

such individual will not participate in the General Partner's determination of whether or not to effect such purchase or sale.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-5645 Filed 3-7-95; 8:45 am]

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[Investment Company Act Release No. 20934; International Series Release No. 789; 812-9262]

### **Mellon Bank, N.A.; Notice of Application**

March 1, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Mellon Bank, N.A. ("MBNA").

**RELEVANT ACT SECTIONS:** Sections 6(c) and 17(f).

**SUMMARY OF APPLICATION:** MBNA seeks an order under section 6(c) of the Act granting an exemption from section 17(f). The order would allow United States registered investment companies other than investment companies registered under section 7(d) (a "U.S. Investment Company"), for which MBNA serves as custodian or subcustodian, to maintain foreign securities and assets in the United Kingdom with Mellon Europe Limited ("MEL"), a wholly-owned subsidiary of MBNA.

**FILING DATES:** The application was filed on September 29, 1994 and amended on February 23, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 27, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549.

Applicants, Mellon Bank, N.A., One Mellon Bank Center, Pittsburgh, Pennsylvania 15258-0001.

**FOR FURTHER INFORMATION CONTACT:** Marianne H. Khawly, Staff Attorney, at (202) 942-0562, or C. David Messman, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### **Applicant's Representations**

1. MBNA requests an order to allow MBNA, any U.S. Investment Company, and any custodian for a U.S. Investment Company to maintain foreign securities, cash, and cash equivalents (collectively, "assets") in the custody of MEL. For the purposes of this application, "foreign securities" includes: (a) securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country; and (b) securities issued or guaranteed by the Government of the United States or by any state or any political subdivision thereof of by any agency thereof or by any entity organized under the laws of the United States or of any state thereof which have been issued and sold primarily outside the United States.

2. MBNA is a national banking association organized and existing under the laws of the United States. MBNA is regulated by the Office of the Comptroller of the Currency and is subject to the National Bank Act. As of December 31, 1993, MBNA had aggregate capital, surplus, and undivided profits in excess of \$2,460,000,000. MBNA is a wholly-owned direct subsidiary of Mellon Bank Corporation ("Mellon"), a Pennsylvania corporation qualified as a bank holding company under the Bank Holding Company Act of 1956.

3. MEL is a wholly-owned subsidiary of MBNA and is regulated by the Bank of England under the Banking Act of 1987. As of December 31, 1993, MEL had shareholders' equity slightly in excess of \$10,000,000.

4. Boston Safe Deposit and Trust Company ("Boston Safe") is a subsidiary of The Boston Company, Inc. Boston Safe is organized as a trust company under Massachusetts law and is regulated by the Massachusetts Commissioner of Banks. In May 1993, Mellon acquired The Boston Company,

Inc. and its subsidiaries, including Boston Safe. A major business unit of Boston Safe is Global Securities Services, which provides international financial and securities processing services, including global custody, and is qualified to hold U.S. Investment Company assets under section 17(f) of the Act.

5. Mellon proposes to transfer the custody activities of the London branch of Boston Safe to MEL by transferring to MEL the operations and assets of the Global Custody Department of Boston Safe. Assets of U.S. Investment Companies held by the London branch of Boston Safe will not be transferred to MEL prior to the issuance of the requested order.<sup>1</sup> Thereafter, MBNA, as custodian or sub-custodian for a U.S. Investment Company, will deposit, or cause or permit a U.S. Investment Company to deposit, its assets with MEL. In the alternative, MEL, as custodian or subcustodian will receive and hold the assets of a U.S. Investment Company directly from such U.S. Investment Company, its custodian or subcustodian, other than MBNA but including Boston Safe.

### **Applicant's Legal Analysis**

1. Section 17(f) of the Act requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities, including bank having at all times aggregate capital, surplus, and undivided profits of at least \$500,000. A "bank", as that term is defined in section 2(a)(5) of the Act, includes: (a) a banking institution organized under the laws of the United States; (b) a member bank of the Federal Reserve System; and (c) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks, which is supervised or examined by state or federal authority having supervision over banks, and which is not operated for the purposes of evading the Act.

2. The only entities located outside the United States which section 17(f) authorizes to serve as custodians for registered management investment companies are the overseas branches of qualified U.S. banks. Rule 17f-5 expands

<sup>1</sup> Until the requested order is issued, U.S. Investment Company assets will continue to be held by the London branch of Boston Safe or another custodian that qualifies under section 17(f) of the Act.

the group of entities that are permitted to serve as foreign custodians. Rule 17f-5(c)(2)(ii) defines the term "Eligible Foreign Custodian" to include a majority-owned direct or indirect subsidiary of a qualified U.S. bank or bank holding company that is incorporated or organized under the laws of country other than the United States and that has shareholders' equity in excess of \$100,000,000. MBNA is a qualified U.S. bank since it is a bank as defined in rule 17f-5(c)(3) and it has aggregate capital, surplus, and undivided profits of at least \$500,000.

3. MEL satisfies the requirements of rule 17f-5 insofar as it is a majority-owned direct or indirect foreign subsidiary of a qualified U.S. bank or bank holding company. MEL does not, however, meet the minimum shareholders' equity requirement of rule 17f-5. Accordingly, MEL is not an Eligible Foreign Custodian under rule 17f-5 and, absent exemptive relief, could not serve as a custodian for the assets of U.S. Investment Companies.

4. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by other, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. MBNA submits that its request satisfies this standard.

#### **Applicant's Conditions**

Applicant agrees that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements proposed regarding MEL satisfy the requirements of rule 17f-5 in all respects other than MEL's level of shareholder equity.

2. MBNA, any U.S. Investment Company, and any custodian for a U.S. Investment Company, will deposit assets with MEL only in accordance with an agreement (the "Agreement") required to remain in effect at all times during which MEL fails to satisfy the requirements of rule 17f-5 (and during which such assets remain deposited with MEL). Each Agreement will be three party agreement among (a) MBNA, (b) MEL, and (c) the U.S. Investment Company or any custodian for a U.S. Investment Company (including Boston Safe) pursuant to which MBNA or MEL, as the case may be, will undertake to provide specified custody services. If MBNA is to provide such services, the Agreement will authorize MBNA to

delegate to MEL such of the duties and obligations of MBNA as will be necessary to permit MEL to hold in custody the U.S. Investment Company's assets. If MEL is to provide service directly, no such delegation will be necessary. However, in either case, the Agreement will provide that MBNA will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by MEL of its responsibilities under the Agreement to the same extent as if MBNA had itself been required to provide custody services under the Agreement. Further, the Agreement will provide that, in the event of loss, the U.S. Investment Company or its custodian may pursue a claim for recovery against MBNA, regardless of whether MEL acted as MBNA's delegate or as direct custodian or subcustodian.

3. MBNA currently satisfies and will continue to satisfy the minimum requirements for a qualified U.S. bank set forth in sections 2(a)(5) and 17(f) of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### **SMALL BUSINESS ADMINISTRATION**

##### **Honolulu District Advisory Council Meeting**

The U.S. Small Business Administration Honolulu District Advisory Council will hold a public meeting on Tuesday, March 14, 1995 at 9:30 a.m. at the Business Information and Counseling Center, 130 Merchant Street, Suite 1030, Honolulu, Hawaii, 96813 to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Andrew K. Poepoe, Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2314, Honolulu, Hawaii 968503, (808) 541-2965.

Dated: February 27, 1995.

**Dorothy A. Overall,**

*Director, Office of Advisory Council.*

[FR Doc. 95-5608 Filed 3-7-95; 8:45 am]

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#### **DEPARTMENT OF STATE**

[Public Notice 2172]

##### **Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea Working Group on Radiocommunications and Search and Rescue; Notice of Meetings**

The Working Group on Radiocommunications and Search and Rescue of the Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 a.m. on Thursday, April 20, Wednesday, June 14, Thursday, August 17, Thursday, September 21, Thursday, October 19, Wednesday, November 15, and Thursday, December 21, 1995. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20950. The purpose of these meetings is to discuss the papers received and the draft U.S. positions in preparation for the 1st Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications and Search and Rescue which is scheduled for February 19, 1996, at the IMO headquarters in London, England.

Among other things, the items of particular interest are:

- The implementation of the Global Maritime Distress and Safety System (GMDSS).
- Maritime Search and Rescue matters.

Further information, including meeting agendas, minutes, and input papers, can be obtained from the Coast Guard Navigation Information Center computer bulletin board, accessible by modem by dialing: (703) 313-5910. The computer is also accessible through Internet by entering: "Telnet fedworld.gov." logging on, and entering: "udd54", at the first menu.

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing: Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters, Commandant (G-TTM), Room 6306, 2100 Second Street, SW., Washington, DC 20593-0001, by calling: (202) 267-1389, or by sending Internet electronic mail to cgcomms/g-t@cgsmtm.comdt.uscg.mil.

Dated: February 21, 1995.

**Charles A. Mast,**

*Chairman, Shipping Coordinating Committee.*

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