

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

February 3, 2014

VIA FEDERAL EXPRESS

Douglas J. Scheidt, Esq.
Associate Director and Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0504

Re: The Brink's Company

Dear Mr. Scheidt:

We are writing on behalf of The Brink's Company, a corporation organized under the laws of the Commonwealth of Virginia and its subsidiaries (including such subsidiaries, "Brink's"). Brink's is a worldwide provider of secure storage and transportation services for gold bullion and other precious metals (e.g., platinum, palladium, rhodium and silver), including vault custody and related transportation services. Brink's is not a bank, as specified in Sections 17(f)(1) or 26(a) of the Investment Company Act of 1940, as amended (the "1940 Act").

We request that you advise us 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 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 bullion and other precious metals¹ (collectively, "Precious Metals") in a vault or other secure custody facility operated by Brink's and located in the United States or in the United Kingdom. As described in further detail below, we believe that permitting Brink's to serve as a Fund's Precious Metals custodian in the United States or the United Kingdom: (i) satisfies the concerns Congress sought to address in adopting Section 17(f)(1) of the 1940 Act; and (ii) would enhance

¹ As used in this letter, "gold bullion" does not include gold coins or any currency in the form of gold that may be circulated as legal tender within the United States or within any foreign jurisdiction. Similarly, as used in this letter, "precious metals" does not include coins or any legal tender fabricated from these precious metals.

competition among custodians that provide Precious Metals custody services to registered investment companies regardless of whether they use Brink's services, resulting in greater choices and potential cost savings to such registered investment companies.

I. THE STATUTORY PROVISIONS AND REGULATORY POLICY

A. Section 17(f)(1) and Brink's

As noted above, Brink's is a worldwide provider of secure storage and transportation services for Precious Metals, including vault custody and related transportation services. Brink's provides these services to banks and other financial institutions, retailers, government agencies, mints, jewelers and other commercial operations. Brink's wishes to serve as custodian for registered investment companies' Precious Metals.

In pertinent part, Section 17(f)(1) of the 1940 Act provides 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 qualification 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. (Emphasis added).

The Section 26(a)(1) qualification is that a bank's "aggregate capital, surplus, and undivided profits . . . not be less than \$500,000."

Brink's is not a bank, a member of a national securities exchange or any of the other types of entities permitted to serve as a custodian to a registered investment company pursuant to rules and regulations adopted by the Commission pursuant to Section 17(f)(1)(C).

Based on the facts and representations described below, Brink's 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 Precious Metals in a vault or other secure facility operated by Brink's.²

² We note that the Staff has concluded that gold bullion (and, presumably, any other Precious Metal) is not a security, as defined in Section 2(a)(36) of the 1940 Act. *See, e.g.*, CoinVest, Inc. (pub. avail. June 10, 1974); Charles E. Rickard (pub. avail. July 28, 1981); Benham Management Corp. (pub. avail. Feb. 16, 1978). We do believe that, due to their unique storage and transportation requirements, Precious Metals owned by a registered investment company would not constitute "similar investments" for purposes of

B. Brink's Request is Consistent with Section 17(f)(1)'s Purpose and Investor Protection

In adopting Section 17(f) of the 1940 Act, Congress intended securities and "similar investments" owned by registered investment companies "to be kept by financially secure entities that have sufficient safeguards against misappropriation" by fund insiders.³ Brink's believes that its services satisfy these goals. More generally, Brink's believes its Precious Metals custody and related transportation services are at least as secure and competent as the same services available through an entity that would qualify under Section 17(f)(1) of the 1940 Act.

Consider gold bullion, which is the Precious Metal most likely to be owned by registered investment companies (and, therefore, of the greatest aggregate value to registered investment companies). To our knowledge, regulations applicable to federally insured banks in the United States and regulations applicable to banks in the United Kingdom do not address expressly the level of quality and security provided by a bank. Instead, as described below, in the market segment in which Brink's and banks compete, the demands of Precious Metals customers and loss insurers are the principal drivers of the level of quality and security that Brink's or any bank must provide its customers in designing and maintaining a secure facility to custody gold bullion and other Precious Metals. These forces apply equally to Brink's and to any bank.

I. Express U.S. and U.K. Requirements

The Bank Protection Act of 1968, 12 U.S.C. § 1881 *et seq.* ("BPA"), requires the federal banking agencies to issue regulations: (i) establishing minimum standards for banks regarding the installation and operation of bank security devices, and (ii) requiring banks to implement procedures to discourage crimes against banks.⁴ The BPA applies to all federally insured (*i.e.*, FDIC-insured) banks (*e.g.*, national banks regulated by the Office of the Comptroller of the Currency), state-chartered Federal Reserve System member banks (regulated by the Federal Reserve) and state-chartered non-member banks (regulated by the FDIC). The initial regulations

Section 17(f)(1) of the 1940 Act, but we do not seek the Staff's concurrence with this conclusion as a basis for the no-action relief requested.

³ Rel. No. IC-21259 (July 27, 1995) (*citing* 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)) (Emphasis added). *Cf.* 10 SEC Ann. Rep. 169 (1944) (discussing Section 17(f) and its protections against theft and embezzlement by affiliated persons of investment companies).

⁴ See 56 Fed. Reg. 29562-01, 1991 WL 298709 (June 28, 1991) ("Adopting Release").

promulgated in 1969 under the BPA by the relevant federal agencies specified, with respect to bank vaults, that:

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 1/2 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.⁵

In 1991, these BPA regulations were changed “to delete references to specific security devices”, including vaults, “which [references], due to technological advances, are likely to become obsolete.”⁶ Thus, today, with respect to security devices, the applicable regulations require a bank to have:

(i) A means of protecting cash and other liquid assets, such as a vault, safe, or other secure space; (ii) A lighting system for illuminating . . . the area around the vault . . . (iii) Tamper-resistant locks on exterior doors and exterior windows . . .; (iv) An alarm system . . . for promptly notifying the nearest responsible law enforcement officers of . . . a robbery or burglary; and (v) Such other devices as the [bank’s] security officer determines to be appropriate, taking into consideration: the incidence of crimes against financial institutions in the area; the amount of currency and other valuables exposed to robbery, burglary, or larceny; the distance of the banking office from the nearest responsible law enforcement officers; the cost of the security devices; other security measures in effect at the banking office; and the physical characteristics of the structure of the banking office and its surroundings.⁷

⁵ 12 C.F.R. Part 21 (App. A), 34 Fed. Reg. 615 (Jan. 16, 1969) (applicable to state member banks). *Cf.* 34 Fed. Reg. 612 (identical App. A applicable to national banks); 34 Fed. Reg. 618 (identical App. A applicable to state non-member banks) (Jan. 16, 1969).

⁶ 55 Fed. Reg. 14424-01, 1990 WL 338058 (April 18, 1990) (proposing release). *See also* Adopting Release (“[B]y eliminating numerous technical references to specific security devices, the final rule will avoid the need to periodically revise the regulation to reflect particular advances in security device technology.”).

⁷ 12 C.F.R. § 208.61(c)(2) (applicable to state member banks). *Cf.* 12 C.F.R. § 21.3(b) (identical regulations applicable to national banks); 12 C.F.R. § 326.3(b) (identical regulations applicable to state non-member banks).

In short, a federally insured U.S. bank has considerable discretion with respect to the quality of vault facilities it makes available.⁸

In the United States, transactions in gold bullion occur under the rules of NYMEX/COMEX, of which Brink's is a "Licensed Depository".⁹ The NYMEX/COMEX application process for an entity wishing to become a "Licensed Depository" for the storage of Precious Metals (the "NYMEX/COMEX Application")¹⁰ is more specific than the regulations promulgated under the Bank Protection Act of 1968. A potential NYMEX/COMEX "Licensed Depository" must provide the following information in its application: (i) a detailed description of the type of building, materials of construction, floor load bearing capacity and estimated storage capacity for each Precious Metal; (ii) a detailed description of the vault facility's security features, both internal and external; (iii) confirmation that the "London Underwriters"¹¹ inspected and approved

⁸ A state-chartered trust company not insured by the FDIC is not subject to the federal BPA regulations but would technically qualify as a "bank" for purposes of Section 2(a)(5) of the 1940 Act. However, we believe that very few, if any, state trust companies not subject to federal BPA regulations are utilized by registered investment companies for custody purposes. We have not undertaken a survey of the extent to which applicable state regulations of such trust companies may include specific requirements regarding the quality of vault facilities that these trust companies must provide. Therefore, discussion herein of "U.S. banks" excludes any state-chartered trust company that is not subject to federal BPA regulations.

In addition, it is possible that state regulations applicable to state-chartered banks (both Federal Reserve System member and non-member) may be more specific than federal BPA regulations regarding vault facilities. We have not undertaken a survey of the extent to which applicable state regulations of state-chartered banks may be more specific regarding the quality of vault facilities that state-chartered banks must provide.

⁹ NYMEX is the New York Mercantile Exchange, Inc. COMEX is the Commodity and Metals Exchange, Inc. NYMEX and COMEX are independent exchanges owned by the CME Group, Inc., which was formed by the 2007 merger of the Chicago Mercantile Exchange and the Chicago Board of Trade.

¹⁰ The document's full title is: "NYMEX Division and COMEX Division, Licensed Depository Application for the Storage of Gold Silver Platinum and Palladium Deliverable Against the Respective Exchange Futures Contracts". The NYMEX/COMEX Application is made available by Registrar's Office; CME Group, Inc.; 20 South Wacker Drive; Chicago, Illinois 60606.

¹¹ "London Underwriters" refers to London insurance underwriters that confirm Underwriters Laboratories testing. Telephone conversation with Registrar's Office; CME Group, Inc.; 20 South Wacker Drive; Chicago, Illinois 60606 (Jul. 12, 2013). See note 12, below.

the vault facility as a Class 3¹² 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.

Moreover, as an ongoing matter, a NYMEX/COMEX Licensed Depository must comply with applicable NYMEX/COMEX rules (“NYMEX/COMEX Rules”), including: (i) having in force insurance against loss of Precious Metals, in an amount satisfactory to NYMEX/COMEX;¹³ (ii) providing NYMEX/COMEX with annual audited financial statements, as they become available;¹⁴ (iii) at its own expense, having an independent auditor annually audit the Licensed Depository’s inventory in compliance with procedures established by NYMEX/COMEX and providing the resulting audit report to NYMEX/COMEX within thirty days of the date of the completion of the audit;¹⁵ and (iv) permitting NYMEX/COMEX, 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.¹⁶

Each of NYMEX and COMEX is a “designated contract market” (“DCM”) – *i.e.*, an exchange that operates under the regulatory oversight of the Commodity Futures Trading Commission (“CFTC”) pursuant to Section 5 of the Commodity Exchange Act (“CEA”).¹⁷ DCMs are like traditional futures exchanges, which may allow access to their facilities by all types of traders, including retail customers.¹⁸ To obtain and maintain its designation, a DCM also must comply,

¹² “Class 3” refers to a standard established by Underwriters Laboratories. In pertinent part, UL Standard 608 (titled “Burglary Resistant Vault Doors and Modular Panels”) states: “These requirements are intended to establish the burglary resistant rating of vault doors and modular panels according to the length of time they withstand attack by common mechanical tools, electric tools, cutting torches, or any combination of these means. The ratings based on the net working time to effect entry are as follows: [Class 1 - 1/2 hour, Class 2 - 1 hour, and Class 3 - 2 hours.]” As described in note 26, below, the quality of security at a Precious Metals custody facility depends on multiple elements, including but not limited to the vault. *See* <http://ulstandardsinfonet.ul.com/scopes/0608.html>.

¹³ *See* NYMEX Rule 703.B.5.a. The rules in the NYMEX Rulebook are applicable to both NYMEX and COMEX. <http://www.cmegroup.com/market-regulation/rulebook/>.

¹⁴ *See* NYMEX Rule 703.B.5.f.

¹⁵ *See* NYMEX Rule 703.B.5.d.

¹⁶ *See* NYMEX Rule 703.B.5.g.

¹⁷ *See* 7 U.S.C. § 7.

¹⁸ <http://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/index.htm>.

on an initial and ongoing basis, with the twenty-three “Core Principles” established in Section 5(d) of the CEA, 7 U.S.C. § 7, and Part 38 of the CFTC’s regulations.¹⁹ The CFTC’s Division of Market Oversight’s Market Compliance Section conducts regular reviews of each designated DCM’s ongoing compliance with core principles through the self-regulatory programs operated by the exchange in order to enforce its rules (*e.g.*, the NYMEX/COMEX Rules).²⁰

Therefore, within the United States, in order to qualify as a NYMEX/COMEX Licensed Depository each Brink’s facility is subject to approval by NYMEX/COMEX and, thereafter, is subject to the continuing oversight of NYMEX/COMEX. The same approval and continuing oversight applies to each bank Licensed Depository. Further, the CFTC’s Division of Market Oversight Market Compliance Section’s regular RERs of NYMEX and COMEX’s compliance with core principles (through the self-regulatory programs operated by NYMEX and COMEX to enforce the NYMEX/COMEX Rules) provides a layer of regulatory oversight of each Licensed Depository. That is, both NYMEX and COMEX are inspected by the CFTC staff to confirm that, among other things, NYMEX and COMEX assure that each Licensed Depository – whether Brink’s or a bank – complies with applicable NYMEX/COMEX Rules (*e.g.*, having an independent auditor annually audit the Licensed Depository’s inventory in compliance with procedures established by NYMEX/COMEX and providing the resulting audit report to NYMEX/COMEX within thirty days of the date of the completion of the audit).

¹⁹ *Id.*

²⁰ These reviews are known as rule enforcement reviews (“RERs”).
<http://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/dcmruleenf>.

In conducting an RER, the Division of Market Oversight (DMO) staff examine trading and compliance activities at the exchange in question over an extended time period selected by DMO, typically the twelve months immediately preceding the start of the review. Staff conduct extensive review of documents and systems used by the exchange in carrying out its self-regulatory responsibilities; interview compliance officials and staff of the exchange; and prepare a detailed written report of their findings. In nearly all cases, the RER report is made available to the public and posted on CFTC.gov. *Id.*

The most-recent COMEX RER report (*2013 Rule Enforcement Review of the Chicago Mercantile Exchange and Chicago Board of Trade Rule Enforcement Review*) and the most-recent NYMEX RER report (*2011 Rule Enforcement Review New York Mercantile Exchange and Commodity Exchange Rule Enforcement Review*) are available on the CFTC’s website. *See id.*

In London, which is the principal gold bullion market in the world, transactions in gold bullion occur under the rules of the London Bullion Market Association (the "LBMA"),²¹ of which Brink's is a member.²²

The LBMA does not have any specific membership requirements related to vaults. The LBMA publication, *Best Practice Guidelines; Used by "Loco London" Vaults Opening a new vault for the storage of precious metals* (Sept. 2012) (the "LBMA Best Practices"),²³ provides only general guidance concerning the requirements that a vault operator should consider when opening a new vault. Among other things, the LBMA Best Practices highlight that the requirements of customers and insurers may drive the design of a new vault. This is consistent with Brink's experience, described below, that market forces from customers and insurers are critical in designing and maintaining a U.K. secure facility to custody gold bullion and other Precious Metals.

2. *Customer and Insurer Requirements*

As discussed above, in the United States, applicable regulations provide a federally insured bank with discretion with respect to the quality of the secure facilities, including a vault, that it uses to provide custody services for Precious Metals. Any federally insured bank seeking to provide such services is required to take into consideration the various factors listed in the applicable BPA regulations. In designing and maintaining the secure facility to provide custody services for Precious Metals, Brink's is guided by the demands of its customers. Brink's believes that the

²¹ According to the LBMA website: "The LBMA is the international trade association that represents the market for gold and silver bullion, which is centered in London but has a global client base, including the majority of the central banks that hold gold, private sector investors, mining companies, producers, refiners and fabricators. The current membership stands at 140 companies. . . . The LBMA was formally incorporated in 1987 at the behest of the Bank of England, which was the bullion market's regulator at that time, to take over the roles previously played by two separate organizations, the London Gold Market and London Silver Market, whose origins go back to the mid-nineteenth century."

The LBMA's nine-member Management Committee includes representatives of various banks and Brink's Limited. A representative of the Bank of England has observer status on the committee.

²² In addition to the London vaults of Brink's and The Bank of England, Brink's believes that only six additional LBMA-member entities provide gold bullion vault services, and four of these entities are banks (including one bank with a facility under construction).

²³ The LBMA Best Practices are available on the LBMA website:
http://www.lbma.org.uk/assets/Best_practice20120920FINAL.pdf

same is true for banks in designing and maintaining their secure facilities. The amount of insurance against loss that Brink's provides to its Precious Metals customers is also market driven, and insurers' willingness to underwrite insurance includes their assessment of the risk of loss presented by any secure facility. Again, Brink's believes the same is true for the banks with which it competes.

Brink's is unaware of any bank regulation within the United Kingdom comparable to the BPA.²⁴ Instead, in the United Kingdom, as in the United States, Brink's believes that the demands of Precious Metals customers and insurers are the principal drivers of the level of quality and security that Brink's is required to provide its customers in Brink's Precious Metals secure facilities.

In terms of the value of customers' Precious Metals in custody, Brink's is one of the largest providers of secure facilities for custody of Precious Metals in the United States and the United Kingdom. For example, within its several New York and London vaults, in the aggregate, Brink's currently has secure custody of more than one billion dollars of its customers' gold bullion in each location. Because the customers in the market segment in which Brink's competes own significant values of Precious Metals, these customers require that Brink's secure facilities be "state of the art". Brink's competes with banks in both the U.S. and U.K. markets, to provide custody services to these customers. Brink's believes the fact that it is able to compete successfully in providing custody services, and the amount of insurance coverage Brink's is able to secure for its several New York and London vaults (between \$1.25 billion and \$2.75 billion for each relevant facility, which is available to cover any Precious Metals losses sustained by Brink's customers while the Precious Metals are in the custody of Brink's) evidence the fact that market participants and insurers view the level of quality and security that Brink's provides to be at least as high as that provided by banks.

Many banks have exited the business of providing vault services for gold bullion, which requires significant investments in secure, state-of-the-art vaults large enough to hold large quantities of

²⁴ U.K. banks are regulated principally by the Bank of England's Prudential Regulatory Authority ("PRA") and, in some respects, by the Financial Conduct Authority ("FCA") (effective April 1, 2013, the responsibilities of the U.K.'s Financial Services Authority were divided between the PRA and FCA as successor authorities). We are not aware of any specific requirements regarding bank vaults within the PRA or FCA rules, although care for customer's assets is addressed in the high-level "Principles for Businesses" ("PRIN"), which appear in both the PRA and FCA rulebooks and are legally binding on U.K. banks (and other authorized entities in the United Kingdom). Specifically, PRIN 2.1 principle 10 (Clients' assets) merely provides that "A firm must arrange adequate protection for clients' assets when it is responsible for them."

gold bullion (*see* note 26). A provider of gold bullion vault services also must provide secure transportation services to settle transactions by delivering gold bullion to or from its vaults. Accordingly, in London and the United States, in particular, many of Brink's vault and transportation clients are, themselves, banks.²⁵ These banks, and other Brink's customers, rely on Brink's to provide these services in which Brink's has specialized for decades. Therefore, Brink's believes its vault facilities and related transportation services provide an equally secure custody location and means of transport for registered investment companies' Precious Metals.²⁶

Stated simply, Brink's customers require that Brink's vault facilities to be "state of the art" in view of the value of the customers' gold bullion deposits with Brink's.²⁷ The same is true with respect to other Precious Metals.

Based on the foregoing, we believe that the investor protection purposes of Section 17(f) would not be furthered by barring Brink's from serving as custodian for Precious Metals owned by a registered investment company in favor of a bank or broker-dealer.

²⁵ In addition, in 2012, Barclays Bank opened a new gold bullion vault in London that is *operated by Brink's*.

²⁶ Note that the vault is merely a secure area for the holding of Precious Metals for protection over a long period of time, when the contents are not immediately required. Equally important are the security fittings and fixtures (*e.g.*, doors, locks, alarm systems, closed-circuit television ("CCTV")) and the surrounding secure facility. Security begins with the perimeter – CCTV and motion detectors – followed by the secure facility itself, which, in Brink's case, includes: third-party controlled opening/closing (*i.e.*, access to premises controlled via another Brink's company, *e.g.* only Brink's Dublin (Ireland) may open Brink's Radius Park (London) facility – the purpose of such third-party controlled opening/closing is to prevent unauthorized access to the premises by local staff under duress or otherwise); bullet-resistant doors and airlocks (a secure area between two bullet-resistant doors with remotely controlled locks, normally at the entrances to the facility and between the office space of the facility and the more secure area holding the Precious Metals); 24/7 armed guards; coded key cards for employees restricting the employees to specific areas; dedicated facility guards within their own secure work area, CCTV external (approaches) and internal (accessing areas); a minimum of two alarm systems (at least one alarm is physically and operationally independent from other alarm systems); and internal operating procedures.

²⁷ For example, Brink's represents that: (i) Brink's vault facilities include what Brink's believes are state-of-the-art intrusion detection systems and CCTV systems; (ii) the construction and location of Brink's vault facilities, and the security of the buildings which the vaults are maintained, conform to the highest levels of security best practice; (iii) access to all Brink's vault facilities is subject to prior notification and approval, and access control systems are in place in all facilities; (iv) procedures for the handling and audit of all Precious Metals and valuables are in place, and audits occur regularly; and (v) Brink's hiring process includes an in-depth background check for all employee candidates.

C. Additional Information About Brink's Request Underscores That its Request is Consistent with Section 17(f)(1)'s Investor Protection Purposes

The Brink's Company is a reporting company under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Accordingly, Brink's is subject to the periodic disclosure requirements, including the financial disclosure and internal control requirements, mandated by the Exchange Act. Not all banks, which are otherwise eligible to serve as custodians for registered investment companies under Section 17(f)(1) of the 1940 Act, are subject (either directly or indirectly) to the Exchange Act's disclosure and internal control requirements. Thus, for any registered investment company that contemplates placing and maintaining custody of its Precious Metals in a vault or other secure facility operated by Brink's, Brink's is at least as "transparent" in these respects as any bank.

Moreover, while Sections 17(f)(1) and 26(a)(1) of the 1940 Act require a bank to have at least \$500,000 in shareholder equity and surplus, as of December 31, 2013, Brink's shareholder equity and surplus exceeded \$500 million (*i.e.*, approximately 1,000 times greater than that required under Sections 17(f)(1) and 26(a)(1) of the 1940 Act).

Brink's also believes that permitting registered investment companies to place and maintain custody of their Precious Metals with Brink's would enhance the accessibility of high-quality Precious Metals custody services to registered investment companies and enhance competition in this market, resulting in greater efficiencies and lower costs with respect to Precious Metals custody services for registered investment companies regardless of whether they actually use Brink's services.

The most-prominent Precious Metals markets are New York City and London. In the United States, in addition to the New York City Brink's vaults, there are five NYMEX/COMEX-approved depositories for gold bullion, and three of these depositories are banks.²⁸ In addition to the London vaults of Brink's and The Bank of England, only six additional LBMA-member entities provide gold bullion vault services, and four of these entities are banks.

In view of the limited number of banks in the United States and the United Kingdom that currently provide gold bullion vault services and secure custody services for other Precious Metals, Brink's believes that permitting registered investment companies to place and maintain

²⁸ Brink's represents that, in both the New York City and London markets, entities (such as Brink's) that provide gold bullion vault services also provide secure custody services for other Precious Metals.

custody of their Precious Metals with Brink's would enhance competition in the United States and the United Kingdom in providing these services to registered investment companies.

Finally, Brink's maintains over \$1 billion of insurance coverage per vault or secure facility to cover any Precious Metal losses sustained by Brink's customers while the Precious Metals are in the custody of Brink's. This amount of insurance coverage is available for each and every claim, which means previous claims and claims by other claimants do not reduce the \$1 billion of insurance coverage per vault or secure facility available for future claims. The insurance also covers mysterious disappearance and employee infidelity, without an exclusion for officers and senior managers.

II. REPRESENTATIONS

We respectfully request that the Staff agree not to recommend that 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 Brink's in the United States or the United Kingdom, provided that:

1. Brink's remains a reporting company under the Exchange Act, a majority-owned subsidiary of a reporting company or continues to provide financial disclosure about its operations substantively equivalent in all material respects to the information that Brink's currently is required to disclose;
2. In the United States, with respect of each such vault or secure facility, Brink's remains a NYMEX/COMEX-approved Licensed Depository and, in the United Kingdom, Brink's remains an LMBA-member providing Precious Metals vaults and secure facilities;
3. Brink's vaults and secure facilities that are used to store Precious Metals – whether located in the United States or in the United Kingdom – provide substantially equivalent protections against misappropriation; and
4. Brink's continues to maintain insurance coverage of at least \$1 billion in respect of each such vault or secure facility to cover any custody-related losses incurred by its customers, including registered investment companies. This amount of insurance coverage remains available for each and every claim, which means previous claims and claims by other claimants do not reduce the \$1 billion of insurance coverage per vault or secure facility available for future claims.

In addition, Brink's recognizes that the board of a Fund may lack specific expertise to assess custodial risks and to make the depository arrangements for Precious Metals owned by a Fund.

Therefore, we would expect that the responsibility for assessing this risk and making these arrangements would be delegated by the Fund's board to the Fund's adviser or other delegate, subject to the board's general oversight.²⁹ However, no Fund would be permitted to utilize Brink's as a Precious Metals custodian in the United States or the United Kingdom unless a majority of the Fund's board members, including a majority of the board members who are not "interested persons" under Section 2(a)(19) of the 1940 Act, determines that use of Brink's custody services is in the best interest of the Fund and its shareholders. In making this determination, the board or its delegate also should consider whether the Precious Metals will be subject to reasonable care and whether Brink's can provide services at least equal in nature and quality to the services that could be provided by bank custodians in the same market(s) after consideration of the relevant factors.³⁰

III. 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 Precious Metals in a Brink's vault or other secure facility operated by Brink's in the United States or the United Kingdom.


* * *

²⁹ Brink's believes that the delegation would be analogous to delegation permitted by Rule 17f-5(b) under the 1940 Act. A Brink's Precious Metals vault or other secure facility in the U.K. would *not*, however, constitute an "Eligible Foreign Custodian" for purposes of Rule 17f-5.

³⁰ Brink's expects that, in making and maintaining custody arrangements with Brink's for Precious Metals owned by a Fund and maintained securely *within the U.K.*, a Fund board's delegate would satisfy, in all material respects, the responsibilities set forth in Rule 17f-5(c)(1), (c)(2), and (c)(3) under the 1940 Act. Similarly, Brink's expects that, in making and maintaining custody arrangements with Brink's for Precious Metals owned by a Fund and maintained securely *within the United States*, a Fund board's delegate would satisfy, in all material respects, the responsibilities set forth in Rule 17f-5(c)(1), (c)(2), and (c)(3), except the U.S. jurisdictional issue within Rule 17f-5(c)(1)(iv).

Please contact the undersigned at (617) 728-7167 if you have any questions or concerns regarding this request.

Sincerely yours,



Christopher P. Harvey

cc: Frank J. Russo, III, Esq.