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November 25, 2002
Office of the Assistant General Counsel
Attention: Official Comment Record
Room 2000
Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, DC 20220
RE: Notice of Proposed Rulemaking in Unregistered Investment Company Regulations, ***"Attention: NPRM –Section 352."***

Dear Sir or Madam:

Bank of Bermuda (New York) Limited ("BBNY") is a limited purpose trust company organized under the laws of New York and supervised by the New York State Banking Department. Bank of Bermuda (New York) Limited is an indirect wholly owned subsidiary of The Bank of Bermuda Limited, which was incorporated in Bermuda under The Bank of Bermuda Act of 1890. Through its main office in Hamilton Bermuda and its subsidiaries in the Isle of Man, Guernsey, Jersey, Luxembourg, the Cayman Islands, Hong Kong, London, Singapore, New Zealand, Cook Islands, Dublin and Bahrain, The Bank of Bermuda Limited is engaged in a wide range of international banking and trust and investment services. It has been involved in the servicing of offshore investment vehicles for over 30 years with a client base in excess of 400 mutual funds, pension plans and other forms of investment vehicles

BBNY appreciates the opportunity to write to you regarding our comments to the proposed rules under the USA PATRIOT Act affecting unregistered investment companies. BBNY and its affiliates have a strong commitment to the prevention and detection of money laundering and have long been compliant with anti-money laundering requirements in various jurisdictions around the world.

As a leading provider of administrative and custodial services to unregistered investment companies around the world, we have a particular sensitivity to the international implications of the proposed rules. We applaud the initiatives of the Treasury Department and offer the following comments in an effort to clarify certain aspects of the proposed rules.

- <u>Independent Trustee / Director Arrangements.</u>

Certain non-U.S. investment vehicles are structured as trusts. In many cases a third party service provider to the trust (such as a law firm or an administrator) acts as trustee. Often these third party service providers act as a trustee to add a level of independence to the trust and are not directly involved in the day to day operations of the entity.

Similarly many non-U.S. companies engage independent directors. These directors generally do not participate in the daily management of the company but have a broader advisory and oversight role.

It is our concern that given the wording of the proposed rule that such service providers, or individuals who act as independent trustees or directors would be considered the "Issuer" of securities and would bear the ultimate responsibility for developing anti-money laundering programs and for any possible violations. This could have a chilling effect on the willingness of independent parties to act in these important oversight capacities.

We feel that the person or entity that caries out the day to day management of such investment vehicles (which is often a contractual investment manager) is better suited to develop custom an anti-money laundering program as required in the proposed rules.

- Redemption Rights

You have asked for comments regarding the proposed two year lock-up period. We believe that a two year lock-up period is sufficient to deter most forms of money laundering as it will prevent the frequent exchange of illicit funds for "clean" funds. There are of course exceptions where perpetrators may not need frequent turn over or immediate access to their funds. We believe that those cases would be minimal.

In our experience most funds have either no lock-up period or lock up periods of one year or less as the market does not generally bear longer periods. Therefore we believe it unlikely that managers would increase lock-up periods to avoid being subject to the rule.

Additional clarification is needed regarding what is considered a "lock-up" period. Often a fund's constitutional documents will give a manager or directors the discretion to allow redemptions during a lock-up period in cases of hardship or for other valid circumstances. Would such a provision negate a lock-up period for purposes of the proposed rule? Also some lock-up periods are incentive based "soft lock-up periods" where investors suffer financial penalties for early withdrawals. Would such provisions satisfy the two year lock-up requirements under the proposed rule?

- Minimum Assets

We feel that a minimum asset requirement of $1,000,000 is quite low. We feel that $5,000,000 is a more appropriate amount. Given the demands of the rule it would be a hardship for funds managing between $1,000,000 and $5,000,000 to comply with the requirements of the proposed rule. Additionally funds with $5,000,000 or less will generally have few investors who are well known to the manager reducing the possibility of surreptitious behavior. Perhaps a minimum number of investors standard should also be applied.

- Offshore Funds

Please give clarification as to what constitutes "organized, operated, or sponsored by a U.S. person". Of specific concern is whether the use of U.S. domiciled service providers such as administrators, custodians, auditors or legal counsel would be a sufficient nexus under the proposed rules to require compliance by non-U.S. funds with no U.S. investors and with non-U.S. domiciled managers. Also would a non-U.S. company which had a majority of U.S. domiciled directors be subject to the proposed rules?

We note that the application of the Patriot Act and the proposed rules extends to any non-U.S. entity with the jurisdictional nexus outlined in the rules. It is notable that no recognition was given to entities domiciled in FATF countries. Given that the U.S. is a member of FATF would it not be appropriate to acknowledge the anti-money laundering regulations that entities domiciled in FATF countries are already subject to?

The proposed rules require funds to make their records available to U.S. regulators. This raises numerous conflicts for entities domiciled in jurisdictions with investor privacy laws. We are

certain that the majority of funds would be willing to comply with requests to produce records however compliance with such requests by U.S. regulators could create situations where funds could be in contravention of the local regulations to which they are also subject.

The argument above is also relevant to the requirement that non-U.S. funds file suspicious activity reports with the U.S. Government under section 326 of the U.S. Bank Secrecy Act.

- Independent Testing.

It is stated in the proposed rules that funds may delegate certain compliance procedures to third party service providers. It is also stated that independent testing of a fund's procedures is required. Could a fund that has delegated its compliance procedures to a third party service provider rely on an independent audit (such as a SAS 70 audit) of the third party service provider in satisfaction of the independent testing requirement under the rule? Thus funds could review the results of the independent audit of their service provider and approve such audit at an annual meeting.

BBNY hopes this letter has helped articulate certain concerns to the international financial community regarding the proposed rule . We would be happy to respond to any further questions that may arise during the process of revising the proposed rules.

Should you have any questions, please contact Paul Tiranno of BBNY at (212) 715-6950.

Very truly yours,
Bank of Bermuda (New York) Limited
100 Wall Street
New York, NY 10005