

ACT ICA

SECTION 10F

RULE 17f-5

PUBLIC

AVAILABILITY 1/21/98

**PUBLIC**

January 21, 1998

Our Ref. No. 97-597-CC

Stock Holding Corporation  
of India Limited

File No. 132-3

RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF INVESTMENT MANAGEMENT

Your letters dated December 19, 1997, January 8, 1998, and January 13, 1998 request assurance that we would not recommend enforcement action to the Commission under Section 17(f) of the Investment Company Act of 1940 ("Investment Company Act") and Rule 17f-5 thereunder if U.S.-registered investment companies deem the Stock Holding Corporation of India Limited ("SHCIL") to be an "eligible foreign custodian." 1/

**BACKGROUND**

You state that SHCIL, which provides securities custodial services to institutional investors in India, proposes to provide such services to U.S.-registered investment companies that maintain custody of their assets in India. You represent that SHCIL is licensed and registered as a custodian with, and is regulated as such by, the Securities and Exchange Board of India ("SEBI"). 2/ You also represent that SHCIL currently provides approximately 70% of the securities custodial services in India, and that SHCIL is the prime custodian for Indian institutional investors.

You state that SHCIL also acts as a custodial depository participant ("Participant") with the National Securities Depository Limited ("NSDL"), a central depository in India. 3/ You state that investors can participate in this depository system only through a Participant. You represent that SHCIL, as a Participant, registers securities transactions in

---

1/ Section 17(f) sets forth the custodial requirements for registered management investment companies. Section 17(f) permits four types of custodians: U.S. banks (and their foreign branches) and, subject to the Commission's rules, members of U.S. securities exchanges, U.S. securities depositories and investment companies themselves. Rule 17f-5 permits a registered investment company to maintain assets outside of the United States with certain categories of "eligible foreign custodians." See Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 22658 (May 12, 1997).

2/ You represent that SEBI meets the definition of a "foreign financial regulatory authority" under Section 2(a)(50) of the Investment Company Act.

3/ You state that NSDL was established to allow scripless trading through electronic depository facilities. You represent that after January 1998, all institutional investors in India are required to begin a transition to the holding of securities in dematerialized form. You also represent that, as of the end of 1997, SHCIL has acted as a Participant in approximately 80% of the transactions involving dematerialized securities effected at NSDL.

dematerialized securities for its customers. You state that the dematerialized securities are registered in the name of NSDL, but that NSDL also maintains a ledger listing the Participants and beneficial owners of the dematerialized securities. You state that SHCIL also records in its ledger the beneficial owners of the dematerialized securities; in the event of a dispute, however, NSDL's records would govern. <sup>4/</sup> You represent that, as a Participant, SHCIL also is regulated by the depository regulations of SEBI, and that these regulations, in effect, recognize that a Participant functions like a sub-depository.

You state that Indian law distinguishes between depositories and custodians with separate regulatory schemes for each (although both are regulated by SEBI). You represent that separate entities have been established in India to perform primarily custodial functions or primarily depository functions. You also represent that the same degree of investor protection is achieved through the Indian custodial regulations as is achieved through the Indian depository regulations.

#### ANALYSIS

Rule 17f-5(a)(ii) under the Investment Company Act defines an "eligible foreign custodian" to include any foreign securities depository or clearing agency that acts as a system for the central handling of securities or equivalent book-entries in the country that is regulated by a foreign financial regulatory authority. <sup>5/</sup> While you assert that SHCIL is not a clearing agency or depository under Indian law, you represent that SHCIL meets the definition of "clearing agency" in Section 3(a)(23)(A) of the Exchange Act because it operates a system that facilitates the settlement of securities transactions for its customers without physical delivery of securities certificates directly by or among its customers. You also represent that in its capacity as a Participant, SHCIL meets the definition of "clearing agency" because, as a Participant, SHCIL "acts as a custodian of securities in connection with a system for the central handling of securities . . . ." <sup>6/</sup>

---

<sup>4/</sup> Telephone conversation on January 7, 1998 among Vijay Tata, Karrie McMillan, and Veena Jain.

<sup>5/</sup> Section 3(a)(23)(A) of the Securities Exchange Act of 1934 ("Exchange Act") defines a clearing agency in part as any person who "(1) 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 (2) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates."

<sup>6/</sup> Telephone conversation on January 15, 1998 between Vijay Tata and Veena Jain.

Whether an entity is a clearing agency for purposes of Rule 17f-5 depends upon whether the entity, because of its activities and functions, falls within the definition of clearing agency in Section 3(a)(23)(A) of the Exchange Act, not upon whether it falls within the definition of, or is treated as, a clearing agency under foreign law. Because you represent that SHCIL meets the definition of a clearing agency in Section 3(a)(23)(A) of the Exchange Act, we will assume in this letter that SHCIL is a clearing agency for purposes of Rule 17f-5(a)(ii). 7/

Although you represent that SHCIL is a clearing agency as defined in Section 3(a)(23)(A) of the Exchange Act, you state that it does not meet the definition of eligible foreign custodian in Rule 17f-5 because SHCIL does not by itself act as "a system for the central handling of securities . . . ." You argue that SHCIL nevertheless should be considered to be an eligible foreign custodian. You represent that, although SHCIL by itself does not act as "a system for the central handling of securities or equivalent book-entries" in India, SHCIL, as a Participant in NSDL, is an integral part of a central system. You also represent that the only way that investors can use the NSDL is through a Participant, and that SHCIL, as a Participant, acts as an agent of the depository to provide the depository's services to investors. You assert, therefore, that SHCIL is an integral and necessary part of the depository system, and argue that, as a part of a central depository system, SHCIL should be considered an eligible foreign custodian. 8/

Based on the facts and representations in your letters and telephone conversations, we would not recommend enforcement action to the Commission under Section 17(f) of the Investment Company Act and Rule 17f-5 thereunder if U.S.-registered investment companies

---

7/ Rule 17f-5 is self-operative, i.e., if an entity determines that it meets the definition of "eligible foreign custodian" under Rule 17f-5(a), the entity does not need to seek any confirmation or relief from the staff to be an eligible foreign custodian. The staff, as a matter of policy, will not provide guidance on whether an entity meets the definition of "eligible foreign custodian" unless the request raises unique and novel issues.

8/ By analogy, you assert that the staff has taken the position that an investment company may maintain its assets in the custody of any foreign securities depository or clearing agency that, although is not the central system, is part of a national system that is integrated in its procedural guidelines, computer linkages, and ability to hold securities for participants to avoid the physical transfer of securities whenever possible. See Investment Company Institute (pub. avail. Nov. 4, 1987) (no-action relief granted to any investment company relying on Rule 17f-5 that deems to be an eligible foreign custodian any one of the seven regional depositories in the Federal Republic of Germany that are integrated and effectively function as the central system for the handling of securities or equivalent book-entries). See also Camara de Liquidacao e Custodia S/A (pub. avail. Oct. 28, 1992).

deem SHCIL to be an eligible foreign custodian. In taking this position, we rely in particular on your representations that: (1) although SHCIL is not a clearing agency under Indian law, it functions as a clearing agency as defined by U.S. law; (2) SHCIL is regulated as a custodian and as a Participant by SEBI; (3) Indian custodial regulations provide the same degree of investor protection as Indian depository regulations; and (4) SHCIL is an integral part of a system for the central handling of securities. You should note that any different facts or representations may require a different conclusion. This letter expresses the Division's position on enforcement only and does not purport to express any legal position on the issues presented.

*Veena K. Jain*

Veena K. Jain  
Staff Attorney

**ARNOLD & PORTER**399 PARK AVENUE  
NEW YORK, NEW YORK 10022-4690(212) 715-1000  
FACSIMILE: (212) 715-1399

WASHINGTON, D.C.

DENVER

LOS ANGELES

LONDON

VIJAY S. TATA  
(212) 715-1070

January 13, 1998

**VIA FACSIMILE**

Ms. Veena Jain  
Office of the Chief Counsel  
Division of Investment Management  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Room 10097, Stop 10-6  
Washington, DC 20549

Re: Stock Holding Corporation of India  
Limited ("SHCIL")  
Rule 17f-5 Interpretive Relief

Dear Ms. Jain:

Further to our conversations of Friday, January 9, 1997, I would like to confirm that the Stock Holding Corporation of India makes the following representations:

(1) As a custodian, SHCIL does not act as a depository, because, as a custodian under Indian law, it cannot be a depository and is not regulated as one.

(2) Prior to October 14, 1997, SHCIL had acted as depository participant in approximately 94% of the transactions involving dematerialized securities effected at NSDL. With the move towards the use of dematerialized securities by major institutions and the registration of other depository participants, SHCIL's share of transactions involving dematerialized securities effected at NSDL as of the end of December 1997 stood at approximately 80%.

(3) SHCIL understands that under Rule 17f-5 and other applicable rules governing U.S. registered investment companies having activities in foreign countries, it is the obligation of the Board of Directors of the Fund to select an appropriate custodian. SHCIL further understands that the recent revisions to Rule 17f-5 were intended in part to provide the Board of Directors with additional flexibility to determine the appropriateness of foreign custodial

S. Vaena Jain  
January 13, 1998  
Page 2

arrangements. Consequently, SHCIL requests assurance that the staff would not recommend any action under Section 17 of the Investment Company Act of 1940 and Rule 17f-5 promulgated thereunder, if a U.S. registered fund were to deem SHCIL to be an eligible foreign custodian for such fund's securities in India.

Please do not hesitate to call me at (212) 715-1070 should you have any questions on the foregoing.

Sincerely,

  
Vijay S. Tata

cc: Mr. B. V. Goud, Stock Holding Corporation of India,  
Limited

**ARNOLD & PORTER**399 PARK AVENUE  
NEW YORK, NEW YORK 10022-4690(212) 715-1000  
FACSIMILE: (212) 715-1399

WASHINGTON, D.C.

DENVER

LOS ANGELES

LONDON

VIJAY S. TATA  
(212) 715-1070

January 8, 1998

Ms. Karen L. McMillan  
Office of the Chief Counsel  
Division of Investment Management  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Room 10097, Stop 10-6  
Washington, DC 20549

Re: Stock Holding Corporation of India  
Limited ("SHCIL")  
Rule 17f-5 Interpretive Relief

Dear Ms. McMillan:

Further to our conversation yesterday, I would like to confirm the substance of my responses to your questions relating to the Rule 17f-5 no-action request of Stock Holding Corporation of India, Ltd. ("SHCIL"). I have confirmed with SHCIL and its in-house counsel the following representations:

1. After January 1998, all institutional investors in India are required to begin a transition to the holding of securities in dematerialized form.
2. Only officially sanctioned custodian depository participants will be permitted to interact directly with the depository. SHCIL, as a custodial depository participant, will act as agent of the depository for the purposes of providing the depository's services to investors. Therefore, SHCIL, as a custodial participant in the depository system, is an integral and necessary part of such depository system.
3. The computer systems of the depository and the custodial depository participants will be connected.
4. Under applicable Indian laws and regulations, a securities depository and a securities custodian are distinct entities and are separately regulated. A securities custodian under Indian


Ms. Karen L. McMillan  
January 8, 1998  
Page 2

law has a direct contractual relationship with the beneficial holder of securities; a depository does not have any such direct contractual relationship and, unlike a securities custodian, cannot function as an agent for any particular beneficial owner.

Attached is a schematic summary of the functioning of the depository system indicating, in particular, the integral role of SHCIL as a depository participant.

Should you have any further questions, please do not hesitate to give me a call, at (212) 715-1070.

Very truly yours,

  
Vijay S. Tata

Attachment

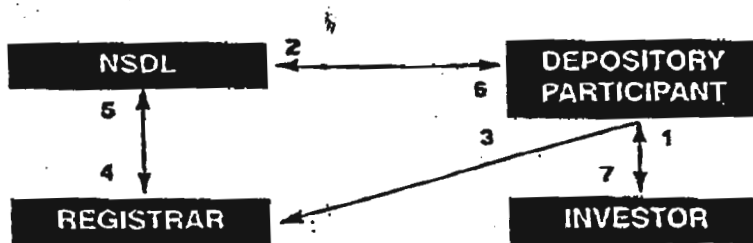
cc: B. V. Goud, Stock Holding Corporation  
of India, Ltd.



## ANNEX 1

**Dematerialisation:** The certificates surrendered to the depository are cancelled by the registrar and transfer agent. The investor surrenders certificates to be dematerialised to the depository participant who forwards the same to the registrar. Simultaneously, NSDL is informed of this dematerialisation request through the established telecommunication system. The registrar on verification of details and on confirmation of the request from NSDL destroys the securities within a specified period of time and intimates NSDL electronically. The registrar enters NSDL as the registered owner of these dematerialised securities. NSDL then credits the account of the investor to the extent of the securities dematerialised by informing the concerned depository participant.

Thus, the dematerialisation process at a glance is as follows:



1. Investor surrenders certificates for dematerialisation to depository participant
2. Depository participant intimates NSDL of the request through the system
3. Depository participant submits the certificates to the registrar
4. Registrar confirms the dematerialisation request from NSDL.
5. After dematerialising certificates, Registrar updates accounts and informs NSDL of the completion of dematerialisation
6. NSDL updates its accounts and informs the depository participant
7. Depository participant updates its accounts and informs investor

The entire process of dematerialisation takes a maximum of 15 days - however, for those cases where a very large amount of certificates are submitted for dematerialisation, additional time may be required.

**ARNOLD & PORTER**

555 TWELFTH STREET, N.W.  
WASHINGTON, D.C. 20004-1202

(202) 942-5000  
FACSIMILE: (202) 942-5999

NEW YORK  
DENVER  
LOS ANGELES  
LONDON

**Investment Company Act/Rule 17f-5  
No-Action Letter Request**

December 19, 1997

Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549  
Attention: Douglas J. Scheidt, Esq.  
Office of Associate Director (Chief Counsel)  
Division of Investment Management

Re: Stock Holding Corporation of India Limited -  
Rule 17f-5 Interpretive Relief

Dear Mr. Scheidt:

We are writing on behalf of Stock Holding Corporation of India Limited ("SHCIL") to request assurance that the staff would not recommend enforcement action to the Commission under Section 17(f) of the Investment Company Act of 1940 (the "Act"), or Rule 17f-5 thereunder, if a registered U.S. Fund (as defined in Rule 17f-5(a)(3)) maintains custody of its assets in India with SHCIL.

SHCIL is the largest provider of securities custodial services in India and is duly licensed and regulated as a custodian of securities by the Securities and Exchange Board of India (a "foreign financial regulatory authority" under § 2(a)(50) of the Act, and a securities regulatory body similar in function and authority to the United States Securities and Exchange Commission). SHCIL was established in 1986, through a specific Government of India initiative, jointly by seven central government-controlled Indian financial institutions solely for the purpose of providing specialized custodial services necessary for the holding, registration and management of ownership interests in Indian securities by major financial institutions. SHCIL's primary business is the provision of securities custodial services for institutional investors. SHCIL is able to devote far more resources to perfecting and maintaining its custodial services than would be feasible for a

non-specialized financial institution. SHCIL currently accounts for approximately 70% of the securities custodial services provided in India. Because of its extensive custodial expertise, sophisticated computerized systems, security controls and financial resources, SHCIL is the prime custodian for Indian institutional investors.

Each of SHCIL's seven shareholders is a regulated financial institution in India. Four major Indian banking institutions (each of which would itself be a Qualified Foreign Bank) hold over 51% of SHCIL's equity, with the remainder being held by three major users of SHCIL services, the Unit Trust of India, Life Insurance Corporation of India and General Insurance Corporation of India.

SHCIL believes that its custodial facilities and capabilities are ideally suited to the securities custodial needs of U.S.-based Funds. Permitting Funds to use SHCIL's securities custodial services in India is consistent with the rationale of the revisions to Rule 17f-5, which was to enable selection of a foreign custodian "based on whether the Fund's assets will be subject to reasonable care if maintained by the custodian, after considering all factors relevant to the safekeeping of fund assets, including the custodian's financial strength, its practices and procedures and internal controls." Failure to recognize SHCIL as an Eligible Foreign Custodian would have the anomalous effect of disqualifying India's premier securities custodian from serving the needs of U.S.-based Funds, although SHCIL currently acts as custodian for major Indian and foreign institutional investors in India.

Interpretive relief is necessary in this case because, although SHCIL effectively operates as a non-compulsory "depository" or "clearing agency" for its customers as such terms have been used under Rule 17f-5 and is a duly registered securities custodian regulated by the Securities Exchange Board of India, SHCIL is not a "depository" or "clearing agency" as such term are used under Indian law. Under U.S. law the functions of depositories and custodians are not regarded as necessarily distinct; the reference to depositories, in Rule 17f-5 in fact assumes that the depository itself will perform custodial functions (thus, for example, the proposing release speaks of need for

regulation of "a depository's custodial integrity", see Release No. IC-21259 at fn. 153-157). Under Indian law, by contrast, the depository's functions and custodial functions regarded as distinct and are separately regulated. Separate entities have been established in India to perform primarily depository functions on the one hand, and primarily custodial functions on the other. However, both depositories and custodians are regulated by the Securities Exchange Board of India. Supervision of the safety and integrity of custodial operations is the responsibility of the Securities Exchange Board of India, which has promulgated detailed regulations which are comparable to and, in all material respects, are at least as stringent as the regulations applicable to depositories. Specifically, the same degree of investor protection is achieved through the SEBI regulations of custodians as is achieved through the regulations governing depositories in India.

Because SHCIL is a duly registered and regulated custodian under Indian law and would, under the broader understanding of the term "depository" under U.S. law, be deemed to be operating a non-compulsory depository or clearing system for its customers, it should be qualified to act as an Eligible Foreign Custodian, notwithstanding the fact that SHCIL is not a "depository" or "clearing agency" under the narrower definition of those terms under Indian law. The interpretive relief requested hereby is consistent with the type of relief accorded by the Staff to other entities which performed "depository" functions under the terms of Rule 17f-5, but were not the "central depositories or clearing agencies" under local laws. See *Camara de Liquidacao e Custodia S/A* (publicly available October 28, 1992), discussed below.

Although SHCIL is not "a system for the central handling of securities or equivalent book entries" in India, SHCIL, as a participant in NSDL, a central depository in India, is part of such a central system. As a custodial participant in the central depository, SHCIL is regulated by the depository regulations promulgated by the Securities Exchange Board of India. As custodial participant, SHCIL is an integral part of the central depository system.

Because the provisions of Rule 17f-5 have only recently been amended, we have not found any requests for no action relief that present facts similar to those present in this request. However, under the previous version of Rule 17f-5, where relief was sought by depositories or clearing agencies that were not the unique central system for the transfer and clearing of securities, the Staff had accepted the representation that the applicant was a part of a unique central system, as a basis for no action relief. For example, in Camara de Liquidacao e Custodia S/A ("CLC") (publicly available October 28, 1992), the Staff concludes that:

"We believe that CLC does not operate the central system for the handling of equity securities in Brazil, but instead functions with CALISPA [Caixa de Liquidacao de Sao Paulo, S.A.] as the central clearance and settlement system for equity securities in Brazil, and functions with the Sao Paulo Exchange as the central depository system for equity securities in Brazil."

The relief in the CLC matter was based on the Staff's position that "an investment company may maintain its assets in the custody of any foreign securities depository or clearing agency that is part of a national system," [which is integrated in terms of procedural guidelines, holdings of physical securities, and computer linkages]. Although the specific facts and legal issues are not similar to those involving SHCIL, we believe this letter, by analogy, supports the view that SHCIL, as a part of a central depository system, should be recognized as an Eligible Foreign Custodian.

I. DESCRIPTION OF THE APPLICANT

A. SHCIL

SHCIL is a corporation that was created by a consortium of India's major government-controlled financial

institutions.<sup>1</sup> SHCIL was established in 1986, with the specific approval of the Indian government, to provide a wide range of custody related services, including reporting, reconciliation, settlement, safekeeping of physical securities and income collection both to these founding financial institutions and to other customers. SHCIL currently has a net worth (equity plus free reserves) of approximately U.S. \$20,000,000. SHCIL's custodial operations are fully insured under a comprehensive insurance policy with a risk coverage of approximately U.S. \$60,000,000.

Presently, SHCIL is one of the largest providers of custodian services in India, with custody of approximately U.S. \$20 billion in assets as of October 1997. SHCIL has been rendering custodial services to a wide variety of public sector investment institutions and mutual funds and certain foreign investment institutions. According to SHCIL estimates, about 70% of the assets of Indian institutional investors and mutual funds are currently managed by SHCIL.

SHCIL is able to provide custodial services of international standards because it has adopted computerized information technology similar to that used by other internationally competitive global custodians. Moreover, SHCIL has been a pioneer in the application of the most advanced information technology systems in the area of custodial services. SHCIL's automated custodial services were recognized in 1996 by the Smithsonian Institute, Washington, D.C. as an innovative use of information technology. The applications developed by SHCIL allow for

---

<sup>1</sup> SHCIL was promoted by the seven nationwide, government-owned development and financial institutions in India: Industrial Development Bank of India, The Industrial Credit & Investment Corporation of India Limited, The Industrial Finance Corporation of India Limited, The Industrial Investment Bank of India, Unit Trust of India, Life Insurance Corporation of India and General Insurance Corporation of India and four of its subsidiaries. Each of these financial institutions was formed by an act of the Indian parliament.

an on-line access to about 48 million certificates held in safe custody.

While continuing to provide expert custodial services in a paper-based system, SHCIL has actively participated in the move toward the book-entry system of trading in India. In 1996, India's first national depository, the National Securities Depository Limited ("NSDL"), was established to enable scripless trading through electronic depository facilities. Investors, including domestic and foreign mutual funds, can only participate in the depository system through a depository participant. SHCIL was the first depository participant registered with NSDL. SHCIL is regulated as a Depository Participant and in effect functions like a sub-depository. SHCIL is able to provide its clients with the procedures for the dematerialization and rematerialization of securities. The client can get physical certificates converted into electronic balances maintained in its account with the Participant. Likewise, SHCIL converts clients' electronic holding into physical certificates through the process of rematerialization as and when desired. SHCIL also provides both entry and settlement services, reporting of book entry transfers and follow up on record keeping requirements and corporate actions relating to dematerialized securities. Of the total dematerialization of securities effected at NSDL, SHCIL has, as a Depository Participant, secured around 94 per cent share.

#### B. Regulatory Controls

Securities and Exchange Board of India ("SEBI"), a statutory body established by an Act of Parliament in 1992, regulates the securities market and its component institutions in India. SEBI promulgated Custodial Regulations in 1996, governing all custodians operating in India. The Custodial Regulations require custodians to register with SEBI, impose capital adequacy norms and set forth basic standards of conduct for custodians. SEBI is empowered to inspect Custodians' accounts, records, documents, investigate complaints against Custodians and ascertain compliance with regulations. The Custodial Regulations establish a uniform custodial code of conduct and mechanisms for reviewing, monitoring and evaluating

controls, systems, procedures and safeguards. For example, the regulations require annual review of custodial operations by an independent auditor and impose administrative, civil and criminal sanctions for violation of custodial and fiduciary obligations.

SHCIL is a depository participant and is registered as a Custodial Depository Participant with the Securities Exchange Board. Depository Participants are regulated by specific regulation which, in effect, recognizes that the Depository Participant functions like a sub-depository.

The regulation of securities custodians in India is comparable to, and in all material respects at least as stringent as the regulation of depositories. Specifically, the same degree of investor protection is achieved through the SEBI regulations of custodians as is achieved through the regulations governing depositories in India. The regulation of depositories and the regulation of custodians cover all of the following areas: (i) registration with SEBI, which includes review of the qualification of the persons controlling and managing the entity; (ii) capital adequacy requirements (approximately Rs 1 billion for depositories and Rs 500 million for custodians); (iii) minimum infrastructure requirements for carrying on the depository or custodial functions, respectively; (iv) minimum safeguards for the protection of investors including electronic and computer security measures and insurance; (v) minimum record keeping requirements; (vi) public auditing and reporting requirements; (vii) administrative powers of SEBI to regulate, investigate and impose sanctions; (viii) rights of action by SEBI and by customers or participants. (See Annex A for a chart comparing the regulation of depositories and custodians in India.)

Under Indian law, custodians are also subject to a regime of indirect regulatory controls designed to insure the protection of investors. For example, as a corporation incorporated in India, SHCIL is subject to the requirements of the Companies Act of 1956. In addition, foreign institutional investors ("FII's") in India (including U.S. based investment funds) and their custodians are subject to regulatory guidelines promulgated by SEBI. Among other requirements, the guidelines for FIIs required FIIs to



register with SEBI, to hold a registration from the Indian Securities Commission or the regulatory organization for the FII's home country's stock market, and permit the regulatory authorities in India to request inspection of the books and records of the FII. Only custodians approved by SEBI are permitted to provide custody services to mutual funds and FIIs. Custodians servicing FII's are required to establish separate accounts for detailing on a daily basis the investment capital utilization and securities held by each FII and submit semi-annually reports to the Reserve Bank of India ("RBI") and SEBI.

In addition, the seven government-controlled financial institutions that participated in the formation of SHCIL provide an additional layer of oversight. These institutions continue to exercise significant oversight over the affairs of SHCIL in their roles as members of the Board of Directors of SHCIL and as shareholders and customers of SHCIL. Because SHCIL was formed by this consortium of India's major financial institutions, in part to furnish custodial services to themselves, SHCIL believes that it is arguably even better supported that it would be if it had a single qualifying bank as its parent.

### C. Internal Security Procedures

SHCIL has adopted significant internal control and security measures specifically designed to ensure safety in a paper-based securities system. Control mechanisms utilized by SHCIL include: screening visitors, restricted entry facilities, continuous internal auditing and monitoring, armored vehicles, bar coding and the rigorous screening and training of all employees. SHCIL also has developed the extensive facilities required to effectively manage the volumes of paper. Presently SHCIL has storage space of approximately 100,000 square feet (capable of storing 50 million certificates). These facilities, internal controls and security measures play an important role in ensuring the safety of SHCIL's customers' assets. In addition, SHCIL, in consultation with Price Waterhouse in a project funded by the U.S.A.I.D., has implemented a comprehensive electronic data security system to protect all custodial information in situations ranging from tampering to disaster recovery contingencies.

D. Significance of SHCIL's Functions Under Rule 17f-5

SHCIL currently operates a system which facilitates securities transactions for its customers without physical delivery of securities certificates directly by or among its customers. All securities held by SHCIL for its customers are registered for the account of the beneficial owner, with SHCIL named as the beneficial owner's custodian. The physical holdings of certificated securities are centralized in SHCIL's vaults and all records relating to customers securities are kept in electronic form within SHCIL's system. For example, under the current physical certificate system, if a customer of SHCIL wishes to transfer securities for X Co. and another customer wishes to buy securities of X Co., the clearing agency would only transfer to or from SHCIL the net amount of X Co. securities; SHCIL would make adjustments in its electronic records to reflect the transfer after the registrar and transfer agent for X Co. has reflected the change in the beneficial ownership of the X Co. shares for which SHCIL acts as custodian. SHCIL's customers thus interact within an electronic system. From the customer's perspective, SHCIL is the sole interface with the issuer and any clearing intermediary.

In the book-entry or "dematerialized" context, SHCIL will continue to act as custodian. All dematerialized securities, including those of SHCIL's customers, will be registered in the name of the depository, which in turn will maintain a ledger of depository participants and beneficial owners. SHCIL, in its capacity as a depository participant, will register transactions for its customers in dematerialized securities.

Although SHCIL is not a depository or clearing agency under Indian law, it functions as a private, non-compulsory "depository" for its customers under Rule 17f-5 and functions as a clearing agency under Section 3(a)(23)(A) of the Securities Exchange Act of 1934, which is defined, inter alia, as any person who "permits or facilitates the settlement of securities transactions ... without the physical delivery of certificates" to the customer. As such, SHCIL falls within the scope of the definition under

Rule 17f-5 of a "securities depository or clearing agency... that is regulated by a foreign financial regulatory authority", even though it acts as such for its customers only and not for the market as a whole. Moreover, as discussed above, although SHCIL is not "a system for the central handling of securities or equivalent book entries" in India, SHCIL, as a participant in NSDL, a central depository in India, is part of such a central system. As a custodial participant in the central depository, SHCIL is regulated by the depository regulations promulgated by the Securities Exchange Board of India. As custodial participant, SHCIL is an integral part of the central depository system.

## II. REQUESTED RELIEF AND RELATED ANALYSIS

SHCIL hereby requests that it be permitted to act as an Eligible Foreign Custodian for the purposes of Rule 17f-5.

SHCIL is experienced in providing custodial services and is capable and well-qualified to provide custodial and sub-custodial services to Funds and custodians for Funds.

SHCIL believes that the relief requested is reasonable, necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

First, SHCIL believes that the requested relief is needed in order to facilitate the access of Funds to Indian markets. Any Fund wishing to hold Indian securities will need the services of a custodian such as SHCIL that is structured to safely manage the logistical complexities of the Indian Securities transfer systems. The requested relief is necessary to permit Funds to have access to the custodial services of SHCIL which has an established record of investor protection, enhanced by the existing regulatory framework.

SHCIL currently offers and provides custodial services to foreign institutional investors which wish to hold securities of Indian issuers as part of their global

portfolios. Under Indian law, SHCIL is already a recognized and dependable custodian for both registered and bearer form securities. In addition to serving as custodian for many of India's largest banks, SHCIL has been rendering sub-custodial and related administrative services to Morgan Stanley. In 1995, SHCIL signed an agreement with Morgan Stanley Trust Company (MSTC) to collaborate in the provision of custody services for FII's in the Indian securities market (covering approximately \$1.2 billion in securities) according to international standards. In order to increase the access of Funds to global markets and improve their ability to hold the securities of Indian issuers through a leading Indian custodian, the interpretive relief is necessary.

Second, the requested relief is consistent with the protection of investors because it enables Funds to hold in India their securities through an established, regulated custodian.

Third, the granting of the requested relief would be consistent with the policy and provisions of the Act which, in relevant part, are to ensure investor protection and to ensure that Funds hold the securities in a manner which ensures maximum protection of their interests therein.

\* \* \* \*

Should you have any questions on the foregoing request or if you should require additional information, please call the undersigned at (212) 715-1070.

Very truly yours,

*Vijay S. Tata* (EB)

Vijay S. Tata