

(1) Is at a minimum obligated to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain such financial assets;

(2) Is required to provide, promptly upon request by the fund, such reports as are available concerning the internal accounting controls and financial strength of the custodian; and

(3) Requires any intermediary custodian at a minimum to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets corresponding to the security entitlements of its entitlement holders.

(b) *Direct dealings with securities depository.* A fund may place and maintain financial assets, corresponding to the fund's security entitlements, directly with a securities depository, if:

(1) The fund's contract with the securities depository or the securities depository's written rules for its participants:

(i) Obligate the securities depository at a minimum to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets corresponding to the fund's security entitlements; and

(ii) Requires the securities depository to provide, promptly upon request by the fund, such reports as are available concerning the internal accounting controls and financial strength of the securities depository; and

(2) The fund has implemented internal control systems reasonably designed to prevent unauthorized

officer's instructions (by providing at least for the form, content and means of giving, recording and reviewing all officer's instructions).

(c) *Definitions.* For purposes of this section the terms:

(1) *Clearing corporation, financial asset, securities intermediary, and security entitlement* have the same meanings as is attributed to those terms in § 8-102, § 8-103, and §§ 8-501 through 8-511 of the Uniform Commercial Code, 2002 Official Text and Comments, which are incorporated by reference in this section pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the Uniform Commercial Code from the National Conference of Commissioners on Uniform State Laws, 211 East Ontario Street, Suite 1300, Chicago, IL 60611. You may inspect a copy at the following addresses: Louis Loss Library, U.S. Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549, and Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(2) *Custodian* means a bank or other person authorized to hold assets for the fund under section 17(f) of the Act (15 U.S.C. 80a-17(f)) or Commission rules in this chapter, but does not include a fund itself, a foreign custodian whose use is governed by § 270.17f-5 or § 270.17f-7, or a vault, safe deposit box, or other repository for safekeeping maintained by a bank or other company whose functions and physical facilities are supervised by a federal or state

authority if the fund maintains its own assets there in accordance with § 270.17f-2.

(3) *Fund* means an investment company registered under the Act and, where the context so requires with respect to a fund that is a unit investment trust or a face-amount certificate company, includes the fund's trustee.

(4) *Intermediary custodian* means any subcustodian that is a securities intermediary and is qualified to act as a custodian.

(5) *Officer's instruction* means a request or direction to a securities depository or its operator, or to a registered transfer agent, in the name of the fund by one or more persons authorized by the fund's board of directors (or by the fund's trustee, if the fund is a unit investment trust or a face-amount certificate company) to give the request or direction.

(6) *Securities depository* means a clearing corporation that is:

(i) Registered with the Commission as a clearing agency under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1); or

(ii) A Federal Reserve Bank or other person authorized to operate the federal book entry system described in the regulations of the Department of Treasury codified at 31 CFR 357, Subpart B, or book-entry systems operated pursuant to comparable regulations of other federal agencies.

Dated: February 13, 2003.

By the Commission.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-4042 Filed 2-19-03; 8:45 am]

**BILLING CODE 8010-01-P**