

Foreign Investments with an Eligible Securities Depository on a continuing basis, and promptly notifying the Sponsor of any material change in these risks. Applicants also state that the Sponsor will be required to take appropriate action in response to a notification by the Trustee.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Indenture will contain provisions under which the Trustee agrees to indemnify the Trust Series against the risk of loss of Trust Series' Foreign Investments held with an Eligible Foreign Custodian in accordance with the foreign custody contract.
2. The Indenture will contain provisions under which the Trustee agrees to exercise reasonable care, prudence, and diligence such as a person having responsibility for the safekeeping of Trust Series assets would exercise, and to be liable to the Trust Series for any loss occurring as a result of the Trustee's failure to do so.
3. The Indenture will contain provisions under which the Trustee 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 a Foreign Custody Manager. A Trustees' duties under this condition will not be delegated.
4. The Indenture will contain provisions under which the Trustee agrees that it (or the Trustee's agent) will (i) provide the Sponsor with an analysis of the custody risks associated with maintaining assets with an Eligible Securities Depository; (ii) monitor the custody risks associated with maintaining assets with the Eligible Securities Depository on a continuing basis and promptly notify the Sponsor of any material change in these risks; and (iii) exercise reasonable care, prudence and diligence in performing the foregoing duties.
5. The Sponsor will be required to take appropriate action in response to a notification by the Trustee provided pursuant to condition 4 above.
6. The Trust Series' prospectuses will contain such disclosure regarding foreign securities and foreign custody as is required for management investment companies by Forms N-1A and N-2. The prospectus also will contain disclosure concerning the Sponsor's responsibilities pursuant to condition 5 above.
7. The Trustee will maintain and keep current written records regarding the basis for the choice or continued use of

each foreign custodian. These records will be preserved for a period of not less than six years from the end of the fiscal year in which the Trust Series was terminated, the first two years in an easily accessible place. The records will be available for inspection at the Trustee's main office during the Trustee's usual business hours, by unitholders and by the Commission or its staff.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43775; International Series Release No. 1241; File No. 601-01]

Self-Regulatory Organizations; Morgan Guaranty Trust Company, Brussels Office, as Operator of the Euroclear System and Euroclear Bank, S.A.; Order Approving Application to Modify an Existing Exemption from Clearing Agency Registration

December 28, 2000.

I. Introduction

On September 21, 2000, Morgan Guaranty Trust Company of New York, Brussels office ("MGT-Brussels"), as operator of the Euroclear System,¹ and Euroclear Bank, S.A., ("Euroclear Bank") filed with the Securities and Exchange Commission ("Commission") an application on Form CA-1² to modify an existing exemption from clearing agency registration ("Modification Application") pursuant to section 17A of the Securities Exchange Act of 1934 ("Exchange Act")³ and Rule 17Ab2-1 thereunder.⁴ The existing exemption enables MGT-Brussels as operator of the Euroclear System to perform the functions of a clearing agency with respect to

¹ MGT-Brussels presently operates the Euroclear System pursuant to an operating agreement with Euroclear Bank. The Euroclear System functions as a clearance and settlement system for internationally traded securities. Securities settlement through the Euroclear System can occur with other participants in the Euroclear System, with members of Clearstream, formerly Cedel Bank, societe anonyme, Luxembourg ("Clearstream"), or with counterparties in certain local markets that are not members of either the Euroclear System or Clearstream.

² Copies of the application for exemption are available for inspection and copying at the Commission's Public Reference Room.

³ 15 U.S.C. 78q-1.

⁴ 17 CFR 240.17Ab2-1.

transactions involving U.S. government agency securities for its U.S. participants subject to certain limitations without registering as a clearing agency.⁵ The Modification Application substitutes Euroclear Bank for MGT-Brussels as operator of the Euroclear System. Notice of the application was published in the **Federal Register** on December 1, 2000.⁶ No comment letters were received in response to the notice of filing of the Modification Application. This order grants the Modification Application.

II. Description

On February 11, 1998, the Commission approved an application by MGT-Brussels as operator of the Euroclear System for an exemption from registration as a clearing agency under section 17A (the "1998 Exemption Order"). The 1998 Exemption Order granted MGT-Brussels as operator of the Euroclear System the authority to provide clearance, settlement, and collateral management services for its U.S. participants' transactions in: (i) Fedwire-eligible U.S. Government securities; (ii) mortgage-backed pass through securities that are guaranteed by the Government National Mortgage Association ("GNMAs"); and (iii) any collateralized mortgage obligation whose underlying securities are Fedwire-eligible U.S. Government securities or GNMA guaranteed mortgage-backed pass through securities and that are depository eligible securities collectively (collectively "Eligible U.S. Government Securities").

On January 1, 2000, the owners and operators⁷ decided that MGT-Brussels would be replaced by Euroclear Bank as operator of the Euroclear System. In May 2000, Euroclear Bank was created. On July 27, 2000 the Belgian Banking and Finance Commission ("BFC") granted Euroclear Bank a Belgian Banking license. MGT-Brussels will continue to operate the Euroclear System until the changeover, which is scheduled to occur on December 31, 2000. At the Changeover, the business and related assets and liabilities of the Euroclear System will vest in and

⁵ Securities Exchange Act Release No. 39643 (February 11, 1998), 63 FR 8232.

⁶ Securities Exchange Act Release No. 43592 (November 17, 2000), 65 FR 75324 (December 1, 2000).

⁷ Copies of the application for amendment to exemption from registration as a clearing agency are available for inspection and copying at the Commission's Public Reference Room. See volume 2 of 9, exhibit S of the application for amendment to exemption for a description of the change in ownership structure of the Euroclear System.

virtually all of the MGT-Brussels staff will be transferred to Euroclear Bank.

As a result of the changeover, Euroclear Clearance System Public Limited Company ("Euroclear PLC"), a limited liability company organized under the laws of the United Kingdom, will own 58.5% of Euroclear Bank. Calar Investments, a wholly-owned subsidiary of Euroclear PLC, will own 35.5% of Euroclear Bank. The remaining five percent of Euroclear Bank will be owned by the former members of Euroclear Clearance System Societe Cooperative (the "Cooperative"), the predecessor of Euroclear Bank.

III. Comment Letters

The Commission received no comment letters in response to the notice of filing of the Modification Application.

IV. Discussion

A. Statutory Standards

Under section 17A(b)(1) of the Exchange Act, the Commission may conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of section 17A or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.⁸

In granting the 1998 Exemption Order, the Commission required the Euroclear System to be substantial compliance with section 17A and the rules and regulations.⁹ Therefore, to approve the Modification Application, Euroclear Bank must demonstrate that

the Euroclear System will continue to be in substantial compliance with Section 17A.

B. Evaluation of the Modification Application

Euroclear Bank will operate the Euroclear System in the manner currently operated by MGT-Brussels and employing the same personnel, operating systems, risk management and operating procedures as MGT-Brussels.

1. Safety and Soundness Protections

a. Financial Condition. Section 17A(b)(3) and (F) of the Exchange Act require a clearing agency to be organized and its rules be designed to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard securities and funds in its custody or control or for which it is responsible.¹⁰ The Commission believes that the Euroclear System as operated by Euroclear Bank will substantially satisfy this standard.

Euroclear Bank's senior debt is expected to be rated at least AA by Fitch IBCA Limited and AA by S&P. Euroclear Bank's and Euroclear PLC's annual statements of financial condition will be made available to all shareholders and participants on a timely basis in accordance with local custom. The financial condition of each of the securities intermediaries through which it holds its positions in U.S. government and agency securities is similarly strong. Euroclear Bank's depository bank in the United States is currently Chase Manhattan Bank. Its Tier 1 capital ratio was 8.5% as of March 31, 2000. S&P rated Chase's most recent offering of Class A Notes AAA and its offering of Class B Notes A - .

b. Operational Safeguards. A clearing agency must be organized in a manner that has established effective operational and audit controls while fostering director independence.¹¹

¹⁰ In the 1998 Exemptive Order the Commission relied on MGT-Brussels' representations that its financial condition, operational safeguards, and the extent to which it is already subject to substantial U.S. regulatory oversight because Morgan Guaranty Trust Company of New York, the entity which is ultimately fiscally responsible for MGT-Brussels' operations, was a U.S. bank that was "well capitalized" and "well managed" as those terms are defined under applicable U.S. Federal Banking regulations. 1998 Exemptive Application at 26837 and 26838.

¹¹ Standards Release, *supra* note 9 at 45 FR 41925-26. As described in the 1998 Exemptive Order, the Commission was satisfied that MGT-Brussels' organizational and processing capacity substantially satisfied the Exchange Act requirements because MGT-Brussels' internal organizational structure, including its system of internal and external audit, is reasonably designed to provide the necessary flow of information to

Euroclear Bank's personnel, systems, and procedures will essentially be the same as those of MGT-Brussels.

Approximately 1300 MGT-Brussels personnel, representing all but 11 people in the entire MGT-Brussels workforce currently working at the Euroclear Operations Centre are expected to continue to be employed by the Euroclear Bank.

Further Euroclear Bank will continue the following operational safeguards:

(1) Euroclear Bank will have an audit committee comprised entirely of three to four outside directors. There will be a direct reporting line from the internal audit division to the audit committee as recommended by the Basel Committee.

(2) Euroclear Bank will have a separate audit division that will be responsible for the internal audit process.¹²

(3) PricewaterhouseCoopers has agreed to continue to act as the independent auditors of Euroclear Bank and, as such, will conduct an audit of Euroclear Bank's annual report and perform an annual review of Euroclear Bank's internal controls, policies and procedures in accordance with SAS-70 guidelines.

(4) Euroclear Bank will take over MGT-Brussels' data centers and contingency recovery facilities.

c. Regulatory Oversight. Euroclear Bank will be subject to the comprehensive supervision on a consolidated basis by the BFC. The BFC is primary regulator of credit institutions in Belgium. It is responsible for ensuring that credit institutions satisfy the authorization requirements and operating criteria of Belgium banking laws and regulations. Any credit institution wishing to operate in Belgium must be licensed by the BFC. In addition, any depository bank through which U.S. government and agency securities would be held by Euroclear Bank would similarly be subject to the comprehensive supervision of the Federal Reserve Board or some other U.S. Federal bank regulatory agency.

Morgan Guaranty Trust Company of New York's board of directors.

¹² The internal audit process of Euroclear Bank will, like that of MGT-Brussels, be based on a risk assessment methodology. Review of the participant, product, market and service dimensions of the Euroclear business, including technology infrastructure, will continue to be considered in this risk driven approach. Internal audit procedures will include tests, which are designed to independently assess the strengths and weaknesses of Euroclear Bank's control environment. The audit division will determine the scope of its audits independently of management and will report directly to the Managing Director and General Manager. Periodic reports will also be made to the audit committee.

⁸ 15 U.S.C. 78q-1(b)(1).

⁹ Section 17A(b)(3) of the Exchange Act requires that the Commission make a number of determinations with respect to the clearing agency's organization, capacity, and rules. 15 U.S.C. 78q-1(b)(3). See also Section 19 of the Exchange Act, 15 U.S.C. 78s, and Rule 19b-4, 17 CFR 240.19b-4, setting forth procedural requirements for registration and continuing Commission oversight of clearing agencies and other self-regulatory organizations. The Commission has published the standards applied by its Division of Market Regulation in evaluating applications for clearing agency registration. Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (Standards Release). These requirements are designed to assure the safety and soundness of the clearance and settlement system.

The 1998 Exemption Order provided that the Commission could modify the terms, scope, or conditions of the exemption from registration if the Commission determines that the modification is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

d. Financial Risk Management. The Standards Release states that a clearing agency should establish a clearing fund and promulgate rules to assure an appropriate level of contributions in accordance with, among other things, the risks to which the clearing agency is subject for the protection of clearing agency participants and for the national system for clearance and settlement. Euroclear Bank will not have a clearing fund, but will have a separate risk management department that is responsible for identifying and controlling the risks of operating a multicurrency, cross-border clearance and settlement system.¹³ The risk management department reports to the Chief Financial Officer. Euroclear Bank expects to maintain insurance coverage similar to that of MGT-Brussels with respect to securities at rest or in transit against risk of physical loss or damage, including securities held on the premises of its depositories, as well as fraudulent securities. It is also anticipated that Euroclear Bank will add new insurance coverage for operational errors. Euroclear Bank will take over MGT-Brussels' information technology division, with the same systems and the same personnel as MGT-Brussels, which will be in charge of the development and maintenance of its information technology infrastructure.

2. Fair Representation

Section 17A(b)(3)(C) of the Exchange Act requires that the rules of a clearing agency provide for fair representation of the clearing agency's shareholders or members and participants in the selection of the clearing agency's directors and administration of the clearing agency's affairs. This section contemplates that users of a clearing agency have a significant voice in the direction of the affairs of the clearing agency.¹⁴

¹³ The Euroclear System as operated by MGT-Brussels does not maintain a clearing fund. However, MGT-Brussels employed various financial and operational risk management mechanisms. In the 1998 Exemption Order, the Commission found that MGT-Brussels' rules and procedures and the methods substantially satisfied the requirements of the Exchange Act.

¹⁴ Participants of the Euroclear System operated by MGT-Brussels did not have the right to appoint the directors of Morgan Guaranty Trust Company of New York. However, they could become members of the Cooperative and could use this membership to influence the range of MGT-Brussels services and the level of fees charged by MGT-Brussels. The board of directors of the Cooperative consisted of 23 members that were nominated from Euroclear's participant organizations representing various financial sectors and geographic regions. In the 1998 Exemption Order, the Commission found that the method in which the Cooperative's directors are selected and interact with Euroclear's management adequately addresses the requirements of Fair

The conversion of the Cooperative into Euroclear Bank did not change the participation rights of the Cooperative's 1,248 participant institutions. However, since the change of corporate form, Euroclear Bank participants will not automatically become shareholders. To become a shareholder, a new participant will have to purchase shares from current shareholders in Euroclear Bank or in PLC. Euroclear participants will be represented on the boards of Euroclear Bank and Euroclear PLC. Board members will be nominated from Euroclear participant organizations representing various financial sectors and geographical regions.

E. Participation Standards

Section 17A(b)(3)(B) of the Exchange Act enumerates certain categories of persons that a clearing agency's rules must authorize as potentially eligible for access to clearing agency membership and services. Section 17A(b)(4)(B) of the Exchange Act contemplates that a registered clearing agency have financial responsibility, operational capability, experience, and competency standards that are used to accept, deny, or condition participation of any participant or any category of participants enumerated in section 17A(b)(3)(B), but that these criteria may not be used to unfairly discriminate among applicants or participants. In addition, the Exchange Act recognizes that a clearing agency may discriminate among persons in the admission to or the use of the clearing agency if such discrimination is based on standards of financial responsibility, operational capability, experience, and competence.¹⁵

Euroclear Bank's standards for the admission of participants will be similar to those applied in the past. Consistent with section 17A(b)(4), any broker-dealer, clearing agency, investment company, bank, insurance company or other professional investor that demonstrates it meets certain financial and operational criteria may become a Euroclear participant. The applicant also must demonstrate the ability to maintain these financial and operational standards on an on-going basis. They must demonstrate that they have both the personnel and technological

Representation under section 17A(b)(3)(C) of the Exchange Act.

¹⁵ Because each of the enumerated categories of participants was eligible for Euroclear system membership and because Euroclear has accepted a wide range of participants based upon its standards of financial responsibility, operational capability, experience and competence, the Commission was satisfied that MGT-Brussels' participants standards adequately address the requirements of Section 17A of the Exchange Act.

infrastructure to meet the operational requirements of the Euroclear System. They must show that they expect to derive material benefit from direct access to Euroclear and that they are reputable firms.

IV. Scope of Modification Application

This order modifies the 1998 Exemption Order by replacing MGT-Brussels with Euroclear Bank as operator of the Euroclear System.

1. Volume Limits

The volume limitations in the 1998 Exemption Order are unchanged. Specifically, the average daily volume of eligible U.S. government securities processed through Euroclear Bank as operator of the Euroclear System may not exceed five percent of the total average daily dollar value of the aggregate volume in eligible U.S. government securities.

2. Commission Access to Information

To continue to facilitate the Commission's monitoring of the operation of the Euroclear System's under the 1998 Exemption Order, Euroclear Bank will continue to provide the Commission with quarterly reports, calculated on a twelve-month rolling basis, of (1) the average daily volume of transactions in eligible U.S. government securities for U.S. participants that are subject to the volume limit as described in Section IV.C.2 of the 1998 Exemption Order and (2) the average daily volume of transactions in eligible government securities for all Euroclear System participants, whether or not subject to the volume limit as described in Section IV.C.2 of the 1998 Exemption Order.¹⁶

The Commission will require the execution of a satisfactory Memorandum of Understanding ("MOU") with the BFC, Belgium banking and securities regulatory, to facilitate the provision of information by Euroclear Bank to the Commission. In addition, the Commission will monitor Euroclear Bank through review of information provided by to the BFC by Euroclear Bank and its external auditors.¹⁷

¹⁶ Euroclear Bank also continues to agree to provide information to the Commission as described in the 1998 Exemption Order.

¹⁷ As described in the 1998 Exemption Order, MGT-Brussels is a division of the foreign branch of a U.S. bank and accordingly is subject to the comprehensive supervision and regulation of the Federal Reserve Bank of New York. Because there will be no similar U.S. regulation of Euroclear Bank, the Modification Application is contingent upon the execution of a satisfactory MOU with the BFC to facilitate the provision of information by Euroclear Bank to the Commission.

3. Modification of Order

The Commission may modify by order the terms, scope, or conditions of Euroclear's exemption from registration as a clearing agency granted to Euroclear Bank as operator of the Euroclear System if the Commission determines that such modification is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.¹⁸ Furthermore, the Commission may limit, suspend, or revoke this exemption if the Commission finds that Euroclear Bank has violated or is unable to comply with any of the provisions set forth in this order if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act for the protection of investors and the public interest.

V. Conclusion

The Commission finds that the application by MGT-Brussels and Euroclear Bank to modify the exemption from registration as a clearing agency for Euroclear Bank as operator of the Euroclear System meets the standards and requirements deemed appropriate for such an exemption.

It is Therefore Ordered, pursuant to section 19(a)(1) of the Exchange Act, that the Modification Application to modify the exemption from registration as a clearing agency filed by MGT-Brussels and Euroclear Bank (File No. 601-01) be, and hereby is, approved subject to the conditions contained in this order.

By the Commission.

Jonathan G. Katz,

Secretary.

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¹⁸ The exemption provided by this order is based upon representations by Euroclear Bank, its officers and attorneys, facts contained in Euroclear Bank's Modification Application, and other information known to the Commission regarding the substantive aspects of Euroclear Bank's proposal (collectively, "representations and facts"). In addition, as described in the 1998 Exemption Order, Euroclear Bank, like MGT-Brussels, will be required to file with the Commission amendments to its application for exemption on Form CA-1 if it makes any fundamental change affecting its clearance and settlement business with respect to eligible U.S. government securities. Any changes in the representations or facts as represented to the Commission may require a modification of this order. Responsibility for compliance with all applicable U.S. securities laws rests with Euroclear Bank and its U.S. participants, as appropriate. Euroclear Bank also is advised that this order does not exempt Euroclear Bank from the anti-fraud or anti-manipulation provisions of the Exchange Act or any of the rules promulgated thereunder.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43766; File No. SR-BSE-00-13]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2 and 3 to the Proposed Rule Change by the Boston Stock Exchange, Inc. to Issue Electronic Trading Permits for BEACON Remote Units

December 22, 2000.

I. Introduction

On September 21, 2000, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change that would add rules regarding the issuance of Electronic Trading Permits ("ETPs") to specialists and registered floor clerks of Exchange members for remote specialist operations. The ETPs will allow Exchange members access to the BEACON trading system from remote locations using authorized terminals and related equipment. The proposed rule change was published for comment in the **Federal Register** on October 12, 2000.³ No comments were received on the proposal.

The Exchange filed Amendment No. 2 to the proposed rule on December 4, 2000 and on December 21, 2000, the Exchange filed Amendment No. 3. This order approves the proposed rule change and grants accelerated approval to Amendments No. 2 and 3 of the proposed rule change. The Commission is also soliciting comments on Amendments No. 2 and 3.

II. Description of the Proposal

In August 2000,⁴ the Commission approved the Exchange's remote specialist program that generally permitted Exchange specialists to conduct regular trading activities off the Exchange's trading floor using the BEACON trading system. The Exchange's pending filing supplements its remote specialists filing. As noted by the Exchange, it is proposing to issue

ETPs primarily as a surveillance tool to monitor its remote specialists operations.⁵

The Exchange proposes to add paragraph (o) to Chapter XXXIII, Section 9, *BEACON Remote*, to require and establish guidelines for Electronic Trading Permits ("ETP") for remote specialist operations. Each BEACON Remote terminal will be individually identified and associated with (an) authorized and qualified specialist(s) and/or registered clerk(s). The Exchange will specifically authorize and approve each ETP based on certain qualifications. Each ETP will provide remote access to the BEACON system from remote locations using authorized terminals and related equipment. The ETP is in addition to the membership requirements, and even a specialist who holds a membership will be required to hold an ETP. Each Beacon remote specialist operation still requires a membership in the Exchange notwithstanding the ETP requirements. According to the Exchange, the ETP's are non-transferable permits that will be primarily used for surveillance purposes.⁶

The Exchange states that remote specialists and associated registered clerks with ETPs, like current Exchange floor specialist units, will receive orders, commitments over the Intermarket Trading system ("ITS") and administrative messages through the BEACON system. The existing Exchange systems and rules will support remote specialists as they currently support the physical trading floor. As noted above, the BSE has also adopted specific rules applicable to remote specialist operations. All executions occurring within BEACON, whether conducted on the floor or electronically from remote locations, will be considered to be executions occurring on the Exchange.

The proposal, among other things, requires that all registered specialists and clerks complete a floor-training program, unless waived as discussed below, as well as successfully complete a BSE floor examination and the Series 63 (NASAA Uniform State Law Exam).⁷

⁵ The approval order was conditioned on the Exchange putting into place specific information barrier policies and surveillance policies that are consistent with the Exchange's existing rules and that are acceptable to the Commission's Office of Compliance Inspections and Examinations ("OCIE"). *Id.* at 49620. Nothing herein is intended to change the requirement that the Exchange get its surveillance plan approved by OCIE.

⁶ See Letter from John A. Boese, Assistant Vice President, to Madge Hamilton, Division of Market Regulation, Commission, dated December 1, 2000 ("Amendment No. 2").

⁷ The proposal originally allowed the floor examination to be waived. Amendment No. 3

¹ 15 U.S.C. 78s(b)(1). This notice incorporated typographical changes made by the Exchange in letter Amendment No. 1 filed September 29, 2000.

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 43394 (September 29, 2000), 65 FR 60705.

⁴ Securities Exchange Act Release No. 43127 (August 14, 2000), 65 FR 49617.