

II. Discussion

Section 17A(b)(3)(F) of the Act¹¹ requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to provide for the safeguarding of securities and funds in its custody or control or for which it is responsible. The Commission believes that PTC's proposal is consistent with these obligations because the modifications to PTC's processing system should help decrease the potential for liquidity problems for delivering participants at the end of the day which existed under the former processing system.

Since 1989, PTC has considered various proposals to address the concerns behind Commitment No. 3.¹² The Commission believes that the modifications to PTC's processing system in the proposed rule change satisfies Commitment No. 3 by deleting the abeyance account, amending the receipt mode provisions, and providing for simultaneous credit and debit of an account transfer to both the receiving and delivering participant or limited purpose participant. These changes will eliminate the situation where a delivering participant's securities account has been debited and cash account credited when the receiving participant's securities account has not been credited and cash account debited.

A main policy consideration leading to Commitment No. 3 was the concern that in the case of an uncompleted account transfer versus payment the unexpected return to the delivering participant of the securities in the receiving participant's abeyance account and the corresponding elimination of the credit to the cash balance of the delivering participant could place liquidity pressures on the delivering participant. Such liquidity pressure could occur at the end of the processing day just prior to settlement when there is little time for a participant to fund an unanticipated debit. The Commission believes the modifications to PTC's processing system should help to decrease the potential for such liquidity pressure.

In addition, because unmatched deliveries of account transfers versus payment transactions no longer will generate a credit to the cash balance of the delivering participant without the corresponding debit to the cash balance of the receiving participant, it was anticipated that the implementation of SPEED Release 5.6 could result in

increased incidences of failed deliveries due to NDML and NFE violations. In anticipation of the implementation of SPEED Release 5.6, PTC has monitored potential credit fails by monitoring participants' NFE and NDML usage periodically throughout the processing day using the hypothetical immediate posting of both matched and unmatched transactions to the receiving participant's account. Under the monitoring program, potential NDML violations have been minimal, but potential NFE violations have been noted.

PTC advised participants of the hypothetical NFE and NDML violations and of the amount of the hypothetical credit deficiency so that participants could monitor their transactions and adjust their businesses in order to comply with the new processing sequence when it became operational on January 8, 1996. The Commission believes that PTC's extensive work with its participants should help to ensure a smooth transition to the new transaction processing sequence and should help to minimize NFE and NDML violations.¹³ Furthermore, consistent with PTC's obligations to safeguard securities or funds in its custody, control, or for which it is responsible, PTC has thoroughly tested SPEED Release 5.6 including performing several full participant tests and has made several changes as a result of these and other quality assurance testing procedures to ensure that SPEED Release 5.6 operates properly upon implementation.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, in particular with Section 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (File No. SR-PTC-95-06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁵

¹³ The Commission recently approved a proposed rule change establishing the opening of security processing activity at PTC at 8:30 a.m. instead of the previous time of 7 a.m. This change was to conform the opening of PTC's security processing to the opening time of the Federal Reserve System's fedwire. This will eliminate the hour and a half window during which time transactions failing PTC's credit checks cannot be processed because of participants' inability to move funds to PTC until the 8:30 fedwire opening. Securities Exchange Act Release No. 36677 (January 3, 1996), [SR-PTC-95-08] (order granting accelerated permanent approval of proposed rule change).

¹⁴ 15 U.S.C. § 78s(b)(2) (1988).

¹⁵ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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[Investment Company Act Rel. No. 21673; International Series Release No. 916; 812-9598]

The Chase Manhattan Bank, N.A.; Notice of Application

January 16, 1996.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Chase Manhattan Bank, N.A. ("Chase").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act from section 26(a)(2)(D) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit Chase, as trustee for certain unit investment trusts ("UITs"), to deposit trust assets in the custody of the Euroclear System ("Euroclear") and Cedel Bank S.A. ("Cedel").

FILING DATE: The application was filed on May 10, 1995 and amended on November 6, 1995 and December 7, 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 February 12, 1996, 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 reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 1 Chase Manhattan Plaza, New York, New York 10081.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942-0582 (Office of Regulatory Policy, Division of Investment Management), or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the

¹¹ 15 U.S.C. § 78q-1(b)(3)(F) (1988).

¹² *Supra* note 3 and accompanying text.

application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Chase, a national banking association, is a wholly-owned subsidiary of The Chase Manhattan Corporation ("CMC"), a Delaware corporation. Through its Global Securities Services division, Chase provides custody and related services to global institutional investors, and currently has over \$1.3 trillion in assets under custody worldwide. Chase serves as trustee for a number of UITs.¹

2. On September 2, 1995, Chase succeeded to certain of the trust and custodial functions of United States Trust Company of New York ("U.S. Trust"). Chase's succession to these functions resulted from the merger of U.S. Trust into Chase, immediately following the merger of U.S. Trust's parent, U.S. Trust Corporation, into CMC. Following the merger, Chase succeeded to the responsibilities of trustee under the various trust indentures executed by sponsors of UITs for which U.S. Trust acted as trustee. Under these indentures, and as required by the Act, Chase also assumed responsibility for the custody of the securities held in these UITs.

3. On October 7, 1992, the SEC issued an exemptive order permitting U.S. Trust to maintain UIT assets in the custody of Euroclear and Cedel (the "U.S. Trust Order").² Chase now seeks

to ensure that: (a) The UITs to which Chase has succeeded as trustee as a result of the merger may continue to maintain assets with Euroclear and Cedel;³ and (2) Chase's other UIT customers⁴ may benefit from the same exemption, under substantially the same terms and conditions as are set forth in the U.S. Trust Order.

4. Euroclear was organized by Morgan Guaranty in 1968, principally to provide a simple, economic, and automated means of settling secondary market transactions in internationally-traded securities, regardless of the geographical location of the parties to the transaction. Morgan Guaranty, which is subject to regulation by the State of New York and U.S. federal banking authorities, has operated Euroclear since its inception. In Belgium, Euroclear is subject to supervision by the Belgian Banking Commission. One of the main services of Euroclear is to hold securities in custody for participants and thus eliminate the need for physical movement of securities. Securities deposited by participants in Euroclear are held in segregated accounts in the name of the Brussels branch of Morgan Guaranty (as the operator of Euroclear) by various local financial institutions throughout the world, including branch offices of Morgan Guaranty and other major banks, as well as certain central banks and national clearing systems.

5. Centrale de Livraison de Valeurs Mobilières S.A. ("CEDEL S.A.") was formed in 1970 to provide a simple, economic, and automated means of settling primary and secondary transactions in international securities. On January 1, 1995, CEDEL S.A. became a fully licensed Luxembourg bank and changed its name to Cedel Bank S.A. Cedel is headquartered in Luxembourg and has representative offices in London, Tokyo, New York, and Hong Kong. Cedel operates under the supervision of the Luxembourg Monetary Authority, the bank regulatory

(notice) (Sept. 11, 1992) and 19006 (order) (Oct. 7, 1992).

³To insure that the UITs to which Chase was to succeed as trustee could continue without interruption to maintain assets with Euroclear and Cedel after the merger and pending SEC action on the application, Chase sought and obtained interim no-action relief from the SEC staff. In *The Chase Manhattan Bank, N.A.*, (pub. avail. July 25, 1995), the staff authorized Chase to continue to maintain these assets with Euroclear and CEDEL until the earlier of the date on which the SEC takes final action on this application or July 25, 1996.

⁴The assets of UITs sponsored by Merrill Lynch may already be held in the custody of Euroclear and Cedel pursuant to an exemptive order issued to Merrill Lynch. Merrill Lynch, Pierce, Fenner & Smith Incorporated, *Investment Company Act Release Nos. 15739* (notice) (May 14, 1987) and 15813 (June 16, 1987).

authority in Luxembourg. Like Euroclear, Cedel provides custody services for its participants' securities through a network of local financial institutions.

Applicant's Legal Analysis

1. Under sections 2(a)(5) and 26(a)(1) of the Act, the trustee of a unit investment trust must be a bank that is subject to regulation by the U.S. government or one of the states. Section 26(a)(2)(D) requires that the trust indenture provide that the trustee "shall have possession of all securities and other property in which the funds of the trust are invested * * * and shall segregate and hold the same in trust * * * until distribution thereof to the security holders of the trust." Under these sections, the only foreign entity that qualifies as a unit investment trust custodian is an overseas branch of a U.S. bank.⁵

2. Section 6(c) provides that the SEC may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Chase requests an order pursuant to section 6(c) of the Act exempting (i) Chase, (ii) any UIT registered pursuant to the Act for which Chase serves, or may in the future serve, as trustee, (iii) any co-trustee or subcustodian thereof, and (iv) any sponsor of such UIT, from the provisions of section 26(a)(2)(D) to the extent necessary to permit Chase to maintain securities and other assets of such UITs in the custody of Euroclear and Cedel, in the manner and subject to the conditions described below.

4. No SEC rule presently addresses the custody of the foreign assets of a UIT. Rule 17f-5, however, permits an investment company that is a management company to hold its foreign securities in certain specified foreign entities, including foreign security depositories or clearing agencies such as Euroclear or Cedel, subject to certain provisions designed to safeguard assets held overseas. Since UITs are not management companies, however, they may not rely on rule 17f-5.

⁵See *Custody of Investment Company Assets Outside the United States*, Investment Company Act Release No. 21259 (July 27, 1995).

¹ Chase currently serves as trustees to UITs sponsored by the following:

American Municipal Securities
B.C. Ziegler & Co.
BEA Associates
Bear Stearns & Co., Inc.
Concord Financial Group, Inc.
Craig Inc.
Dean Witter Reynolds
Fidelity Capital Markets
First Charlotte Corp.
First of Michigan
Herbert J. Sims
Manley Bennett McDonald & Co.
Merrill Lynch, Pierce, Fenner & Smith, Inc.
Nike Securities L.P.
John Nuveen & Co.
Oppenheimer Capital
Oppenheimer Manag. Corp.
Paine Webber
Prescott Ball & Turben Inc.
Prudential Securities Inc.
Raffensberger, Hughes & Co.
Rickel & Associates
Rotan, Mosle
Salomon Bros. Inc.
Smith Barney
Sterne Ages Leach
The Ohio Company
Tucker Anthony
Underwood Neuhaus & Co., Inc.

² United States Trust Company of New York, *Investment Company Act Release Nos. 18946*

5. Chase proposes to provide foreign custody services to UITs through the facilities of Euroclear and Cedel (the "Transnational Depositories") pursuant to arrangements that will mirror the requirements applicable to registered management investment companies under rule 17f-5, with the specific modifications set forth below.

6. A significant difference between the operation of a management investment company and a UIT is that the former is governed by a board of directors, while the latter is not. Rule 17f-5 imposes certain responsibilities on the board with respect to foreign custody arrangements. Accordingly, Chase will utilize the services of the Transnational Depositories to hold the assets of UITs for which Chase acts as trustee only where the duties assigned by rule 17f-5 (as now in effect or as it may be amended in the future) to the board of directors of management companies are performed in the manner set forth below.

7. Prior to placing or holding foreign securities of a UIT in a Transnational Depository, Chase will:

(a) Make such determinations with respect to (i) the particular country or countries in which the UIT's assets will be held, and (ii) the Transnational Depository in which the UIT's assets will be held;

(b) Enter into such written contract to govern the manner in which the Transnational Depository will maintain the UIT's assets; and

(c) Establish such system to monitor the foreign custody arrangements to ensure compliance with the proposed provisions of the order requested herein; as rule 17f-5, as now in effect or as it may be amended in the future, requires of the board of a management investment company before it may place the assets of such company in the custody of a foreign custodian. Chase will memorialize in writing its determinations referred to in (a) above, and the reasons therefor. Chase will exercise reasonable care in the performance of the above-mentioned duties.

8. The trust indenture will contain a provision under which Chase agrees to indemnify any UIT relying on the relief requested herein against any loss that occurs as the result of a Transnational Depository's willful misfeasance, reckless disregard, bad faith, or gross negligence in performing its custodial duties.

9. Applicants believe that the requested order satisfies the section 6(c) standard. The requested exemptive order is necessary and appropriate in

the public interest to permit UITs for which Chase serves as trustee to have access to the custody services of the Transnational Depositories. Absent an exemptive order, Chase will be unable to offer these services to such UITs. Chase believes that encouraging the growth of responsible book-entry systems for the clearance, settlement, and safeguarding of securities is in the public interest. In addition, Chase believes that requiring unitholders to bear the substantial additional expense of holding UIT securities outside of the Transnational Depositories would be contrary to the best interests of unitholders and to the public policy positions cited above. Chase, moreover, believes that securities deposited in the Transnational Depositories are at least as effectively protected as the same securities would be if directly deposited with a foreign branch of a U.S. bank, or shipped to the U.S. for custody.

Applicant's Conditions

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

1. The trust indenture will contain provisions under which Chase agrees to indemnify any UIT relying on the relief requested herein against any loss occurring as a result of a Transnational Depository's willful misfeasance, reckless disregard, bad faith, or gross negligence in performing custodial duties.

2. The trust indenture will contain provisions under which Chase agrees to perform all the duties assigned by rule 17f-5, as now in effect or as it may be amended in the future, to the boards of directors of management investment companies. Chase's duties under this condition will not be delegated.

3. The prospectus of any UIT relying on the relief requested herein will contain such disclosure regarding foreign securities and foreign custody as is required for management investment companies by Forms N-1A and N-2.

4. Chase will maintain and keep current written records regarding the basis for the choice or continued use of a particular Transnational Depository. These records will be preserved for a period of not less than six years from the end of the fiscal year in which the UIT was terminated, the first two years in an easily accessible place. Such records will be available for inspection at Chase's main offices during Chase's usual business hours, by unitholders and by the SEC or its staff.

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

Margaret H. McFarland,
Deputy Secretary.

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[Investment Company Act Release No. 21676; International Series Release No. 917; 812-9872]

Credit Suisse; Notice of Application

January 16, 1996.

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

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

APPLICANT: Credit Suisse.

RELEVANT ACT SECTIONS: Order under section 6(c) of the Act for an exemption from section 17(f) of the Act.

SUMMARY OF APPLICATION: Credit Suisse requests an order that would permit United States registered investment companies other than investment companies registered under section 7(d) (a "U.S. Investment Company"), for which Credit Suisse serves as custodian or subcustodian, to maintain foreign securities and other assets in Russia with Credit Suisse (Moscow) Ltd. ("Credit Suisse (Moscow)"), a wholly-owned subsidiary of Credit Suisse.

FILING DATES: The application was filed on December 6, 1995 and amended on January 11, 1996.

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 February 12, 1996, 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. Applicant: Credit Suisse, Paradeplatz 8, CH-8001 Zurich, Switzerland; cc: Daniel L. Goelzer, Esq., Baker & McKenzie, 815 Connecticut Avenue NW., Washington, DC, 20006-4078.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942-0562, or Robert A. Robertson,