AMERICAN EXPRESS BANK INTERNATIONAL

Publicly Available July 2, 1987
1940 Act /s 202(a)(2)(A)
June 2, 1987

We would not recommend that the Commission take any enforcement action under the Investment Advisers Act of 1940 ("Advisers Act") if American Express Bank International ("American") offers investment advice as outlined in your letters of December 22, 1986, and April 23, 1987, without registering as an investment adviser. This position is based on the representations contained in your letters, particularly those listed below.

1. American is a corporation organized and regulated under Section 25(a) of the Federal Reserve Act (12 U.S.C. § 611 et seq.) ("Edge Corporation").

1. American is a banking Edge Corporation that is exclusively "engaged in banking," as that term is defined in Section 211.2(d) of the Federal Reserve Board's Regulation K (12 C.F.R. § 211 et seq.) ("Regulation K").

2. American, as an Edge Corporation chartered and regulated pursuant to a federal banking statute, has the same powers as a U.S. commercial bank, although the exercise of those powers is limited to international banking.

3. American's investment advisory services will be conducted in accordance with paragraphs (v) and (vi) of Section 211.4(e)(7) of Regulation K, which authorize an Edge Corporation to:

> act as investment or financial adviser by providing portfolio investment advice and portfolio management with respect to securities, other financial instruments, real property interest and other investment assets, and by providing advice on mergers and acquisitions, provided such services for U.S. persons shall be with respect to foreign assets only; and
>
> provide general economic information and advice, general economic statistical forecasting services and industry studies, providing such services for U.S. persons shall be with respect to foreign economies and industries only.

4. American, as an Edge Corporation, is examined by the Board of Governors of the Federal Reserve System, which, in addition to evaluating the safety and soundness of the operation of an Edge Corporation's total activities, examines its investment advisory activities to ensure compliance with all applicable laws and regulations.

5. American will not act as a "qualified U.S. bank" under Rule 17f–5(b), nor acquire a foreign subsidiary that will act as an "eligible foreign custodian" under Rule 17f–5(a), of the Investment Company Act of 1940.

Because this position is based upon the representations made in your letters, you should note that any different facts or conditions may require a different conclusion. Further, this response only expresses the Division's position on enforcement action and does not purport to express any legal or interpretive conclusions on the questions presented.

A. Thomas Smith III
Attorney

INCOMING LETTER

December 22, 1986
Mr. Thomas P. Lemke, Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: American Express Bank International—Section 202(a)(2) of the Investment Advisers Act of 1940

Dear Mr. Lemke:

On behalf of our client, American Express Bank International (the "Bank"), we request your assurance that the Division of Investment Management would not recommend enforcement action to the Securities and Exchange Commission (the "Commission") if the Bank were to offer investment advisory services without registering with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended (the "Act"), on the basis that the Bank is excluded from the definition of an "investment adviser" by virtue of being a "bank" within the meaning of section 202(a)(2) of the Act.

Factual Background

The Bank is a banking Edge corporation headquartered in New York, New York, with branch offices in Miami, Florida, and Los Angeles, California. It provides international commercial banking services to international clients, primarily non-United States residents, emphasing checking and money market accounts and time deposit accounts, and including various business and personal credit services (including loans of all kinds, letters of credit, bankers acceptances, and other credit facilities), check collection services, trust services, foreign exchange services, funds transfer services and other international banking services. It is organized under section 25(a) of the Federal Reserve Act, known as the Edge Act (12 U.S.C. §§ 611–632). As of December 31, 1985, it had total assets of approximately $130 million. The Bank is wholly owned by American Express Bank Ltd., a wholly owned subsidiary of American Express Company. Headquartered in New York, New York, with offices in thirty-nine countries, American Express Bank Ltd. provides a broad range of international banking and financial services. Its total assets as of September 30, 1986, were approximately $17.4 billion.

The Bank proposes to offer to its clients certain investment advisory services, including discretionary asset management, portfolio advice, and safekeeping and related services. Clients will be charged fees for these services. In the future, the Bank may expand its investment activities to include other services not contemplated at this time.

Legal Analysis
1. Section 202(a)(2) of the Act

Section 203(a) of the Act generally requires that an "investment adviser" register with the Commission before making use of the mails or any instrumentality of interstate commerce in its business as an investment adviser. According to the definition of an "investment adviser" in section 202(a)(11) of the Act, an "investment adviser," in relevant part, is a person "who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities...." The Bank proposes to engage in the business of an investment adviser for compensation in the United States and to make use of the facilities of interstate commerce in that business; therefore, the Bank would be required to register with the Commission pursuant to section 203(a) if it would become an "investment adviser" as a result. The definition of an "investment adviser" in section 202(a)(11), however, specifically excludes a "bank," as defined in section 202(a)(2) of the Act. Thus, if the Bank qualifies as a "bank" under section 202(a)(2), it will not be required to register with the Commission pursuant to section 203(a) in order to provide investment advisory services to its clients.

The question whether an Edge corporation is a "bank" within the meaning of section 202(a)(2) does not

appear to have been addressed by the Commission or its staff in the past. In a telephone conversation on October 10, 1986, with Mr. Jon S. Rand at this firm, Mr. Jack W. Murphy of the Office of Chief Counsel of the Division of Investment Management confirmed that the Division of Investment Management has not considered this question previously.

Section 202(a)(2) of the Act defines a "bank" as follows:

> "Bank" means (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

An Edge corporation is organized under the laws of the United States, specifically, under section 25(a) of the Federal Reserve Act, and, therefore, is a "bank" under the first clause of section 202(a)(2) if it is a "banking institution" within the meaning of that section. See, e.g., Status of Savings and Loan Associations under the Federal Securities Laws, SEC Investment Company Act Release No. 13,666, text at n. 19 (December 12, 1983) (under definition in section 202(a)(2) and identical definition in Investment Company Act of 1940, federal savings and loan associations would be "banks" if they were "banking institutions").

The term "banking institution" is not defined in the Act, nor in the Securities Act of 1933, as amended, the Securities Exchange Act of 1934 (the "1934 Act"), or the Investment Company Act of 1940, as amended. Rather, in each statute, the term is used in the definition of "bank" to refer to a larger class of institutions, some of which are "banks." We believe that a "banking institution" is an organization that performs banking functions similar to those performed by a bank and is supervised and examined similarly to a bank, whether or not such an organization is chartered as a bank under federal or state banking statutes. By this or any reasonable standard, an Edge corporation is a "banking institution."

2. Edge Corporations Generally

Although no distinction is found in section 25(a) of the Federal Reserve Act, Edge corporations tend in fact to be of two types: Edge corporations engaged in banking and Edge corporations engaged in an investment business. During the hearings on the Edge Act, Mr. George L. Harrison, the general counsel to the Board of Governors of the Federal Reserve System (the "Board"), explained that Senator Edge's bill was "calculated to authorize the Federal incorporation of two characters of institutions—one a banking institution that would do a regular commercial banking business abroad in connection with foreign business, and the other a general investment business of the kind that Senator Edge described so particularly at the last meeting of the committee." Amendment to Federal Reserve Act: Hearings on S. 2472 Before the House Committee on Banking and Currency, 66th Cong., 1st Sess. 78 (1919). In reporting Senator Edge's bill back to the House, the House Committee observed that "two classes of institutions are to be incorporated under this act, though there may not always be a very clear line of demarcation between them—one doing principally a banking business, like that done by the eight international banking corporations already organized [under state laws], and the others doing principally an investment business, taking long-time paper, including bonds and mortgages, and issuing their own debentures against them." H.R.Rep. No. 408, 66th Cong., 1st Sess. 3 (1919); see Wiley, Edge Act Corporations—Catalysts for International Trade and Investment, 16 Bus.Law. 1014, 1019 (1961).

In its Regulation K, adopted under the authority of section 25(a), the Board makes clear the line of demarcation between banking Edge corporations and investment Edge corporations by defining an Edge corporation "engaged in banking" as one ordinarily engaged in the business of accepting deposits in the United States from unaffiliated persons. 12 C.F.R. § 211.2(d). Regulation K treats Edge corporations engaged in banking somewhat differently from Edge corporations not engaged in banking. First, only Edge corporations engaged in banking are subject to a lending limit, or limit on loans to any one

borrower, of 15 percent of capital and surplus. 12 C.F.R. § 211.6(b). Second, while all Edge corporations are required to maintain adequate capital, only banking Edge corporations are subject to a specific minimum ratio of capital and surplus to risk assets of 7 percent. 12 C.F.R. § 211.6(c). Third, the Board's general consent for investments abroad is limited to the lesser of $15 million or 5 percent of capital and surplus for Edge corporations engaged in banking, but is limited only to the lesser of $15 million or 25 percent of capital and surplus for Edge corporations not engaged in banking. 12 C.F.R. § 211.5(c).

Thus, an Edge corporation engaged in banking (as opposed to an Edge corporation not engaged in banking) accepts deposits from unaffiliated persons in the United States, operates under lending limits, and is subject to closer supervision of capital adequacy and of investment abroad. Banking Edge corporations are in these respects more like commercial banks than are investment Edge corporations. The Bank is a banking Edge corporation and throughout this letter we refer to banking Edge corporations when we use the term “Edge corporation.”

3. Legislative Purpose of Section 25(a) of the Federal Reserve Act

The members of Congress who debated and enacted the Edge Act viewed Edge corporations as international banking institutions. Section 25(a) authorizes the organization of corporations “for the purpose of engaging in international or foreign banking or other international or foreign financial operations....” 12 U.S.C. § 611. The declared purpose of section 25(a), in part, is “to provide for the establishment of international banking and financial corporations operating under Federal supervision with powers sufficiently broad to enable them to compete effectively with similar foreign-owned institutions in the United States and abroad....” 12 U.S.C. § 611.

In the Senate debates on his bill, Senator Edge explained its features as follows: “It provides for the incorporation of banks to engage in foreign business, to be entirely under the supervision and control of the Federal Reserve Board, just as is our national banking system, to be in no way guaranteed or underwritten by the Government, but simply supervised by the Government.” 57 Cong.Rec. 4953 (1919) (emphasis added). In objecting to a provision of Senator Edge's bill requiring only a majority of directors of an Edge corporation to be United States citizens, Senator Smoot proclaimed that “there never ought to be a foreigner on the board of directors of any banking institution in this country. I think that every director of every bank that may be established under this bill, if it becomes law, ought to be a citizen of the United States....” 57 Cong.Rec. 4963 (1919) (emphasis added). Generally, the history of the debates and the hearings on the Edge Act is replete with references to the corporations to be created as banks, banking institutions, banking corporations, international banking institutions, and the like. E.g., Incorporating Institutions to Engage in International or Foreign Banking: Hearings on S. 2472 Before the Senate Committee on Banking and Currency, 66th Cong., 1st Sess. 20 (remarks of Sen. Gronna); 57 Cong.Rec. 3420, 4953, 4954 (1919) (remarks of Sen. Edge); 57 Cong.Rec. 4963, 4972 (1919) (remarks of Sen. Smoot); Amendment to Federal Reserve Act: Hearings on S. 2472 Before the House Committee on Banking and Currency, 66th Cong., 1st Sess. 27, 29, 34, 61, 78, 80, 81 (1919) (remarks of Gov. Harding, Rep. Wingo, and Mr. Harrison); 57 Cong.Rec. 8083 (1919) (remarks of Rep. Phelan); 58 Cong.Rec. 273 (1919) (remarks of Sen. Edge). Indeed, the original title of Senate Bill 2472, which became the Edge Act, was “Banking Corporations Authorized to do Foreign Banking Business.” Incorporating Institutions to Engage in International or Foreign Banking: Hearings on S. 2472 Before the Senate Committee on Banking and Currency, 66th Cong., 1st Sess. 3 (1919).

Senators Cummins and Edge focused on the similarity between the corporations to be organized under Senator Edge's bill and national banks. Senator Edge and others made it clear that Edge corporations would not have any powers that national banks did not have, except that they would not be subject to the borrowing limitations imposed on national banks (which have been repealed); they would be subject to lending limits set by the Board (which are similar to those applicable to national banks, 12 C.F.R. § 211.6(b)), rather than subject to statutory lending limits; and they would have such powers abroad as might be usual in connection with the transaction of the business of banking in the countries in which they operated. 57 Cong.Rec. 4955–59 (1919). These last powers were intended, as Senator McLean explained, to ensure that Edge corporations would have sufficient powers to compete with banking institutions chartered in the countries where those corporations did business, 57 Cong.Rec. 4957 (1919); these powers do not give Edge corporations any powers over and above those of commercial banks today. As enacted, section 25(a) conferred on Edge corporations only such powers as might be usual “in the determination of the Board of Governors of the Federal Reserve System” in connection with

the transaction of the business of banking in the countries in which they operated “and not inconsistent with the powers specifically granted herein.” 12 U.S.C. § 611. In its Regulation K the Board has listed the activities that it has determined to be usual in connection with the transaction of the business of banking abroad; these include some activities not generally permitted in the United States for commercial banks: general insurance agency activities, data processing (not limited to banking and economic data), managing offshore mutual funds, securities underwriting activities, and management consulting (not limited to banking). 12 C.F.R. § 211.5(d). These activities are closely related to traditional banking activities and represent only some enlargement on what domestic commercial banks do at home. Member banks are permitted to engage in these activities indirectly through subsidiaries abroad and directly, to a lesser extent, through foreign branches. 12 C.F.R. § 211.5(b)(1); see 12 C.F.R. § 211.3(b). Moreover, Edge corporations are authorized to engage in these activities only abroad. In their domestic offices Edge corporations are not authorized to engage in any activities not generally permissible for domestic commercial banks. See 12 C.F.R. § 211.4(e). We note that the Bank operates no offices abroad.

4. Powers of Edge Corporations

Section 25(a) grants to Edge corporations a full complement of banking powers, including the power to purchase, sell, discount, and negotiate notes, drafts, checks, bills of exchange, acceptances, and other evidences of indebtedness; to accept bills or drafts; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to receive deposits outside the United States; and to receive deposits within the United States that are incidental to an Edge corporation's international transactions or business.

The Board's Regulation K permits Edge corporations to engage in banking activities in the United States that are incidental to their international or foreign businesses and that are permitted under section 25(a). 12 C.F.R. § 211.4(e)(1). These banking activities include the receipt of deposits in transaction accounts and savings and time deposit accounts from foreign governments and their agencies, from offices or establishments abroad, from individuals residing outside the United States, and, under limitations designed to ensure that the deposits are related to international transactions, from individuals and organizations in the United States. The permitted banking activities include, further, various financing and guarantee activities in connection with international activities and transactions, 12 C.F.R. § 211.4(e)(4), the receipt of checks and other instruments for collection abroad or for collection in the United States for customers abroad, 12 C.F.R. § 211.4(e)(5), the transmittal of funds and securities for depositors, id., the provision of paying agent services (limited to foreign securities), 12 C.F.R. § 211.4(e)(7), the provision of trustee, registrar, conversion agent, or paying agent services (limited to securities issued to finance foreign activities and distributed outside the United States only), id., and various fiduciary and investment advisory activities, including the provision of securities brokerage and safekeeping services, the provision of general economic advice, and the provision of investment advisory and portfolio management services (with the limitation that when such services are provided to United States residents they are to be with respect to foreign securities and assets only), id. Thus, Edge corporations perform the same banking functions as commercial banks.

5. Supervision of Edge Corporations

Under section 25(a) Edge corporations are chartered, examined, supervised, and regulated by the Board in a manner similar to the chartering, examination, supervision, and regulation of commercial banks. An Edge corporation is organized under paragraph 4 of section 25(a) through Board approval of an application and issuance of a permit. In acting on such an application, the Board considers the applicant's financial condition and history, the general character of the applicant's management, the competitive effects of the proposal, and the convenience and needs of the community to be served. 12 C.F.R. § 211.4(a). This organizational process is similar to the process of organizing a commercial bank. An Edge corporation may use the word “bank” in its name. (It must include the word “international” or a similar word. 12 C.F.R. § 211.4(a)(2).)

A change in control of an Edge corporation requires prior notice to the Board and the expiration of a sixty-day period, during which period the Board may disapprove the proposed change in control or impose conditions to assure the safe and sound operation of the Edge corporation to be acquired and for other reasons. 12 C.F.R. § 211.4(b)(3). This procedure is similar to the procedure applicable to a change

in control of a commercial bank under the Change in Bank Control Act. The establishment of domestic branches by Edge corporations requires prior notice to the Board, publication in the community to be served, and the expiration of a forty-five-day period, during which the Board may disapprove the proposal on the basis of the same factors considered in acting on an application to organize an Edge corporation, set forth above. 12 C.F.R. § 211.4(c). Again, this procedure is similar to that applicable to the establishment of a branch of a commercial bank.

The domestic deposits of an Edge corporation are subject to the Board's reserve requirements for member banks. 12 C.F.R. § 211.4(d) (rule also imposed by statute, 12 U.S.C. § 615). Edge corporations are subject to lending limits and capital requirements established by the Board, similar to those applicable to commercial banks, as discussed above. 12 C.F.R. § 211.6.

The Board's Regulation K states that organizations conducting international banking operations through Edge corporations are "to ensure that their operations conform to high standards of banking and financial prudence." 12 C.F.R. § 211.7(a). This requires effective recordkeeping, controls, and internal reporting. Id. Edge corporations are examined annually by the Board and are required to file reports of condition and other reports with the Board. 12 C.F.R. § 211.7. In all respects, Edge corporations are organized and supervised in a manner similar to the organization and supervision of commercial banks.

6. International Banking

To summarize, an Edge corporation performs internationally the same banking functions performed by a commercial bank. To put this another way, an Edge corporation has the same powers as a commercial bank, but the exercise of those powers is limited to international banking. An Edge corporation is subject to a regulatory structure of examination and supervision by the Board, an authority having supervision over banks, that is similar to the regulatory structure governing banks. Moreover, an Edge corporation is chartered and regulated pursuant to a federal banking statute. Congress believed that it was creating a banking institution when it created the Edge corporation in 1919. Accordingly, we believe that an Edge corporation, and, specifically, the Bank, is a "banking institution" for purposes of section 202(a)(2) of the Act.

From a general policy perspective, the fact that an Edge corporation differs from a commercial bank in that it generally provides its banking services to persons engaged in international transactions and to non-United States residents is not a reason to subject an Edge corporation to regulation as an "investment adviser" when Congress has chosen to exempt banks and other banking institutions from such regulation. Moreover, the staff has concluded previously that an international banking agency that engages in all activities in which banks may engage except certain fiduciary activities and the receipt of deposits from United States residents is a "bank" under the definition of section 3(a)(6) of the 1934 Act, a definition virtually identical with the definition of section 202(a)(2) of the Act. Letter re Banque Sudameris (pub. available June 5, 1986).

Conclusion

Based on the foregoing, it is our opinion that an Edge corporation, and, specifically, the Bank, is a "banking institution" for purposes of section 202(a)(2) of the Act and, accordingly, is a "bank" under the first clause of section 202(a)(2). We respectfully request your confirmation that the Division of Investment Management would not recommend any enforcement action to the Commission if the Bank were to offer investment advisory services without registration of the Bank as an investment adviser under the Act. In the event that you conclude that you cannot confirm that the Division of Investment Management would not recommend any enforcement action to the Commission if the Bank were to commence to offer investment advisory services without registration, we request that you call the undersigned before responding formally to this letter. If you have any questions or require any further information with respect to this request, please call the undersigned at (212) 935–8000. Seven additional copies of this letter are enclosed.

Very truly yours,
John B. Cairns

INCOMING LETTER

April 23, 1987
Mr. Thomas Smith
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: American Express Bank International—Section 202(a)(2) of the Investment Advisers Act of 1940

Dear Mr. Smith:

Please refer to our letter dated December 22, 1986, addressed to Mr. Thomas P. Lemke of the Division of Investment Management, requesting the Division's assurance that it would not recommend enforcement action to the Securities and Exchange Commission (the "Commission") if our client, American Express Bank International (the "Bank"), were to offer investment advisory services without registering with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended (the "Act"), on the basis that the Bank is excluded from the definition of an "investment adviser" by virtue of being a "bank" within the meaning of section 202(a)(2) of the Act.

In a recent telephone conversation regarding this request, you indicated that we might facilitate the Division's efforts to respond to the request by supplementing the discussion in our December 22 letter on three points. First, you indicated that the Division would like a more specific description of the investment advisory services the Bank proposes to offer, to the extent available. Second, you indicated that the Division would like some discussion of the Bank's authority under Regulation K to offer the proposed investment advisory services and of the supervision of such an activity by an Edge corporation on the part of the Board of Governors of the Federal Reserve System (the "Board"). Third, you indicated that Division staff may have some concern, which we may need to address, regarding an Edge corporation qualifying as a "qualified U.S. bank" or regarding an Edge corporation's foreign subsidiary qualifying as an "eligible foreign custodian" under the Commission's Rule 17f–5 under the Investment Company Act of 1940, as amended (the "Investment Company Act").

1. Proposed Services

Through its offices in the United States, the Bank proposes to offer to individuals and institutions who are neither citizens nor residents of the United States portfolio investment advice on both a discretionary and a non-discretionary basis. Such investment advice may include, as well as investment advice regarding securities or other investment instruments, general financial advice or general economic advice. Such investment advice will be primarily regarding securities and other investment instruments traded on United States and foreign exchanges or privately placed or traded over the counter in the United States and abroad. The Bank also proposes to offer investment advice regarding the management of currency exchange risk and multi-currency asset management. The Bank does not propose to render investment advice to any investment company registered under the Investment Company Act.

In the early stages of its investment advisory business, the Bank may retain one or more sub-investment advisers, but in such cases it will operate under direct contractual arrangements with its clients and will be responsible for the investment advice rendered and for the appropriateness of such advice in light of the investment objectives of its clients. As the Bank gains experience in the investment advisory business, it may render advice to its clients without the assistance of sub-investment advisers.

Also, following the initial stages of its investment advisory business, the Bank expects to offer securities brokerage services to its clients, directly or through a subsidiary.

2. Regulation K

Section 211.4(e)(7) of the Board's Regulation K authorizes an Edge corporation to engage in certain

fiduciary and investment advisory activities in the United States, as set forth therein. Paragraph (v) authorizes an Edge corporation to

> act as investment or financial adviser by providing portfolio investment advice and portfolio management with respect to securities, other financial instruments, real property interests and other investment assets, and by providing advice on mergers and acquisitions, provided such services for U.S. persons shall be with respect to foreign assets only.

Further, paragraph (vi) authorizes an Edge corporation to

> provide general economic information and advice, general economic statistical forecasting services and industry studies, provided such services for U.S. persons shall be with respect to foreign economies and industries only.

This authority clearly encompasses the activities proposed by the Bank.

As explained in our December 22 letter, Edge corporations are examined and supervised by the Board in the same manner as are banks generally. The Board examines Edge corporations at least annually; such examinations are for all purposes "bank examinations," conducted by Federal Reserve bank examiners in a manner similar to the manner in which those bank examiners conduct examinations of banks and similar in scope to bank examinations. Such examinations are aimed at all the affairs of an Edge corporation. The examiners evaluate the quality of supervision and management of an Edge corporation, asset quality, earnings performance, compliance with applicable laws and regulations, and quality of internal controls and management information systems. Overall, the examiners consider the safety and soundness of the operation of an Edge corporation and examine all its activities to ensure such safety and soundness and to ensure compliance with applicable law.

In particular, when Federal Reserve examiners examine an Edge corporation engaged in providing investment advice to clients, they will consider whether the activity is conducted in compliance with Regulation K and other applicable laws and regulations and whether the activity is conducted in a prudent manner. From the point of view of Federal Reserve examiners, of course, any activity conducted in a manner such that the conduct of the activity subjects an Edge corporation to liability is not conducted in a prudent manner. Thus, Federal Reserve examiners will be concerned to ensure that an Edge corporation's investment advisory activities are conducted in compliance with all applicable laws and regulations, including the Act and regulations thereunder to the extent applicable. Most significant here, Federal Reserve examiners will examine an Edge corporation's investment advisory activities in the same manner as they would examine such activities conducted by a bank.

3. Rule 17f–5

The Bank has authorized us to state on its behalf that it has no intention of acting as a "qualified U.S. bank" under Rule 17f–5(b) or acquiring a foreign subsidiary that will act as an "eligible foreign custodian" under Rule 17f–5(a).

We hope that this letter supplies the further information the Division needs. If you have any questions or need any further information, please call the undersigned at (212) 935–8000. Seven additional copies of this letter are enclosed.

We are hopeful of your early reply.

Very truly yours,
John B. Cairns