

ACT LCA

SECTION 17(f)

RULE 17f-5

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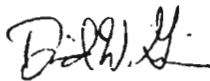
**RESPONSE OF THE OFFICE OF
INVESTMENT COMPANY REGULATION
DIVISION OF INVESTMENT MANAGEMENT**

June 12, 1998
Our Ref. No. 98-5-ICR
The Chase Manhattan Bank
File No. 812-10176

Your letter of May 29, 1998 requests that we extend the effectiveness of our no-action position taken in a letter issued on July 11, 1997 (the "1997 No-Action Letter") to The Chase Manhattan Bank ("Chase"). In the 1997 No-Action Letter, we stated that we would not recommend that the Commission take any enforcement action under Section 17(f) of the Investment Company Act of 1940 (the "Act") if, during the period between July 12, 1997 and June 15, 1998, Chase and certain of its investment company customers that had established foreign custody arrangements prior to July 12, 1997 in conformity with a Commission order¹ continued to rely on that order.

The expiration date for our position in the 1997 No-Action Letter was based on the compliance date for the 1997 amendments to Rule 17f-5 under the Act.² On May 21, 1998, the Commission extended the compliance date for certain of the 1997 amendments to Rule 17f-5 until February 1, 1999.³ You request that we extend the effectiveness of our position in the 1997 No-Action Letter to provide Chase with the benefit of this new compliance date.

Based on the facts and representations in your letter dated July 2, 1997 requesting the position taken in the 1997 No-Action Letter and your May 29, 1998 letter, we would not recommend enforcement action under Section 17(f) of the Act if Chase continues to rely on the 1997 No-Action Letter from June 15, 1998 to the later of February 1, 1999, or any date that the Commission specifies as the compliance date for the 1997 amendments to Rule 17f-5.


David W. Grim
Staff Attorney

¹ Investment Company Act Release No. 12053 (Nov. 20, 1981).

² See Investment Company Act Release No. 22658 (May 12, 1997) (adopting amendments to Rule 17f-5).

³ Investment Company Act Release No. 23201 (May 21, 1998).



BAKER & MCKENZIE

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1940 Act
Section 17(f)

May 29, 1998

BY MESSENGER

Robert E. Plaze
Associate Director
Office of Associate Director (Regulation)
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Douglas J. Scheidt
Associate Director
Office of Associate Director (Chief Counsel)
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: The Chase Manhattan Bank
Request for Amendment to Temporary No-Action Relief

Dear Messrs. Plaze and Scheidt:

On behalf of our client, The Chase Manhattan Bank ("Chase"), we hereby request that the staff of the Division of Investment Management advise us that it will not recommend that the Securities and Exchange Commission ("Commission") take enforcement action under Section 17(f) of the Investment Company Act of 1940 (the "Act") if, during the period from June 16, 1998, until February 1, 1999 (or such later date as the Commission may specify as the end of the transition period for implementation of the 1997 amendments to Investment Company Act Rule 17f-5), Chase and those of its investment company customers that have established foreign custody arrangements in conformity with an order granted to Chase's predecessor ("Old

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Chase") in 1981 ("1981 Order")¹ continue to rely on those arrangements. The staff has previously granted such relief to Chase and its investment company customers, but that relief expires on June 15, 1998.²

At the time that the staff issued the 1997 No-Action Letter, the Commission had announced that the transition period for the implementation of the 1997 amendments to Rule 17f-5³ would expire on June 15, 1998. The effect of the 1997 No-Action Letter is therefore to permit Chase and its customers to avail themselves of the same transition period to implement Amended Rule 17f-5 as the Commission afforded to other global custodians and their customers. On May 21, 1998, the Commission extended the end of the transition period for implementation of Amended Rule 17f-5 to February 1, 1999. In order to continue to afford Chase and its investment company customers the same treatment as other global custodians and their customers, the relief granted in the 1997 No-Action Letter should also be extended to February 1, 1999 (or such later date as the Commission may specify as the end of the transition period for implementation of Amended Rule 17f-5).

Background

The pre-1998 background of this matter is set forth in detail in my letter, dated July 9, 1997, requesting the relief granted in the 1997 No-Action Letter. That background, and subsequent developments, are summarized briefly below.

¹ Investment Company Act Release No. 12053 (November 20, 1981). This order was issued prior to the adoption of Rule 17f-5.

² The Chase Manhattan Bank (July 11, 1997) ("1997 No-Action Letter").

³ The amendments to Rule 17f-5 were adopted in Investment Company Act Release No. 22658 (May 12, 1997), 62 Fed. Reg. 26923 (May 16, 1997). Release No. 22658 is referred to herein as the "1997 Release;" Rule 17f-5 as amended is referred to as "Amended Rule 17f-5."

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A. The 1981 Order

The 1981 Order, subject to certain conditions, permits Old Chase, and qualifying foreign banks and foreign securities depositories selected by Old Chase, to hold the assets of registered investment companies outside of the United States, notwithstanding the fact that these foreign banks and foreign depositories do not qualify as custodians of investment company assets under Section 17(f) of the Act. Old Chase and Chase entered into numerous contracts with U.S. investment companies and foreign subcustodians based on the 1981 Order. Chase estimates that, as of December 31, 1997, in excess of \$700 billion in assets of over 100 U.S. investment company complexes were held by Chase pursuant to contracts premised on the 1981 Order.

B. The Chase/Chemical Merger

On March 31, 1996, Old Chase's parent holding company, The Chase Manhattan Corporation, and Chemical Banking Corporation, the parent holding company of Chemical Bank ("Chemical"), merged. Chemical Banking Corporation survived the merger, but changed its name to The Chase Manhattan Corporation. Thereafter, on July 14, 1996, Old Chase merged into Chemical. Chemical survived that merger and changed its name to "The Chase Manhattan Bank."

C. The 1997 Amendments To Rule 17f-5 and the Transition Period

On May 12, 1997, the Commission adopted substantial amendments to Rule 17f-5. These amendments were effective on June 16, 1997. However, since Amended Rule 17f-5 imposes significant new requirements on foreign custody arrangements, the Commission concluded that a transition period should be provided for investment companies to comply with the amended rule. In this regard, the 1997 Release states:

Funds that have established foreign custody arrangements in accordance with rule 17f-5 prior to the effective date of these amendments ("existing foreign custody arrangements") must bring these arrangements into compliance with the amended rule (i.e., have the fund's board make the findings

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required by the amended rule or appoint a delegate to do so) within one year of the effective date of these amendments. The one year period is designed to give funds the flexibility to bring an existing foreign custody arrangement into compliance with the amended rule either when that arrangement would have been subject to the fund board's annual review, as was required by the rule before these amendments, or at any board meeting within the one year period.⁴

D. 1997 No-Action Letter

The arrangements pursuant to which Chase holds the foreign assets of its investment company customers will no longer require exemptive relief after the investment company boards (or their delegates) make the necessary findings under Amended Rule 17f-5. Therefore, following discussions with the staff, Chase withdrew a previously-filed application to amend the 1981 Order to substitute Chase for Old Chase as the party to which relief was granted. However, like other global custodians and their investment company customers, Chase and its customers require a transition period to conform their foreign custody arrangements to the requirements of the amended rule. Accordingly, on July 2, 1997, Chase requested that the staff afford Chase and its investment company customers the same transition period as set forth in the 1997 Release.

On July 11, 1997, the staff granted Chase's request by issuing the 1997 No-Action Letter. The staff stated:

Based on the facts and representations in your letter, we would not recommend enforcement action under section 17(f) if Chase and those of its investment company customers that have established foreign custody arrangements prior to July 12, 1997 in conformity with the 1981 Order continue to rely on that order during the period between July 12, 1997 and June 15, 1998.⁵

⁴ 1997 Release at 33-34.

⁵ 1997 No-Action Letter at 4-5.

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E. 1998 Extension of Transition Period

On May 21, 1998, the Commission, at the request of the Investment Company Institute ("ICI"), extended the transition period to Amended Rule 17f-5 until February 1, 1999.⁶ In announcing this extension, the Commission noted that the ICI had asserted that certain requirements of Amended Rule 17f-5 "may present unanticipated problems when a foreign custody arrangement involves the selection of a compulsory depository"⁷ and that, because of difficulties in applying the rule, "many funds may not be prepared to comply with the 1997 Amendments as of June 16, 1998."⁸ The Commission described the effect of this extension as follows:

Until February 1, 1999, a fund may maintain its foreign custody arrangements under either of two regulatory frameworks. First, the fund may continue to comply with rule 17f-5 as it existed prior to the 1997 Amendments ("old rule 17f-5"). Because the compliance date for the amended definition of eligible foreign custodian will remain June 16, 1998, a fund may comply with old rule 17f-5 while also selecting a custodian that is an eligible foreign custodian under the amended definition. Second, in the alternative, a fund may comply entirely with rule 17f-5 as amended by the 1997 Amendments (the "amended rule").

The Fund may apply either of these alternative frameworks separately to each foreign custodian it uses. The fund's arrangement with a particular foreign custodian or subcustodian, however, should comply in its entirety either with old rule 17f-5 (subject to the amended definition of eligible foreign custodian), or with the amended rule.⁹

⁶ Investment Company Act Release No. 23201 (May 21, 1998) ("1998 Release").

⁷ 1998 Release at 2-3.

⁸ 1998 Release at 3.

⁹ 1998 Release at 4-5 (footnote omitted).

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Discussion

By this request, Chase merely seeks the continuation of the principle underlying the 1997 No-Action Letter -- that its investment company customers should be afforded the same transition period to implement the requirements of Amended Rule 17f-5 as the Commission has afforded to other investment companies. The uncertainties described in the 1998 Release have precluded investment companies generally from implementing delegations or otherwise conforming their foreign custody arrangements to the requirements of Amended Rule 17f-5. These uncertainties have similarly affected Chase's investment company customers. Therefore, Chase and its customers have the same need for an extension of the transition period as do all other global custodians and investment companies.

Relief Requested

Chase respectfully requests that the staff advise it that it will not recommend that the Commission take enforcement action under Section 17(f) of the Act if, during the period between June 15, 1998 and February 1, 1999 (or such later date as the Commission may specify as the end of the transition period for implementation of Amended Rule 17f-5), Chase and those of its investment company customers that have established foreign custody arrangements in conformity with the 1981 Order continue to rely on those arrangements.¹⁰

* * *

In accordance with Investment Company Act Release No. 6330 (January 25, 1971), we are enclosing two additional copies of this letter. Given the brief period of time between the

¹⁰ We respectfully suggest that the staff extend the relief granted to Chase until February 1, 1999, or such later date as the Commission may specify as the end of the transition period for implementation of Amended Rule 17f-5, in order to avoid the need for additional no-action requests in the event that, in the future, the Commission further extends the Rule 17f-5 transition period.

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issuance of the 1998 Release and the June 15, 1998 expiration of transition period in the 1997 No-Action Letter, we respectfully request expedited consideration of this request.

We appreciate the staff's attention to this matter. If you have questions concerning our request, or require any additional information, please contact the undersigned at 202/452-7013.

Sincerely,


Daniel L. Goelzer

cc: C. Hunter Jones
Assistant Director
M. J. Kerwin
Senior Counsel
Office of Regulatory Policy

Nadya B. Royblat
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