

MEMO# 1231

June 21, 1989

NO-ACTION LETTER PERMITTING A DUTCH DEPOSITORY AND CASHIER INSTITUTION TO ACT AS AN "ELIGIBLE FOREIGN CUSTODIAN"

June 21, 1989 TO: SEC RULES COMMITTEE NO. 29-89 INTERNATIONAL FUNDS TASK FORCE
NO. 2-89 RE: NO-ACTION LETTER PERMITTING A DUTCH DEPOSITORY AND CASHIER
INSTITUTION TO ACT AS AN "ELIGIBLE FOREIGN CUSTODIAN"

Attached is a no-action letter recently issued by the SEC staff permitting Kas-Associatie ("KAS"), a Dutch depository and cashier institution, to act as an "eligible foreign custodian" under Rule 17f-5 of the Investment Company Act of 1940. (Kas- Associatie N.V., pub. avail. May 15, 1989.) KAS represented that it substantially meets the criterion for an eligible foreign custodian in subparagraph (c)(2)(iii) of Rule 17f-5 in that it operates the central system for the handling of securities transactions in the Netherlands. As noted in the response to the no-action request, the SEC staff takes the position that an investment company may maintain its assets in the custody of any securities depository or clearing agency that is part of a national system that is at least as integrated as that of the Federal Republic of Germany ("FRG"). See Investment Company Institute (pub. avail. Oct. 29, 1987). Finding that KAS satisfied the criterion outlined in the ICI letter, the staff concluded that KAS may act as an "eligible foreign custodian" under Rule 17f-5(c)(2)(iii). Since KAS satisfied the standards in subparagraph (c)(2)(iii) of Rule 17f-5, the staff noted that it is not required to meet the other conditions in subparagraphs (c)(2)(i) or (c)(2)(iv). However, because of the significant degree of interest in this issue, the staff elected in its response to express its views on those additional conditions. Specifically, the staff noted that it is unable to grant no-action requests with respect to banks not meeting the shareholders' equity requirement of \$200 million in subparagraph (c)(2)(i) and that such banks must file applications for exemptive relief. In addition, the staff stated that to qualify as a transnational - 2 - system in order to meet the definition of eligible foreign custodian under subparagraph (c)(2)(iv) of the Rule, an entity may not solely process transactions in securities of issuers of one country. Amy B. Rosenblum Assistant General Counsel Attachment