

Applicant: 3 First Place, BankCity, Johannesburg, Republic of South Africa; cc: Michael Gruson, Esq., Shearman & Sterling, 599 Lexington Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT:

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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. First National Bank requests an order to permit First National Bank, 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 First National Bank of Botswana Limited ("First Botswana"), First National Bank of Namibia Limited ("First Namibia"), and First Merchant Bank of Zimbabwe Limited ("First Zimbabwe," together the "Foreign Affiliates") located in the countries of Botswana, Namibia, and Zimbabwe, respectively. 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 or 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. First National Bank, a bank organized under the laws of the Republic of South Africa, is regulated in South Africa by the Registrar of Banks of South Africa under the banks Act of 1990. First National Bank is a wholly-owned subsidiary of First National Bank Holdings Limited ("First National Bank Group"), a South African public limited company. First National Bank Group is one of the largest financial service groups in South Africa and is engaged in a broad range of banking and financing services for both individual and corporate customers. As of September 30, 1994, First National Bank had shareholders' equity of approximately \$427,500,000.

3. First Botswana is an 80 percent owned subsidiary of First National Bank Group and is supervised by the Bank of Botswana. First Namibia is a wholly-owned subsidiary of First National Bank Group and is supervised by the Central Bank of Namibia. First Zimbabwe operates under the banking Act of Zimbabwe (Chapter 188, Regulatory Controls). First Zimbabwe is appointed as subcustodian by First National Bank but is neither a branch nor a subsidiary of First National Bank.

Applicant's Legal Analysis

1. First National Bank requests an order under section 6(c) of the Act exempting First National Bank, any U.S. Investment Company, and any custodian for such U.S. Investment Company from section 17(f) of the Act to permit the deposit and custody of Assets with the Foreign Affiliates in their respective countries.

2. 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 a 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 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 or examined by state or federal authority having supervision over banks, and which is not operated for the purposes of evading the Act.

3. The only entities located outside the United States that section 17(f) authorizes to serve as custodians for registered management investment companies are the overseas branches of qualified United States banks. Rule 17f-5 expands the group of entities that are permitted to serve as foreign custodians. Rule 17f-5(c)(2)(i) defines the term "Eligible Foreign Custodian" to include 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 that country's government or an agency thereof and that has shareholders'

equity in excess of \$200,000,000 or its equivalent.

4. First National Bank meets the requirements for an Eligible Foreign Custodian under rule 17f-5 because it has shareholders' equity in excess of \$200,000,000, is organized and existing under the laws of a country other than the United States, and is regulated as a bank under the laws of South Africa.

5. The Foreign Affiliates also satisfy the requirements of rule 17f-5 insofar as each is a banking institution or trust company incorporated or organized under the laws of a country other than the United States and is regulated as such by such country's government or an agency thereof. The Foreign Affiliates, however, do not meet the minimum shareholders' equity requirement of the rule. Accordingly, the Foreign Affiliates are not Eligible Foreign Custodians under the rule and, absent exemptive relief, could not serve as custodians for the Assets of U.S. Investment Companies.

6. Section 6(c) provides, in relevant part, that the SEC may 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. First National Bank 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 the Foreign Affiliates satisfy the requirements of rule 17f-5 in all respects other than the Foreign Affiliate's level of shareholders' equity.

2. First National Bank will deposit the Assets in Botswana, Namibia, or Zimbabwe, as the case may be, with First Botswana, First Namibia, or First Zimbabwe, respectively only in accordance with an agreement (the "Agreement") required to remain in effect at all times during which the Foreign Affiliates fail to satisfy the requirements of rule 17f-5. Each Agreement will be a three-party agreement among First National Bank, the Foreign Affiliate, and the U.S. Investment Group (or its custodian) pursuant to which First National Bank will undertake to provide specified custody or subcustody services for a U.S. Investment Company or its custodian, and will delegate to the Foreign Affiliate such of the duties and