

**§ 270.17f-4 Custody of investment company assets with a securities depository.**

(a) *Custody arrangement with a securities depository.* A fund's custodian may place and maintain financial assets, corresponding to the fund's security entitlements, with a securities depository or intermediary custodian, if the custodian:

(1) Is at a minimum obligated to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain such financial assets;

(2) Is required to provide, promptly upon request by the fund, such reports as are available concerning the internal accounting controls and financial strength of the custodian; and

(3) Requires any intermediary custodian at a minimum to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets corresponding to the security entitlements of its entitlement holders.

(b) *Direct dealings with securities depository.* A fund may place and maintain financial assets, corresponding to the fund's security entitlements, directly with a securities depository, if:

(1) The fund's contract with the securities depository or the securities depository's written rules for its participants:

(i) Obligate the securities depository at a minimum to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets corresponding to the fund's security entitlements; and

(ii) Requires the securities depository to provide, promptly upon request by the fund, such reports as are available concerning the internal accounting controls and financial strength of the securities depository; and

(2) The fund has implemented internal control systems reasonably designed to prevent unauthorized officer's instructions (by providing at least for the form, content and means of giving, recording and reviewing all officer's instructions).

(c) *Definitions.* For purposes of this section the terms:

(1) *Clearing corporation, financial asset, securities intermediary, and security entitlement* have the same meanings as is attributed to those terms in § 8-102, § 8-103, and §§ 8-501 through 8-511 of the Uniform Commercial Code, 2002 Official Text and Comments, which are incorporated by reference in this section pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the Uniform Commercial Code from the National Conference of Commissioners on Uniform State Laws, 211 East Ontario Street, Suite 1300, Chicago, IL 60611. You may inspect a copy at the following addresses: Louis Loss Library, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(2) *Custodian* means a bank or other person authorized to hold assets for the fund under section 17(f) of the Act (15 U.S.C. 80a-17(f)) or Commission rules in this chapter, but does not include a fund itself, a foreign custodian whose use is governed by § 270.17f-5 or § 270.17f-7, or a vault, safe deposit box, or other repository for safekeeping maintained by a bank or other company whose functions and physical facilities are supervised by a federal or state authority if the fund maintains its own assets there in accordance with § 270.17f-2.

(3) *Fund* means an investment company registered under the Act and, where the context so requires with respect to a fund that is a unit investment trust or a face-amount certificate company, includes the fund's trustee.

(4) *Intermediary custodian* means any subcustodian that is a securities intermediary and is qualified to act as a custodian.

(5) *Officer's instruction* means a request or direction to a securities depository or its operator, or to a registered

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transfer agent, in the name of the fund by one or more persons authorized by the fund's board of directors (or by the fund's trustee, if the fund is a unit investment trust or a face-amount certificate company) to give the request or direction.

(6) *Securities depository* means a clearing corporation that is:

(i) Registered with the Commission as a clearing agency under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1); or

(ii) A Federal Reserve Bank or other person authorized to operate the federal book entry system described in the regulations of the Department of Treasury codified at 31 CFR 357, Subpart B, or book-entry systems operated pursuant to comparable regulations of other federal agencies.

[68 FR 8442, Feb. 20, 2003, as amended at 69 FR 18803, Apr. 9, 2004; 73 FR 32228, June 5, 2008]

**§270.17f-5 Custody of investment company assets outside the United States.**

(a) *Definitions.* For purposes of this section:

(1) *Eligible Foreign Custodian* means an entity that is incorporated or organized under the laws of a country other than the United States and that is a Qualified Foreign Bank or a majority-owned direct or indirect subsidiary of a U.S. Bank or bank-holding company.

(2) *Foreign Assets* means any investments (including foreign currencies) for which the primary market is outside the United States, and any cash and cash equivalents that are reasonably necessary to effect the Fund's transactions in those investments.

(3) *Foreign Custody Manager* means a Fund's or a Registered Canadian Fund's board of directors or any person serving as the board's delegate under paragraphs (b) or (d) of this section.

(4) *Fund* means a management investment company registered under the Act (15 U.S.C. 80a) and incorporated or organized under the laws of the United States or of a state.

(5) *Qualified Foreign Bank* means a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as

such by the country's government or an agency of the country's government.

(6) *Registered Canadian Fund* means a management investment company incorporated or organized under the laws of Canada and registered under the Act pursuant to the conditions of §270.7d-1.

(7) *U.S. Bank* means an entity that is:

(i) A banking institution organized under the laws of the United States;

(ii) A member bank of the Federal Reserve System;

(iii) Any other banking institution or trust company organized under the laws of any state or of the United States, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by state or federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this section; or

(iv) A receiver, conservator, or other liquidating agent of any institution or firm included in paragraphs (a)(7)(i), (ii), or (iii) of this section.

(b) *Delegation.* A Fund's board of directors may delegate to the Fund's investment adviser or officers or to a U.S. Bank or to a Qualified Foreign Bank the responsibilities set forth in paragraphs (c)(1), (c)(2), or (c)(3) of this section, *provided that*:

(1) *Reasonable Reliance.* The board determines that it is reasonable to rely on the delegate to perform the delegated responsibilities;

(2) *Reporting.* The board requires the delegate to provide written reports notifying the board of the placement of Foreign Assets with a particular custodian and of any material change in the Fund's foreign custody arrangements, with the reports to be provided to the board at such times as the board deems reasonable and appropriate based on the circumstances of the Fund's arrangements; and

(3) *Exercise of Care.* The delegate agrees to exercise reasonable care, prudence and diligence such as a person