allowed to present evidence in this regard.

The Respondent acknowledged in her exceptions that she is without authority to handle controlled substances in Kentucky and West Virginia, thus supporting the Government's contention. State authorization to handle controlled substances where Respondent is registered with DEA or seeks registration with DEA is the only relevant issue in this proceeding. As outlined above, DEA cannot register the Respondent to handle controlled substances without such authority. Therefore, the Deputy Administrator has not considered Respondent's other arguments as set forth in her exceptions. The Deputy Administrator hereby adopts the opinion and recommended decision of the administrative law judge in its entirety.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AS7495624, previously issued to Diane E. Shafer, M.D., be, and it hereby is, revoked, and that her pending application for registration in West Virginia be denied. This order is effective March 1, 1995.

Dated: January 24, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–2190 Filed 1–27–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Postponement of Commission Meetings

Summary: Due to the scheduling difficulties of participants, the Glass Ceiling Commission meetings have been postponed. The meetings had been announced previously in the **Federal Register** of January 19, 1995, 60 FR 3881. The Commission Meetings were to take place on Monday, January 31, 1995, 4:00 p.m.–7:00 p.m. and Tuedsay, February 1, 1995, 1:00 p.m. to 4:00 p.m. at the Department of Labor. The Commission meeting will be rescheduled at a later date.

For Further Information Contact: Ms. René A. Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW, Room C–2313, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 25th day of January, 1995.

René A. Redwood,

Executive Director.

[FR Doc. 95–2198 Filed 1–27–95; 8:45 am]

BILLING CODE 4510–23–M

Pension and Welfare Benefits Administration

[Application No. D–09469, et al.]

Proposed Exemptions; Financial Institutions Retirement Fund, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue NW., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Financial Institutions Retirement Fund (the Fund) and Financial Institutions Thrift Plan (the Thrift Plan) Located in White Plains, New York

[Application No. D–09469]

Proposed Exemption

Section I. Covered Transactions

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the provision of certain services, and the receipt of compensation for such services, by Pentegra Services, Inc. (Pentegra), a wholly-owned, for-profit subsidiary corporation of the Fund, to employee benefit plans (the Plans) and to their sponsoring employers (the Employers) that participate in the Fund and the Thrift Plan; provided that the following conditions are met:

(a) A qualified, independent fiduciary of the Fund determines that the services provided by Pentegra are in the best interests of the Fund and are protective of the rights of the participants and beneficiaries of the Fund;

(b) At the time the transactions are entered into, the terms of the transactions are not less favorable to Pentegra than the terms generally available in comparable arm's-length transactions between unrelated parties;

(c) Pentegra receives reasonable compensation for the provision of its services, as determined by the independent fiduciary;

(d) Prior to the offering of services, the independent fiduciary will initially review the services to be provided by Pentegra and will determine that such services are reasonable and appropriate for Pentegra, taking into account such factors as: whether Pentegra has the capability to perform such services, whether the fees to be charged reflect arm's length terms, whether Pentegra personnel have the qualifications to provide such services, and whether such arrangements are reasonable based upon a comparison with similarly qualified firms in the same or similar locales in which Pentegra proposes to operate;

(e) No services will be provided by Pentegra without the prior review and approval of the independent fiduciary;

(f) Not less frequently than quarterly, the independent fiduciary will perform periodic reviews to ensure that the services offered by Pentegra remain appropriate for Pentegra and that the fees charged by Pentegra represent reasonable compensation for such services;

(g) Not less frequently than annually, Pentegra will provide a written report to the board of directors of the Fund describing in detail the services it provided to employee benefit plans and/or their sponsoring employers that participated in the Fund and the Thrift Plan, a detailed accounting of the fees received for such services, and an estimate of the fees Pentegra anticipates it will receive during the following year from such plans and their sponsoring employers;

(h) Not less frequently than annually, the independent fiduciary will conduct a detailed review of approximately 10 percent of all completed transactions, which will include a reasonable cross-section of all services performed; such transactions will be reviewed for compliance with the terms and conditions of this exemption;

(i) Pentegra's financial statements will be audited each year by an independent certified public accountant, and such audited statements will be reviewed by the independent fiduciary;

(j) The independent fiduciary shall have the authority to prohibit Pentegra from performing services that such fiduciary deems inappropriate and not in the best interests of Pentegra and the Fund; and

(k) Each Pentegra contract with a Fund or Thrift Plan employer, or a plan of such employer, will be subject to termination without penalty by Pentegra for any reason upon not more than 90 days written notice to such employer or plan.

Section II. Recordkeeping

(1). The independent fiduciary and the Fund will maintain, or cause to be maintained, for a period of 6 years, the records necessary to enable the persons described in paragraph (2) of this Section II to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the independent fiduciary and the Fund or their agents, the records are lost or destroyed before the end of the six year period, and (b) no party in interest other than the independent fiduciary and the Board of Directors of the Fund shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (2) below.

(2)(a). Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (1) of this Section II shall be unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) Any employer participating in the Fund or any duly authorized employee or representative of such employer; and

(3) Any participant or beneficiary of the Fund or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraphs (a)(2) and (a)(3) of this paragraph (2) shall be authorized to examine trade secrets of the independent fiduciary, the Fund, or their affiliates, or commercial or financial information which is privileged or confidential.

(3) For purposes of this Section II, references to the Fund shall also include Pentegra.

Summary of Facts and Representations

1. The Fund is a multiple employer, defined benefit pension plan which is intended to meet the requirements for qualification under section 401(a) of the Code and as an employee pension benefit plan within the meaning of section 3(2) of the Act. The applicant further represents that because all of the assets of the Fund are available to pay all benefits accrued under its retirement program, the Fund is considered to be a single plan under the Code and regulations thereunder.

The Fund was established in 1943 to provide a means by which the Federal Home Loan Banks and various financial institutions could cooperate in providing retirement benefits for their employees. The applicant represents that the Fund is currently the largest provider of pension benefits in the thrift industry with 12 Federal Home Loan Banks, hundreds of individual thrift institutions, and various other companies which directly service the thrift industry that have chosen to participate in the Fund. As of March 31, 1994, the Fund had total assets of approximately $1.36 billion, 355 participating employers, and 36,714 individual plan participants. As of July 1, 1993, the applicant represents that the fair market value of the assets of the Fund exceed its liabilities for projected accrued benefits by approximately $420 million.

The named fiduciaries of the Fund and the Thrift Plan are their respective boards of directors. The President of both the Fund and Thrift Plan is also, for both the Fund and Thrift Plan, the chief administrative officer, a member ex officio of the board of directors, and pursuant to the Act, the ''plan administrator''. The Fund has another 13 individuals that are members of its board of directors, most of whom are presidents of various employers that participate in the Fund, and one individual who is the Regional Director for the Northeast Region of the Office of Thrift Supervision.

The Thrift Plan is a multiple employer, defined contribution plan that was established in 1970. As of March 31, 1994, the Thrift Plan had total assets of $315,845,510, 196 participating employers, and 16,897 individual plan participants. It was created to encourage employers participating in the Fund to continue their participation by providing them with the convenience of a defined contribution plan which is administered

by the same personnel at the same facilities as the Fund. The Thrift Plan has a board of directors which, in addition to the President of the Thrift Plan, consists of 6 individuals who are presidents of various employers that participate in the Thrift Plan.

2. The Fund proposes to create a wholly-owned, for-profit subsidiary corporation designated as Pentegra Services, Inc. (Pentegra), a Delaware corporation, in order to externalize the services the Fund performs for employee benefit plans (the Plans) and their sponsoring employers (the Employers) in a way that will enhance the value of the assets of the Fund. The applicant represents that research indicates that, if the Fund does not expand its employee benefit services to gain new clients, it is facing the problem of increased costs of plan administration on a per participant basis because of the consolidation and contraction of many companies which occurred in recent years in the thrift industry. The intention of the Fund is to have Pentegra, on a cost effective basis, expand its current services and activities by providing various ministerial or fiduciary services to Plans and their Employers, which may or may not participate in the Fund or in the Thrift Plan. The applicant represents that the creation of Pentegra will enable the Fund to develop new products and services for employers outside of the banking industry that not only will enhance revenues but will increase significantly the experience and resources of the Fund and enable the Fund to attract and retain a highly qualified staff of employees.

The applicant represents that Pentegra will report not less frequently than annually to the board of directors of the Fund, a detailed description of the services it provided to employee benefit plans and/or to their sponsoring employers that participate in the Fund and the Thrift Plan. Also, the report by Pentegra will give a detailed account of the fees received for such services and will estimate the amount of fees it anticipates receiving in the following year from the plans and/or their sponsoring employers. Further, Pentegra's financial statements will be audited annually by an independent certified public accountant and such audited statements will be reviewed by Pentegra's independent fiduciary (see below).

The services that Pentegra is proposing to provide to tax-qualified defined benefit and defined contribution plans and to their sponsoring employers include:

(a) Preparation of plan documents and summary plan descriptions.

(b) Procurement of favorable determination letters with respect to the tax qualification of the plans from the Internal Revenue Service.

(c) Maintenance of books of account for plans and each participant, disclosing, among other things, accrued benefits and account balances.

(d) Performance of plan administration functions involving preparation of employee statements, calculation and payment of benefits, preparation of investment performance data, top-heavy testing, and administration of plan participant loans and hardship withdrawals.

(e) Performance of functions necessary for maintaining compliance with applicable provisions of the Code; such as, the special nondiscrimination testing, testing for compliance with the annual limitations on contributions and benefits, and testing for compliance with minimum coverage and participation requirements.

(f) Assist in the preparation of annual reports and participant benefit statements as required by the Act and Code.

(g) Provide consulting services to its clients, including employers participating in the Fund or Thrift Plan, with respect to tax-qualified retirement plans.

Pentegra is represented by the applicant to have intentions of offering similar services with regard to nonqualified compensation plans or arrangements as will be offered with regard to tax-qualified retirement plans. The nonqualified plans will be excess benefit plans, supplemental executive retirement plans, salary continuation plans, elective deferred compensation plans, and various types of equity-based compensation arrangements, such as stock options, stock appreciation rights, and phantom stock.

Accordingly, with respect to such nonqualified plans and arrangements, Pentegra intends to perform for its clients, including employers participating in the Fund or the Thrift Plan, the following enumerated services:

(a) Preparation of appropriate plan documents and, as applicable, summary plan descriptions.

(b) Assist employers in obtaining various rulings from governmental authorities; e.g., IRS private letter rulings.

(c) Maintenance of books of account for plans and for each participant in the plan.

(d) Performance of various administration functions, such as benefit calculations, testing for compliance with tax withholding requirements, and making determinations of eligibility for benefits and payment options.

(e) Assist in preparation of annual reports of plans and participant benefit statements.

(f) Provide consulting services to clients, including Fund and Thrift Plan sponsoring employers, with respect to nonqualified plans.

3. The Fund is contracting with Ernst & Young, a New York partnership, to employ its division of Actuarial, Benefits, and Compensation Consulting Services (ABC) to be the independent fiduciary with respect to the services Pentegra will render to Employers that participate in the Fund or the Thrift Plan and to the Plans sponsored by the Employers.

Ernst & Young represents that it is an international professional services firm performing as independent auditors and business advisers to a broad range of companies engaged in various business activities, including companies engaged in regulated industries, such as banking, insurance, and utilities. Its clientele includes companies required to comply with the Act. In addition, Ernst & Young states that as auditors, it has numerous policies, practices, and systems in place to ensure that it remains independent from its clients.[1] Ernst & Young has 600 locations worldwide with 20,000 employees that generated domestic revenues for fiscal 1993 of $2.3 billion and global revenues that exceeded $5 billion. They further represent that including its undertaking as independent fiduciary for the Fund, it will not receive revenues from the Fund and the Thrift Plan that exceed one percent of its gross receipts from all sources for any fiscal year.

The practice of ABC provides a variety of services related to qualified and nonqualified retirement programs, including defined benefit and defined contribution arrangements, and welfare benefit and executive compensation programs. It also deals with benefits, tax, and regulatory issues, actuarial matters, and employee communications. ABC has more than 350 professionals located nationwide, comprised of attorneys, accountants, actuaries, plan administrators, and consultants. ABC is familiar with the types of services that Pentegra proposes to provide to both qualified and nonqualified plans because of its having performed all of those services for its own clients. ABC

[1] Since Ernst & Young is serving as independent fiduciary for Pentegra, Ernst & Young will not be engaged as Pentegra's independent certified public accountant.

has also performed surveys that are regularly used to advise employers and their employee benefit plans on implementing and improving their recordkeeping procedures, benefit valuations, and compliance systems. Ernst & Young concludes that the past experience of ABC will enable it to discern which services that may be performed by Pentegra are appropriate and in the best interests of the Fund and whether or not the fees for the services constitute reasonable compensation.

Following the initial review of the services to be provided by Pentegra, ABC will perform periodic reviews (at fixed intervals, at least quarterly as well as spot checks) to ensure that the services offered remain appropriate for the Fund. ABC not only will determine whether the services are beneficial for the Fund, but will also determine whether the fees charged by Pentegra represent reasonable compensation. ABC will use its own service and pricing structure experience as well as comparisons to similarly qualified firms in similar locales to determine if fees charged by Pentegra are those that would be charged in arm's-length transactions. Pentegra will establish written schedules for fees for different services it will provide that will be subject to review and approval or disapproval by ABC. An annual detailed review of approximately 10 percent of all completed service transactions undertaken by Pentegra will be made by ABC, selecting a reasonable cross-section of all the different services performed.

Ernst & Young represents that ABC will take an active role in determining whether the services performed by Pentegra are economically pragmatic for the Fund and whether the services are in the best interests of the Fund and its participants and beneficiaries. ABC also will determine whether the services performed by Pentegra will enhance the services and product availability as well as afford economies of scale for the Fund and its respective programs.

An initial review by ABC of the services to be performed by Pentegra and the fees to be charged will involve an in-depth analysis of each service proposed by Pentegra and the fees to be charged to determine whether such services are reasonable and appropriate for Pentegra to perform and whether the fees represent reasonable compensation. ABC will review the qualifications of the personnel who will perform the services, interview selected individuals, review documentation and processes to assess administrative practices, systems, and controls employed by Pentegra as well as evaluate the overall capabilities of Pentegra to deliver the proposed services. ABC will also assess the proposed pricing structure of Pentegra for reasonableness in relation to the market. No services will be rendered by Pentegra without prior review and approval by ABC.

As part of the initial review, ABC will explore with Pentegra the standardization of certain services by Pentegra to determine whether the services could have uniform pricing and marketing. If such standardization of services and fees by Pentegra are reasonable and competitive, then ABC would not need to approve every transaction involving such previously approved standardized service.

ABC will maintain for a period of 6 years records that document its determinations as to the services to be rendered and fees charged by Pentegra, and records of the process and rationale used by ABC to make its determinations. Such records will include the initial determinations as well as ABC's periodic and annual reviews and decisions for approving and disapproving the services and fees of Pentegra.

Ernst & Young further represents that ABC will take action to prohibit Pentegra from performing services that ABC deems inappropriate and not in the best interests of the Fund and its participants and beneficiaries. When ABC undertakes to prohibit Pentegra from offering a service, it will inform the President and Senior Vice President—Legal & Secretary of the Fund by facsimile and overnight mail to cease providing the service. Should such service continue, overnight letters containing ABC's findings and orders will be sent to each member of Pentegra's and the Fund's board of directors.

4. The applicant represents that the proposed transactions will permit Pentegra to operate in a for-profit environment and to develop new products and services which will inevitably inure to the benefit of Fund and its Employers by way of enhanced services and the attainment of greater expertise by the staff. Also, the applicant foresees that the proposed provision of services by Pentegra will expand the economic value of the Fund's plan administration services and create significant increased returns for such services. The applicant further represents that the potential returns to be derived from the use of the administration services provided by Pentegra will serve to maintain the present positive economies of scale available under the Fund, and thus facilitate both significant Employer participation in the Fund and its continuing viability as a retirement benefit program, and thereby provide substantial benefits to individual participants and their beneficiaries.

Under the proposed transactions, the applicant represents that the rights of the participants and beneficiaries of the Fund will be protected. The staff of the Fund, in conjunction with a market research firm, has made a study of the current and projected market in which the Fund operates, and the staff performed an analysis of its services and the feasibility of offering its services to third-party employers. A special committee of the board of directors of the Fund reviewed in detail the findings of the staff of the Fund and an independent financial advisor (the Deloitte & Touche Valuation Group) provided an opinion as to the fairness of the proposed transactions from a financial perspective.

With respect to the setting of compensation for Fund and Pentegra employees, the applicant represents that on an annual basis the President and the human resources officer of the Fund draft a proposed salary budget for the Fund (including Pentegra), taking into account input from various management levels, and also, making an analysis of each described position, determining the relative worth and fair market value of each position, and reviewing the performance of each employee.

The proposed annual salary budget is then presented by the President of the Fund to the personnel committee of the board of directors of the Fund, which reports directly to the board of directors of the Fund on major personnel policies, including compensation matters. The personnel committee typically enters into executive session (without the President of the Fund in attendance) when it deliberates over the proposed salary budget and presents its recommendations to the board of directors of the Fund. The board of directors then makes the final decision regarding salary levels.

The personnel committee consists of 5 presidents of different financial institutions that participate in the Fund. No employees or officers of the Fund, Pentegra, or the Thrift Plan are members of the personnel committee. The applicant represents that, as a result of the make-up of the committee and the board of directors, there is assurance that compensation levels are appropriate and in accordance with the board of directors duty as fiduciaries of the Fund to act in the best interests of the participants and beneficiaries of the Fund.

In addition, the applicant represents that if an employer participating in the Fund and/or the Thrift Plan is considering retaining Pentegra to provide services and an officer of such employer is also a member of either the board of directors of the Fund, the Thrift Plan, or Pentegra, such individual shall refrain from any discussions or considerations by such board of directors with respect to the provision of services by Pentegra.

The applicant represents that in the event a situation arises which could lead to a conclusion that there may be a conflict of interest or the appearance of a conflict of interest in the context described above involving a person who is a member of the Board of the Fund, the Thrift Plan, or Pentegra, the following procedures will be followed:

(a) The person shall disclose the facts of the situation to the Chairperson of the Board of which the person is a member;

(b) The person shall not participate in any formal or informal discussion of, or participate in any decision, or vote on the specific contract, relationship, person, or organization with respect to which the conflict or appearance of conflict may arise. However, such person may be counted to establish a quorum for meetings;

(c) The person will leave the meeting to allow the remaining members to engage in a free and frank discussion regarding the contract, relationship, individual, or organization with respect to which the conflict or appearance of conflict may arise and not return to the meeting until called by the Chairperson of the Board; and

(d) The minutes of the affected Board shall record the absence of the person from the discussions, deliberations, and decisions of the Board with respect to the contract, relationship, individual, or organization in question. If a vote is taken, the person affected will not vote, and the minutes of the meeting will record that fact.

The applicant represents that the terms of any transactions between Pentegra and employers who participate in the Fund or Thrift Plan will be at least as favorable to Pentegra as the terms available in arm's-length transactions between Pentegra and employers who do not participate in the Fund or the Thrift Plan. It is represented by the applicant that all arrangements between Pentegra and a Fund or Thrift Plan employer, or its plan, for the provision of services, will be in writing and will be terminable by Pentegra without penalty to Pentegra upon not more than 90 days written notice to such an employer or its plan. Further, such plans and employers may terminate their contracts with Pentegra without penalty upon not more than 90 days written notice to Pentegra.

The applicant represents that Pentegra will report not less than annually to the board of directors of the Fund a detailed description of the services it provided to employee benefit plans and/or to their sponsoring employers that participate in the Fund and the Thrift Plan. Also, the report by Pentegra will give a detailed account of the fees received for such services and will estimate the amount of fees it anticipates receiving in the following year from the such plans and/or their sponsoring employers.

5. In summary, the applicant represent that the proposed transactions will satisfy the criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because (a) the terms for the proposed services between Pentegra and employers that participate in the Fund or the Thrift Plan will be as favorable to Pentegra as are the terms available in arm's-length transactions between Pentegra and employers which do not participate in the Fund or the Thrift Plan; (b) Pentegra will be able to terminate without penalty its services to plans sponsored by employers which participate in the Fund or the Thrift Plan on reasonably short notice under the particular circumstances; (c) an independent fiduciary will determine that Pentegra receives reasonable compensation for the provision of its services; and (d) the independent fiduciary has the authority to prohibit Pentegra from performing services that such fiduciary deems inappropriate and not in the best interests of the Fund.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Mellon Bank, N.A., Located in Pittsburgh, Pennsylvania

[Application No. D–09523]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).

Section I—Exemption for In-Kind Transfer of CIF Assets

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, as of November 5, 1993, to the in-kind transfer of assets of plans for which Mellon Bank, N.A. or any of its affiliates (Mellon) acts as a fiduciary (the Client Plans), other than plans established or maintained by Mellon, that are held in certain collective investment funds maintained by Mellon (CIFs), in exchange for shares of the Laurel Funds [a/k/a Dreyfus or Premier Funds] (the Funds),[2] open-end investment companies registered under the Investment Company Act of 1940 (the 1940 Act), in situations where Mellon acts as investment advisor for the Fund as well as custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, and/or Fund accountant, or provides some other ''secondary service'' to the Funds as defined in Section V(h), in connection with the termination or partial termination of such CIFs, provided that the following conditions and the general conditions of Section IV are met:

(a) No sales commissions or other fees are paid by the Client Plans in connection with the purchase of Fund shares through the in-kind transfer of CIF assets and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the Funds.

(b) Each Client Plan receives shares of a Fund which have a total net asset value that is equal to the value of the Client Plan's pro rata share of the assets of the CIF on the date of the in-kind transfer, based on the current market value of the CIF's assets as determined in a single valuation performed in the same manner at the close of the same business day using independent sources in accordance with Rule 17a–7 of the Securities and Exchange Commission under the 1940 Act (see 17 CFR 270.17a–7) and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers (or, in the case of any weekday CIF transfers, the day of the transfer), determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of Mellon.

[2] The applicant represents that effective October 1994, the Laurel Funds changed their name to either ''Dreyfus'' or ''Premier'' as a result of Mellon's acquisition of the Dreyfus Corporation, the sponsor of the Dreyfus Funds.

(c) All or a pro rata portion of the assets of a Client Plan held in a CIF are transferred in-kind to the Funds in exchange for shares of such Funds.

(d) A second fiduciary which is independent of and unrelated to Mellon (the Second Fiduciary) receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Funds (including a current prospectus for each of the Funds and a statement describing the fee structure) and, on the basis of such information, authorizes in writing the in-kind transfer of the Client Plan's assets to a corresponding Fund in exchange for shares of the Fund.

(e) For all transfers of CIF assets to a Fund following the publication of this proposed exemption in the **Federal Register**, Mellon sends by regular mail to each affected Client Plan the following information:

(1) Within 30 days after completion of the transaction, a written confirmation containing:

(i) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4);

(ii) The price of each such security involved in the transaction;

(iii) The identity of each pricing service or market maker consulted in determining the value of such securities; and

(2) Within 90 days after completion of each transfer, a written confirmation that contains:

(i) The number of CIF units held by the Client Plan immediately before the transfer, the related per unit value, and the total dollar amount of such CIF units; and

(ii) The number of shares in the Funds that are held by the Client Plan immediately following the transfer, the related per share net asset value, and the total dollar amount of such shares.

(f) The conditions set forth in paragraphs (e), (f) and (n) of Section II below are satisfied.

Section II—Exemption for Receipt of Fees

If the exemption is granted, the restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, as of November 5, 1993, to the receipt of fees by Mellon from the Funds for acting as an investment advisor for the Funds as well as for providing other services to the Funds which are ''secondary services'' as defined in Section V(h), in connection with the investment by the Client Plans in shares of the Funds, provided that the following conditions and the general conditions of Section IV are met:

(a) Each Client Plan receives a cash credit of such Plan's proportionate share of all fees charged to the Funds by Mellon for investment advisory services and ''secondary services'', including any investment advisory fees paid by Mellon to third party sub-advisers, no later than the same day as the receipt of such fees by Mellon. The crediting of all such fees to the Client Plans by Mellon is audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Client Plan.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share at the time of the transaction, as defined in Section V(e), and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither Mellon nor an affiliate, including any officer or director of Mellon, purchases or sells shares of the Funds from or to any Client Plan.

(d) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds and no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds.

(e) The combined total of all fees received by Mellon for the provision of services to a Client Plan, and in connection with the provision of services to the Funds in which the Client Plan may invest, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(f) Mellon does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(g) The Client Plans are not employee benefit plans sponsored or maintained by Mellon.

(h) The Second Fiduciary receives full and detailed written disclosure of information concerning the Funds (including a current prospectus for each of the Funds and a statement describing the fee structure) in advance of any investment by the Client Plan in a Fund.

(i) On the basis of the information described above in paragraph (h), the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in each particular Fund and the fees to be paid by such Funds to Mellon.

(j) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to Mellon are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by Mellon of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) above (the Termination Form) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by Mellon of written notice from the Second Fiduciary; and

(2) Failure to return the Termination Form will result in continued authorization of Mellon to engage in the transactions described in paragraph (i) on behalf of the Client Plan.

(k) The Second Fiduciary of each Client Plan invested in a particular Fund receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by Mellon to the Funds for investment advisory services or other services (i.e. ''secondary services'') even though such fees will be credited to the Client Plan as required by paragraph (a) above.

(l) On an annual basis, Mellon provides the Second Fiduciary of a Client Plan investing in the Funds with:

(1) A copy of the current prospectus for the Funds and, upon such fiduciary's request, a copy of the Statement of Additional Information for such Funds which contains a description of all fees paid by the Funds to Mellon;

(2) A copy of the annual financial disclosure report prepared by Mellon which includes information about the Fund portfolios as well as audit findings of an independent auditor within 60 days of the preparation of the report; and

(3) Oral or written responses to inquiries of the Second Fiduciary as they arise.

(m) With respect to each of the Funds in which a Client Plan invests, in the event such Fund places brokerage transactions with Mellon or an affiliate, Mellon will provide the Second Fiduciary of such Client Plan at least annually with a statement specifying:

(1) The total, expressed in dollars, brokerage commissions of each Fund's portfolio that are paid to Mellon or an affiliate by such Fund;

(2) The total, expressed in dollars, of brokerage commissions of each Fund's portfolio that are paid by such Fund to brokerage firms unrelated to Mellon;

(3) The average brokerage commissions per share, expressed as cents per share, paid to Mellon or an affiliate by each Fund portfolio; and

(4) The average brokerage commissions per share, expressed as cents per share, paid by each Fund portfolio to brokerage firms unrelated to Mellon.

(n) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings with other shareholders of the Funds.

Section III—Exemption for Transfers of Client Plan Securities from Individual Portfolios

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply to an exchange (the Exchange) by a Client Plan of securities for shares of the Funds (other than an exchange covered by Section I above), and to the receipt of fees by Mellon from the Funds for acting as investment adviser for the Funds as well as providing other services to the Funds which are ''secondary services'' as defined in Section V(h), in connection with such an investment by a Client Plan in the Funds, provided that the following conditions and the general conditions in Section IV are met:

(a) The terms of the transaction are at least as favorable to the Client Plan as those obtainable in an arm's-length transaction between unrelated parties.

(b) Each Exchange is a one-time transaction between a Client Plan and the Fund.

(c) All or a pro rata portion of the assets of a Client Plan held by Mellon in an investment account or portfolio that is selected by the Second Fiduciary of such Client Plan for an Exchange are transferred in-kind to the Funds in exchange for shares of such Funds.

(d) No sales commission or dealer mark-up is paid by the Client Plan in connection with the transaction.

(e) The Exchange meets the requirements of the particular Fund for an in-kind purchase of shares of the Fund.

(f) One of the following conditions is met:

(1) The Client Plan receives a cash credit of such Plan's proportionate share of *all* fees (including all investment advisory fees and all secondary service fees) charged to the Funds by Mellon, less any fees paid by Mellon to parties unrelated to Mellon for services other than investment advisory services provided to the Funds, no later than the same day as the receipt of such fees by Mellon;

(2) The assets of the Client Plan invested in the Funds are excluded from the assets on which the investment management fees paid by the Client Plan to Mellon are determined; or

(3) The Client Plan pays an investment management fee to Mellon based on total Plan assets from which a credit is subtracted representing only the Client Plan's pro rata share of the investment advisory fees paid by the Funds to Mellon.

(g) For purposes of the Exchange, the price of securities is established as of the close of business on the date for the Exchange specified in the written authorization by the Second Fiduciary, as follows:

(1) If the security is described in subparagraphs (b) (1) through (3) of Rule 17a–7 under the 1940 Act (see 17 CFR 270. 17a–7(b) (1)–(3)), in accordance with the valuation procedures described in those paragraphs; or

(2) If the security is not described in paragraph (g)(1) above, by the recognized, independent pricing service or services disclosed to the Second Fiduciary described in paragraph (j) below prior to its written authorization of the Exchange. If no price is available from a recognized, independent pricing service for such date, or from a sufficient number of pricing services if more than one is to be used, Mellon will determine the price by averaging the mean of the closing bid and asked quotation for each of two or more recognized, independent market markers and/or pricing services for such securities on that date.

(h) For purposes of the Exchange, the price paid or received by a Client Plan for Fund shares is the net asset value per share at the time of the transaction, as defined in Section V(e), and Mellon determines the value of the securities exchanged and the net asset value of the Funds as of the close of business on the same day.

(i) Within 30 days after the authorization of the Exchange, the Second Fiduciary receives a written confirmation that reflects the price of each of the securities involved in the Exchange. For those securities described in paragraph (g)(2) above, the confirmation will include a written disclosure of the identity of the pricing service or market markers consulted in determining the value of the securities.

(j) The Second Fiduciary acting for the Client Plan—

(1) Receives advance written disclosure of information concerning the Funds (including current prospectuses for the Funds and a statement describing the fee structure to be used to comply with paragraph (f) above) and, prior to the Exchange, receives in writing (A) the reasons why Mellon may consider such Exchanges to be appropriate for the Client Plan and a list of the securities held by the Client Plan that would be accepted by one or more Funds with respect to the Exchange, (B) the date the Exchange is to occur, and (C) an explanation of the procedures that would be followed for valuing the securities for purposes of the Exchange, including the identity of the recognized, independent pricing service or services that will value any of the securities described in paragraph (g)(2) above; and

(2) On the basis of such information, authorizes in writing the investment of assets of the Client Plan in the Funds through the Exchange and the fees to be paid by the Funds to Mellon.

(k) The authorization referred to in paragraph (j) is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by Mellon of written notice of termination. A Termination Form expressly providing an election to terminate the authorization described in paragraph (j) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by Mellon of written notice from the Second Fiduciary; and

(2) Failure to return the form will result in continued authorization of the investment by the Client Plan in the Funds and the payment of fees by the Funds to Mellon.

(l) If the fee structure described in paragraph (f)(2) or (f)(3) above is followed, the Second Fiduciary is notified of any change in any of the rates of the fees payable to Mellon for investment advisory services or secondary services, that had been disclosed to the Second Fiduciary as described in paragraph (j) above, at least 30 days prior to the effective date of such change, and approves in writing the continued holding of any Fund shares acquired by the Client Plan prior to such change which are still held by the Plan. Such approval may be limited solely to the investment advisory and other fees paid by the Funds in relation to the fees paid by the Client Plan and need not relate to any other aspect of such investment.

(m) The conditions set forth in paragraphs (c), (e), (f), (g), (l), (m), and (n) of Section II above are satisfied.

Section IV—General Conditions

(a) Mellon maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) to determine whether the conditions of this exemption have been met, except that (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Mellon, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Mellon shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b) (1) Except as provided below in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in paragraph (a) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1) (ii) and (iii) shall be authorized to examine trade secrets of Mellon, or commercial or financial information which is privileged or confidential.

Section V—Definitions

For purposes of this proposed exemption:

(a) The term ''Mellon'' means the Mellon Bank, N.A. and any affiliate thereof as defined below in paragraph (b) of this section.

(b) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Fund'' or ''Funds'' shall include the Laurel Funds, Inc. [a/k/a the Dreyfus Funds or the Premier Funds], or any other diversified open-end investment company or companies registered under the 1940 Act for which Mellon serves as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other ''secondary service'' (as defined below in paragraph (h) of this Section) which has been approved by such Funds.

(e) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(f) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term ''Second Fiduciary'' means a fiduciary of a Client Plan who is independent of and unrelated to Mellon. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Mellon if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with Mellon;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner or employee of Mellon (or is a relative of such persons);

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner or employee of Mellon (or relative of such persons), is a director of such Second Fiduciary, and if her or she abstains from participation in (i) the choice of the Client Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of this section shall not apply.

(h) The term ''secondary service'' means a service other than an investment management, investment advisory, or similar service, which is provided by Mellon to the Funds. However, for purposes of this exemption, the term ''secondary service'' will not include any brokerage services provided to the Funds by Mellon for the execution of securities transactions engaged in by the Funds.

(i) The term ''Termination Form'' means the form supplied to the Second Fiduciary which expressly provides an election to the Second Fiduciary to terminate on behalf of a Client Plan the authorization described in paragraph (j) of Section II. Such Termination Form may be used at will by the Second Fiduciary to terminate an authorization without penalty to the Client Plan and to notify Mellon in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by Mellon of the form; provided that if, due to circumstances beyond the control of Mellon, the sale cannot be executed within one business day, Mellon shall have one additional business day to complete such sale.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective November 5, 1993, for those transactions described in Sections I and II above.

Summary of Facts and Representations

1. Mellon Bank, N.A. (Mellon Bank) is a national banking association with its principal offices located in Pittsburgh, Pennsylvania, and is a subsidiary of Mellon Bank Corporation (referred to herein together with its affiliates as ''Mellon''). As of December 31, 1992, Mellon Bank provided trust services for approximately 3,642 employee benefit plans, and had total assets under management of approximately $41 billion. As of that same date, Mellon Bank had, in combination with other subsidiaries of Mellon Bank Corporation, total assets of approximately $31.6 billion.

Mellon acts as a trustee, directed trustee, investment manager, and/or custodian for the Client Plans. The Client Plans include various pension, profit sharing, and stock bonus plans as well as voluntary employees' beneficiary associations, supplemental unemployment benefit plans, simplified employee benefit plans, retirement plans for self-employed individuals (i.e. Keogh Plans) and individual retirement accounts (IRAs). Mellon's status as a

fiduciary with investment discretion for a Client Plan arises out of its relationship as a trustee or investment manager, but not from the rendering of any investment advice to a third party that has investment discretion under the Plan. Mellon, in its capacity as a fiduciary of the Client Plans, may exercise investment discretion for all or a portion of the assets of such Client Plans. As a custodian or directed trustee of a Client Plan, Mellon has custody of Plan assets, collects all income, performs bookkeeping and accounting services, generates periodic statements of account activity and other reports, and makes payments or distributions from the account as directed. However, Mellon has no duty as a custodian or directed trustee to review investments or make recommendations, acting only as directed by an authorized Second Fiduciary.

2. Mellon is in the process of making a series of mutual fund portfolios within the Laurel Funds, Inc. [a/k/a Dreyfus Funds or Premier Funds] (i.e. the Funds) available to some of the Client Plans as alternatives to or in place of some of its collective funds (i.e. the CIFs). Mellon requests an exemption for investments in a Fund which occur through an in-kind transfer of a Client Plan's pro rata share of assets from either a terminating or partially terminating CIF to a corresponding Fund in exchange for shares of such Fund. Mellon also requests an exemption for the receipt of fees from the Funds in connection with the investment of assets of a Client Plan (including any assets of a Client Plan which were held in a terminating or partially terminating CIF) for which it acts as a trustee, directed trustee, investment manager, or custodian, in shares of the Funds in instances where Mellon is an investment adviser for the Funds as well as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, and/or Fund accountant, or provides some other secondary service to the Funds. Finally, Mellon seeks exemptive relief to be able to transfer securities in-kind, rather than in cash, from a Client Plan's individual investment portfolio (which is not a CIF) to a Fund in exchange for shares of the Fund to avoid the additional transaction costs involved in disposing of and re-acquiring the securities on the open market.

To avoid charging existing Client Plans any additional fees in connection with investments in the Funds, primarily as a result of the in-kind transfers of CIF assets, Mellon has implemented a fee structure under which the Client Plans do not bear any part of the fees charged by Mellon to the Funds (as discussed further below). Under this arrangement, Mellon charges its negotiated fees to the Client Plans and also charges the Funds for investment advisory services as well as secondary services. Mellon then credits as cash to each Client Plan its proportionate share of all fees paid by the Funds to Mellon, no later than the same day as the payment of the fees to Mellon. Therefore, Mellon retains only the Plan-level fees for services to the Client Plans. However, as noted in Paragraph 11 below, a Client Plan may have an alternative fee structure for investments made into a Fund through an in-kind transfer of securities from an individual portfolio. Under these arrangements, Mellon would retain fees received from the Fund for secondary services and would either credit to each Client Plan the fees received from the Funds for investment advisory services or would not charge the Client Plan a Plan-level investment management fee for those assets invested in the Fund. In such instances, the Second Fiduciary's choice of whether to obtain either a full or partial credit of Fund fees paid by the Funds to Mellon shall be made in writing prior to any in-kind transfer of securities into a Fund following full disclosure of all relevant information concerning the various fee structures.

3. The Funds are a Maryland corporation organized as open-end investment companies registered under the 1940 Act. The Funds consist of a series of investment portfolios (each a ''Fund'') representing distinct investment vehicles, which have their own prospectuses or joint prospectuses with one or more other Funds. The shares of each Fund represent a proportionate interest in the assets of that Fund.

The Funds involved in the initial transfer transactions were: (i) The Laurel Intermediate Income Portfolio; (ii) The Laurel Stock Portfolio; (iii) The Laurel Prime Money Market I Portfolio; and (iv) The Laurel Short-Term Bond Portfolio. Additional Funds that were available for investment in connection with the transactions described herein following the initial transfer transactions included: (i) The Laurel Midcap Stock Portfolio; (ii) The Laurel Bond Market Index Portfolio; and (iii) The Laurel S&P 500 Index Portfolio.

The applicant states that Mellon subsequently acquired The Dreyfus Corporation (Dreyfus), the sponsor of the Dreyfus family of mutual funds, in August 1994. Thus, Dreyfus is now an affiliate of Mellon. As a result of this acquisition, changes have been made to the names of the Laurel Funds and the parties providing services to the Funds. Effective October 1994, the Laurel Funds have changed their names to include ''Dreyfus'' or ''Premier'' (another name used by Dreyfus). Some of the Funds retain ''Laurel'' as part of their names so as not to confuse them with existing Dreyfus Funds.

Shares of all Funds are offered to trust account customers of Mellon, including the Client Plans, as a means of acquiring an interest in a diversified portfolio of investments. Mellon states that each series of Fund shares are offered to the Client Plans under terms and conditions which are at least as favorable to the Plans as the terms and conditions available to other shareholders of the Fund. Mellon states further that additional Funds may be created in the future that will receive assets from CIFs or otherwise be used for investment by Client Plans.

4. Mellon served as the investment adviser to each Fund until the acquisition of Dreyfus. Dreyfus, as Mellon's affiliate, is now the investment adviser to the Funds and receives investment advisory fees from each Fund that may vary between 0.20% and 1.50% of the Fund's average net assets on an annual basis, depending on the particular Fund. As noted above, Mellon also previously served as the custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, and fund accountant, for which it was entitled to receive fees from the Funds.[3] Mellon continues to provide such ''secondary services'' to the Funds. However, since the acquisition of Dreyfus, the new transfer agent is The Shareholder Services Group, Inc., an independent party.

Until Mellon's acquisition of Dreyfus, the Funds' administrator and distributor were Frank Russell Investment Management Company and Russell Fund Distributors, Inc. (collectively, the Russell Companies). The applicant states that the Russell Companies were independent of and unaffiliated with Mellon. The new administrator and distributor is Premier Mutual Fund Services, Inc. (Premier Services). Mellon represents that Premier Services is also independent of Mellon and its affiliates.

[3] The Funds may use broker-dealers that are affiliates of Mellon to provide brokerage services to the Funds. The applicant states that such brokerage services would be provided in accordance with section 17(e) of the 1940 Act, as amended, and Rule 17e-1 thereunder. Rule 17e-1 requires, among other things, that the commissions, fees or other remuneration for any brokerage services provided by an affiliate of an investment company's investment advisor must be reasonable and fair compared to what other brokers receive for comparable transactions involving similar securities.

The Fund administrator receives annual fees of $500,000 plus an asset-based component, which is 0.01% of the aggregate assets of the Funds up to $10 billion and 0.005% of assets over $10 billion. The asset-based fee is payable monthly, charged pro rata to each Fund on its average daily net assets for the month. The administrator is also entitled to receive reimbursement from the Funds for the start-up costs of certain new Funds. Under the current arrangement, the Fund distributor is reimbursed for certain of its Fund distribution fees and expenses by Mellon. The Client Plans are not charged sales commissions, redemption fees, or distribution expenses on their transactions or investments in Fund shares.[4]

In-Kind Transfers of CIF Assets

5. Mellon is offering the Funds as alternatives or replacements for a number of the CIFs currently used by Client Plans. In connection with making these Funds available to a Client Plan, Mellon is transferring in-kind the Plan's assets currently invested in a particular CIF to a corresponding Fund with substantially similar investment objectives, if a Second Fiduciary for the Client Plan provides prior written authorization for the transfer following receipt of full and detailed written disclosures regarding the particular Fund and related fees.

Mellon represents that a principal reason for offering Client Plans the opportunity to transfer their CIF investments to the Funds is that in many cases the interests of such Plans would be better served by the use of mutual funds and Mellon's customers have expressed an interest in having mutual funds available as investment vehicles. In this regard, mutual funds are valued on a daily basis, whereas most of the CIFs are valued weekly or monthly. The daily valuation permits (i) immediate investment of Plan contributions in varied types of investments; (ii) greater flexibility in transferring assets from one type of investment to another; and (iii) daily redemption of investments for purposes of making distributions. In addition, information concerning the investment performance of mutual funds will be available on a daily basis in newspapers of general circulation, which will allow Client Plan sponsors and participants to monitor the performance of their investments on a daily basis. Furthermore, unlike CIF units, mutual fund shares can be given to participants in plan distributions, thus avoiding the expense and delay of liquidating plan investments and facilitating roll-overs into IRAs.

6. Prior to investing any Client Plan's assets in a Fund, Mellon obtains written approval from the Second Fiduciary for the Client Plan, who generally is either the Client Plan's named fiduciary, trustee (if other than Mellon), or the sponsoring employer. Mellon provides the Second Fiduciary with a current prospectus for that Fund and a written statement giving full disclosure of the structure under which Mellon's investment advisory and other fees will be credited back to the Client Plan. The disclosure statement describes why Mellon believes the investment of assets of the Client Plan in the Funds may be appropriate. The disclosure statement also describes any limitations on Mellon regarding which plan assets may be invested in shares of the Funds and the nature of such limitations.

On the basis of such information, the Second Fiduciary authorizes Mellon to invest the Client Plan's assets in the Fund(s) and to receive fees from the Fund(s). In connection with the asset transfers from the CIFs, if the Second Fiduciary has not provided Mellon with its approval of investment in a corresponding Fund by the deadline established for approvals of transfers from a CIF, the Client Plan continues to be invested in that CIF. However, if the CIF is terminated, the Client Plan receives a distribution from the CIF which is then invested in an appropriate investment vehicle other than the Funds, in accordance with the terms of the Client Plan.

Any authorization for investment by a Client Plan in shares of a Fund and the fees paid to Mellon is terminable at will by the Second Fiduciary, without penalty to the Client Plan, upon receipt by Mellon of written notice of termination. A Termination Form expressly providing an election to terminate the authorization with instructions on the use of the form is supplied to the Second Fiduciary no less than annually. The Termination Form instructs the Second Fiduciary that the authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by Mellon of written notice from the Second Fiduciary (through the return of such form), and that failure to return the Termination Form results in continued authorization of Mellon to engage in the subject transactions on behalf of the Client Plan.

Mellon states that the Termination Form may be used to notify Mellon in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by Mellon of the form; provided that if, due to circumstances beyond the control of Mellon, the sale cannot be executed within one business day, Mellon shall have one additional business day to complete such sale.

The Second Fiduciary will receive notice of any increases in the rates of fees charged by Mellon to the Funds for investment advisory services as well as for secondary services, through an updated prospectus or otherwise. However, such notice will not be accompanied by an additional Termination Form since all increases in investment advisory fees and secondary fees will be credited by Mellon to the Client Plans and will be subject to an annual reauthorization as described above.

Mellon states that the Second Fiduciary receives an updated prospectus for each Fund at least annually and either annual or semi-annual reports for each Fund. Mellon also provides monthly or quarterly reports to the Second Fiduciary of all transactions engaged in by the Client Plans, including purchases and sales of the Fund shares.

The Funds may use broker-dealers that are affiliates of Mellon to provide brokerage services to the Funds. As noted in Footnote 2 above, such brokerage services would be provided in accordance with section 17(e) of the 1940 Act and Rule 17e-1 thereunder. Mellon represents that it will provide at least annually to the Second Fiduciary of any Client Plan that invests in the Funds written disclosures indicating the following: (i) The total, expressed in dollars, brokerage commissions of each Fund's portfolio that are paid to Mellon or an affiliate by such Fund; (ii) the total, expressed in dollars, of brokerage commissions of each Fund's portfolio that are paid by such Fund to brokerage firms unrelated to Mellon; (iii) the average brokerage commissions per share, expressed as cents per share, paid to Mellon or an affiliate by each Fund portfolio; and (iv) the average brokerage commissions per share, expressed as cents per share, paid by each Fund

[4] Mellon represents that all Funds have adopted a Distribution and Service Plan pursuant to Rule 12b-1 under the 1940 Act. Prior to July 28, 1992, the Funds paid the fees and expenses payable to the distributor under such plan. However, since that date, the distributor has waived its rights to these fees and expenses in exchange for Mellon paying them, as described in the prospectus for each Fund. Mellon states that these fees may be charged to the Funds again in the future, but will not be charged to a class of Fund shares in which the Client Plans have invested. In addition, Mellon does not and will not receive fees payable pursuant to Rule 12b-1 in connection with transactions involving any shares of the Funds.

portfolio to brokerage firms unrelated to Mellon.

7. Prior to November 5, 1993, Mellon generally invested assets of Client Plans for which it acted as a trustee with investment discretion in a series of CIFs. In addition, certain Client Plans where investment decisions were directed by a Second Fiduciary generally used a CIF as an investment option for individual accounts in the Client Plans. However, on Friday, November 5, 1993, Mellon terminated several of its CIFs (as noted below) and transferred in-kind the assets that were in these CIFs to various corresponding Funds. Mellon represents that the initial acquisition of shares in the Funds by Client Plans invested in the CIFs was accomplished by distributing the CIF assets to the Client Plans, and then transferring these assets from the Client Plans to the corresponding Funds.

Mellon anticipates that there will be additional in-kind transfers of CIF assets to the Funds in the future. Such transfers will normally take place over a weekend. The steps involved in transferring the assets of a CIF attributable to a Client Plan's investment to a corresponding Fund are as follows:

(a) Prior to the transfer, the assets of the CIF are reviewed to determine whether they are appropriate investments for the corresponding Fund, consistent with the Fund's investment objectives and policies as well as the applicable requirements under the 1940 Act and the Code. Mellon determines whether the assets are capable of being divided between the CIF and the Fund (or among the Client Plans receiving distributions, if the CIF is terminating). Assets that are not appropriate investments for the corresponding Fund or are not capable of being divided are liquidated prior to the transfer date.[5]

(b) For purposes of the transfer, the values of the CIF assets are determined based on market value as of the close of business on the Friday preceding the transfer. Values are determined in a single valuation in accordance with the valuation procedures described in Rule 17a–7(b) under the 1940 Act, 17 CFR 270.17a–7(b).[6] As noted below in paragraph (e), the valuation of the securities is performed in the same manner for both the CIF's assets and the corresponding Fund's assets at the close of the same business day using independent market sources.

(c) Having established the value of the CIF assets, the CIF accounting unit determines the value of each Client Plan's investment in the CIF. If the Client Plan is transferring its investment, or if the CIF is terminating, the Plan's pro rata share of each investment is distributed to the Client Plan, either in kind if all the CIF assets are securities, or partly in kind and partly in cash if part of the CIF assets consist of cash. Thus, each Client Plan receives a pro rata share of each security and any cash. The CIF, if not terminating, retains the securities and cash representing the pro rata shares of the Client Plans that are not transferring their investments to the Funds.[7]

(d) If the Second Fiduciary provides written approval of the transfer of its CIF investments to the Fund by the deadline set for such approval, the assets and cash received by the Client Plan from the CIF are contributed to the corresponding Fund to purchase shares of that Fund through an exchange of securities or investment of cash. Exchanges are conducted in accordance with the procedures described in the Fund prospectus, which provide that the securities being exchanged need to meet the receiving Fund's investment objectives, policies and limitations, have a readily ascertainable market value, be liquid, and not be subject to resale restrictions.

(e) The securities received by the Fund are valued by the Fund for purposes of the in-kind transfer transaction in the same manner as of the same business day as the assets were valued by the corresponding CIF and the per-share value of the Fund shares issued are based on the Fund's then-current net asset value as of such date. Therefore, the value of a Client Plan's investment in a Fund as of the start of business the following Monday, based on the Client Plan's pro rata share of the underlying market value of the securities transferred to the Funds, is the same as the value of its investment in the corresponding CIF as of the close of business the previous Friday.

The CIFs involved in the initial series of transfers and their corresponding Funds are as follows:

Mellon CIF	Laurel fund
Portfolio[8]	
EB Intermediate Bond	Intermediate Income
EB Stock	Stock
EB Special Stock	Midcap Stock
EB Composite Bond Index.	Bond Market Index
EB Composite Bond	Bond Market Index
EB Stock Index	S&P 500 Stock Index
EB Equity Market	S&P 500 Stock Index
EB Savings	Prime Money Market I
EB Enhanced Temporary Investment.	Short-Term Bond

[8] As of October 1994, these Funds were renamed as follows: (i) Premier Limited Term Income; (ii) Dreyfus Disciplined Stock; (iii) Dreyfus Disciplined Midcap Stock; (iv) Dreyfus Bond Market Index; (v) Dreyfus S&P 500 Stock Index; (vi) Dreyfus/Laurel Prime Money Market; and (vii) Dreyfus/Laurel Short-Term Bond.

Mellon states that because of the relatively small number of Client Plans approving the transfer of assets from the EB Intermediate Bond Fund, the EB Composite Bond Index Fund and the EB Composite Bond Fund, and because of the nature of the assets in these CIFs, the transfers from these CIFs were made totally in cash rather than in kind. The Client Plans investing in these CIFs that had approved the transfer received a distribution of the cash value of their CIF units, and that cash was then used to acquire shares of the corresponding Funds. Therefore, no exemptive relief is requested for the in-kind transfer of assets from these three CIFs.

Each Client Plan that approved the CIF asset transfers to the Funds received account statements describing the asset transfers either in mid-December 1993, if such Plans were on a monthly account statement schedule, or mid-January 1994, if such Plans were on a quarterly account statement schedule. The statements showed the disposition of the CIF units from the Client Plan account and the acquisition by the account of Fund shares, both posted as of Monday, November 23, 1992.[9] This

[5] Mellon states that such assets are sold in the open market and are not sold through any brokerage firm affiliated with Mellon.

[6] Rule 17a–7 permits transactions between investment funds that use the same investment adviser, subject to certain conditions. Rule 17a–7 requires, among other things, that such transactions be effected at the ''independent current market price'' for each security, involve only securities for which market quotations are readily available, involve no brokerage commissions or other remuneration, and comply with valuation procedures adopted by the board of directors of the investment company to ensure that all requirements of the Rule are satisfied.

[7] Such distributions are made in compliance with 12 CFR 9.18(b)(6), which requires that distributions in kind from CIFs must be made ''ratably''. The Client Plans withdrawing from the CIF and the Client Plans remaining invested in the CIF each receive their pro rata portions of each CIF asset and the CIF cash, so that both groups of Plans retain the same asset quality and liquidity following the transfers.

[9] The following example illustrates the contents of such a statement: Assume a Client Plan held 12,506 units of the Mellon Employee Benefit Stock Fund prior to the asset transfers. The account statement showed a disposition of 12,506 units of Mellon Employee Benefit Stock Fund, at a value of $72.08 per unit, on November 23, 1992, with total proceeds of $901,432.18. The statement also showed a purchase on that same date of 90,143.218 shares of the Laurel Stock Fund, the Fund corresponding to the Mellon Employee Benefit Stock Fund, at $10 per share, at a total cost of $901,432.18, the same amount as the proceeds of

information provided the affected Client Plans with written confirmation of the number of CIF units held by the Client Plan immediately before the transfer, the related per unit value and the total dollar amount of such CIF units as well as the number of shares of the Funds held by the Client Plan following the transfer, the related per share net asset value, and the total dollar amount of such shares.

For all subsequent in-kind transfers of CIF assets to a Fund following publication of this proposed exemption in the **Federal Register**, Mellon will send by regular mail to each affected Client Plan a written confirmation, not later than 30 days after completion of the transaction, containing the following information:

(1) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4);

(2) The price of each such security involved in the transaction; and

(3) The identity of each pricing service or market maker consulted in determining the value of such securities. Securities which are valued in accordance with Rule 17a–7(b)(4) are securities for which the current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or the NASDAQ system. Mellon states that such securities are valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of Mellon.

In addition, for all in-kind transfers of CIF assets to a Fund that occur after the date this proposed exemption is published in the **Federal Register**, Mellon will send by regular mail to the Second Fiduciary no later than 90 days after completion of each transfer a written confirmation that contains the following information:

(1) The number of CIF units held by the Client Plan immediately before the transfer, the related per unit value, and the total dollar amount of such CIF units; and

(2) The number of shares in the Funds that are held by the Client Plan immediately following the transfer, the related per share net asset value, and the total dollar amount of such shares.

Mellon anticipates that additional CIFs will be converted or ''partially converted'' to the Funds so that the Client Plan investors in those CIFs will be given the opportunity to transfer their investments in-kind from the CIFs to corresponding Funds, or alternatively to continue investing in the CIFs until such CIFs are terminated. Mellon states that such transfers will follow the same procedures as the initial transfers, including valuations in accordance with Rule 17a-7(b), and will comply with the conditions of this proposed exemption. In the case of partial CIF terminations, the transfers will involve a smaller amount of assets and may occur on a weekday rather than a weekend. In all cases, such transfers will use the closing market prices for that particular day in valuing the Client Plan assets to be transferred and the net asset value of the Fund.

8. Mellon or an affiliate (i.e. Dreyfus) charges investment advisory fees to the Funds in accordance with the investment advisory agreements between Mellon and the Funds. These agreements have been approved by the independent members of the Board of Directors of the Funds (the Directors), in accordance with the applicable provisions of the 1940 Act. Any future changes in the fees paid to Mellon must be approved by the Directors. These fees are payable monthly by the Funds.

Mellon uses a fee structure that is designed to preserve the negotiated fee rates of the Client Plans that transfer investments from the CIFs to the Funds, so as to minimize the impact of the change to the Funds on a Client Plan's fees. At the beginning of each month, and in no event later than the same day as the payment of the investment advisory and other fees by the Funds to Mellon for the previous month, Mellon credits to each Client Plan in cash its proportionate share of all investment advisory fees charged by Mellon to the Funds for the previous month.

To assure that Client Plans pay no additional fees as a result of investing in the Funds rather than the CIFs, and to otherwise preserve the negotiated fee rates of the Client Plans, Mellon also credits to the Client Plans participating in the transfers their pro rata shares of any fees paid by the Funds to Mellon for services other than investment advisory services. However, Mellon does retain amounts necessary to account for its direct expenses in providing such secondary services. These credits are made at the same time and in the same manner as the advisory fee credits.

In addition, Mellon has credited to the Client Plans participating in the transfers from the CIFs to the Funds their pro rata shares of fees paid by the Funds or Mellon to Fund service providers other than Mellon, so that the Client Plans effectively receive a credit of all charges assessed upon their investments in the Funds. Mellon retains the flexibility to cease crediting these third-party fees and, in such instances, provides further disclosure to and obtains express approval from any Client Plan before terminating the credit of the third-party fees for the Client Plan. However, Mellon states that all investment advisory fees charged to the Funds by third party sub-advisers, or paid by Mellon to such third party sub-advisers, will continue to be credited to the Client Plans.

9. Mellon maintains a system of internal accounting controls for the crediting of all fees to the Client Plans. In addition, Mellon retains the services of KPMG Peat Marwick (the Auditor), an independent accounting firm, to audit annually the crediting of fees to the Client Plans under this program. Such audits provide independent verification of the proper crediting to the Client Plans.

In its annual audit of the credit program, the Auditor will: (i) Review and test compliance with the specific operational controls and procedures established by Mellon for making the credits; (ii) verify on a test basis the monthly credit factors transmitted to Mellon by the Funds; (iii) verify on a test basis the proper assignment of identification fields to the Client Plans; (iv) verify on a test basis the credits paid in total to the sum of all credits paid to each Client Plan; (v) recompute, on a test basis, the amount of the credit determined for selected Client Plans and verify that the credit was made to the proper Client Plan account.

In the event either the internal audit by Mellon or the independent audit by the Auditor identifies an error made in the crediting of fees to the Client Plans, Mellon will correct the error. With respect to any shortfall in credited fees to a Client Plan, Mellon will make a cash payment to the Client Plan equal to the amount of the error plus interest paid at money market rates offered by Mellon for the period involved. Any excess credits made to a Client Plan will be corrected by an appropriate deduction from the Client Plan account or reallocation of cash during the next payment period after discovery of the error to reflect accurately the amount of total credits due to the Client Plan for the period involved.

10. Mellon also uses the credit procedure described above (referred to hereafter as ''the Alternative Credit Method'') for investments by Client

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the disposition from the Mellon Employee Benefit Stock Fund.

Plans other than through the asset transfer transactions. In addition, Mellon may use a fee offset method that complies with Prohibited Transaction Exemption (PTE) 77–4 (42 FR 18732, April 8, 1977).[10] Mellon states that Client Plans that use the Alternative Credit Method have the option to change to an offset method that complies with PTE 77–4.

However, Mellon represents that the Alternative Credit Method offers several advantages to a Client Plan. These advantages include the following:

(a) *Plan Sponsor Paying Fees:* With many Client Plans, the Plan sponsor pays the Plan-level fees. In such instances, if the offset method described in PTE 77–4 is used, the Client Plan pays all Fund-level fees in connection with the investments in the Funds. By contrast, under the Alternative Credit Method, the sponsor pays the entire Plan-level fee and the Client Plan does not pay any Fund-level fees. Thus, where the Plan sponsor pays the Client Plan's fees, the Client Plan's rate of return on its investments in the Funds is higher under the Alternative Credit Method.

(b) *Timing of Credit:* Plan-level trustee fees will generally be paid to Mellon quarterly, whereas Fund-level investment advisory fees are paid monthly. Consequently, the crediting may not occur for up to three months under PTE 77–4 credit method, so that Mellon receives the use of the amounts to be credited for the time period between the payment dates. In contrast, there is no such time delay under the Alternative Credit Method.

(c) *Excess Credits:* The amount of a Client Plan's pro rata share of Fund advisory fees may exceed the amount of its Plan-level fees, depending on the relative fee rates. Under the PTE 77–4 credit method, it is not clear how an investment adviser should handle the amount of a credit that exceeds the Plan-level fee. The problem of excess credits does not arise under the Alternative Credit Method since the credit is made directly to the Client Plan, rather than as an offset against the Plan-level fees.

Mellon states that the Alternative Credit Method allows it to maintain without modification its fiduciary fee schedules for its services to the Client Plans, which is more efficient and less costly than a system which employs credits against such fiduciary fees. In addition, use of the Alternative Credit Method permits Mellon's existing Client Plans to retain their negotiated fiduciary fee structures despite the change to a new investment vehicle.

Mellon states further that where Client Plans are withdrawing assets from the CIFs and investing in the corresponding Funds, the CIFs and Funds would be forced to incur large transaction costs if the CIF assets could not be transferred via the Client Plan accounts to the Funds. The asset transfer transactions permit the CIFs and the Funds to avoid incurring any such transaction costs in connection with liquidating CIF investments and making investments for the Funds, enhancing the investment return of the Client Plans.

In-Kind Transfers of Securities From Individual Portfolios

11. Mellon represents that certain Client Plans may desire in the future to transfer securities from their individual portfolios to the Funds in exchange for shares of the Funds (i.e. an Exchange), as discussed in Section III above. The Exchange would involve assets as to which Mellon is a fiduciary which are not distributed from a CIF. All or a pro rata portion of the assets of a Client Plan held by Mellon in an investment account or portfolio that is selected by the Second Fiduciary of such Client Plan for an Exchange would be transferred in-kind to the Funds in exchange for shares of such Funds. Such Exchanges may occur when a Second Fiduciary of a Client Plan trusteed by Mellon selects Mellon to manage the Client Plan's assets on a collective rather than individual portfolio basis in order to achieve certain economies of scale and diversification. Mellon states that in such cases it may be less expensive for the Client Plan to exchange its existing investments in securities directly for Fund shares rather than liquidating the securities and investing the proceeds in the shares. The Exchange would avoid transaction costs, such as commissions and dealer mark-ups, as well as any adverse market impact from a sale of the securities at the time of the transaction.

The Exchange would have to comply with the requirements for an ''in-kind'' exchange of securities as stated in the Fund prospectus. Specifically, the securities to be exchanged must meet the investment objectives, policies and limitations of the particular Fund portfolio, must have a readily ascertainable market value, must be liquid and must not be subject to resale restrictions. Securities accepted by a Fund would be valued in the same manner as the Fund values its assets, and the number of Fund shares issued would depend on the relative net asset value of the shares purchased and securities exchanged.[11] The Fund's procedures will protect any existing Fund shareholders while assuring that fair value is given to the Client Plan exchanging the securities. The Second Fiduciary would receive disclosures regarding the relevant Funds and their fees, including each Fund's prospectus and additional information regarding the fee structures which may be used to avoid duplicative investment advisory fees being paid to Mellon (see Section III(f) above). In such instances, Mellon represents that one of the following fee structures will be used: (i) The Client Plan will receive a cash credit of such Plan's proportionate share of all fees (including all investment advisory fees and all secondary service fees) charged to the Funds by Mellon, less any fees paid by Mellon to parties unrelated to Mellon for services other than investment advisory services provided to the Funds, no later than the same day as the receipt of such fees by Mellon; (ii) the assets of the Client Plan invested in the Funds will be excluded from the assets on which the investment management fees paid by the Client Plan to Mellon are determined; or (iii) the Client Plan will pay an investment management fee to Mellon based on total Plan assets from which a credit is subtracted representing only the Client Plan's pro rata share of the investment advisory fees paid by the Funds to Mellon.

Prior to the Exchange, the Second Fiduciary would receive in writing (i) the reasons why Mellon may consider the Exchange to be appropriate for the Client Plan and a list of the securities held by the Client Plan that would be accepted by one or more Funds in the Exchange, (ii) the date the Exchange is

[10] PTE 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that, among other things, the plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77–4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

[11] In this regard, the Department assumes that the securities which are transferred to a Fund will have the same value at the time the securities become part of the Fund's portfolio as the value that was determined for the securities in the individual Client Plan portfolios, in accordance with procedures described in Rule 17a-7 under the 1940 Act, for purposes of the Exchange.

to occur, and (iii) an explanation of the procedures that would be followed for valuing the securities for purposes of the Exchange, including the identity of the independent pricing service or services that would be used to value the securities. In addition, within 30 days after the Exchange, the Second Fiduciary would receive written confirmation that reflects the price of each security involved in the Exchange and, for securities which are valued in accordance with Rule 17a-7(b)(4), a written disclosure of the identity of the pricing services or broker-dealers consulted in determining the value of the securities.

12. In summary, the subject transactions satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code for the following reasons:

(a) The Funds provide many of the Client Plans with a more effective investment vehicle than the CIFs currently maintained by Mellon, without any increase in fees paid by the Client Plans to Mellon;

(b) Mellon requires annual audits by an independent accounting firm to verify that the Client Plans receive proper credits for the fees paid to Mellon by the Funds;

(c) Client Plan fiduciaries and participants have access to more frequent reports of Fund performance than are available for plan assets invested in the CIFs, which enables such fiduciaries or participants to make more informed decisions regarding their investments;

(d) Client Plan investments in the Funds and the payment of any fees by the Funds to Mellon in connection with such investments require an advance authorization in writing by an independent fiduciary (i.e. the Second Fiduciary) after full written disclosure, including current prospectuses for the Funds and a statement describing the Alternative Credit Method;

(e) Any authorization made by the Second Fiduciary is terminable at will by that fiduciary, without penalty, upon receipt by Mellon of written notice of termination from the Second Fiduciary on a form expressly providing an election to terminate the authorization (i.e. the Termination Form), which is supplied to the Second Fiduciary no less than annually;

(f) No sales commissions or other fees are paid by the Client Plans in connection with any acquisition of Fund shares (either by an in-kind transfer of CIF assets, a cash purchase, or an in-kind transfer of securities from a Client Plan's individual investment portfolio) and no redemption fees are paid in connection with the sale of Fund shares;

(g) All dealings among the Client Plans, the Funds, and Mellon are on a basis no less favorable to the Client Plans than such dealings with the other shareholders of the Funds;

(h) The in-kind transfers of CIF assets into the Funds are done with the prior written approval of independent fiduciaries (i.e. the Second Fiduciary) following full and detailed written disclosure concerning the Funds;

(i) Each Client Plan receives shares of a Fund which have a total net asset value that is equal to the value of the Client Plan's pro rata share of the assets of the CIF on the date of the in-kind transfer, based on the current market value of the CIF's assets as determined in a single valuation performed in the same manner at the close of the same business day in accordance with independent sources and the procedures established by the Funds for the valuation of such assets; and

(j) With respect to any transfer of securities from an individual portfolio of a Client Plan in exchange for Fund shares (i.e. an Exchange), the Second Fiduciary receives written disclosures regarding the relevant Funds and their fees (including the Fund prospectus, additional information regarding the fee structure to be used to avoid duplicative advisory fees, and the valuation procedures to be used for the securities involved in the Exchange) as well as written confirmations that reflect the price of each security involved in the Exchange and, for securities valued in accordance with Rule 17a–7(b)(4), the identity of the pricing service or broker-dealers consulted in the valuation of such securities.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all Second Fiduciaries of Client Plans described herein that had investments in a terminating CIF and from whom approval was sought, or will be sought prior to the granting of this proposed exemption, for a transfer of a Client Plan's CIF assets to a Fund. In addition, interested persons shall include the Second Fiduciaries of all Client Plans that are currently invested in the Funds, as of the date the notice of the proposed exemption is published in the **Federal Register**, where Mellon provides services to the Funds and receives fees which would be covered by the exemption, if granted. Notice to interested persons shall be provided by first class mail within fifteen (15) days following the publication of the proposed exemption in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs all interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Bank South, N.A. (the Bank) Located in Atlanta, Georgia

[Application No. D–09626]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Exemption for In-Kind Transfer of Assets

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply as of February 11, 1994, to the in-kind transfer of assets of plans for which the Bank serves as a fiduciary (the Client Plans), other than plans established and maintained by the Bank, that are held in certain collective investment funds maintained by the Bank (the CIFs), in exchange for shares of the Peachtree Funds (the Funds), an open-end investment company registered under the Investment Company Act of 1940 (the 1940 Act) for which the Bank acts as investment adviser, in connection with the termination of such CIFs, provided that the following conditions and the general conditions of Section III below are met:

(a) No sales commissions or other fees are paid by the Client Plans in connection with the purchase of Fund shares through the in-kind transfer of CIF assets and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the Funds.

(b) Each Client Plan receives shares of a Fund which have a total net asset value that is equal to the value of the Client Plan's pro rata share of the assets of the CIF on the date of the transfer, based on the current market value of the CIF's assets, as determined in a single

valuation performed in the same manner at the close of the same business day using independent sources in accordance with Rule 17a-7(b) of the Securities and Exchange Commission under the 1940 Act and the procedures established by the Funds pursuant to Rule 17a-7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

(c) A second fiduciary who is independent of and unrelated to the Bank (the Independent Fiduciary) receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Funds (including a current prospectus for each of the Funds and a statement describing the fee structure) and, on the basis of such information, authorizes in writing the in-kind transfer of the Client Plan's CIF assets to a corresponding Fund in exchange for shares of the Fund.

(d) For all transfers of CIF assets to a Fund following the publication of this proposed exemption in the **Federal Register**, the Bank sends by regular mail to each affected Client Plan the following information:

(1) Within 30 days after completion of the transaction, a written confirmation containing:

(i) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a-7(b)(4);

(ii) The price of each such security involved in the transaction;

(iii) The identity of each pricing service or market maker consulted in determining the value of such securities; and

(2) Within 90 days after completion of each transfer, a written confirmation that contains:

(i) The number of CIF units held by the Client Plan immediately before the transfer, the related per unit value, and the total dollar amount of such CIF units; and

(ii) The number of shares in the Funds that are held by the Client Plan following the transfer, the related per share net asset value, and the total dollar amount of such shares.

(e) The conditions set forth in paragraphs (e), (f) and (m) of Section II below are satisfied.

Section II—Exemption for Receipt of Fees

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply as of February 11, 1994, to the receipt of fees by the Bank from the Funds for acting as investment adviser to the Funds in connection with the investment in the Funds by Client Plans for which the Bank acts as a fiduciary, including any Client Plan invested in a CIF which transfers its assets to a Fund, provided that the following conditions and the general conditions of Section III are met:

(a) No sales commissions, loads, charges or similar fees are paid by the Client Plans for the purchase or sale of shares of the Funds and no redemption fees are paid for the sale of shares by the Client Plans to the Funds.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share at the time of the transaction, as defined in Section IV(e), and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither the Bank nor an affiliate, including any officer or director of the Bank, purchases or sells shares of the Funds from or to any Client Plan.

(d) The Client Plans do not pay any plan-level investment management fees, investment advisory fees, or similar fees to the Bank with respect to any of the assets of such Client Plans which are invested in shares of any of the Funds. This condition does not preclude the payment of investment advisory fees or similar fees by the Funds to the Bank under the terms of an investment advisory agreement adopted in accordance with section 15 of the 1940 Act or any other agreement between the Bank and the Funds which is in compliance with the 1940 Act.

(e) The combined total of all fees received by the Bank for the provision of services to a Client Plan, and in connection with the provision of services to the Funds in which the Client Plan may invest, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(f) The Bank does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(g) The Client Plans are not employee benefit plans sponsored or maintained by the Bank.

(h) The Independent Fiduciary receives, in advance of any investment by the Client Plan in a Fund, full and detailed written disclosure of information concerning the Funds, including, but not limited to:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, as well as all other fees to be charged to or paid by the Client Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why the Bank may consider such investment to be appropriate for the Client Plan;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Client Plan may be invested in the Funds, and if so, the nature of such limitations; and

(5) Upon request of the Independent Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, if granted, once such documents become available.

(i) On the basis of the information described above in paragraph (h) of this Section II, the Independent Fiduciary authorizes in writing the investment of assets of the Client Plan in each Fund, and the fees to be paid by such Funds to the Bank.

(j) All authorizations made by an Independent Fiduciary regarding investments in a Fund and the fees paid to the Bank are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) of Section II shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) of Section II above (the Termination Form) with instructions on the use of the form must be supplied to the Independent Fiduciary no less than annually. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Plan, upon receipt by the Bank of written notice from the Independent Fiduciary; and

(2) Failure to return the Termination Form will constitute continued authorization of the Bank to engage in

the transactions described in paragraph (i) of Section II on behalf of the Client Plan.

(k) In the event of an increase in the rate of any fees paid by the Funds to the Bank regarding any investment management services, investment advisory services, or fees for similar services that the Bank provides to the Funds over an existing rate for such services that had been authorized by an Independent Fiduciary, in accordance with paragraph (i) of this Section II, the Bank will, at least thirty (30) days in advance of the implementation of such increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the increase in fees) to the Independent Fiduciary of each of the Client Plans invested in a Fund which is increasing such fees. Such notice shall be accompanied by a Termination Form. However, if the Termination Form has been provided to the Independent Fiduciary pursuant to this paragraph, then the Termination Form need not be provided again for an annual reauthorization pursuant to paragraph (j) above unless at least six months has elapsed since the form was provided in connection with the fee increase.

(l) On an annual basis, the Bank provides the Independent Fiduciary of a Client Plan investing in the Funds with:

(1) A copy of the current prospectus for the Funds and, upon such fiduciary's request, a copy of the Statement of Additional Information for such Funds which contains a description of all fees paid by the Funds to the Bank; and

(2) Upon the request of such Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current Statement of Additional Information for the Fund, or some other written statement) that contains a description of all fees paid by the Fund to the Bank.

(m) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings with other shareholders of the Funds.

Section III—General Conditions

(a) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) of Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504 (a)(2) and (b) of the Act, the records referred to in paragraph (a) of Section III are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1) (ii) and (iii) shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this proposed exemption:

(a) The term ''Bank'' means the Bank South, N.A. and any affiliate thereof as defined below in paragraph (b) of this Section IV.

(b) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Fund'' or ''Funds'' shall include the Peachtree Funds, Inc., or any other diversified open-end investment company registered under the 1940 Act for which the Bank serves as an investment adviser.

(e) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(f) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term ''Independent Fiduciary'' means a fiduciary of a Client Plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Independent Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner, employee or affiliate of the Bank (or is a relative of such persons);

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, affiliate or employee of the Bank (or relative of such persons), is a director of such Independent Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of this Section IV shall not apply.

(h) The term ''Termination Form'' means the form supplied to the Independent Fiduciary which expressly provides an election to the Independent Fiduciary to terminate on behalf of a Client Plan the authorization described in paragraph (j) of Section II. The Termination Form shall be used at will by the Independent Fiduciary to terminate an authorization without penalty to the Client Plan and to notify the Bank in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by the

Bank of the form; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such sale.

Effective Date: If the proposed exemption is granted, the exemption will be effective February 11, 1994.

Summary of Facts and Representations

1. The Bank is a Georgia corporation with its principal offices located at 55 Marietta Street, N.W., Atlanta, Georgia, and is a wholly-owned subsidiary of Bank South Corporation, a bank holding company. The Bank provides trust services to approximately 128 employee benefit plans with total assets of approximately $132 million, as of November 1, 1993. The Bank has total assets under management of approximately $1 billion.

The Bank serves as a discretionary trustee, investment manager, directed trustee, or custodian for the Client Plans. The Client Plans include various pension, profit sharing, and stock bonus plans as well as voluntary employees' beneficiary associations, supplemental unemployment benefit plans, simplified employee benefit plans, retirement plans for self-employed individuals (i.e. Keogh plans), and individual retirement accounts (IRAs).

The Bank represents that its status as a fiduciary with investment discretion for a Client Plan arises out of its relationship as a trustee or investment manager for such Plan. The Bank may exercise investment discretion for all or a portion of the assets of a Client Plan. As a custodian or directed trustee of a Client Plan, the Bank has custody of Plan assets, collects all income, performs bookkeeping and accounting services, generates periodic statements of account activity and other reports, and makes payments or distributions from the account as directed. However, the Bank has no duty as a custodian or directed trustee to review investments or make recommendations, acting only as directed by an authorized Independent Fiduciary.

2. The Bank requests an exemption for investments in a Fund which occur through an in-kind transfer of a Client Plan's pro rata share of assets of a terminating CIF to a corresponding Fund in exchange for shares of such Fund.[12] The Bank also requests an exemption for the receipt of fees from the Funds in connection with the investment of assets of a Client Plan (including any Client Plan invested in a CIF which transfers its assets to a Fund), for which it acts as a trustee, directed trustee, investment manager, or custodian in shares of the Funds in situations where the Bank acts as an investment adviser to the Funds. The exemption for the receipt of fees would include Client Plans for which the Bank exercises investment discretion as well as Client Plans where investment decisions are directed by an Independent Fiduciary.[13]

3. The Funds are a Massachusetts business trust organized as an open-end investment company registered under the 1940 Act. The Funds currently consist of five Funds or ''portfolios'', each having a separate prospectus and representing a distinct investment vehicle. The shares of each Fund represent a proportionate interest in the assets of that Fund. The existing Funds include the Peachtree Government Money Market Fund, the Peachtree Prime Money Market Fund, the Peachtree Bond Fund, the Peachtree Equity Fund, and the Peachtree Georgia Tax-Free Fund.[14] The Bank states that additional Funds may be established in the future. Shares of the Funds are offered and sold to eligible investors, including the Client Plans and other trust clients of the Bank, as a means of acquiring an interest in a diversified portfolio of investments. The Bank states that the Fund shares are offered to the Bank's trust customers, including the Client Plans, under terms and conditions which are at least as favorable to such customers as the terms and conditions offered to any other customers of the Bank.

Investments of Client Plan assets in the Funds occur either through a transfer of assets from a terminating CIF, the direct purchase of shares of the Funds for a Client Plan by the Bank, the transfer by the Bank of Client Plan assets from one Fund to another Fund, or a daily automated sweep of uninvested cash of a Client Plan by the Bank into one or more Funds previously designated by the Client Plan for sweeping such cash. All such investments for the Client Plans are made pursuant to the Independent Fiduciary's prior written authorization and annual reauthorization to the Bank.

4. Federated Securities Corporation (FSC) is the principal distributor for all shares of the Funds including shares which are sold to the Client Plans. There are no fees for distribution expenses, pursuant to Rule 12b–1 under the 1940 Act, paid by the Client Plans or other trust clients of the Bank to FSC for any shares of the Funds. In addition, the Bank does not and will not receive fees payable pursuant to Rule 12b–1 in connection with transactions involving any shares of the Funds. However, such shareholders are charged for certain administrative expenses of the Funds. FSC is a subsidiary of Federated Investors (Federated) which, through other subsidiaries, acts as the transfer and dividend disbursing agent for the Funds and provides certain personnel and administrative services for the Funds. Federated and its subsidiaries are unrelated to the Bank. The Bank of New York is the custodian for the securities and cash of the Funds.

5. The Bank serves as the investment adviser for the Funds pursuant to investment advisory agreements with the Funds (the Agreements) which allow the Bank to receive monthly investment advisory fees based on a certain percentage (i.e., between .33%

[12] The Bank is not requesting an exemption for any investment in the Funds by employee benefit plans sponsored and maintained by the Bank (the Bank Plans). The Bank represents that the Bank Plans may acquire or sell shares of the Funds pursuant to Prohibited Transaction Exemption 77–3 (PTE 77–3, 42 FR 18734, April 8, 1977). PTE 77–3 permits the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met. The Department is expressing no opinion in this proposed exemption regarding whether any transactions with the Funds by the Bank Plans would be covered by PTE 77–3.

[13] The transactions with the Funds involving Client Plans for which the Bank acts as a nondiscretionary trustee may be covered by Prohibited Transaction Exemption 84–24 (PTE 84–24, 49 FR 13206, April 3, 1984). PTE 84–24 provides, among other things, an exemption for the purchase by a plan of securities issued by an investment company from, or the sale of such securities to, an investment company or an investment company principal underwriter, when the investment company, principal underwriter, or investment company investment adviser is a fiduciary or service provider to the plan solely by reason of the sponsorship of a master or prototype plan or the provision of nondiscretionary trust services to the plan, or both, if the conditions discussed therein are met (see Section III(f) and Section IV of PTE 84–24). However, the applicant states that it is unclear whether PTE 84–24 would cover either: (i) The ''conversion'' transaction, pursuant to which Plan interests in the CIFs are exchanged for equivalent interests in the Funds; (ii) the ''fee offset'' mechanism, pursuant to which the Bank ensures that Plans are not charged investment advisory fees at both the Plan-level and the Fund-level; and (iii) the ''negative consent'' mechanism, pursuant to which future Fund-level fee modifications are deemed approved unless the Plan submits an ''investment termination form'' after receiving notice of the fee modification, as discussed herein. The Department expresses no opinion in this proposed exemption regarding whether such transactions would be covered by PTE 84–24.

[14] The Bank does not anticipate that the Client Plans will invest in the Peachtree Georgia Tax-Free Fund, since the Plans are not subject generally to Federal or State income taxes and would not need to seek tax-free income.

and .75%) of the average daily net assets of each of the Funds.[15] The Bank is currently the sole investment adviser to the Funds' existing portfolios and presently contemplates no change for such portfolios. However, the Bank states that it may utilize third party sub-advisers in the future to enhance the investment alternatives and the investment advisory services available to the Funds for certain new portfolios. The Agreements and the fees received by the Bank are approved by the Board of Directors of the Funds (the Funds' Directors), in accordance with the applicable provisions of the 1940 Act. Any changes in the fees or services for the Funds are approved by the Funds' Directors, a majority of whom must be independent of the Bank.

6. Prior to February 11, 1994, the Bank generally invested assets of Client Plans for which it acted as a trustee with investment discretion in a series of CIFs. In addition, certain Client Plans where investment decisions are directed by an Independent Fiduciary generally used a Bank CIF as an investment option for the Client Plans. However, on Friday, February 11, 1994, the Bank terminated two of its CIFs—the BankSouth Fixed Income CIF and the BankSouth Equity CIF. The assets in these CIFs were transferred to the Peachtree Bond Fund and the Peachtree Equity Fund, respectively. Each CIF transferred its assets to the corresponding Fund in exchange for shares of that Fund at the then current market value of the CIF assets, in accordance with Rule 17a–7 under the 1940 Act (as discussed below).[16] The CIFs were then liquidated and the Fund shares were distributed to the Client Plans, subject to the prior written consent of the Independent Fiduciary for the Client Plan. Any Client Plan that had not provided prior written approval for the transfer of its CIF assets to the Funds by the deadline set for such approvals received a cash distribution of its pro rata share of the CIF assets no later than Friday, February 11, 1994, preceding the transfers.

The assets of the CIFs were reviewed by the Bank as investment adviser to the Funds, in coordination with Federated Administrative Services (FAS), the Funds' third party administrator, to determine that the assets were appropriate investments for the corresponding Funds. FAS created a portfolio accounting system to track the securities to be acquired by the Funds. Prior to the transfer of CIF assets to the Funds, the Funds did not hold any securities or other assets.

The transfer transactions occurred using market values as of the close of business on Friday, February 11, 1994. The securities transferred from the CIFs were the same as the securities received by the Funds. The applicant states that the value of the securities was determined in a single valuation by the Bank as investment adviser for the Funds, in accordance with the requirement of Rule 17a–7(b) that transactions be effected at the ''independent current market price'' of the securities. The valuation of the securities was performed in the same manner for both the CIF and the corresponding Fund at the close of the same business day. Specifically, as required by the Rule, securities listed on exchanges were valued at their closing prices on Friday, February 11, and unlisted securities were valued based on the average of bid and ask quotations at the close of the market on Friday, February 11, obtained from three brokers independent of the Bank. Any fees charged by the independent brokers for the bid and ask prices were paid by the Bank.

Each Client Plan that approved the CIF asset transfers to the Funds received account statements describing the asset transfers on or before March 31, 1994. The statements showed the disposition of the CIF units from the Client Plan account and the acquisition by the account of Fund shares, both posted as of Monday, February 14, 1994.[17] This information provided the affected Client Plans with written confirmation of the number of CIF units held by the Client Plan immediately before the transfer, the related per unit value and the total dollar amount of such CIF units as well as the number of shares of the Funds held by the Client Plan following the transfer, the related per share net asset value, and the total dollar amount of such shares.

Thus, the applicant represents that as of February 14, 1994, Client Plans that were formerly invested in the terminated CIFs held shares of the corresponding Funds which were of the same value, based on the Client Plans' pro rata share of the underlying market value of the securities transferred to the Funds, as their assets in the CIF as of the close of business on Friday, February 11, 1994. The Bank represents that the other CIFs may be terminated in the future and that all such terminations and subsequent transfers of CIF assets for shares of the Funds will comply with Rule 17a–7 as described above and the conditions of this proposed exemption.

For all transfers of CIF assets to a Fund following publication of this proposed exemption in the **Federal Register**, the Bank sends by regular mail to each affected Client Plan a written confirmation, not later than 30 days after completion of the transaction, containing the following information:

(1) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4);

(2) The price of each such security involved in the transaction; and

(3) The identity of each pricing service or market maker consulted in determining the value of such securities. Securities which are valued in accordance with Rule 17a–7(b)(4) are securities for which the current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or the NASDAQ system. The Bank states that such securities are valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

In addition, for all in-kind transfers of CIF assets to a Fund that occur after the date this proposed exemption is published in the **Federal Register**, the Bank will send by regular mail to the Independent Fiduciary no later than 90

[15] The Bank states that it will not perform any services for the Funds other than investment advisory services. Thus, the Bank will not act as the custodian, transfer agent, or shareholder servicing agent for a Fund or provide any other secondary services to the Funds. The Bank also will not provide portfolio execution services for the Funds. Therefore, all securities transactions for a Fund's portfolio will be executed by broker-dealers unrelated to the Bank and will not generate commissions or other fees to the Bank.

[16] Rule 17a–7 permits transactions between investment funds that use the same investment adviser, subject to certain conditions. Rule 17a–7 requires, among other things, that such transactions be effected at the ''independent current market price'' for each security, involve only securities for which market quotations are readily available, involve no brokerage commissions or other remuneration, and comply with valuation procedures adopted by the board of directors of the investment company to ensure that all requirements of the Rule are satisfied.

[17] The following example illustrates the information provided by the statements: Assume a Client Plan held 12,506 units of the BankSouth Equity CIF prior to the asset transfers. The account statement showed a disposition of 12,506 units of the BankSouth Equity CIF, at a value of $72.08 per unit, on February 14, 1994 with total proceeds of $901,432.18. The statement also showed a purchase on that same date of 90,143.218 shares of the Peachtree Equity Fund, the Fund corresponding to the BankSouth Equity CIF, at $10 per share, at a total cost of $901,432.18, the same amount as the proceeds of the disposition from the BankSouth Equity CIF.

days after completion of each transfer a written confirmation that contains the following information:

(1) The number of CIF units held by the Client Plan immediately before the transfer, the related per unit value, and the total dollar amount of such CIF units; and

(2) The number of shares in the Funds that are held by the Client Plan following the transfer, the related per share net asset value, and the total dollar amount of such shares.

The Bank believes that the interests of the Client Plans are better served by the collective investment of assets of the Client Plans in the Funds rather than in the CIFs. The Funds are valued on a daily basis, whereas the majority of the CIFs are valued monthly. The daily valuation permits (i) immediate investment of Client Plan contributions in various types of investments; (ii) greater flexibility in transferring assets from one type of investment to another; and (iii) daily redemption of investments for purposes of making distributions. In addition, information concerning the investment performance of the Funds will be available on a daily basis in newspapers of general circulation which will allow Client Plan fiduciaries to monitor the performance of investments on a daily basis and make more informed investment decisions.

7. For investments in the Funds on behalf of Client Plans, the Bank currently offsets its investment management or advisory fees for assets invested in the Funds in accordance with one of the methods for offsetting double investment advisory fees described in Prohibited Transaction Exemption 77–4 (PTE 77–4, 42 FR 18732, April 8, 1977).[18] Consequently, the Bank represents that the fee structure for these investments complies with the fee structure under PTE 77–4, and that the other conditions of PTE 77–4 are met.[19]

The Bank charges its standard fees to all the Client Plans for serving as a trustee or investment manager for the Client Plans.[20] All fees are billed on a quarterly basis. The annual charges for a Client Plan account are based on fee schedules negotiated with the Bank. The Bank provides services to the Client Plans for which it has investment discretion, including sweep services for uninvested cash balances in such Plans, under a single fee arrangement which is calculated as a percentage of the market value of the Plan assets under management. There are no separate charges for the provision of sweep services to the Client Plans for which the Bank has investment discretion. However, for Client Plans where investment decisions are directed by an Independent Fiduciary, a separate charge is assessed for sweep services where the Independent Fiduciary specifically agrees to have the Bank provide such services to the Client Plan.[21] The Bank states that in many cases fees charged by the Bank to a Client Plan are paid by the Client Plan sponsor rather than by the Client Plan.

The Bank charges the Funds for its services to the Funds as investment adviser, in accordance with the Agreements between the Bank and the Funds. Under the Agreements, the Bank charges fees at a different rate for each Fund, computed based on the average daily net assets for the respective Fund. The fee differentials among the Funds result from the particular level of services rendered by the Bank to the Funds.

The investment advisory fees paid by each of the existing Funds are accrued on a daily basis and billed by the Bank to the Funds at the beginning of the month following the month in which the fees accrued. The Bank states that any additional Funds will follow the same monthly billing arrangement.

Under the fee structure which would be covered by the proposed exemption, the Bank states that the Client Plans will not pay any plan-level investment management fees, investment advisory fees, or similar fees to the Bank with respect to any of the assets of such Client Plans which are invested in shares of any of the Funds. However, this fee structure does not preclude the payment of investment advisory fees or similar fees by the Funds to the Bank under the terms of the Agreements, provided that such Agreements are adopted in accordance with section 15 of the 1940 Act.

The Bank states that the combined total of all fees received by the Bank for the provision of services to a Client Plan, and in connection with the provision of services to the Funds in which the Client Plan may invest, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

The Bank represents that the fee structure ensures that the Bank does not receive any additional investment management, advisory or similar fees from the Funds as a result of investments in the Funds by the Client Plans. Thus, the Bank represents that the fee structure is at least as advantageous to the Client Plans as an arrangement pursuant to the conditions of PTE 77–4 whereby investment advisory fees paid by the Funds to the Bank would be offset or credited against investment management fees charged directly by the Bank to the Client Plans. In this regard, the Bank states that the fee structure essentially has the same effect in offsetting the Bank's investment advisory fees as an arrangement under PTE 77–4, section II(c).

8. With respect to any transfer of a Client Plan's CIF assets to a Fund, the Bank states that an Independent Fiduciary for the Client Plan receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Fund. On the basis of such information, the Independent Fiduciary authorizes in writing the in-kind transfer of the Client Plan's CIF assets to a Fund in exchange for shares of the Fund. With respect to the receipt of fees by the Bank from a Fund in connection with any Client Plan's investment in the Fund, the Bank states that an Independent Fiduciary receives full and detailed written disclosure of information concerning the Fund in

[18] PTE 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that, among other things, the plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77–4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the 1940 Act. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

[19] The Department is expressing no opinion in this proposed exemption regarding whether any transactions with the Funds under the circumstances described herein would be covered by PTE 77–4.

[20] The applicant represents that all fees paid by Client Plans directly to the Bank for services performed by the Bank are exempt from the prohibited transaction provisions of the Act by reason of section 408(b)(2) of the Act and the regulations thereunder (see 29 CFR 2550.408b–2). The Department notes that to the extent there are prohibited transactions under the Act as a result of services provided by the Bank directly to the Client Plans which are not covered by section 408(b)(2), no relief is being proposed herein for such transactions.

[21] See DOL Letter dated August 1, 1986 to Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, stating the Department's views regarding the application of the prohibited transaction provisions of the Act to sweep services provided to plans by fiduciary banks and the potential applicability of certain statutory exemptions as described therein.

advance of any investment by the Client Plan in the Fund. On the basis of such information, the Independent Fiduciary authorizes in writing the investment of assets of the Client Plan in the Fund and the fees to be paid by the Fund to the Bank. In addition, the Bank represents that the Independent Fiduciary of each Client Plan invested in a particular Fund will receive full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by the Bank to the Funds for investment advisory services which is above the rate reflected in the prospectus for the Fund, at least 30 days prior to the effective date of such increase.[22]

Any authorizations by the Independent Fiduciary regarding the investment of a Client Plan's assets in a Fund and the fees to be paid to the Bank, including any future increases in rates of such fees, are or will be terminable at will by the Independent Fiduciary, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. A Termination Form expressly providing an election to terminate the authorization with instructions on the use of the form is supplied to the Independent Fiduciary no less than annually. The instructions for the Termination Form include the following information:

(a) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Independent Fiduciary; and

(b) Failure to return the Termination Form will result in continued authorization of the Bank to engage in the subject transactions on behalf of the Client Plan.

The Bank states that the Termination Form may be used to notify the Bank in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form. The Bank states further that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank will complete the sale within the next business day.

Any disclosure of information regarding a proposed increase in the rate of fees for investment advisory services will be accompanied by a Termination Form. However, if the Termination Form has been provided to the Independent Fiduciary for the authorization of a fee increase, then a Termination Form for an annual reauthorization will not be provided by the Bank for that year unless at least six months has elapsed since the Termination Form was provided for the fee increase.

Each Independent Fiduciary receives from the Bank a current prospectus for the Funds and a written statement giving full disclosure of the Fee Structure prior to any investment by the Client Plan in shares of the Fund. The disclosure statement explains why the Bank believes that the investment of assets of the Client Plan in the Funds is appropriate. The disclosure statement also describes whether there are any limitations on the Bank with respect to which Client Plan assets may be invested in shares of the Funds and, if so, the nature of such limitations.[23] The Bank states that Client Plan fiduciaries will also receive from Federated, the Funds' distributor, an updated prospectus and periodic reports for each Fund. In addition to information provided to Fund shareholders by Federated, the Bank will provide each Independent Fiduciary with a quarterly performance review for the Peachtree Equity and Bond Funds. This report will include updated information regarding the particular Fund's investment strategy, performance, and diversification of assets as well as a description of the securities held by the Fund. The Bank states further that Fund shareholders may also request a copy of the Statement of Additional Information for any Fund free of charge, obtain other information, or make inquiries about a Fund by writing or calling the Bank.

9. No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds. In addition, no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds. The applicant states that all other dealings between the Client Plans, the Funds, and the Bank or any affiliate, are on a basis no less favorable to the Client Plans than such dealings are with the other shareholders of the Funds.

10. In summary, the Bank represents that the transactions described herein satisfy the statutory criteria of section 408(a) of the Act because: (a) The Funds provide the Client Plans with a more effective investment vehicle than the CIFs maintained by the Bank without any increase in investment management, advisory or similar fees paid to the Bank; (b) with respect to the transfer of a Client Plan's CIF assets into a Fund in exchange for Fund shares, an Independent Fiduciary authorizes in writing such transfer prior to the transaction only after full written disclosure of information concerning the Fund; (c) each Client Plan receives shares of a Fund in connection with the transfer of assets of a terminating CIF which have a net asset value that is equal to the value of the Client Plan's pro rata share of the CIF assets on the date of the transfer, based on the current market value of such assets as determined in a single valuation at the close of the same business day using independent sources in accordance with procedures established by the Fund which comply with Rule 17a-7 of the 1940 Act; (d) with respect to any investments in a Fund by the Client Plans and the payment of any fees by the Fund to the Bank, an Independent Fiduciary receives full written disclosure of information concerning the Fund, including a current prospectus and a statement describing the fee structure, and authorizes in writing the investment of the Client Plan's assets in the particular Fund and the fees paid by such Fund to the Bank; (e) any authorizations made by a Client Plan regarding investments in a Fund and fees paid to the Bank, or any increases in the rates of fees for such services, are or will be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination from the Independent Fiduciary; (f) no commissions or redemption fees are paid by the Client Plan in connection with either the acquisition of Fund shares, through either a direct purchase of the shares or a transfer of CIF assets in exchange for the shares, or the sale of Fund shares; and (g) all dealings between the Client Plans, the Funds and

[22] The Department notes that an increase in the amount of a fee for an existing investment advisory service (other than through an increase in the value of the underlying assets in the Funds) or the imposition of a fee for a newly-established investment advisory service shall be considered an increase in the rate of such investment advisory fee. However, in the event an investment advisory fee has already been described in writing to the Independent Fiduciary and the Independent Fiduciary has provided authorization for the investment advisory fee, and such fee is waived, no further action by the Bank would be required in order for the Bank to receive such fee at a later time. Thus, for example, no further disclosure would be necessary if the Bank had received authorization for a fee for investment advisory services from Client Plan investors and subsequently determined to waive the fee for a period of time in order to attract new investors but later charged the fee.

[23] See section II(d) of PTE 77–4 which requires, in pertinent part, that an independent plan fiduciary receive a current prospectus issued by the investment company and a full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including a discussion of whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations.

the Bank, are on a basis which is at least as favorable to the Client Plans as such dealings are with other shareholders of the Funds.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all Independent Fiduciaries of Client Plans described herein that had investments in a terminating CIF and from whom approval was sought, or will be sought prior to the granting of this proposed exemption, for a transfer of a Client Plan's CIF assets to a Fund. In addition, interested persons shall include the Independent Fiduciaries of all Client Plans that are currently invested in the Funds, as of the date the notice of the proposed exemption is published in the **Federal Register**, where the Bank provides services to the Funds and receives fees which would be covered by the exemption, if granted. Notice to interested persons shall be provided by first class mail within fifteen (15) days following the publication of the proposed exemption in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs all interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Dillon, Read & Co. Inc. (Dillon) Located in New York, New York

[Application No. D–09741]

Proposed Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[24]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or assets contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[25] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii), and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[26]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a

[24] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[25] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[26] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. ''Certificate'' means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust; with respect to certificates defined in (1) and (2) for which Dillon or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. ''Trust'' means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either—

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) ''Guaranteed governmental mortgage pool certificates,'' as defined in 29 CFR section 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);[27]

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating

[27] The Department wishes to take the opportunity to clarify its view that the definition of Trust contained in III.B.(1)(a) through (e) includes a two-tier trust structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues certificates that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or *indirect* acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. ''Underwriter'' means:

(1) Dillon;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Dillon; or

(3) Any member of an underwriting syndicate or selling group of which Dillon or a person described in (2) is a manager or co-manager with respect to the certificates.

D. ''Sponsor'' means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. ''Master Servicer'' means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the master servicer, services assets contained in the trust, but is not a party to the pooling and servicing agreement.

G. ''Servicer'' means any entity which services assets contained in the trust, including the master servicer and any subservicer.

H. ''Trustee'' means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. ''Obligor'' means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. ''Restricted Group'' with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. ''Sale'' includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. ''Forward delivery commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. ''Reasonable compensation'' has the same meaning as that term is defined in 29 CFR section 2550.408c–2.

S. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. ''Pooling and Servicing Agreement'' means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

Summary of Facts and Representations

1. Dillon, Read & Co. Inc. is an international investment banking firm

which has its headquarters in New York, New York. The firm has numerous offices in the United States as well as London, Paris and Tokyo. Dillon and its affiliates [28] engage in a variety of activities that facilitate the flow of capital from investors in the United States and abroad to corporations, governments and international agencies. Dillon provides a broad range of merger and acquisition services, engages in securities transactions as both principal and agent and provides underwriting, research and financial services to domestic and foreign financial institutions. The firm is actively involved in the issuance and trading of equity securities, high-yield corporate debt, investment grade fixed income securities, U.S. Government securities and municipal securities.

2. Dillon seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts; [29] (2) motor vehicle receivables pool investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[30]

3. Residential and commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground lease pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgage.[31]

Trust Structure

4. Each trust is established under a pooling and servicing agreement or equivalent agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables or certificates which may have been originated, in the ordinary course of business, by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Dillon, or one or more broker-dealers (which may include Dillon), acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated have been or are to be underwritten by Dillon on a firm commitment basis. In addition, Dillon anticipates privately placing certificates on both a firm commitment and an agency basis. Dillon may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive periodic installments of principal and/or interest, or other payments due on the trust assets.

5. Some of the certificates will be multi-class certificates. Dillon requests exemptive relief for two types of multi-class certificates: ''strip'' certificates and ''fast-pay/slow-pay'' certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[32]

''Fast-pay/slow-pay'' certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying trust assets are distributed first to the class of certificates having the earliest stated maturity of principal and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying trust assets. In neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders will share in the amount distributed on a pro rata basis.[33]

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of trust assets by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an

[28] As described herein, the term ''Dillon'' refers to Dillon, Read and Co. Inc. and its affiliates unless the context otherwise requires.

[29] The Department notes that Prohibited Transaction Exemption (PTE) 83–1 (48 FR 895, January 7, 1983) a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83-l are met. Dillon requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Dillon has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[30] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[31] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990) at 23150.

[32] It is the Department's understanding that where a plan invests in REMIC ''residual'' interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(l)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[33] If a trust issues subordinate certificates, holders of such subordinate certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies, financial institutions, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* of a trust will be one of three entities: (i) a special-purpose corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the assets to be included in the trust, establishing the trust, designating the trustee, and assigning the assets to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to Dillon, the trust sponsor or the servicer. Dillon represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid from the assets of the trust by the sponsor or servicer. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the trust assets on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be ''subserviced'' by their respective originators and for a single entity to ''master service'' the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investors' interest, the servicer ordinarily convenants that this ''sold flag'' will be included in all records relating to the sold receivables, including the master file, archives, tape extracts, and printouts.

The sold flags are invisible to the obligor, and do not affect the manner in which the servicer performs the billing, posting and collection procedures relating to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to the trust.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsiblities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placements of certificates may be made on a firm commitment or agency basis.

It is anticipated that the lead or co-managing underwriter will make a market in certificates offered to the public.

In some cases, the originator and servicer of assets to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to Dillon. However, affiliates of Dillon may originate or service assets included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the assets from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a finance company pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

As compensation for the assets transferred to the trust, the sponsor receives cash, or certificates representing the entire beneficial interest in the trust. The sponsor sells some or all of these certificates for cash to investors or securities underwriters.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on assets included in the trust minus a specified servicing fee.[34] This rate is generally

[34] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into ''principal'' and ''interest'' components based on an implicit interest rate.

determined by the same market forces that determine the price of a certificate.

The price of a certificate and its pass-through, or coupon rate, together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting as sponsor) will retain the difference between payments received on the assets in the trust and payments payable to certificateholders, except that in some cases a portion of the payments on assets in the trust may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the assets between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer, typically, will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and is either paid in a lump sum at the time the trust is established, or out of the payments received on the assets in the trust.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories:

(a) Prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession of assets in the trust, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on assets in the trust may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on an asset and the certificate payment. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on trust assets are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what the underwriter receives for the certificates and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the assets in a trust is reduced by payment, the cost of administering the trust generally increases in proportion to the unpaid balance of the assets in the trust, making the servicing of the trust prohibitively expensive at some point.

Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables included in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually between 5 and 10 percent) of the initial balance.

The repurchase price for such an option is set at a level such that the certificateholders will receive the full amount on all of the receivables held by the trust plus the accrued interest at the pass-through rate plus the full amount of property, if any, that has been acquired by the trust through collections on or liquidations of the receivables.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as overcollateralization, surety bonds, letters of credit or guarantees) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the servicer, or an affiliate of the servicer, may provide credit support to the trust (i.e., act as an insurer). In these cases, the servicer will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be itself) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates. In some transactions, the servicer may not be obligated to advance funds, but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a servicer typically can recover advances either from the provider of credit support or from the future payment stream. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism.

If the servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover defaulted payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights pursuant to the pooling and servicing agreement.

Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a servicer advances funds, the amount so advanced is recoverable by the servicer out of future payments on

assets held by the trust to the extent not covered by credit support. However, where the servicer provides credit support to the trust, there are protections, including those described below, in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on assets are passed through to investors. These protective safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the servicer to follow its normal servicing guidelines and will set forth the servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the assets included in the trust (monthly, quarterly, or semi-annually as set forth in the pooling and servicing agreement), the servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the assets and draws upon the credit support. Further, the servicer is required to deliver to the trustee annually a certificate of an executive officer of the servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the servicer has defaulted under any of its obligations, specifying any such default. The servicer's reports are reviewed at least annually by independent accountants to ensure that the servicer is following its normal servicing standards and that the master servicer's reports conform to the servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee;

(d) The credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect. The protection provided by a floor dollar amount to the credit support applies particularly where the servicer and the insurer are affiliated or are the same entity. (An entity should not be considered an insurer solely because it holds subordinated certificates.)

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the assets contained in the trust, including the types of assets, the diversification of the assets, their principal terms and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through certificates to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted assets.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the

amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the trustee summarizing information regarding the trust and its assets. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

24. Dillon represents that, to date, it has not entered into any forward delivery commitments in connection with the offering of pass-through certificates. However, Dillon, represents that it may contemplate entering into such commitments. Dillon notes that the utility of forward delivery commitments has been recognized with respect to the offering of similar certificates backed by pools of residential mortgages. As such, Dillon states that it may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

25. It is Dillon's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter. Dillon anticipates that it will make a market in certificates.

Summary

26. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain ''fixed pools'' of assets. There is little discretion on the part of the trust sponsor to substitute assets contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which Dillon seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) Dillon anticipates that it will make a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 (46 FR 7520, January 23, 1981), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 (48 FR 895, January 7, 1983).

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406(b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83-1 provides conditional exemptive relief from section 406(a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled assets, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[35]

[35] In referring to different ''types'' of asset-backed securities, the Department means certificates representing interests in trusts containing different ''types'' of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by

Continued

III. Limited Section 406(b) and Section 407(a) Relief for Sales

Dillon represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to assets contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[36] In these cases, a direct or indirect sale or certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[37] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, Dillon represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to assets contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. Dillon represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, Dillon represents that to the extent there is a plan asset ''look through'' to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

For Further Information Contact: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been ''seasoned'' (e.g., originated at least one year prior to the plan's investment in the trust).

[36] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which Dillon or any of its affiliates is either (a) the sole underwriter or manager or comanager of the underwriting syndicate, or (b) a selling or placement agent.

[37] The applicant represents that where a trust sponsor is an affiliate of Dillon, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if Dillon is not a fiduciary with respect to plan assets to be invested in certificates.

Treasure Valley Transplants, Inc. Money Purchase Pension Plan (the Plan) Located in Boise, Idaho

[Application No. D–09874]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of certain real property (the Property) by the Plan to Dr. George Holzer, D.V.M. (Dr. Holzer), a disqualified person with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not incur any expenses in connection with the proposed transaction; and (3) the consideration paid for the Property is no less than the fair market value of the Property as determined by an independent appraiser.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan whose sole participant is Dr. Holzer. The Plan, which was adopted by Treasure Valley Transplants, Inc (the Employer) effective as of September 1, 1992, is a successor plan to the George L. Holzer Rollover IRA (the IRA). As of October 1, 1994, the Plan had assets of approximately $780,000.00.

The Employer is an Idaho corporation which specializes in bovine embryo transfers. Dr. Holzer is the sole shareholder of the Employer.[38] Dr. Holzer and Kathleen J. Holzer serve as the Plan's co-trustees.

2. The Property is designated as Lot 16, Block 2, Warm Springs Village 2nd Addition in Ketchum, Idaho, together with the improvements thereon. The Property was appraised in September, 1994 by Monge Appraisal & Investments (Monge), an independent appraisal firm located in Sun Valley, Idaho. The appraisal was performed by Kyle T. Kunz and Thomas R. Monge, MAI. The Property is described as a contemporary-style dwelling completed in 1993, having 4,144 square feet of living space, with 4 baths and a total of 10 rooms, including 4 bedrooms. The Property is also described as being within walking distance of Warm Spring Village and Sun Valley ski lift operations. The size of the lot is 64 acres and is described as having good mountain views. Monge determined, as of September 26, 1994, that the Property had a fair market value of $775,000.00. The applicant represents that the Property has never been used or occupied.

3. On September 3, 1991, the IRA loaned $230,000.00 to David and Paula Barovetto to enable them to build a dwelling on the property. The applicant represents that the Barovettos are not related to the Plan or the IRA. The Barovettos defaulted on the loan on August 29, 1992, prior to completion of the dwelling. The IRA subsequently commenced foreclosure proceedings to acquire title to the Property. As a result of those proceedings, on November 13, 1992, the IRA purchased the deed on the Property for $265,756.00. The applicant represents that the assets from the IRA were rolled into the Plan during the month of November, 1992.[39] In addition, the applicant represents that, in order to protect its investment, the IRA and the Plan authorized work on the partially completed dwelling and borrowed over $300,000 to continue that work. It is represented that the Plan's total investment in the Property as of October 26, 1994, including interest costs and property taxes, was $830,717.30.

4. The Plan proposes to sell the Property to Dr. Holzer for the fair market value of the Property as determined by a qualified, independent appraiser. The applicant represents that the Plan will receive cash and will not incur any expenses in connection with the proposed transaction. In addition, the applicant represents that the Sale will provide the Plan with the opportunity to divest itself of a non-income producing asset which has substantial carrying costs and to replace it with liquid assets that can be placed in more diversified investments. The applicant further represents that attempts to sell the Property have been unsuccessful.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because (1) the proposed Sale will be a one-time transaction for cash; (2) the Plan will receive not less than the fair market value of the Property as

[38] Since Dr. Holzer is the sole shareholder of the Employer, and the only participant in the Plan, there is no jurisdiction under Title I of the Act, pursuant to 29 CFR 2510.3–3(c)(1). There is, however, jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[39] The applicant represents that one of the reasons the Plan was created was to allow the Property to be rolled into a vehicle to which Dr. Holzer could make sufficient contributions to pay for the costs of carrying the Property.

determined by an independent appraiser; (3) the Plan will not incur any expenses in connection with the proposed transaction; and (4) the proposed transaction will enable the Plan to diversify its assets in more liquid investments.

Notice to Interested Persons

Since Dr. Holzer is the only person affected by the proposed transaction, there is no need to distribute notice to interested persons. Comments are due 30 days after publication of this notice in the **Federal Register**.

For Further Information Contact: Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Terry Segal, P.C. Retirement Plans (the Plans) Located in Boston, MA

[Application No. D–09891]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) shall not apply to the proposed purchase by Terry and Harriet Segal (the Segals) of an interest (the Interest) in a limited partnership (the Limited Partnership) from Mr. Segal's individually-directed account (the Account) in the Terry Segal, P.C. Pension Plan (the Pension Plan), provided: (1) The purchase is a one-time transaction for cash; (2) the Pension Plan Account is not required to pay any fees or commissions in connection therewith; (3) the Interest is appraised by a qualified, independent appraiser; and (4) the Pension Plan Account receives an amount which reflects the fair market value of the Interest.

Summary of Facts and Representations

1. The Plans, which are defined contribution plans, consist of the Pension Plan and the Terry Segal, P.C. Profit Sharing Plan (the Profit Sharing Plan). At present, the Plans have two participants. They are Terry Segal, a trial attorney who maintains his offices at 210 Commercial Street, Boston, Massachusetts, and his associate, Scott Lopez. As of August 31, 1993, the Plans had total assets of $262,919. Of this amount, the Pension Plan had assets of $169,858 and the Profit Sharing Plan had assets of $93,061.

The Plans provide for participant-directed investments. Mr. Segal, who serves as the trustee, had Account balances in the Pension Plan and the Profit Sharing Plan of $167,504 and $90,744, respectively, as of August 31, 1993.

2. Among the assets in Mr. Segal's Account in the Pension Plan is a residual profits (and freely transferable) interest in a limited partnership called ''Turbo Dynamix'' whose underlying assets consist of machines for making frozen yogurt.[40] The Interest was purchased by Mr. Segal's Accounts in the Plans in April 1992 for the total cash consideration of $50,000. The seller of the Interest was Turbo Dynamix Corporation of Cambridge, Massachusetts. This entity is general partner of the Limited Partnership and an unrelated party with respect to the Accounts. Following acquisition, the Interest was allocated 65 percent to Mr. Segal's Pension Plan Account and 35 percent to Mr. Segal's Profit Sharing Plan Account. This allocation arrangement continued until August 1, 1994. At that time, the allocable portion of the Interest held by Mr. Segal's Account in the Profit Sharing Plan was transferred to his Pension Plan Account. Thus, the Pension Plan Account currently holds 100 percent of the Interest.[41] Aside from the Interest, Mr. Segal does not invest in the Limited Partnership on an individual basis.

3. When initially purchased, the Pension Plan Account and the Profit Sharing Plan Account collectively owned a 1.8249 percent profits interest in the Limited Partnership. However, because additional Limited Partnership interests were subsequently sold, by August 31, 1994 the Pension Plan Account's share of profits had decreased to 1.2452 percent. The Accounts never received any investment income for the Interest nor did they ever incur any expenses other than the $50,000 capital contribution.

4. Because the Interest has not generated any investment income and due to the start-up nature of the Limited Partnership, Mr. and Mrs. Segal request an administrative exemption from the Department in order to purchase the Interest from the Pension Plan Account. The Segals propose to pay the Pension Plan Account the fair market value of the Interest on the date of the sale. The Pension Plan Account will not be required to pay any fees or commissions in connection therewith.

6. The Interest has been appraised by Paul Kateman. Mr. Kateman is the President of Turbo Dynamix Corporation, which is the general partner of the Limited Partnership. Mr. Kateman is not an owner, director, officer or director of the sponsor of the Plans nor is he a participant or beneficiary of the Plans.

By letter dated September 6, 1994, Mr. Kateman represents that the actual value of the Interest is speculative due to the start-up nature of the Limited Partnership. In an addendum to his letter dated December 19, 1994, Mr. Kateman notes that the Limited Partnership has had no earning capacity, no products currently in the market place and has funded research and development and other business expenses by raising capital. He explains that although the Limited Partnership has been successful in raising capital since 1992 and has sold three interests for $50,000, there is no ready market for buying and selling of such interests. He represents that the book value of the Interest was $45,541 as of December 19, 1994. Thus, the Segals propose to pay $45,541 for such Interest.

7. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The purchase of the Interest will be a one-time transaction for cash; (b) the Pension Plan Account will not be required to pay any fees or commissions in connection therewith; (c) the Interest has been appraised by Mr. Kateman who serves as president of the general partner of the Limited Partnership; and (d) the Pension Plan Account will receive an amount which reflects the fair market value of the Interest.

Notice to Interested Persons

Because Mr. Segal is the only participant in the Pension Plan whose Account therein will be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of pendency to interested persons. Therefore, comments and requests for a public hearing are due 30 days from the publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[40] For purposes of the exemptive relief requested herein, the Accounts in the Plans that are held by Mr. Lopez will not be affected by the proposed transaction.

[41] The Department is not proposing, nor is the applicant requesting, exemptive relief with respect to the transfer of the allocable portion of the Interest held by Mr. Segal's Account in the Profit Sharing Plan to his Account in the Pension Plan.

Employee Benefit Capital Preservation Fund of Central Fidelity National Bank (the Fund) Located in Richmond, Virginia

[Application No. D–09905]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the past sale by the Fund of three Guaranteed Income Contracts (the GICs) of Confederation Life Insurance Company (CL) to Central Fidelity Bank, Inc. (CFB), a party in interest with respect to the Fund, provided the following conditions are satisfied: (1) The sale was a one-time transaction for cash; (2) the Fund received no less than the fair market value of the GICs at the time of the transaction; (3) the purchase price was not less than the GICs' accumulated book values (defined as total deposits plus interest accrued but unpaid at the GICs' stated rates of interest through the date of sale, less withdrawals) as of the date of the sale.

Effective Date: If this proposed exemption is granted, it will be effective on December 29, 1994.

Summary of Facts and Representations

1. The Fund is a group trust created on August 1, 1988, established and maintained exclusively by Central Fidelity National Bank (the Bank) for the collective investment of various participating trusts for the assets of retirement, pension, profit sharing, stock bonus or other plans exempt from taxation under the Code. Each participating trust is deemed to have a proportionate undivided interest in the Fund, and each shares ratably with the others in the income, profits, or losses thereof. As of September 30, 1994, there were 266 participating trusts in the Fund, and the Fund had assets with a total value of approximately $48 million. All of the assets of the Fund are held by the Bank as fiduciary. The Bank is a wholly-owned subsidiary of CFB, which is a bank holding company located in Richmond, Virginia.

2. Among the Fund's investments are the three GICs, which can be described as follows:

(a) GIC Contract Number 62340 is a single deposit contract acquired from CL on November 16, 1990. Its maturity date is November 15, 1995. The guaranteed rate of interest payable on the GIC is 8.9%, and the deposit amount was $1 million.

(b) GIC Contract Number 62379 is also a single deposit contract acquired from CL on January 11, 1991. Its maturity date is January 10, 1996. The guaranteed rate of interest payable on this GIC is 8.55%, and the deposit amount was also $1 million.

(c) GIC Contract Number 62424 is also a single deposit contract acquired from CL on March 8, 1991. Its maturity date is March 7, 1996. The guaranteed rate of interest payable on this GIC is 8.6%, and the deposit amount was also $1 million.

3. On August 11, 1994, Canadian regulatory authorities seized CL due to serious liquidity problems facing CL, caused by failed real estate investments. As a result, the assets of CL were frozen, including the subject GICs. The Bank determined that, as a consequence of CL's current financial condition, the likelihood that CL will timely satisfy its obligations under the GICs is seriously compromised.

4. Due to the uncertainty of payments under the GICs, the Bank sought to eliminate the financial risk to the Fund's participating trusts and to protect the benefits of the participants and beneficiaries in the participating trusts. The applicant represents that this was accomplished by the cash sale of the GICs to CFB, the Bank's parent company. The purchase price for each of the GICs was its accumulated book value (defined as deposits plus accrued interest at the guaranteed rate, less withdrawals). The total purchase price for the three GICs amounted to $3,253,109.59. The Fund had received scheduled interest payments from CL prior to August 12, 1994. Thus, the purchase price for the GICs included interest at the guaranteed rates for the periods from the last interest payments made by CL for the respective contracts through the date of sale.

5. In summary, the applicant represents that the subject transaction satisfied the criteria contained in section 408(a) of the Act because: (a) The sale was a one time transaction for cash; (b) the Fund received the accumulated book value (defined as deposits plus unpaid interest to the date of the sale at the guaranteed rate, minus withdrawals) of the GICs, which the applicant represents to be equal to or in excess of the fair market value of the GICs; (c) the transaction has enabled the Fund to avoid any risk associated with continued holding of the GICs and to redirect assets to safer investments; and (d) the Plan did not incur any expenses related to the transaction.

For further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 24th day of January 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

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[Prohibited Transaction Exemption 95–04; Exemption Application No. D–09721, et al.]

Grant of Individual Exemptions; Mid-Hudson Medical Group, P.C. Money Purchase Pension Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Mid-Hudson Medical Group, P.C. Money Purchase Pension Trust (the Plan) Located in Fishkill, New York

[Prohibited Transaction Exemption 95–04; Exemption Application No. D–09721]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: 1) the acquisition by the Plan of certain improved real property (the Property) from unrelated parties for a sales price of $562,500; and 2) the leasing (the Lease) of the Property by the Plan to Mid-Hudson Medical Group, P.C. (the Employer), a party in interest with respect to the Plan, provided the following conditions are satisfied: (a) The Plan pays no more than the fair market value of the Property; (b) the Property represents no more than 25% of the value of the Plan's assets; (c) the terms of the Lease are, and will remain, at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (d) the fair market rental value has been, and will continue to be determined on an annual basis by a qualified, independent appraiser; (e) the Plan's independent fiduciary has determined that the transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; and (f) the Plan's independent fiduciary will continue to monitor the transaction and the conditions of the exemption and take whatever action is necessary to enforce the Plan's rights under the Lease.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 5, 1994 at 59 FR 62420.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

John R. Lyman Company 401(k) Profit Sharing Plan (the Plan) Located in Chicopee, Massachusetts

[Prohibited Transaction Exemption 95–05; Exemption Application No. D–09759]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of Guaranteed Investment Contract CGO 1303A3A and Guaranteed Investment Contract CGO 1344A3A (collectively, the GICs) issued by Executive Life Insurance Company (Executive Life), a California corporation, to John R. Lyman Company, a Massachusetts corporation (the Employer), the sponsoring employer and a party in interest with respect to the Plan; provided (1) the Sales is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GICs as determined on the date of the Sale, or an amount that is equal to the total amount expended by the Plan for the GICs at the time of acquisition, less withdrawals, plus the amount the GICs would have earned by the date of the Sale if Executive Life had not been placed under conservatorship; and (4) any funds from the GICs in excess of the Sale price that are received by the Employer, or its successors, from Executive Life, or its successors, after the date of the Sale are paid to the Plan.

For a more complete statement of the facts and representations representing the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 28, 1994, at 59 FR 60847.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Regency Marketing Corporation Restated Employees Profit Sharing Plan and Trust (the Plan) Located in West Bloomfield, Michigan

[Prohibited Transaction Exemption 95–06; Application No. D–9763]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan (the Loan) of $84,667 by the Plan to Frankenmuth