

PUBLIC

MAY 19 1993

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 92-728-CC
Malaysian Central
Depository Sdn. Bhd.
File No. 132-3

Your letter dated December 10, 1992, as supplemented by your letters dated January 25, 1993, March 19, 1993, April 13, 1993, and April 28, 1993, and supporting materials, requests our assurance that the Malaysian Central Depository Sdn. Bhd. ("MCD") qualifies as an "eligible foreign custodian" pursuant to subparagraph (c)(2)(iii) of Rule 17f-5 under the Investment Company Act of 1940 (the "Act") and that we would not recommend enforcement action to the Commission if the MCD serves as an eligible foreign custodian for securities listed on the Kuala Lumpur Stock Exchange ("KLSE"). 1/

The MCD is a subsidiary of the KLSE, the only securities exchange in Malaysia. 2/ There is no over-the-counter market in Malaysia. The MCD began operating the Central Depository System ("CDS"), an electronic book-entry system, on March 2, 1993. You represent that the CDS is the only central depository system for securities listed on the KLSE. 3/ You further represent that the

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- 1/ Section 17(f) of the Act provides that every registered management investment company shall maintain its securities and similar investments in the custody of (1) a bank meeting certain requirements, (2) a member of a national securities exchange, (3) the company itself, in accordance with Commission rules, or (4) a system for the central handling of securities pursuant to which all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of such securities, in accordance with Commission rules. Rule 17f-5 provides an exemption from Section 17(f) permitting a registered management investment company to deposit foreign securities in the custody of an "eligible foreign custodian." Rule 17f-5(c)(2)(iii) defines the term "eligible foreign custodian" to include "a securities depository or clearing agency, incorporated or organized under the laws of a country other than the United States, which operates the central system for handling of securities or equivalent book-entries in that country."
- 2/ You represent that the KLSE owns 55% of the voting stock in the MCD, the Association of Banks Malaysia owns 25%, and a government foundation owns 20%.
- 3/ You note that trades in securities that are not part of the CDS are settled through physical delivery through the Securities Clearing Automated Network System ("SCANS"). The SCANS is 99% owned by the KLSE. The SCANS collects all of

(continued...)

CDS is the only central system for handling book-entry transfers of securities in Malaysia, with the exception of certain government bonds and mortgage securities that are not listed on the KLSE and are transferred by a book-entry system operated by Bank Negara Malaysia (Malaysia's central bank). 4/

You represent that investment company portfolio securities in the MCD typically will be held in the custody of a bank that is an "authorized direct member" of the MCD. 5/ Authorized direct members have direct access to the CDS through their own MCD accounts as well as through MCD accounts established for their wholly-owned subsidiaries and nominee companies. Generally, a bank will establish an MCD account in the name of a wholly-owned, locally incorporated nominee company through which the bank's foreign clients' assets, including those of a registered investment company, will be held and through which their trades will be settled.

The KLSE prescribes the securities to be deposited with the MCD. 6/ Generally, a prescribed security cannot be traded on the KLSE until the investor deposits the scrip representing it, along with the instrument of transfer, in an MCD account or with a

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- 3/ (...continued)
the physical scrips of securities to be traded and nets the trades per broker at the end of each trading day. The SCANS is not a depository.
- 4/ You represent that the Bank Negara system permits scripless trading in certain federal government securities and mortgage securities between participating banks and between those banks and the central bank, that none of those securities is listed on the KLSE, and that there will be no overlap between the securities handled by the MCD and the securities handled by Bank Negara.
- 5/ The MCD may appoint banks and other financial institutions as authorized direct members. See Rules of the Malaysian Central Depository Sdn. Bhd., Part III, Ch. 14 and Part IV, Ch. 33. Of course, because such a bank would be deemed to have custody of the investment company's assets, it too would have to be an eligible foreign custodian within the meaning of Rule 17f-5(c).
- 6/ You state that the MCD is implementing scripless trading gradually. The KLSE will prescribe approximately ten to twelve securities per month to be deposited with the MCD, beginning with securities of smaller companies. You represent that within three to five years, all securities listed on the KLSE will be traded through the MCD book-entry system.

broker who is an "authorized depository agent" of the MCD. 7/ When a security owned by a registered investment company is prescribed, the authorized direct member that has custody of the security will give the scrip and the instrument of transfer to the MCD, which will lodge the scrip and the instrument of transfer with the issuer. 8/ After validating the scrip and certifying the instrument of transfer, the issuer will cancel the scrip and issue jumbo certificates in the name of the Malaysian Central Depository Nominees Sdn. Bhd. ("MCD Nominees"), a wholly-owned subsidiary of the MCD, which will act as custodian of the deposited securities and bare trustee for the depositors. Thus, the original scrip will be removed from circulation and cancelled, and the jumbo certificates on deposit with the MCD will become the only remaining physical representations of traded securities. The MCD Nominees will hold physical custody of the jumbo certificates and treat them as fungible.

All transactions in deposited securities will be executed by the CDS, which will treat all securities of a given class or series of an issuer as fungible. Physical transfer of certificates for those securities will be unnecessary. 9/ The CDS will facilitate and record all transactions in connection with prescribed securities, including transfers of securities between the MCD accounts, public offerings, bonus issues, rights offerings, options, share splits, consolidations, and capital restructurings. The CDS also will permit investors to pledge or otherwise encumber their securities.

Your letters also describe the Malaysian government's regulation of the MCD. The MCD is regulated by the Securities Commission, the Ministry of Finance, and the Registrar of

7/ Under Malaysia's Securities Industry (Central Depositories) Act 1991, an "authorized depository agent" is a person appointed by a central depository to act as its agent for certain purposes, including facilitating the deposit of securities into the CDS. See Sections 2(1) and 13 of the Securities Industry (Central Depositories) Act 1991; see also Rules of the Malaysian Central Depository Sdn. Bhd., Part II, Ch. 2.

8/ We understand that the MCD will provide an official receipt for the scrip to the authorized direct member, which will break down the receipt by customer and provide individual receipts to each customer. The MCD each day will send to the issuer a list of scrips lodged with the issuer and the issuer will acknowledge receipt of those scrips. Telephone conversation with Steven A. Hirsch, counsel to MCD, on May 12, 1993.

9/ Investors may request and receive certificates for a fee.

Companies. The MCD was incorporated in accordance with the Companies Act of 1965 and received permission from the Minister of Finance to operate the depository pursuant to the Securities Industry (Central Depositories) Act 1991. As described in more detail in your letter dated December 10, 1992, the Minister of Finance has broad regulatory authority over the MCD, including the power to approve or disapprove amendments to the MCD's rules and to adopt additional regulations regarding the operation of the central depository. The Registrar of Companies is empowered to inspect the books and records of the MCD, the MCD Nominees, and others in connection with the operation of the MCD system, to investigate violations of the Central Depositories Act, and to levy fines against, or prosecute, violators. As further described in your letter dated March 19, 1993, the Securities Commission is empowered to supervise and monitor the MCD, to adopt regulations, to investigate violations of the Securities Industry (Central Depositories) Act 1991 and other laws, 10/ and to inspect records and gather evidence with respect to violations of those laws.

On the basis of the facts and representations contained in your letters and supporting documents, particularly your representations that (1) the MCD is a securities depository and clearing agency that will, when fully implemented, operate the only central system for the handling of securities or equivalent book-entries listed on the KLSE, (2) there will be no overlap between the securities handled by the MCD and the government and mortgage securities handled by Bank Negara, (3) all securities listed or proposed for listing on the KLSE will be prescribed for deposit with the MCD within three to five years from the date the MCD begins to implement the CDS, and (4) the MCD (including the CDS) is subject to the supervisory and regulatory control of the Malaysian government, we would not recommend that the Commission take any enforcement action under Section 17(f) of the Act, or Rule 17f-5 thereunder, if the MCD acts as an eligible foreign custodian as defined in Rule 17f-5(c)(2)(iii), for securities listed on the KLSE. You should note that any different facts or representations might require a different conclusion. Moreover, this response expresses the Division's position on enforcement action only and does not express any legal conclusions on the questions presented.



Richard F. Jackson
Attorney

10/ The Securities Commission also has the authority to investigate violations of the Securities Commission Act 1993, the Securities Industry Act 1983, and the Futures Industry Act 1993.



MALAYSIAN CENTRAL DEPOSITORY SDN BHD

(A Subsidiary of KLSE)

Lot 2.4, 2nd Floor, Bangunan BNH, Off Jalan Semantan, Damansara Heights, 50490 Kuala Lumpur.
Telephone: 03-2530855 (General Line), 03-2549222 (Operations) Fax: 03-2532829 (General Line), 03-2562964 (Operations)

ICA-40/Rule 17f-5(c)(2)(iii)

10 December 1992

Thomas S. Harman, Esq.
Chief Counsel
Division of Investment Management
United States Securities and
Exchange Commission
450 Fifth Street, N.W.
Judiciary Plaza
Washington, D.C. 20549
United States of America

Act	ICA
Section	
Rule	17f-5(c)(2)(iii)
Public	
Availability	5/15/92

Dear Mr. Harman:

I am an American attorney acting on behalf of the Malaysian Central Depository Sdn. Bhd. ("MCD"), a subsidiary of the Kuala Lumpur Stock Exchange ("KLSE"). The MCD requests your assurance that it qualifies as an eligible foreign custodian pursuant to SEC Rule 17f-5(c)(2)(iii), 17 C.F.R. 270.17f-5(c)(2)(iii), promulgated under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq. ("the 1940 Act"), and that the Division of Investment Management ("the Division") will not recommend that the Commission take any enforcement action under Section 17(f) of the 1940 Act, 15 U.S.C. § 80a-17(f), or Rule 17f-5 thereunder, if the MCD acts as an eligible foreign custodian for securities listed on the KLSE.

The KLSE is Malaysia's only securities exchange, and there is no over-the-counter market. When fully operational, the MCD will be both a clearing agency and the only central securities depository for securities listed on the KLSE. As such, the MCD will operate "the" central system for handling of book-entry securities transfers in Malaysia (except for certain Malaysian federal government bonds and mortgage securities transferred by a book-entry system administered by Bank Negara Malaysia, the Malaysian central bank).

We believe that this request is factually and legally indistinguishable from that of the Mexican central depository, S.D. Indeval, S.A. de C.V. ("Indeval").¹ In that case, the

¹ See No-Action Request of S.D. Indeval, S.A. de C.V. (Mexico), Response of the Office of Chief Counsel, Division of Investment Management, Ref. No. 90-448-CC (Oct. 19, 1990) ("Indeval

Division found that Indeval operated "the" central system for handling of securities or equivalent book entries in Mexico, despite the fact that the Mexican central bank operated a book-entry system for transferring certain Mexican government securities.

Background

The KLSE

The KLSE is the only stock exchange in Malaysia, one of the fastest-growing economies in the world with annual GDP growth rates of nearly 9% over the last five years.² The U.S.-based International Finance Corporation has rated the KLSE as one of the world's top five emerging securities markets based on market capitalization, which has climbed steadily from US \$ 52.7 billion at year-end 1990 to US \$ 79.8 billion at the end of August 1992.³ From having only four brokers at its inception in 1960, the KLSE by year-end 1991 boasted 54 member brokers and 324 listed companies with a nominal paid-up capital of almost US \$ 17 billion.⁴

The KLSE operates a "Main Board" for companies with a minimum capitalization of US \$ 8 million and a "Second Board" for companies with a minimum capitalization of US \$ 2 million.⁵ Matching of trades was computerized on May 15, 1989.⁶ Now, with the advent of a scripless trading system designed to boost trading volume and eliminate the problems of lost scrips, forgeries or registration delays, the KLSE is poised to become an even more attractive capital market for U.S. investment companies.

No-Action Letter").

² "Country Outlook: Malaysia," Bank of America World Information Services (May 1992), at p.1.

³ Ministry of Finance Malaysia, Economic Report 1992/93 (1992) at p. 265.

⁴ Id. at pp. 264-65.

⁵ Id. at p. 263.

⁶ Id.

The MCD and MCD Nominees

The MCD is a private company incorporated under the Companies Act 1965 (Act 125) and regulated by the Malaysian government⁷ pursuant to the Securities Industry (Central Depositories) Act, 1991 (Act 453) ("the Central Depositories Act"), annexed hereto as Exhibit A.⁸ The KLSE is the MCD's controlling shareholder, owning 55% of its voting stock. The Association of Banks Malaysia owns another 25% and a government foundation the remaining 20%.

Malaysian Central Depository Nominees Sdn. Bhd. ("MCD Nominees") is a wholly-owned subsidiary of the MCD which acts as custodian for deposited securities and as bare trustee for the depositors.⁹

At present, the MCD's activities are limited to the establishment of securities accounts (hereinafter "MCD accounts") with depositors. In mid-February 1993, the MCD will start to operate the Central Depository System ("CDS"), a book-entry system for the transfer of "prescribed securities" -- i.e., securities listed or proposed to be listed for quotation on the Official List of the KLSE.¹⁰

With respect to such "prescribed" securities, the primary purposes of the CDS will be (1) to immobilize and take custody of scrips, and (2) to provide book-entry clearance and settlement of trades.

The CDS will operate as follows: The KLSE will prescribe that a security which is listed or proposed to be listed on the Exchange be deposited with the MCD.¹¹ The prescribed security cannot be traded on the KLSE until the investor deposits the scrip representing it, along with the instrument of transfer, in an MCD account or with a stockbroker who is an "authorized depository

⁷ See "Legal Analysis," infra.

⁸ The Central Depositories Act became effective by publication in the Gazette on July 15, 1992.

⁹ See Rules of the Malaysian Central Depository Sdn. Bhd. ("MCD Rules") 6.12 & Appendix I, "The Memorandum of Association of the Malaysian Central Depository Nominees Sdn. Bhd."

¹⁰ Central Depositories Act § 14; MCD Rules 6.01, 6.02, 1.01 (defining "prescribed securities") & 27.01.

¹¹ Central Depositories Act § 14; MCD Rules 18.01 & 27.01.

agent" of the MCD.¹² The MCD or its authorized depository agent then will lodge the scrip and the instrument with the issuer.¹³

Within seven market days, the issuer will (where appropriate) validate the scrip by confirming that it is genuine and capable of being transferred to MCD Nominees.¹⁴ The issuer also will certify the instrument of transfer as having been lodged for registration in the name of MCD Nominees. The issuer then will cancel the physical scrip and issue to the MCD appropriate replacement certificates,¹⁵ known as "jumbo certificates," representing large numbers of deposited securities of a given class or series of an issuer.¹⁶ Using the CDS computers, the MCD, acting on the issuer's instructions, will designate the validated securities in the depositor's MCD account as being "free," i.e., capable of being traded.¹⁷

Thus, original scrip will be taken out of circulation and cancelled, and the jumbo certificates on deposit with the MCD will become the only remaining physical representations of traded securities, which thenceforth will be treated as fungible.¹⁸ It is these jumbo certificates that will remain in the physical custody of the MCD.

Subsequently, all transactions in connection with the securities will be effected by CDS, an electronic book-entry system which treats as fungible all securities of a given class or series of an issuer, rendering physical transfer of the deposited scrips

¹² Central Depositories Act § 17(1). The MCD derives its statutory power to appoint authorized depository agents from Central Depositories Act § 13, and the procedures for appointment and suspension of such agents are set forth in MCD Rules Chapters 2.0 & 3.0. The MCD also may appoint "authorized direct members," large institutional investors who do not have to go through an authorized depository agent to effect their trades in the CDS. MCD Rules Chapter 14.0.

¹³ Central Depositories Act § 18(1).

¹⁴ Id. § 18(3) & (4); MCD Rule 18.03.

¹⁵ Central Depositories Act § 18(4) & (7).

¹⁶ Id. §§ 11 (defining "jumbo certificates"), 20 & 63(p).

¹⁷ MCD Rule 18.03(2).

¹⁸ Should the investor wish to withdraw the scrip, the MCD will issue him new scrip for a fee. MCD Rules Part VII.

unnecessary.¹⁹

In a typical KLSE trade between different depositors, the authorized depository agent will submit to the MCD computerized instructions detailing the trade in question, including the identity and quantity of securities and the account number of the buyer.²⁰ Within five market days of the sale date, and after the computer system confirms that the seller's MCD account actually contains the securities being transferred,²¹ the securities will be transferred electronically to the buyer's MCD account and "earmarked" as being "under suspense" pending confirmation of payment from the buyer's broker.²² After seven market days, the MCD will assume such payment has been made unless it receives a computerized message to the contrary.²³ At that time, the MCD will redesignate the transferred securities electronically as "free securities" in the buyer's MCD account.²⁴

The CDS will facilitate and record all transactions in connection with prescribed securities, including: on-market and off-market²⁵ transfers between MCD accounts of the same²⁶ and different²⁷ depositors; public offers²⁸; bonus issues, rights issues and other rights or options²⁹; and share splits, consolidations and capital restructurings.³⁰ The system also will provide Pledged Securities Accounts for securities which have been pledged, charged, mortgaged or otherwise encumbered by

¹⁹ Central Depositories Act § 29; MCD Rule 10.05(1).

²⁰ See generally id. 10.05.

²¹ If the account contains insufficient securities to effect the transfer, automatic buying-in will occur. MCD Rules Chapter 11.0.

²² Id. 10.05(3).

²³ Id. 10.06(1).

²⁴ Id.

²⁵ Central Depositories Act § 31.

²⁶ MCD Rules Chapter 8.0.

²⁷ Id. Chapter 9.0.

²⁸ Id. Chapter 20.0.

²⁹ Id. Chapter 21.0.

³⁰ Id. Chapter 22.0.

any depositor in favor of the account holder.³¹

Cash settlement between the KLSE and member brokers acting as authorized depository agents will be done through the KLSE in accordance with its rules.³²

Bank Negara Malaysia³³

Bank Negara Malaysia ("Bank Negara") is the Malaysian Central Bank. It operates a system known as Sistem Pemindahan Elektronik untuk Dana dan Sekuriti ("SPEEDS") for book-entry trading and funds transfer between member banks in connection with certain non-prescribed Malaysian federal government securities and mortgage securities which are not traded on the KLSE.

SPEEDS has two components:

(1) a Scripless Securities Trading System ("SSTS") to effect and record the trading of Malaysian Government papers and Cagamas (mortgage) bonds between participating banks, or between those banks and Bank Negara, as well as the associated settlement of payments; and

(2) an Inter Bank Funds Transfer System ("IFTS") to effect and record transfers of funds between Bank Negara and the participating banks, or among the participating banks.

SPEEDS governs trading only of a limited group of government securities: Malaysian Government Securities; Cagamas bonds, Malaysian Government Treasury Bills, Government Investment Certificates and Bank Negara Malaysia Certificates (collectively, "SSTS Securities"). None of the SSTS Securities are listed on the KLSE. Thus, there is no overlap at all between the securities handled by the MCD and those handled by Bank Negara.

³¹ Central Depositories Act § 40; MCD Rules 26.08 & 33.04.

³² MCD Rule 10.11.

³³ The source of the information in this section is the Code of Conduct and Market Practices for Scripless Trading in the Malaysian Securities Market (Bank Negara Malaysia, undated), at pp. 1-2.

Legal Analysis

The MCD Is an Eligible Foreign Custodian

Rule 17f-5(a) provides that a U.S. investment company which is registered under the 1940 Act "may place and maintain in the care of an *eligible foreign custodian* the company's foreign securities, cash and cash equivalents in amounts reasonably necessary to effect the company's foreign securities transactions[.]"³⁴ Rule 17f-5(c)(2)(iii) defines "eligible foreign custodian" as

[a] securities depository or clearing agency, incorporated or organized under the laws of a country other than the United States, which operates the central system for handling of securities or equivalent book-entries in that country[.]

We will show that the MCD meets all of the requirements of this definition as it has been interpreted by the Division in previous no-action requests.

The MCD is a Securities Depository and Clearing Agency. Although the 1940 Act does not define the term, the MCD clearly is a "securities depository" within the ordinary meaning of those words. As discussed above, no security can be traded on the KLSE unless the "jumbo certificate" which constitutes the sole surviving physical representation of that security has first been deposited with the MCD for safekeeping.

The MCD also is a "clearing agency" because it operates as a custodian for a book-entry system for the central handling of securities in which all deposited securities of a particular class or series of an issuer are treated as fungible and may be transferred without physical delivery of the scrips. As such, it falls squarely within the definition of "clearing agency" which the Division has adopted for these purposes.³⁵

³⁴ (Emphasis added).

³⁵ That definition, contained in Section 3(a)(23)(A) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(23)(A), defines "clearing agency" as

any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for the comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also

The MCD is Incorporated and Organized under the Laws of Malaysia.

The MCD is incorporated under the Companies Act 1965 and permission to operate the depository was granted by the Minister of Finance pursuant to the Central Depositories Act §§ 3-5.

The Malaysian government extensively regulates the MCD.³⁶ The Central Depositories Act, §§ 3-7, 36 and 63, confers vast regulatory powers upon the Minister of Finance. Those sections permit the Minister to, inter alia:

- Approve or deny applications to establish a central depository³⁷ (a factor the Division appeared to consider relevant in the Indeval case);³⁸
- Approve or disapprove any amendments to the MCD's Rules;³⁹
- Dictate whether and under what circumstances the MCD may act as principal in connection with

means any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.

³⁶ We note that, in processing recent no-action applications under Rule 17f-5, the Division has found it "useful to consider whether and to what extent a foreign government operates or regulates the foreign securities depository or clearing agency[.]" Hong Kong Securities Clearing Co. Ltd. No-Action Request, Response of the Office of Chief Counsel, Division of Investment Management, Ref. No. 92-170-CC (Sept. 8, 1992), at p. 4 n.7; Reserve Bank of Australia No-Action Request, Response of the Office of Chief Counsel, Division of Investment Management, Ref. No. 92-47-CC (Sept. 2, 1992), at p. 4 n.10.

³⁷ Central Depositories Act §§ 3-5.

³⁸ Indeval No-Action Letter at pp. 1-2.

³⁹ Central Depositories Act § 7.

transactions regarding a deposited security;⁴⁰

- Make "such regulations as may be necessary or expedient for carrying out or achieving the objects and purposes of" the Central Depositories Act,⁴¹ including, without limitation, regulations
- (a) prescribing forms for the purposes of the Central Depository Act;
 - (b) prescribing fees to be paid in respect of any matter or thing required for purposes of the Act;
 - (c) prescribing the manner and form in which MCD accounts are to be opened, maintained or closed by the MCD and its authorized depository agents, including the manner of making entries in such accounts;
 - (d) prescribing the circumstances when a deposited security in a securities account may be specified by the MCD as being in suspense;
 - (e) regulating the appointment of authorized depository agents and nominee companies and the imposition of duties, obligations and sanctions on such agents and companies;
 - (f) regulating the setting-up and operation of the computer system including computer terminals which form part of such system;
 - (g) regulating the manner in which deposited securities shall be kept for safe custody by the MCD;
 - (h) regulating all matters relating to the deposit of unlisted securities with the MCD and its authorized depository

⁴⁰ Id. § 36.

⁴¹ Id. § 63.

agents;⁴²

- (i) prescribing other purposes for which the MCD may appoint authorized depository agents;
- (j) prescribing the types of bodies corporate which may be appointed to act as authorized depository agents;
- (k) regulating the activities of, and the standards to be maintained by, the MCD and its authorized depository agents;
- (l) prescribing the time and manner in which statements of account shall be issued by the MCD to its depositors;
- (m) prescribing the manner in which records shall be kept and maintained by the MCD, its authorized depository agents and MCD Nominees under the Act;
- (n) prescribing the purposes for which, and the manner in which, the Registrar may conduct a stock count of scrips held in custody by or in the name of the MCD or MCD Nominees;
- (o) prescribing all matters relating to the maintenance of insurances, and the establishment and maintenance of compensation funds, by the MCD, MCD Nominees and authorized depository agents for the purpose of settling claims by depositors against them;
- (p) matters relating to the issuance of jumbo certificates;
- (q) prescribing such other persons who may have access to the computer system of the MCD;
- (r) prescribing the extent to which any user or class of users may have access to the

⁴² Notwithstanding the Minister's power to permit the deposit of unlisted securities, the MCD's rules do not permit such deposits to be made (MCD Rule 6.02) and there is no intention to alter that policy.

computer system of the MCD;

- (s) matters relating to linkages between the MCD and other securities depositories established outside Malaysia; and
- (t) all matters or things which are required by the Act or permitted to be prescribed or which are necessary or expedient to give effect to the Act.

Sections 10, 28, 53-54, 56-57 and 60-61 confer various regulatory powers upon Malaysia's Registrar of Companies. Those sections

- require the MCD, MCD Nominees (and numerous other persons) to produce their depository-related or statutorily-required business records to the Registrar upon demand;⁴³
- require the MCD, its authorized depository agent, or any depositor, to furnish information about the parties and accounts involved in specific securities transactions;⁴⁴
- require the MCD to provide all reasonable assistance to the Registrar in performing his regulatory duties, including giving him full access to its premises;⁴⁵
- require the MCD to submit a quarterly inventory of deposited stock scrips, which the Registrar may audit independently if he finds the report unsatisfactory;⁴⁶
- authorize the Registrar, to investigate "as he thinks expedient" any person suspected of violating or preparing to violate the Act;⁴⁷
- authorize the Registrar, where he suspects that the Act is being violated, to enter and search the premises of the MCD or any user and to seize any

⁴³ Id. § 53.

⁴⁴ Id. § 56.

⁴⁵ Id. § 10.

⁴⁶ Id. § 28.

⁴⁷ Id. § 57.

evidence of such violation;⁴⁸

- demand payment of fines in lieu of instituting a prosecution under the Act;⁴⁹ and
- criminally prosecute violators of the Act.⁵⁰

Numerous sections of the Central Depositories Act create criminal penalties for violations of the Act or for impeding the Minister and the Registrar in their efforts to enforce compliance with it. Section 58 confers jurisdiction on the High Court to enter various orders in connection with alleged violations of the Act.

The MCD Operates "the" Central System for the Handling of Securities or Equivalent Book-Entries in Malaysia. With the exception of the Bank Negara book-entry system described above, the MCD operates the only central system for the handling of securities or equivalent book-entries in Malaysia. It handles all the securities listed on the KLSE, which is the only stock exchange in Malaysia. There is no over-the-counter market.

The existence of the Bank Negara system presents no obstacle to granting the MCD's no-action request. In the *Indeval* case, the Division determined on the basis of the facts presented to it that *Indeval*, the Mexican central depository, was "the" central system for the handling of book-entries in Mexico. In that case, as here,

- *Indeval* recorded transfers of securities through a book-entry system;
- all securities traded on the nation's only stock exchange were deposited with *Indeval*;
- no over-the-counter market existed;
- *Indeval* handled all publicly-traded securities in Mexico (with the exception of certain government securities ("CETES") cleared by a book-entry system operated by the Mexican central bank);
- *Indeval* kept all deposited securities in its own vaults.

⁴⁸ Id. § 54.

⁴⁹ Id. § 60.

⁵⁰ Id. § 61.

MALAYSIAN CENTRAL DEPOSITORY SDN BHD

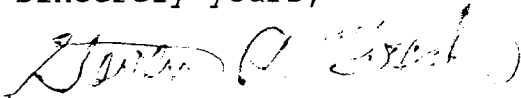
The final paragraph of the Division's no-action letter stated that the Division had placed particular reliance upon Indeval's representation that "Indeval is both a clearing agency and the only central securities depository for securities of Mexican issuers and, as such, operates the central system [for handling of securities or equivalent book-entries in Mexico] (except for certain Mexican Government securities)".⁵¹ That representation equally describes the instant case. Accordingly, we believe that the MCD is an eligible foreign custodian under Rule 17f-5(c)(2)(iii).

If you have any questions regarding this request, please contact me at the following telephone numbers (bearing in mind that Malaysia is twelve hours ahead of Washington).

Home: 60-3-756-9750
Office: 60-3-757-1066 or -1236; extension 231
Office Fax: 60-3-757-3239

Thank you for your patient consideration of this request.

Sincerely yours,



Steven A. Hirsch
Member of the Bars of
New York, Washington, D.C.
and Connecticut

⁵¹ Indeval No-Action Letter at p. 2 (footnotes omitted).