- (3) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary;
- (4) Tamper-resistant locks on exterior doors and exterior windows that may be opened; and
- (5) Such other devices as the security officer determines to be appropriate, taking into consideration :*(i)* the incidence of crimes against financial institutions in the area; *(ii)* the amount of currency or other valuables exposed to robbery, burglary, and larceny;

¹³ 12 U.S.C. § 1882.

¹⁴ 12 C.F.R. Part 21 (App. A), 34 Fed. Reg. 615 (Jan. 16, 1969) (applicable to FRB-supervised state banks). Cf. 34 Fed. Reg. 612 (identical to App. A, and applicable to OCC-supervised federal banks); 34 Fed. Reg. 618 (identical to App. A, and applicable to FDIC-supervised state banks) (Jan. 16, 1969).

¹⁵ Proposed Rulemaking, 12 CFR Part 21 Minimum Security Devices and Procedures, Reports of Crimes and Suspected Crimes and Bank Secrecy Compliance, 55 FR 14424-01 (April 18, 1990)

¹⁶ *Id.*

(iii) the distance of the banking office from the nearest responsible law enforcement officers; (iv) the cost of the security devices; (v) other security measures in effect at the banking office; and (vi) The physical characteristics of the structure of the banking office and its surroundings.¹⁷

By design, the current regulations provide banks with considerable flexibility and discretion in their selection of security devices and internal controls over the function and integrity of such security devices. Notably, Delaware Depository utilizes the security devices prescribed in the initial and current regulations, and other security devices and internal controls described herein that are designed in a manner that satisfies the Congressional objective of Section 17(f).

B. Direct and Indirect Regulatory Oversight of a Custodian's Operations

In the United States, regulated futures contract transactions in gold, silver, platinum, and palladium bullion occur under the rules of CME Group, Inc. (COMEX and NYMEX Divisions¹⁸) ("CME") and ICE Futures US, Inc. ("ICE"), respectively. In comparison to the Bank Protection Act, the CME and ICE rules contain more identifiable and industry-specific security and internal control standards related to the Precious Metals custody industry.

Delaware Depository is approved and licensed by CME to store gold bullion that satisfies the physical settlement requirements of CME gold futures contracts. As a condition of being approved as a CME Licensed Gold Depository, Delaware Depository had to establish, *inter alia*, that its financial condition, precious metals insurance coverage, scales for weighing fine troy ounces of gold, and locational proximity to the City of New York are sufficient to meet CME requirements for a CME Licensed Gold Depository.¹⁹ Additionally, prior to being approved, Delaware Depository submitted: (i) a detailed description of the type of building, materials of construction, floor load bearing capacity and its estimated storage capacity for gold bullion; (ii) a detailed description of the vault facility's security features, both internal and external; (iii) confirmation that the London Underwriters inspected and approved the vault facility as a Class III storage facility; and (iv) a detailed description of the insurance coverage for the vault facility and a copy of the policy and current insurance certificates.

As a CME Licensed Depository, Delaware Depository and all other licensed depositories that store gold, silver, platinum or palladium bullion, undertake a continuing and ongoing responsibility to comply with Chapter 7 of the CME rulebook entitled "Delivery Facilities and Procedures"²⁰ and the following relevant provisions:

- A. On an annual basis, and as they become available, a licensed depository must submit audited financial statements in accordance with generally accepted accounting principles (GAAP) prepared on behalf of the licensed depository, and if applicable, audited financial statements of the parent company of the licensed depository.

¹⁷ 12 C.F.R. § 208.61(c)(2) (applicable to FRB-supervised state banks). Cf 12 C.F.R. § 21.3(b) (identical regulations applicable to OCC-supervised national banks); 12 C.F.R. § 326.3(b) (identical regulations applicable to FDIC-supervised state banks).

¹⁸ In 2008, CME acquired New York Mercantile Exchange, Inc. (NYMEX) and Nymex's subsidiary, Commodity Exchange, Inc. (COMEX). Since then, the NYMEX and COMEX Divisions of CME have operated as DCMs that are supervised by the CME's Market Regulation Department. See, CFTC Publication 6101-11.

¹⁹ See, Rule 703.A of the NYMEX Rules entitled "Designation and Obligations of Metal Service Providers."

²⁰ www.cmegroup.com/rulebook/NYMEX/1/7.pdf

- B. On an annual basis, and at its own expense, a licensed depository must have a physical audit conducted by an independent auditor of registered metal²¹ inventory and inventory reporting in accordance with procedures established by CME, and an audit report must be submitted within 30 days of completion of the audit.
- C. A licensed depository must permit CME, at any time, to examine any and all books and records of the Licensed Depository, for the purpose of ascertaining the stocks relating to Precious Metals on hand.
- D. A licensed depository must immediately report to CME any substantial reduction in capital as compared to the most recent filing of its financial report.
- E. A licensed depository must maintain all-risk insurance against loss of metal in an amount satisfactory to CME.

Delaware Depository is approved and licensed by ICE to store gold and silver bullion that satisfies the physical settlement requirements of ICE gold and silver futures contracts. In its Application and Agreement for Declaration of Regularity to ICE, Delaware Depository established, *inter alia*, that its financial condition, insurance coverage, and vault facilities are sufficient to carry out obligations of an ICE Licensed Depository of gold and silver bullion satisfying ICE physical settlement requirements. As an ICE Licensed Depository, the Company undertakes a continuing and ongoing responsibility to report a 20% or more reduction in its tangible net worth to ICE, and to otherwise comply with Vault Regularity Agreements applicable to ICE gold and silver futures contracts, respectively. The Vault Regularity Agreement contains confidential and proprietary provisions that impose ongoing financial reporting and operating requirements that are substantially similar to requirements imposed upon a CME Licensed Depository.²²

Both CME and ICE are Designated Contract Markets (DCM). A DCM is a designated board of trade²³ that operates under the regulatory oversight of the United States Commodity Futures Commission's (CFTC).²⁴ The criteria for the CFTC to approve a DCM are set forth in Section 5 of the Commodity Exchange Act (CEA)²⁵ and Part 38 of the CFTC's regulations.²⁶ Upon approval, and on an ongoing basis, a DCM is required to comply with the CFTC's "Core Principles for Contract Markets." In relevant part, and consistent with the Congressional objective of Section 17(f)(1) of the 1940 Act, one of the Core Principles requires a DCM to create rules that are designed to ensure "the protection of customer funds."²⁷ This Core Principle and the other 22 Core Principles advance the CFTC's mission of protecting market users and their funds, consumers, and the public from fraud, manipulation, and abusive practices.²⁸

A DCM is subject to oversight of the CFTC's Division of Market Oversight's (DMO) Market Compliance Section. Through its different branches, a DMO uses several regulatory tools to

²¹ The term "registered metal" refers to 100-oz. gold bars, 1,000-oz. silver bars, 50-oz. platinum bars or 100-oz. palladium bars that are physically stored by a CME Licensed Depository, and for which a warrant has been issued. See, Rule 703.A of the NYMEX Rulebook.

²² The ICE Rulebook references the Vault Regularity Agreement as the exclusive source of the conditions for approval of, and ongoing requirements applicable to, an ICE Licensed Depository. See, Rule 31.15(b) of the ICE Rulebook.

²³ "Board of trade" refers to an organized exchange or other trading facility. See, 17 C.F.R. § 1.3(a)

²⁴ 17 C.F.R. § 1.3; See also, United States Commodity Futures Trading Commission Handbook, p. 41-42.

²⁵ 7 U.S.C. § 7

²⁶ 17 C.F.R. § 38.3

²⁷ See, Core Principle 11(B)(ii) of 17 C.F.R. § 38.3

²⁸ www.cftc.gov/About/MissionResponsibilities/index.htm

determine compliance with the Core Principles, such as, for example: (i) assessment of a DCM's detailed quarterly reports about financial resources; and (ii) rule enforcement review ("RER") examinations that typically focus on audit trail, disciplinary programs, trade practice, and market surveillance. Therefore, beyond being subject to approval and continuing oversight of CME and ICE, a licensed depository is indirectly supervised as an incident of the DMO's oversight of DCMs.

C. State Banking Regulations and Commissioner Oversight

As a limited purpose trust company, Delaware Depository is subject to the State of Delaware banking regulations and supervised by the Delaware Bank Commissioner. Prior to approving an application for a Certificate of Public Convenience and Advantage with respect to forming a limited purpose trust company, the Commissioner considers the following factors:

- i. the financial and managerial resources of the applicant, and whether the applicant will have sufficient capital to support its business operations;
- ii. the future prospects of the limited purpose trust company;
- iii. the financial history of affiliates, if any, of the applicant;
- iv. whether approval may result in undue concentration of resources or substantial lessening of competition in Delaware; and
- v. the convenience and needs of the public and the State of Delaware.²⁹

Delaware Depository's application to form a limited purpose trust company was approved on October 30, 2009.

As a Delaware limited purpose trust company, Delaware Depository is subject to ongoing financial requirements. Delaware Depository's net capital must, at all times, meet or exceed the statutory minimum net capital requirement of \$500,000.³⁰ On a quarterly basis, Delaware Depository is required to submit financial reports to the Commissioner.³¹ The financial reports are signed and verified under oath by the President of Delaware Depository, and attested to by at least two (2) directors of Delaware Depository.³² It is a criminal violation, up to and including a penalty of imprisonment, for any director or officer of the Company to make a false entry in a financial report submitted to the Delaware Bank Commissioner.³³

Financial information contained in Delaware Depository's quarterly reports is similar in nature to financial data listed in "quarterly call reports" submitted by federal and state banks that are qualified to store assets for investment companies under Section 17(f) of the 1940 Act.³⁴ Each year, the Commissioner publishes an Annual Report on the State of Delaware web site that contains Delaware Depository's annual financial statement for the previous calendar year.

²⁹ 5 Del. C. § 777(a)

³⁰ 5 Del. C. § 777(c)

³¹ 5 Del. C. § 904

³² 5 Del. C. § 904

³³ 5 Del. C. § 123

³⁴ "Quarterly Report of Condition for Trust Companies" (<http://www.banking.delaware.gov/bnkft/ffi.shtml>)

On a periodic basis³⁵, certain designees of the Delaware Bank Commissioner visit Delaware Depository's office to examine Delaware Depository's management, operations, internal controls, audits, earnings, and compliance.³⁶ It is a criminal violation, up to and including penalty of imprisonment, for any director or officer of Delaware Depository to make a false statement to an examiner during the course of an annual examination.³⁷ At the conclusion of the examination, the Delaware Bank Commissioner issues a Final Examination Report, details of which are required to remain confidential. Delaware Depository represents that it has not been subject to remedial action or disciplinary measures since the Company was approved as a state-chartered limited purpose trust company in 2009.³⁸

D. Customer Demand and Insurer Requirements

As noted above, federal and state banks have considerable flexibility and discretion in their selection of security devices, and implementation of internal controls over the function and integrity of such security devices. In the Precious Metals custody industry in which banks and nonbanks compete, customer demand and loss insurer requirements establish evolving standards for the design and implementation of security devices and underlying internal controls. In its own operations, Delaware Depository adheres to a "defense in depth" philosophy that is described in detail below. "Defense in depth" is an aggregation of risk controls that were implemented in response to specific demands of Delaware Depository's customers and prospective customers (including periodic and ongoing physical security audits conducted by auditors of its customers and insurers), the requirements of its loss insurers, and the collective skills and experience of the Company's managerial and vault staff.

The amount of precious metals storage and transit insurance coverage purchased by Delaware Depository is also driven by market requirements. For instance, in 2010, CME required a minimum requirement of \$200 million in all-risk precious metals insurance. Now, just six (6) years later, Delaware Depository and banks that serve as Precious Metals custodians maintain policies that provide primary and excess coverage in the aggregate amount of \$1 billion, due almost exclusively to factors unrelated to Precious Metals price values, such as customer demand and loss insurer capacity to meet such customer demand.

Furthermore, in deciding whether to issue such coverage, the insurer's auditors must assess the risk of loss attendant to the Precious Metals custodian's operations. With regard to Delaware Depository, prior to issuing a precious metals storage insurance and transit coverage in the amount of \$1 billion to Delaware Depository, the underwriters at Lloyd's of London must be comfortable that the Company's security and internal controls are robust and effective enough to prevent an incident involving a loss of a mere fraction of the \$1 billion in coverage. Put simply, the willingness of Lloyd's underwriters to issue a policy that affords this significant amount of coverage is a strong indication that Delaware Depository maintains security devices and internal controls that are effective and robust enough to protect insured assets from being damaged or stolen. Moreover, the underwriters' requirements for issuing this amount of coverage to Delaware Depository are logically similar (or even more stringent) than the requirements that the insurer would impose upon a Precious Metals custodian that qualifies as a "bank" under the 1940 Act.

³⁵ Historically, Delaware Depository has been examined approximately once every 12-15 months.

³⁶ 5 Del. C. § 122

³⁷ 5 Del. C. § 123

³⁸ 5 Del. C. § 143

II. SAFEGUARDS AGAINST MISAPPROPRIATION OF FUND ASSETS

Delaware Depository's "defense in depth" philosophy is designed to protect its customers' assets. Defense in depth is a multi-layered methodology utilizing successive levels of protections, such that a single point of failure will not thwart the Company's objective of protecting and safeguarding customer assets. Some of the key components of the defense-in-depth approach are: (a) physical security and surveillance; (b) access controls and electronic security; (c) internal controls procedures; (d) selection and retention of competent and honest personnel; and (e) insurance. Taken together, the components of the defense in depth approach, as implemented by the Company, provide investor protections consistent with the letter and spirit of Section 17(f)(1) of the 1940 Act.

1. Physical Security and Surveillance

Delaware Depository physically stores and safeguards gold bullion and other Precious Metals products inside Underwriters Laboratory-rated vaults and secure warehouses which are located in Wilmington, Delaware.³⁹ All of the secure buildings in which Delaware Depository stores Precious Metals are surrounded by chain-link fences and fortified by steel-reinforced concrete block walls and floors and bullet-resistant doors. Delaware Depository monitors activities in and around all buildings through the use of strategically positioned cameras that are functional under all weather and lighting conditions. Multiple redundantly-powered security alarms equipped with motion, sound, and vibration detection technology are strategically positioned to alert security personnel to unauthorized entries in and around all buildings. On a 24/7/365 basis, security personnel monitor closed circuit television (CCTV) video captured by each strategically positioned camera. CCTV footage is available for review as it is digitally recorded, backed up, and archived on high capacity hard drives that are securely positioned in access-restricted server rooms.

2. Access Controls and Electronic Security

Access to the interior portions of all buildings is restricted to authorized personnel only. Pre-authorized visitors are allowed entry into non-secure areas by appointment only, and only after proper identification is provided to and copied by security personnel. Mantraps⁴⁰ with interlocking doors confine and limit an individual's entry to one area at a time. Visitors are accompanied at all times by two or more Delaware Depository staff members while present in any vault or warehouse area. Access control keycards and readers with pre-programmed user permissions limit and restrict employee access into high security areas, including IT server rooms, based on the employee's duties and required need to enter a secure area.

To reduce the risk of internal theft, Delaware Depository has installed walk-through metal detectors at the single exit point out of each secure area. The metal detectors connect to a software program. This software program compares an employee's metal content, at the time of exiting a

³⁹ Each building in which Delaware Depository stores Precious Metals is currently owned outright, without a mortgage or other third-party financing, by 3601 Properties, LLC, a Delaware limited liability real estate holding company that is under common ownership with, and exclusively owned by Delaware Depository's parent company, FidelityTrade. Delaware Depository directly leases vault, secure warehouse, and office space from 3601 Properties. This intercompany arrangement eliminates counterparty and credit risks, risks of unauthorized entry, cancellation or non-renewal of a lease, or a freeze of customer assets due to a third-party landlord's insolvency or receivership, all of which are possible whenever a Precious Metals custodian leases vault and secure warehouse space from an unaffiliated third-party landlord and stores its customers' Precious Metals inside that leased space.

⁴⁰ A "mantrap" is a double door entry and exit system that will not permit a person to pass through the second door until the first door is securely locked.

secure area, to that employee's personalized metal content profile which is scanned and saved in the software program. If the employee's metal content does not match his/her personalized metal content profile, then the employee is not permitted to exit the secure area until security officials rule out attempted internal theft. Each employee exit is digitally saved for subsequent viewing and quality assurance purposes. Taken together, the metal detectors and the software program are designed to prevent collusion and human error from impairing the effectiveness of the metal detection system.

3. Internal Control Procedures

Delaware Depository maintains segregation of duties procedures that restrict office and operations staff from gaining access to secure areas or handling Precious Metals, and, conversely, vault personnel are restricted from accepting customer instructions or entering instructions into the Company's account management system. An independent internal audit team, working independent of the office/operations and vault staff, reconciles inventory to the list of account holdings represented in Company's business records. Dual control procedures require the vault staff to conduct their internal activities in rotating teams of two employees who work independent of each other.

All in-shipments and out-shipments are handled and processed under CCTV surveillance that is digitally recorded and backed up on access-restricted hard drives. Delaware Depository offers its customers the convenience of internally transferring Precious Metals coins and bars from their own account to another customer's account. Internal transfers offer customers the benefit of transferring record ownership of specific precious metals bullion coins or bars without incurring shipping costs or risks of loss attendant to Delaware Depository's delivery of Precious Metals into the independent custody of a postal carrier, or an armored carrier for high value shipments.⁴¹

Each and every Precious Metals coin and bar that Delaware Depository stores is fully allocated to a specific customer's depository account (*i.e.*, no single product is held as an undivided fractional interest of two or more owners), and the ownership of such bullion coins and bars is reflected as such in Delaware Depository's business records and in daily reports delivered to its respective accountholders.⁴² To ensure accurate accounting of customer assets, the Company's internal audit team conducts cycle counting of specific groups of bullion products that are randomly chosen on a periodic basis by a manager who works separate and apart from members of the internal audit team.

Recently, McGladrey LLC (now known as RSM US, LLP) conducted an independent third-party audit to evaluate the design, suitability, and implementation of Delaware Depository's

⁴¹ Delaware Depository does not own or operate an armored carrier service due to its assessment of the costs and risks associated with the provision of such service. Distribution services that are offered by Delaware Depository for the delivery of Precious Metals, including gold and silver bullion from its vaults, include, for example, advanced shipment preparation, customs clearing arrangements, and delivery to an armored, postal, or other customer-approved carrier.

⁴² For example, each and every one-tenth ounce Gold American Eagle bullion coin held in Delaware Depository's custody is fully allocated to and owned by a single accountholder on a fungible basis, as reflected in the Company's books and records. Consequently, Precious Metals stored by the Company would not, among other things, become property of the Company's bankruptcy estate or be subject to liens or attachment by the Company's prospective creditors, and such bullion is excluded from being listed as an asset on the Company's balance sheet.

internal controls over its Precious Metals custody operation. Information security, physical security, account administration, processing of Precious Metals, reconciliation of inventory to records, and client reporting were all within the scope of McGladrey's audit engagement. Upon completion of its audit of Company's internal controls, McGladrey issued a Service Organization Control (SOC) 1 Report in accordance with the American Institute for Certified Public Accountants' (AICPA) Statement on Standards for Attestation Engagements No. 16 (SSAE 16).⁴³

Delaware Depository maintains layers of electronic security controls that were audited and included in the scope of McGladrey's SOC 1 engagement. Network firewalls, IP address blocking, and intrusion detection and prevention systems, among other things, protect the Company's infrastructure from new and existing cybersecurity threats. The Company follows industry standard best practices for users and permissions authorization. Also, the Company maintains an Incident Response Plan that identifies roles of individuals and procedures to be followed in the event of a data breach or data security incident.

As an additional layer of protection against evolving threats of cybercrime, the Company maintains a Cyber Liability insurance policy issued by the Beazley Group⁴⁴ that provides an aggregate coverage limit of \$2 million. The policy provides coverage for theft of personally identifiable information (PII), including investigatory costs, legal fees, compensatory payments, regulatory penalties and/or crisis management/public relations costs, and indemnification against malicious alteration or other damage to Company's data assets, operating systems, or hardware. The Company believes that the Cyber Liability Insurance policy goes beyond the protections that other Precious Metals custodians, including bank custodians, utilize to protect their operations and customers against risks of cybercrimes.

On an annual basis, Delaware Depository's Board of Managers reviews and approves a Business Continuity and Disaster Recovery Plan that is designed to enable Delaware Depository to seamlessly continue to provide its Precious Metals custody services in the event of a natural disaster or other business interrupting event. One of the secure warehouses serves as a disaster recovery location. This building is strategically located outside the power grid of the operations center, and it is fully equipped and available to be used to continue operations in the event that the operations center is rendered inaccessible due to a natural disaster or other business interrupting event. The Company has invested in a dedicated fiber optic cable route from its operations center to its disaster recovery site that transports data to off-site servers, thereby allowing such data to be available to staff working in the disaster recovery site when the operations center and its servers become inaccessible and/or non-functioning.

4. Selection and Retention of Competent and Honest Personnel

The physical security, access controls and electronic security, and internal controls of a Precious Metals custodian are only as effective as the staff that designs and incorporate these measures into the custodian's operation.

⁴³ Upon information and belief, Delaware Depository is the only Precious Metals custodian to have completed a SOC-1 audit of its Precious Metals custodian operations. The SOC-1, Type I audit report evaluates the suitability of the design of internal controls as of a specified date. The scope of the most recent SOC 1, Type I audit report issued in April 2015, as defined by the Company and its auditor, tested the Company's internal controls over physical security, information security, account administration, transaction processing and reconciliation, client reporting, and layers of electronic security controls.

⁴⁴ Beazley is a trade name for Lloyds of London's United States underwriting of specialty policies.

All new employees are subject to a pre-employment verification process, background check, and drug testing performed by a SAMHSA-accredited independent laboratory. Existing employees, including members of management, are subject to random drug testing performed by a SAMHSA-accredited independent laboratory. The Board annually reviews and approves an Ethics Policy that is binding on new and existing employees, including senior members of management. A violation of the Ethics Policy subjects an employee to a verbal warning, written warning, suspension with or without pay, and/or discharge, without any guarantee that any form of action will necessarily precede another, *i.e.*, the gravity of the violation dictates the type of discipline imposed.

The vault and operations staff of Delaware Depository, and members of management, have numerous years of experience providing Precious Metals safekeeping and distribution services. Several Delaware Depository's senior managers and staff members worked for the Precious Metals Division of Wilmington Trust Company since the late 1980s, when Wilmington Trust Company was a COMEX and NYMEX approved Licensed Depository. Employee turnover remains consistently low, year over year. On an annual basis, the Board reviews and approves a Management Succession Plan designed to provide for the orderly transition of management in the event of the death or prolonged disability of a senior manager.

5. Insurance

The Company maintains all-risk precious metals storage and transit coverage in the amount of \$1 billion. This amount of insurance coverage is available for each and every claim, which means that previous claims do not reduce the amount of insurance coverage available for future claims., The insurance coverage covers mysterious disappearances, unexplained loss or shortage, and employee infidelity, without an exclusion for theft or fraud by officers or senior managers. Also, the Company maintains insurance coverage in the amount of \$3 million for and on behalf of each customer with respect to out-shipments delivered by armored carrier (this is in addition to and supplements the armored carrier's own insurance coverage).

In sum, the Company believes that it would offer Funds the following benefits if the requested relief is granted:

1. Geographical diversification of Precious Metals custody services, as substantially all Precious Metals custody providers in the United States are located within New York City⁴⁵, where business has been disrupted by recent events, including the 9/11 terrorist attacks and Hurricane Sandy.
2. Increased competition among Precious Metals custody providers at a time when many providers are exiting the business due to the risks, costs, and demands associated with operating state-of-the-art vaults and secure facilities.
3. Precious Metals custody, accounting, and distribution services provided by a financially secure entity which is a state-regulated limited purpose trust company that acts as a licensed depository of both CME and ICE.

⁴⁵ See NYMEX Rule 703.A.(11) (with respect to the conditions for approval as a metal service provider, stating, in pertinent part, that a depository for Gold "must qualify and be designated as a weighmaster and must be located within a 150-mile radius of the City of New York").

III. THE COMPANY'S UNDERTAKINGS TO INCREASE ITS FINANCIAL TRANSPARENCY AND FINANCIAL SECURITY FOR THE BENEFIT OF FUND CUSTOMERS

Delaware Depository is not a public reporting company under the 1934 Act. If it were such a reporting company, it would be considered a "smaller reporting company" under the Sarbanes-Oxley Act of 2002 ("SOX").⁴⁶

Accordingly, Delaware Depository agrees to the following undertakings as a condition of acting as a Precious Metals custodian for any Fund:

1. Financial Reporting Undertakings
 - A. On an annual basis, and upon completion, Delaware Depository will deliver to the manager or advisor of any Fund for which it acts as custodian of Precious Metals annual audited financial statements of Delaware Depository and its parent company, FideliTrade, prepared by a Public Company Accounting Oversight Board (PCAOB)-registered accountant in accordance with GAAP.
 - B. On a quarterly basis, and within 30 days of quarter end, Company will deliver to the manager or advisor of any Fund for which it acts as custodian of Precious Metals unaudited financial statements of Delaware Depository filed with the Delaware Bank Commissioner.
2. Internal Controls Over Financial Reporting Undertaking
 - A. The financial data and information in the audited financial statements will rely on Company's implementation of internal controls over financial reporting (ICFR) policies and procedures modeled after the 2013 Committee of Sponsoring Organizations of the Treadway Commission ("COSO") internal control guidance.⁴⁷
 - B. On an annual basis, and at the same time that the audited financial statements are delivered to the manager or advisor of any Fund for which it acts as custodian of Precious Metals audited financial statements, Delaware Depository's Board of Managers shall issue to such principal(s) a report consistent with the provisions of SOX Section 404(a) reflecting its assessment of the effectiveness of Company's ICFR as of the end of Company's most recent fiscal year.

⁴⁶ See, *Internal Control Over Financial Reporting In Exchange Act Periodic Reports of Non-Accelerated Filers*, Exchange Act Release No. 62914, Sept. 15, 2010; See also, Amendments to Smaller Reporting Co. Definition, SEC Release No. 10107 (June 27, 2016) (notably, the Company would still meet the SOX 404(b) exclusion from the auditor attestation requirement, notwithstanding the SEC's recently proposed amendments to the smaller reporting company definition).

⁴⁷ See COSO's *Internal Control - Integrated Framework (2013)* (superseding after Dec. 15, 2014 COSO's 2006 *Internal Control over Financial Reporting - Guidance for Smaller Public Companies*, see, e.g., <http://www.coso.org/IC.htm>).

3. ICFR Certification Undertaking
 - A. On an annual basis, and at the same time that the audited financial statements are delivered to the manager or advisor of any Fund for which it acts as custodian of Precious Metals audited financial statements, Company shall submit to such principal(s) an ICFR Certification in the format provided for under Section 302 of the Sarbanes Oxley Act of 2002, and that Certification shall be completed and signed by the Company's President and Treasurer, respectively.⁴⁸

4. SOX Section 406 and 407 Requirements
 - A. Consistent with the requirements of SOX Sections 406 and 407, the Company: (i) has and will maintain a code of ethics that applies to its principal executive officer and senior financial officers (or persons performing similar functions); and (ii) will disclose to the Company's Fund custody customers the composition of its audit committee, including whether it has at least one "audit committee financial expert" serving on its audit committee.⁴⁹

5. Material Event Reports Reporting Undertaking
 - A. The manager or advisor of any Fund for which it acts as custodian of Precious Metals will be provided with immediate notification, *i.e.*, within four (4) or less business days, regarding any event that has a material impact on the commercial custody business of Delaware Depository (references to analogous items of 1934 Act Form 8-K), including any of the following material events impacting the commercial custody business of Delaware Depository:
 - a) Entry into a Material Definitive Agreement not in the ordinary course – Item 1.01
 - b) Termination of Material Definitive Agreement not in the ordinary course for cancellation or alteration of insurance coverages – Item 1.02
 - c) Bankruptcy, Receivership, or Notice of Dissolution of Delaware Depository or FidelityTrade– Item 1.03;
 - d) Reduction of tangible net worth of 20% or more

⁴⁸ See 15 U.S.C. § 7241 (corporate responsibility for financial reports). Such certification requirements and other protective measures implemented by SOX apply to not only operating companies, but also to Funds. See, e.g., Certification of Management Investment Company Shareholder Reports and Designation of Certified Shareholder Reports as Exchange Act Periodic Reporting Forms; Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002, Investment Company Act Release No. 25914 (Jan. 27, 2003) (extending such Exchange Act certification requirements to Fund Form N-CSR), available at <http://www.sec.gov/rules/final/34-47262.htm>.

⁴⁹ See, Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002, SEC Release Nos. 33-8177; 34-47235 (Jan. 24, 2003) [17 CFR 228, 229, 249]; See, <https://www.sec.gov/rules/final/33-8177.htm>

- e) Creation of a Direct Financial Obligation or Obligation under an Off-Balance Sheet Arrangement – Item 2.03
 - f) Triggering Events that Accelerate any of the foregoing Obligations – Item 2.04
 - g) Change in Accountant – Item 4.01
 - h) Non-Reliance on Financial Statements or Related Audit Report – Item 4.02
 - i) Changes in Control of Delaware Depository– Item 5.01(a)(1), (2), (3) and (6)
 - j) Change in Fiscal Year – Item 5.03(b);
 - k) A waiver of the Code of Ethics for a senior financial officer; and
 - l) Material regulatory or disciplinary events or other events having a material negative impact on Delaware Depository’s custody operations or financial security.
6. Undertaking to Provide Support for Fund Due Diligence and Quality Assurances
- A. Fund advisers and managers will receive timely, accurate and complete information concerning Delaware Depository in discharging such advisers’ and managers’ fiduciary duties when determining that retention of Delaware Depository as the Fund’s Precious Metals custodian is in the best interests of the Fund and its shareholders.
 - B. With respect to potential Fund customers of Delaware Depository, Delaware Depository will provide management of each potential Fund customer:
 - a) Annual audited financial statements of Delaware Depository for the most recently completed fiscal year and the two prior fiscal years;
 - b) Quarterly unaudited financial statements issued since the most recent fiscal year end (“FYE”); and
 - c) Any report of material events affecting Delaware Depository issued since the most recent FYE.
 - C. The Company shall provide written notification to the manager or advisor of any Fund for which it acts as custodian of Precious Metals Bullion if Company makes a material change to the internal controls that are audited and reported in the SOC 1 Report.
 - D. The Company shall undergo a SOC 1 audit once every three (3) years, commencing on the date of issuance of the most recent SOC 1 Report; except that, if the Company makes a material change to any internal control audited and reported in the SOC 1 Report, then it shall, within sixty (60) days of the Board decision to make a material change to an internal control, engage a PCAOB-registered auditor to conduct a SOC 1 audit and report on its findings.

- E. The Company shall provide a copy of the Service Organization Control (SOC) Auditor's Attestation in accordance with the American Institute for Certified Public Accountants' (AICPA) Statement on Standards for Attestation Engagements No. 16 (SSAE 16) to the manager or advisor of any Fund for which it acts as custodian of Precious Metals Bullion.
7. Undertaking to Provide Company Code of Ethics
- A. The Company shall provide to the manager or advisor of any Fund customer a copy of Company's Ethics Policy (applying to new and existing employees, including members of management), which has been reviewed and approved by the Company's Board.
 - B. The Company shall provide to any Fund customer any amendments of the Company's Code of Ethics.
8. Undertaking to Adequately Maintain Tangible Net Worth
- Delaware Depository shall maintain a tangible net worth that shall not be reduced by more than 20% or more at any time that it serves as Precious Metals custodian for any Fund.
9. Undertaking to Enter into Contractual Obligations
- All contracts between the Company and any Fund for which it acts as custodian of Precious Metals Bullion shall contain representations and covenants that shall permit Fund's to enforce the undertakings contained in Sections III of this letter request.

IV. REPRESENTATIONS

Delaware Depository respectfully requests that the Staff agree not to recommend that the Commission take enforcement action under Section 17(f)(1) of the 1940 Act against any Fund, based on the fact that the Fund places and maintains custody of its Precious Metals in a vault or other secure facility operated by Delaware Depository in the United States, provided that:

- 1. Delaware Depository performs the undertakings described in Section III herein;
- 2. Delaware Depository remains a limited purpose trust company, and a CME or ICE Licensed Depository;
- 3. Delaware Depository's vaults and secure facilities that are used to secure Precious Metals provide substantially equivalent protections against misappropriation in comparison to a "bank" defined in Sections 17(f)(1) or 26(a) of the Investment Company Act of 1940; and
- 4. Delaware Depository continues to maintain insurance coverage of least \$1 billion with respect to each vault and secure facility to cover any custody-related losses incurred by its customers, including Funds, and this amount of insurance coverage is available for each and every claim, which means that previous claims do not reduce the amount of insurance coverage available for future claims.



Delaware Depository recognizes that a Fund's board may lack expertise to assess Precious Metals custodial risks and to make Precious Metals custodial arrangements. Therefore, Delaware Depository expects that Fund managers and advisers will be responsible to make such assessments and arrangements. Consequently, before utilizing the Company as a Precious Metals custodian, a majority of a Fund's board, including a majority of its independent trustees, determines that the use of Delaware Depository's custody services is in the best interests of the Fund and its shareholders. Fund board or its delegate also should consider whether Precious Metals will be subject to reasonable care and whether Delaware Depository can provide services at least equal in nature and quality to the services that could be provided by a bank in the same market after consideration of relevant factors.

V. CONCLUSION

Based on the facts and representations discussed herein, we respectfully request that you advise us that the Staff will not recommend enforcement action against any Fund under Section 17(f)(1) of the 1940 Act due to the fact that the Fund maintains custody of its gold and silver bullion in a Delaware Depository vault or other secure facility operated by Delaware Depository in the United States.

Please contact the undersigned at (302) 483-4656 if you have any questions or concerns regarding this request.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'S. Schwartz', is written over a solid black horizontal line.

Scott B. Schwartz, Esq.
General Counsel, Depository Trust Company of Delaware, LLC.