

THE ASSOCIATION OF GLOBAL CUSTODIANS

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March 28, 2006

Claudiu Doltu
State Secretary
Ministry of Finance
Strada Apolodor nr. 17,
Sector 5, cod 050741
Bucharest - Romania

Re: Access to Romanian Government Securities by Non-Residents

Dear State Secretary Doltu:

The Association of Global Custodians ("Association") is submitting this letter in response to letter Nr.VII.4/79/06.02/2006, issued by the National Bank of Romania to ING Bank N.V. - Amsterdam Sucursala Bucuresti earlier this year. We hope that the following comments will assist the Ministry of Finance and the National Bank of Romania in their efforts to facilitate operations for non-resident investors in Romanian government debt securities.

Background

The members of the Association, identified in the letterhead above, provide securities safekeeping and related asset-handling services to many of the world's institutional investors, which in turn own a very substantial amount of assets worldwide. Several members of the Association have been active in Romania since the mid-1990s, and are using local custodians for the assets traded on the Bucharest Stock Exchange ("BSE") and the RASDAQ. Indeed, international practice recognizes and accommodates the operations and handling arrangements of global custodians – for example, global custody arrangements are a common and accepted practice for institutional investors who transact in the securities listed on the BSE and RASDAQ markets.

Traditionally, institutional investors appoint global custodians to act as their single point of contact to multiple markets. The benefits of this approach include a single entry point for all post-trade instructions and consolidated reporting. Customers' global custodians in turn establish service arrangements with local subcustodians in each local market. These subcustodians in turn participate in local trade settlement and safekeeping operations and facilities.

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Large institutional investors are very strictly regulated in the United States, with mutual funds being subject to the Investment Company Act of 1940, and in particular, Investment Company Act Rules 17f-7 and 17f-5, and pension funds being subject to ERISA regulations. The significant requirements under these rules and regulations results in the need for most mutual fund and pension fund investors to appoint a global custodian, who coordinates customers' settlement-related activities in all markets.

Issue

Under the current legal framework in Romania, as detailed in order no. 1408/2005 of the Ministry of Finance, non-resident investors in Romanian government debt instruments may access the market for such securities only through a Romanian provider. The interpretation of these regulations in Romania does not recognize the contractual and servicing relationship between the ultimate investor and its global custodian on one side, and between the global custodian and its local subcustodian on the other side. Instead, these regulations uniquely require the establishment of an entirely separate and direct contractual relationship between the final investor and the local primary dealer covering both trading and custody services.

Association members report that this unique requirement is acting as an access barrier to the Romanian debt market for US mutual funds and pension funds, as well as for other categories of global institutional investors who use a global custodian and cannot directly appoint a local bank as their custodian. These investors are usually "buy and hold" investors with significant financial resources which contribute to the growth and stability of the markets in which they invest.

Currently for equity securities in Romania, local subcustodians maintain securities accounts segregated in the name of the ultimate non-resident investor, even if the relationship is governed by the contracts signed between the local subcustodian and the global custodians. This practice could be applied to government debt instruments as well, to address any concern that may exist that the identity of the ultimate investors be known locally at any moment in time.

There is no need to require atypical direct contracts between the ultimate investors and the local dealer acting as custodian. Furthermore, the contract covering the dealer's trade execution services can be separate from the custody contract (as is typically the case elsewhere). Thus, for trading, each ultimate investor could enter into direct trading contracts with one or more local primary dealer, noting in that contract that settlement and custody will take place via the global custodian and its local custodian.

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Conclusion

The Association believes the current regulations applicable to Romanian government debt deter foreign investment in such instruments. The requirement to contract directly with a Romanian dealer overlooks the global custody "system" currently recognized throughout US and non-US markets and the underlying practical limitations that face sizeable institutional investors interested in accessing multiple markets worldwide. The Association believes that consideration of the issue set out above and corresponding action will allow Romania to benefit more fully from access by non-resident investors to the Romanian government debt market.

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We appreciate the opportunity to provide comments on this issue. We are happy to discuss the issue further or to answer any questions you may have.

Sincerely,



Margaret R. Blake
Counsel to the Association



Dan W. Schneider
Counsel to the Association

Cc: Mugur Isarescu
Governor
National Bank of Romania