

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-24806; 812-11374]

### Nike Securities L.P., et al.; Notice of Application

December 28, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from section 26(a)(2)(D) of the Act.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit certain unit investment trusts ("UITs") to deposit trust assets in the custody of foreign banks and securities depositories.

**APPLICANTS:** Nike Securities L.P. (the "Sponsor") and FT Series (the "Trust").

**FILING DATES:** The application was filed on October 28, 1998 and amended on November 17, 2000.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 22, 2001, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 1001 Warrenville Road, Lisle, IL 60532.

**FOR FURTHER INFORMATION CONTACT:** Sara P. Crovitz, Senior Counsel, at (202) 942-0667 or Nadya B. Roytblat, Assistant Director, at (202) 942-0693 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549 (telephone (202) 942-8090).

### Applicants' Representations

1. The Sponsor is a broker-dealer registered under the Securities Exchange Act of 1934. The Trust is

registered under the Act and consists of several UITs registered or to be registered under the Securities Act of 1933 (the "Trust Series"). Each Trust Series is created under the laws of the U.S. pursuant to a trust agreement that will contain information specific to that Trust Series and which will incorporate by reference a master trust indenture (the "Indenture") among the Sponsor, a bank (as defined in section 2(a)(5) of the Act), an evaluator, and a supervisor. Applicants request that any order granted pursuant to the application extend to any future UIT sponsored by the Sponsor or an entity controlling, controlled by, or under common control with the Sponsor (together with the Trust, the "Trusts" and their series, "Trust Series") and any bank which acts as trustee (a "Trustee") for any Trust Series.

2. Several Trust Series have investment objectives that specify the investment of assets in non-United States securities. To date, the existing Trust Series that invest in foreign securities have been able to deposit those securities in the custody of a foreign branch of a U.S. bank or with the securities clearance and depository facilities operated by Morgan Guaranty Trust Company of New York, in its capacity as operator of the Euroclear System ("Euroclear"), or with Central de Livraison de Valeurs Mobilieres, S.A. ("Cedel"), under an exemptive order granted to The Chase Manhattan Bank.<sup>1</sup> Future Trust Series may invest in foreign securities traded in countries (such as Australia, France, and New Zealand) that either are not eligible for settlement through Euroclear or Cedel or for which those depositories are not used in the ordinary course of settling transactions. Applicants therefore request an order to permit the Trust Series to deposit investments, including foreign currencies, for which the primary market is outside the United States and such cash and cash equivalents as reasonably necessary to effect the Trust Series' transactions in those investments (collectively, "Foreign Investments"), with any foreign bank or securities depository subject to the requirements described below.

### Applicants' Legal Analysis

1. Under sections 2(a)(5) and 26(a)(1) of the Act, the trustee of a UIT must be a bank that is subject to regulation by the U.S. government or one of the states.

Section 26(a)(2)(D) also requires that the trust indenture provide that the trustee "shall have possession of all securities and other property in which the funds of the trust are invested \* \* \* and shall segregate and hold the same in trust \* \* \* until distribution thereof to the security holders of the trust." Under these provisions, the only foreign entity that qualifies as a UIT custodian is an overseas branch of a U.S. bank.

2. Section 6(c) provides that the SEC may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the Act or any rule or regulation under the Act if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Rules 17f-5 and 17f-7 under the Act govern the custody of assets of registered management investment companies overseas. Applicants seek an order under section 6(c) exempting them and any U.S. bank that acts as Trustee for any Trust Series from section 26(a)(2)(D) of the Act to the extent necessary to permit a Trustee to deposit Foreign Investments with an eligible foreign custodian as that term is defined in rule 17f-5 under the Act ("Eligible Foreign Custodian"), or eligible securities depository, as that term is defined in rule 17f-7 under the Act ("Eligible Securities Depository").<sup>2</sup>

4. Under the proposed arrangements, a Trust Series would comply with all of the requirements of rule 17f-5, as amended on June 12, 2000, except that the Trustee would perform the duties that rule 17f-5 requires to be performed by the foreign custody manager, as that term is defined in rule 17f-5 ("Foreign Custody Manager"). Applicants state that the Trustee can fulfill the duties of a Foreign Custody Manager under rule 17f-5 to select an Eligible Foreign Custodian and monitor the foreign custody arrangements. Applicants also assert that the Trustee will have the necessary expertise and generally be in the best position to make the determinations required by rule 17f-5. Under the proposed arrangements, a Trust Series also would comply with all of the requirements of rule 17f-7, with the Trustee providing the risk analysis to the Sponsor, monitoring the custody risks associated with maintaining

<sup>1</sup> Investment Company Act Release Nos. 22000 (May 31, 1996) (notice) and 23186 (May 14, 1998) (order) and 21673 (Jan. 16, 1996) (notice) and 21751 (Feb. 16, 1996) (order).

<sup>2</sup> Applicants state that, although the compliance date for rule 17f-5, as last amended, and rule 17f-7 is July 2, 2001, they will comply with amended rule 17f-5 and rule 17f-7 upon the issuance of the requested order.

Foreign Investments with an Eligible Securities Depository on a continuing basis, and promptly notifying the Sponsor of any material change in these risks. Applicants also state that the Sponsor will be required to take appropriate action in response to a notification by the Trustee.

### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Indenture will contain provisions under which the Trustee agrees to indemnify the Trust Series against the risk of loss of Trust Series' Foreign Investments held with an Eligible Foreign Custodian in accordance with the foreign custody contract.
2. The Indenture will contain provisions under which the Trustee agrees to exercise reasonable care, prudence, and diligence such as a person having responsibility for the safekeeping of Trust Series assets would exercise, and to be liable to the Trust Series for any loss occurring as a result of the Trustee's failure to do so.
3. The Indenture will contain provisions under which the Trustee agrees to perform all the duties assigned by rule 17f-5, as now in effect or as it may be amended in the future, to a Foreign Custody Manager. A Trustees' duties under this condition will not be delegated.
4. The Indenture will contain provisions under which the Trustee agrees that it (or the Trustee's agent) will (i) provide the Sponsor with an analysis of the custody risks associated with maintaining assets with an Eligible Securities Depository; (ii) monitor the custody risks associated with maintaining assets with the Eligible Securities Depository on a continuing basis and promptly notify the Sponsor of any material change in these risks; and (iii) exercise reasonable care, prudence and diligence in performing the foregoing duties.
5. The Sponsor will be required to take appropriate action in response to a notification by the Trustee provided pursuant to condition 4 above.
6. The Trust Series' prospectuses will contain such disclosure regarding foreign securities and foreign custody as is required for management investment companies by Forms N-1A and N-2. The prospectus also will contain disclosure concerning the Sponsor's responsibilities pursuant to condition 5 above.
7. The Trustee will maintain and keep current written records regarding the basis for the choice or continued use of

each foreign custodian. These records will be preserved for a period of not less than six years from the end of the fiscal year in which the Trust Series was terminated, the first two years in an easily accessible place. The records will be available for inspection at the Trustee's main office during the Trustee's usual business hours, by unitholders and by the Commission or its staff.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-43775; International Series Release No. 1241; File No. 601-01]**

### Self-Regulatory Organizations; Morgan Guaranty Trust Company, Brussels Office, as Operator of the Euroclear System and Euroclear Bank, S.A.; Order Approving Application to Modify an Existing Exemption from Clearing Agency Registration

December 28, 2000.

#### I. Introduction

On September 21, 2000, Morgan Guaranty Trust Company of New York, Brussels office ("MGT-Brussels"), as operator of the Euroclear System,<sup>1</sup> and Euroclear Bank, S.A., ("Euroclear Bank") filed with the Securities and Exchange Commission ("Commission") an application on Form CA-1<sup>2</sup> to modify an existing exemption from clearing agency registration ("Modification Application") pursuant to section 17A of the Securities Exchange Act of 1934 ("Exchange Act")<sup>3</sup> and Rule 17Ab2-1 thereunder.<sup>4</sup> The existing exemption enables MGT-Brussels as operator of the Euroclear System to perform the functions of a clearing agency with respect to

<sup>1</sup> MGT-Brussels presently operates the Euroclear System pursuant to an operating agreement with Euroclear Bank. The Euroclear System functions as a clearance and settlement system for internationally traded securities. Securities settlement through the Euroclear System can occur with other participants in the Euroclear System, with members of Clearstream, formerly Cedel Bank, société anonyme, Luxembourg ("Clearstream"), or with counterparties in certain local markets that are not members of either the Euroclear System or Clearstream.

<sup>2</sup> Copies of the application for exemption are available for inspection and copying at the Commission's Public Reference Room.

<sup>3</sup> 15 U.S.C. 78q-1.

<sup>4</sup> 17 CFR 240.17Ab2-1.

transactions involving U.S. government agency securities for its U.S. participants subject to certain limitations without registering as a clearing agency.<sup>5</sup> The Modification Application substitutes Euroclear Bank for MGT-Brussels as operator of the Euroclear System. Notice of the application was published in the **Federal Register** on December 1, 2000.<sup>6</sup> No comment letters were received in response to the notice of filing of the Modification Application. This order grants the Modification Application.

#### II. Description

On February 11, 1998, the Commission approved an application by MGT-Brussels as operator of the Euroclear System for an exemption from registration as a clearing agency under section 17A (the "1998 Exemption Order"). The 1998 Exemption Order granted MGT-Brussels as operator of the Euroclear System the authority to provide clearance, settlement, and collateral management services for its U.S. participants' transactions in: (i) Fedwire-eligible U.S. Government securities; (ii) mortgage-backed pass through securities that are guaranteed by the Government National Mortgage Association ("GNMAs"); and (iii) any collateralized mortgage obligation whose underlying securities are Fedwire-eligible U.S. Government securities or GNMA guaranteed mortgage-backed pass through securities and that are depository eligible securities collectively (collectively "Eligible U.S. Government Securities").

On January 1, 2000, the owners and operators<sup>7</sup> decided that MGT-Brussels would be replaced by Euroclear Bank as operator of the Euroclear System. In May 2000, Euroclear Bank was created. On July 27, 2000 the Belgian Banking and Finance Commission ("BFC") granted Euroclear Bank a Belgian Banking license. MGT-Brussels will continue to operate the Euroclear System until the changeover, which is scheduled to occur on December 31, 2000. At the Changeover, the business and related assets and liabilities of the Euroclear System will vest in and

<sup>5</sup> Securities Exchange Act Release No. 39643 (February 11, 1998), 63 FR 8232.

<sup>6</sup> Securities Exchange Act Release No. 43592 (November 17, 2000), 65 FR 75324 (December 1, 2000).

<sup>7</sup> Copies of the application for amendment to exemption from registration as a clearing agency are available for inspection and copying at the Commission's Public Reference Room. See volume 2 of 9, exhibit S of the application for amendment to exemption for a description of the change in ownership structure of the Euroclear System.