

MEMO# 4752

May 3, 1993

SEC STAFF NO-ACTION LETTERS REGARDING CUSTODY OF FUND ASSETS IN CHINA

- 1 - May 3, 1993 TO: INTERNATIONAL MEMBERS NO. 12-93 SEC RULES COMMITTEE NO. 42-93 RE: SEC STAFF NO-ACTION LETTERS REGARDING CUSTODY OF FUND ASSETS IN CHINA _____ The SEC's Division of Investment Management has issued two no-action letters concerning the ability of a U.S. fund to maintain custody of Chinese securities in compliance with Section 17(f) of the Investment Company Act of 1940 and rule 17f-5. In *Jardine Fleming China Region Fund, Inc.* (pub. avail. Apr. 26, 1993) and *Custody of B Shares Trading on the Shenzhen and Shanghai Securities Exchanges* (pub. avail. Apr. 26, 1993), the staff stated that it would not recommend enforcement action to the Commission if certain U.S. funds maintain custody of "B shares" in the book-entry systems established by the Shenzhen and Shanghai stock exchanges. In December, 1991, companies in the Peoples' Republic of China were authorized to issue B shares, a special class of securities that can be purchased only by foreign investors. B shares are traded on the Shenzhen and Shanghai stock exchanges. B shares are uncertificated; ownership is reflected by book-entry. In Shenzhen, the book-entry system is operated by three Shenzhen banks on behalf of the Shenzhen Securities Registrars Co., Ltd. In Shanghai, the system is operated by the exchange itself. In *Jardine*, the staff stated that a fund, through its global custodian, could hold B shares listed on the Shenzhen exchange on the books of the three Shenzhen banks that operate the book-entry system in Shenzhen. The staff's position was based in part on the fact that 1) each of the three banks was either a foreign branch of a U.S. bank with shareholders' equity in excess of \$100 million or a branch of a foreign bank with shareholders' equity in excess of \$200 million, and 2) each of the three banks acts as the sole registration institution for a particular issue of B shares, maintains a computerized book-entry system, and issues a share registration receipt with respect to each trade. - 2 - The staff also stated that the fund could, through its global custodian, hold B shares listed on the Shanghai exchange in an account in the book-entry system of the Shanghai exchange. The staff's position was based in part on representations that the Shanghai exchange is the central book-entry depository and sole clearing agent, transfer agent and registrar of all B shares traded on that exchange. Custody of B Shares involved a no-action request from ten financial institutions that act as custodians or subcustodians for U.S.-registered funds. The staff stated that any U.S.-registered fund could maintain custody of B shares in the manner described in *Jardine*, through the facilities of one or more of the ten named financial institutions. Copies of the letters are attached. Angela C. Goelzer Associate Counsel - International Attachment

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