**MEETING DATE AND TIME:** June 23–25, 1995, 8:00 a.m.–5:00 p.m.

**ADDRESSES:** Sheraton Billings Hotel, 27 North 27th Street, Billings, Montana 59101.

**THE AGENDA OF THIS MEETING WILL BE:** Review minutes of last meeting, discuss follow-up actions from previous meeting, introductions/opening remarks, review of design competition criteria and related proposal packages, and media/public relations.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with: Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, Montana 59022, telephone (406) 638–2621. Minutes of the meeting will be available for public inspection four weeks after the meeting at the Office of the Superintendent of Little Bighorn Battlefield National Monument.

**SUPPLEMENTARY INFORMATION:** The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and ''* * * to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable.''

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara A. Sutteer, Indian Affairs Coordinator, Intermountain Field Area Office, National Park Service, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2511.

Dated: May 22, 1995.

**Dawn A. Carey,**

*Designated Federal Officer, Little Bighorn Battlefield National Monument, National Park Service.*

[FR Doc. 95–15533 Filed 6–23–95; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

### Request for Proposals

The National Institute of Corrections, U.S. Department of Justice, is seeking applications from organizations and individuals able to develop a videotape highlighting the principles of podular direct supervision and the implementation of these principles in several jails. A cooperative agreement of up to $50,000 will be awarded for a 12-month period beginning September 1, 1995. Applications must be received by July 28, 1995. For more information and application procedures, contact Ginny Hutchinson, National Institute of Corrections, Jails Division, 1960 Industrial Circle, Suite A, Longmont, CO 80501; 1–800–995–6429 or fax 1–303–682–0469.

**Morris L. Thigpen,**

*Director.*

[FR Doc. 95–15493 Filed 6–23–95; 8:45 am]

**BILLING CODE 4410–36–M**

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 95–46;**

### Exemption Application No. D–09519, et al.]

### Grant of Individual Exemptions; Westinghouse Pension Plan, 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.

**Westinghouse Pension Plan (the Plan)**

Located in Pittsburgh, Pennsylvania

[Prohibited Transaction Exemption 95–46; Application No. D–09519]

*Exemption*

The restrictions of sections 406(a)(1)(A) through (D), 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 contribution of certain securities (the Securities) to the Plan on September 14, 1993 and October 29, 1993 by Westinghouse Electric Corporation (WEC), the Plan's sponsor and as such a party in interest with respect to the Plan, provided the following conditions are met:

(a) The Securities were valued at an amount which was no greater than their fair market value at the time of contribution, as established by an independent, qualified appraiser;

(b) The terms and conditions of the contributions were at least as favorable to the Plan as terms and conditions which the Plan could have obtained in a purchase of similar securities from an unrelated party;

(c) The Plan did not pay any commissions or other expenses with respect to the contributions;

(d) The fair market value of the Securities represents at all times an amount of the Plan's total assets which is consistent with the Plan's investment guidelines and objectives;

(e) Additional Plan assets are not used to purchase any new securities which are considered ''alternative investments'' to the extent that such purchases, when added to the outstanding fair market value of the Securities owned by the Plan, would cause more than 5.2 percent of the Plan's total assets to be invested in ''alternative investments'' (other than as may be occasioned merely by an increase in value); [1]

(f) Mellon Bank N.A. (Mellon), as an independent, qualified fiduciary for the Plan, determined that each contribution of the Securities to the Plan was in the best interests and protective of the Plan and its participants and beneficiaries at the time of the transactions;

(g) Mellon monitored each contribution made to the Plan and took all appropriate actions necessary to protect the interests of the Plan and its participants and beneficiaries;

(h) Mellon monitors the performance of the Securities as an investment for the Plan and takes whatever action is necessary to protect the interests of the Plan and its participants and beneficiaries;

(i) On the date on which the Plan no longer holds any of the Securities contributed by WEC on September 14 and October 29, 1993 (the Exercise Date), WEC shall contribute to the Plan the difference between the following:

(1) the sum of (i) the sales proceeds received by the Plan on the disposition of all of the Securities, plus (ii) interest accrued and interest and dividends received on the Securities; and

(2) the aggregate value of the Securities on the date that they were originally contributed to the Plan (i.e. $188,882,694), plus any adjustments to such aggregate value requested by Mellon to reflect changes in the Consumer Price Index (CPI) during the period that the Securities were held by the Plan, upon demand by Mellon as the Plan's independent fiduciary under the terms of a ''makewhole agreement'' with the Plan (the Makewhole Agreement). Mellon shall have sole authority to determine the amount due to the Plan under the Makewhole Agreement (the Makewhole Amount) at the time of the transaction;[2]

(j) On December 30, 1994, WEC made a cash contribution to the Plan in the amount of $25 million to support any amounts that may become due under the Makewhole Agreement, provided that this cash contribution is held as a separate credit balance in the Plan's funding standard account until the termination date of the Makewhole Agreement (as amended pursuant to paragraph (i) above) and is not used to offset any other funding obligation owed by WEC to the Plan until such date. Mellon, as the Plan's independent fiduciary, shall be responsible for investing the $25 million and ensuring that the Plan receives all interest and other income earned on the $25 million; and

(l) Mellon monitors the compliance by all parties with the terms and conditions of the exemption.

**EFFECTIVE DATE:** The exemption is effective for each contribution as of September 14 and October 29, 1993, respectively.

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 (the Proposal) published on November 14, 1994, at 59 FR 56537.

**WRITTEN COMMENTS AND MODIFICATIONS:** The Department received over 160 comment letters from interested persons. The matters raised in the comment letters concern: (1) Sufficiency of the notice to interested persons regarding the Proposal; (2) the decision made by WEC to contribute the Securities to the Plan rather than sell the Securities on the open market; (3) the effect of the contribution of the Securities on the Plan's funding status; (4) the investment performance of the Tops Securities since the Plan's acquisition of such Securities and the potential for losses by the Plan after the period covered by the Makewhole Agreement; and (5) the role of Mellon as the independent fiduciary for the Plan, particularly with respect to its obligations to enforce the terms and conditions of the Makewhole Agreement.

The Department notes that in a letter dated December 27, 1994, the International Brotherhood of Electrical Workers (IBEW) expressed particular concerns regarding: (i) The apparent discretionary nature of Mellon's obligations to enforce the terms of the Makewhole Agreement on behalf of the Plan; (ii) the need to extend the period covered by the Makewhole Agreement beyond September 14, 1996 for the Tops Securities owned by the Plan to prevent losses during the 8–10 year period when the Plan cannot dispose of all of the Tops Securities as a result of the timing and volume restrictions of SEC Rule 144; (iii) the need for an overall limitation on total Plan assets that can be committed to ''alternative investments'', including the Securities, which should not exceed 5.2 percent (other than as may be occasioned merely by an increase in value); and (iv) the need for the Proposal, if granted, to clarify that Mellon's decisions regarding whether to exercise the Plan's rights under the Makewhole Agreement will be fully subject to the fiduciary responsibility rules of the Act, and that the Department, by granting the exemption, would not be expressing an opinion regarding whether any actions taken by Mellon are consistent with its fiduciary obligations under the Act. Notwithstanding these concerns, the IBEW stated that it favored the granting of the exemption if modifications were made to address these issues.

By letter dated February 9, 1995, WEC responded to the issues raised by the comment letters.

With respect to the sufficiency of the notice to interested persons regarding the Proposal, WEC states that it provided the broadest possible notice to Plan participants. Notice to active employees was provided through either posting in workplaces, inter-office mail, or both. Notice was sent to retirees and vested separated participants at the most current address available to the Plan. WEC states that in the case of a benefit program as large as the Plan, it is not unusual for some participants to fail to keep current addresses on file with the Plan, especially where a plant closing has resulted in the dispersal of the local workforce. Although some of the commenters indicated that adequate and timely notice was not provided in every instance, WEC represents that it acted in good faith by taking all practicable steps to provide the required notice, as prescribed by the Department's regulations (see 29 CFR

[1] Alternative investments generally are relatively illiquid investments in an asset class other than traditional classes of cash, stock, fixed income securities and real estate.

[2] The Department notes that any decision made by Mellon as the Plan's independent fiduciary with respect to the exercise of the Plan's rights under the Makewhole Agreement shall be fully subject to the fiduciary responsibility provisions of the Act. However, by granting this exemption, the Department is not expressing an opinion regarding whether any actions taken by Mellon would be consistent with its fiduciary obligations under Part 4 of Title I of the Act. In this regard, section 404(a) of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making decisions on behalf of a plan.

2570.43), and that all participants were provided with a copy of the Proposal as published in the **Federal Register**. In this regard, WEC states that the success of its notification efforts was demonstrated by the fact that the Department received over 160 comment letters, most of which raised substantive issues regarding the Proposal.

With respect to the decision made by WEC to contribute the Securities to the Plan rather than sell the Securities on the open market, WEC states that the contribution enabled the Plan to satisfy a pre-existing, independently developed investment target for ''alternative investments'' without incurring significant transaction costs. As noted in Paragraph 2 of the Summary of Facts and Representations in the Proposal (the Summary), the Plan developed investment allocation guidelines in conjunction with the Frank Russell Company in 1990. These guidelines established an allocation target of approximately 5 percent for ''alternative investments''. WEC states that such an allocation appropriately reflects the role of such investments in a prudently diversified portfolio. In addition, WEC represents that there is no intention to increase this allocation of Plan assets to ''alternative investments'' above the current 5.2 percent.

In order to address the concerns raised by the commenters, WEC has agreed to adding a new condition to the Proposal which requires that additional Plan assets will not be used to purchase new ''alternative investments'' to the extent that such purchases would cause more than 5.2 percent of the Plan's total assets to be invested in ''alternative investments'' (see condition (e) above). Paragraph 2 of the Summary states that ''alternative investments'' typically include venture capital, buyout funds, distressed companies, mezzanine financing, oil and gas programs, timberland or farmland, and economically targeted investments addressing certain social policies.

With respect to the effect of the contribution of the Securities on the Plan's funding status, WEC states that five factors indicate that this transaction has had a positive effect on the Plan's funding. First, WEC did not satisfy any current funding obligation through the contribution of the Securities. The Plan has not had to forego any legally required cash contribution; rather, the contribution of the Securities was above and beyond what WEC was legally required to contribute to the Plan at the time of the transactions.

Second, the Securities issued by Tele-Media Company of Western Connecticut (the Tele-Media Securities), representing one-third of the original value of the Securities contributed by WEC, have already been sold at a profit (see Paragraph 6 of the Summary). The Plan, by realizing the proceeds of this sale, has received $4,050,000 in additional cash as the result of the contribution of the Tele-Media Securities.

Third, the Securities issued by First Britannia Mezzanine N.V. (the First Britannia Securities), while remaining stable in asset value, have generated significant income for the Plan. The Plan has thus far received approximately $2.4 million in interest on the debt portion and approximately $9.3 million in cash dividends on the equity portion of the First Britannia Securities. All of this income accrues to the benefit of the Plan and improves the Plan's funding situation.

Fourth, the Plan is protected from diminutions in the value of the Securities through the operation of the Makewhole Agreement. Such support for the value of the Securities would be non-existent if the Plan had purchased the Securities on the open market. Therefore, WEC states that the Plan is better protected in accomplishing its previously described goals for ''alternative investments'' as the result of the contribution of the Securities than had a cash contribution been used by the Plan to invest in such securities on the open market.

Finally, in support of the Makewhole Agreement, WEC has contributed an additional $25 million in cash to the Plan. This amount is above and beyond WEC's other contribution obligations to the Plan. WEC states that this $25 million contribution was made along with a $200 million cash contribution on December 30, 1994 as part of WEC's program to improve Plan funding, even though such amounts were not legally required to satisfy any current minimum funding obligations. Under the terms of the Makewhole Agreement, the additional $25 million will not be used to reduce WEC's future contribution obligations until the end of the term of the Makewhole Agreement.

Thus, WEC represents that the Plan has benefitted from, and the Plan's funding has been improved by, the contribution of the Securities.

With respect to the investment performance of the Tops Securities and the potential for losses by the Plan after the period covered by the Makewhole Agreement, WEC states that the publicly-traded price of these Securities has fluctuated widely and is currently trading at a price significantly below the price that existed on the date that the Securities were contributed to the Plan. Because of the trading restrictions on the Tops Securities, the Plan will be able to dispose of only a small portion of the shares each year. Many of the commenters suggested that WEC extend the period covered by Makewhole Agreement regarding the Tops Securities. In addition, the Department expressed concerns to WEC regarding the absence of additional guarantees for potential losses by the Plan in connection with the continued holding of both the First Britannia Securities and the Securities issued by Federated Investors (the Federated Securities), as well as for the Tops Securities, once the three-year period covered under the Makewhole Agreement expires on September 14, 1996.

Consequently, WEC has agreed to extend the term of the Makewhole Agreement until such time as the Plan's holdings of all of the Securities are totally liquidated. Thus, the new Exercise Date under the Makewhole Agreement, as amended, will be the date on which the Plan's holdings of all of the Securities contributed by WEC on September 14 and October 29, 1993, are liquidated. WEC states that the remaining provisions of the Makewhole Agreement relating to, among other things, the calculation of the Makewhole Amount will remain unchanged, except that such calculation will no longer need to be based on any appraisals of the fair market value of the Securities remaining in the Plan because all of the Securities will have been liquidated at that time. Further, the duration of the $25 million credit balance provision, which is being used to ensure payment of the Makewhole Amount to the Plan, will also be extended until the new Exercise Date under the Makewhole Agreement.

Therefore, in response to WEC's additional representations regarding the extension of the Makewhole Agreement, the Department has modified the language of the previous condition (h) in the Proposal (which has been redesignated as condition (i) above) by deleting the reference in the opening clause to '' * * * the third anniversary of the date of the first contribution made to the Plan * * *'' and substituting therefor the phrase ''* * * the date on which the Plan no longer holds any of the Securities contributed by WEC on September 14 and October 29, 1993 (the Exercise Date) * * *'' in order to redefine the end of the Makewhole Period and create a new Exercise Date. The Department has also deleted the phrase in the previous condition (h)(2) of the Proposal and other phrases thereafter in such condition referring to the fair market value of the Securities

remaining in the Plan, and the appointment of one or more independent appraisers to determine fair market value, for purposes of establishing the Makewhole Amount.

In addition, the Department has amended the language of the previous condition (i) in the Proposal (which has been redesignated as condition (j) above) to reflect the fact that the duration of the $25 million credit balance provision, which is being used to ensure payment of the Makewhole Amount to the Plan, will be extended until the new Exercise Date under the Makewhole Agreement.

With respect to the role of Mellon as the independent fiduciary for the Plan and its obligations to enforce the terms of the Makewhole Agreement, WEC states that it was always WEC's understanding that Mellon, whether acting as a Plan trustee, an independent fiduciary or an investment manager, would be a Plan fiduciary fully subject to the fiduciary responsibility rules of the Act. In this regard, WEC notes that some commenters, including the IBEW, have questioned the provision in the Makewhole Agreement committing exercise of the Plan's rights under the Agreement to Mellon's discretion. WEC states that the sole purpose of this provision was to make clear that Mellon, not WEC, would be representing the Plan with regard to the operation of the Makewhole Agreement, including the calculation of the Makewhole Amount and the triggering of the necessary payment to the Plan.

In a separate letter submitted by Mellon in response to the concerns raised by the comment letters, Mellon represents that any actions taken by Mellon on behalf of the Plan in its role as independent fiduciary will be subject to the provisions of Part 4 of Title I of the Act. With respect to Mellon's authority under the Makewhole Agreement, as amended by WEC and Mellon in response to concerns raised by the IBEW and other commenters, the Agreement requires the following:

(i) that WEC shall contribute the Makewhole Amount to the Plan upon demand from Mellon in its role as ''the Independent Investment Manager'' for the Plan;

(ii) that Mellon shall make such a demand in the event that a Makewhole Amount is due to the Plan;

(iii) that the Makewhole Amount must be equal to the amount determined by Mellon; and

(iv) that Mellon, in its role as ''the Independent Investment Manager'' for the Plan, shall (rather than ''may'' as stated previously in the Agreement prior to the amendment) exercise the rights under this Agreement on behalf of the Plan by the delivery of a notice (the ''Notice of Exercise'') to WEC no later than the sixtieth (60th) day after the Exercise Date.

Mellon states that these provisions are intended to set forth a specific procedure for the determination and payment of the Makewhole Amount (if any), and to make it clear that Mellon, not WEC, would be acting on behalf of the Plan with regard to the Makewhole Agreement. Thus, Mellon represents that if a payment is due under the Makewhole Agreement, Mellon will, on behalf of the Plan, require WEC to make such payment.

Accordingly, upon consideration of the entire exemption application file and record, the Department has determined to grant the proposed exemption as modified.

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

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

[Prohibited Transaction Exemption 95–47; Application No. D–9523]

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

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 for its own employees, 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),[3] 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.

(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 the proposed exemption in the **Federal Register** (i.e. January 30, 1995), 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:

[3] 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.

(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 I—Exemption for Receipt of Fees*

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) Mellon, including any officer or director of Mellon, does not purchase or sell 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 (other than master or prototype plans sponsored by Mellon that are adopted by employers other than 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 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 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 quotations from 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 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 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, II and III 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 Sections II(a) and III(f)(1) 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 and paragraph (k) of Section III. 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:** The exemption is effective November 5, 1993, for those transactions described in Sections I and II above.

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 January 30, 1995, at 60 FR 5704.

**NOTICE TO INTERESTED PERSONS:** The applicant represents that it was unable to notify interested persons within the time period specified in the **Federal Register** notice published on January 30, 1995. The applicant states that interested persons were notified, in the manner agreed upon between the applicant and the Department, by March 22, 1995. Interested persons were advised that they had until April 21, 1995 to comment on the proposed exemption.

**WRITTEN COMMENTS AND MODIFICATIONS:** The applicant submitted the following comments and requests for modifications regarding the notice of proposed exemption (the Proposal).

With respect to the use of the term ''affiliate'', the applicant states that both the beginning of Sections I and V(a) define the term ''Mellon'' to include its affiliates. Therefore, the applicant notes that references in the body of the Proposal to affiliates of Mellon would appear to be unnecessary, and their presence would raise the question of whether particular conditions are intended to apply to affiliates of Mellon's affiliates. In this regard, the applicant requests that Section II(c) of the Proposal be revised to read as follows:

''* * * Mellon, including any officer or director of Mellon, does not purchase or sell shares of the Funds from or to any Client Plan.''

This revision would clarify that the condition does not extend to all affiliates of Mellon's affiliates, but does extend to Mellon and its ''affiliates'' as that term is defined in Section V(a) of the Proposal. In addition, the applicant requests that the statement ''* * * or an affiliate'', which appears after the first mention of Mellon in subparagraphs (1) and (3) of Section II(m), relating to the provision of brokerage services, is

unnecessary and should be deleted. The Department concurs with the applicant's requested clarifications and has so modified the language of the Proposal.

With respect to the use of the term ''Client Plans'' in Section II(g) of the Proposal, the applicant states that this section, which also is incorporated by reference into Section III, excludes from the term ''Client Plans'' any employee benefit plans sponsored or maintained by Mellon. Mellon's understanding of this condition is that it is meant to exclude ''in-house plans'' of Mellon (i.e. plans maintained by Mellon for its own employees) from relief under the requested exemption. However, the applicant notes that Mellon is also the sponsor of master and prototype plans that are adopted by third parties. The applicant wishes to clarify that such plans were not meant to be excluded from relief under the exemption. Therefore, the applicant proposes the following change to Section II(g):

''* * * The Client Plans are not employee benefit plans sponsored or maintained by Mellon *(other than master or prototype plans sponsored by Mellon that are adopted by employers other than Mellon).* [emphasis added]

The applicant requests that the same parenthetical language referred to above be added to the opening paragraph of Section I, following the phrase ''* * * other than plans established or maintained by Mellon''. In this regard, the Department concurs with the applicant's requested clarifications, but for the opening paragraph of Section I has added the phrase ''* * * for its own employees'' instead of the parenthetical language used in Section II(g).

With respect to the definition of the term ''Second Fiduciary'' in Section V(g) of the Proposal, the applicant notes that the language following subparagraph (3) describes an exception for when a fiduciary is considered ''independent'' for purposes of the exemption. Part (iii) of this exception refers to approvals by a ''Second Fiduciary'' as described in Sections I and II. The applicant states that this sentence in Part (iii) should also refer to Section III because that section contains an approval requirement for a ''Second Fiduciary'' as well. The Department concurs with this clarification and has so modified the language of the Proposal.

With respect to the definition of the term ''secondary service'' in Section V(h) of the Proposal, the current definition excludes from the scope of that term any brokerage services provided to the Funds by Mellon for the execution of securities transactions engaged in by the Funds. In this regard, the applicant notes that this exclusion should not prohibit Mellon from providing brokerage services to the Funds because, to the contrary, Section II(m) of the Proposal requires certain disclosures to be made based on the fact that such services may be provided. However, the applicant states that Sections II(a) and III(f)(1) require Mellon to credit to the Client Plans all fees for the ''secondary services'' it provides to the Funds. Thus, the applicant wishes to clarify that brokerage services should be specifically excluded from treatment as a ''secondary service'' under these sections, so that, consistent with the purpose behind the disclosures required in Section II(m), Mellon is not required to credit its fees for brokerage services in the same manner that it is required to credit its fees for other secondary services. Therefore, the applicant requests that the second sentence in Section V(h) of the Proposal should read as follows:

''* * * However, for purposes of *Sections II(a) and III(f)(1)* 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.'' [emphasis added]

The Department concurs with this clarification and has so modified the language of the Proposal.

With respect to the definition of the term ''Termination Form'' in Section V(i) of the Proposal, the current definition refers to the condition describing that form in Section II(j). However, the applicant notes that the ''Termination Form'' is also described in Section III(k) of the Proposal, so that Section V(i) should refer specifically to ''paragraph (k) of Section III'' following the reference to Section II(j). The Department concurs with the applicant's requested clarification and has so modified the language of the Proposal.

Finally, the applicant states that Section III of the Proposal, dealing with transfers of Client Plan securities from individual portfolios, provides relief for both the ''credit'' fee structure described in Section II (which provides a full cash credit of *all* Fund-level fees) and the two fee structures described in Prohibited Transaction Exemption (PTE) 77–4 (42 FR 18732, April 8, 1977).[4] With regard to the fee structures described in PTE 77–4 (the PTE 77–4 Fee Structures), any change in fees received by Mellon from a Fund must be disclosed at least 30 days prior to the effective date of the change and be approved in writing. Mellon represents that the use of an ''affirmative'' approval requirement for the PTE 77–4 Fee Structures creates a number of problems. Mellon states that the Department has previously recognized the administrative difficulties caused by an affirmative approval requirement for increases in Fund-level fees. Mellon notes that the Department has allowed, through recent individual exemptions, the use of a ''passive'' approval condition under which the independent fiduciaries of Client Plans receive notice of any increase in Fund fees at least 30 days in advance of the effective date of such increase and a ''Termination Form'' which allows a Client Plan to withdraw from the Fund.[5] If the bank does not receive a ''Termination Form'' from a Client Plan prior to the effective date of the fee increase, the independent fiduciary of the Client Plan is deemed to have approved the fee increase.[6]

Therefore, Mellon requests that the final exemption contain a ''passive'' approval condition that would apply to both in-kind and cash investments in a Fund where any PTE 77–4 Fee Structure is used.

In this regard, the Department is not prepared, at this time, to include such a material change to the conditions of the Proposal as part of the final exemption for the transactions described herein. Upon the receipt of a

[4] 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.

[5] The Department notes that this approval process for increases in Fund-level fees with the use of a ''Termination Form'' by Client Plans would be similar to the arrangement previously described by Mellon, and included in Section II of the Proposal, for annual reauthorizations of Fund investments by Client Plans where credits of all Fund-level fees are made. The Department notes further that the latter arrangement involving a full credit of Fund-level fees was the particular fee structure which Mellon designed at the time of the initial in-kind transfers of CIF assets to the Funds in order to be able to represent to the affected Client Plans that no increases in fees paid by such Plans would result from the transfer of such assets to the Funds.

[6] See PTE 94–86 (Bank of California, N.A.), 59 FR 65403, December 19, 1994; PTE 95–33 (BankSouth, N.A.), 60 FR 20773, April 27, 1995.

new exemption request pertaining to this issue, the Department is willing to consider the merits of such a change in the conditions pertaining to the PTE 77–4 Fee Structures used by Mellon. Such request, when received, would be processed as an amendment to the final exemption for the subject transactions involving the Funds.

No other comments, and no requests for a hearing, were received by the Department during the comment period, as extended pursuant to the applicant's notification of interested persons as discussed herein.

Accordingly, the Department has determined to grant the proposed exemption as modified.

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

**Norwest Bank Minnesota, N.A., Located in Minneapolis, MN**

[Prohibited Transaction Exemption 95–48; Exemption Application No. D–09595]

*Exemption*

*Section I. Exemption for the In-Kind Transfer of Assets*

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) of the Code, shall not apply, as of September 30, 1994, to the in-kind transfer of assets of plans for which Norwest Bank Minnesota, N.A. or any of its affiliates (collectively, the Bank) serves as a fiduciary (the Client Plans), including plans established or maintained by the Bank (the Bank Plans; collectively, the Plans), that are held in certain collective investment funds (the CIFs) maintained by the Bank, in exchange for shares of the Norwest Funds (the Funds), an open-end investment company registered under the Investment Company Act of 1940 (the '40 Act), as amended, for which the Bank acts as investment adviser, custodian, and shareholder servicing agent, in connection with the termination of such CIFs provided that the following conditions are met:

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

(b) All of the assets of a Bank Plan or a Client Plan that are held in the CIFs are transferred in-kind to the Funds in exchange for shares of such Funds. A Plan not electing to participate in the Funds receives a cash payment representing a pro rata portion of the assets of the terminating CIF before the final liquidation takes place.

(c) Each Bank Plan and each Client Plan receives shares of the Funds which have a total net asset value that is equal to the value of such 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 the procedures set forth in Rule 17a-7(b) (Rule 17a-7) under the '40 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.

(d) A second fiduciary who is independent of and unrelated to the Bank (the Second Fiduciary) receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure, which includes but is not limited to, the following information concerning the Funds:

(1) A current prospectus for each portfolio of the Funds in which a Bank Plan or a Client Plan is considering investing;

(2) A statement describing (i) the fees for investment advisory or similar services that are to be credited back to a Client Plan, (ii) the fees retained by the Bank for Secondary Services, as defined in paragraph (g) of Section III below, and (iii) all other fees to be charged to or paid by the Bank Plan or the Client Plan and by such Funds to the Bank or to unrelated third parties. Such statement also includes the nature and extent of any differential between the rates of the fees.

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

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

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption.

(e) On the basis of the foregoing information, the Second Fiduciary authorizes in writing the in-kind transfer of the Bank Plan's or the Client Plan's CIF assets to a Fund in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, the fees received by the Bank in connection with its services to the Funds and, in the case of a Client Plan only, the purchase by such Client Plan of additional shares of the corresponding Funds with the fees credited back to the Client Plan by the Bank. Such authorization by the Second Fiduciary will be consistent with the responsibilities, obligations and duties imposed on fiduciaries under Part 4 of Title I of the Act.

(f) For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank sends by regular mail to each affected Bank Plan and Client Plan a written confirmation, not later than 30 days after the 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) of the '40 Act;

(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.

(g) For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank sends by regular mail, 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 Plan immediately before the transfer, the related per unit value and the total dollar amount of such CIF units;

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

(h) The conditions set forth in paragraphs (c), (d), (e), (o) and (p) of Section II below as they would relate to all Plans are satisfied.

*Section II. Exemption for the Receipt of Fees*

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) of the Code, shall not apply, as of November 11, 1994, to: (1) The receipt of fees by the Bank from the Funds for acting as an investment adviser to the Funds; and (2) the receipt and proposed retention of fees by the Bank from the Funds for acting as custodian or shareholder servicing agent to the Funds, as well as for any other services provided to the Funds which are not investment advisory services (i.e., the Secondary Services), in connection with the investment in shares of the Funds by the Client Plans, other than the Bank Plans, for which the Bank serves as fiduciary.

The aforementioned transactions are subject to the following conditions:

(a) 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.

(b) The price paid or received by the Client Plans for shares in the Funds is the net asset value per share, as defined in paragraph (d) of Section III, at the time of the transaction 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, purchases from or sells to any of the Client Plans shares of any of the Funds.

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

(e) The Bank does not receive any fees payable, pursuant to Rule 12b–1 of the 1940 Act in connection with the transactions involving the Funds.

(f) Each Client Plan receives a credit, either through cash or, if applicable, the purchase of additional shares of the Funds, pursuant to an annual election, which may be revoked at any time, made by the Client Plan, of such Plan's proportionate share of all investment advisory fees charged to the Funds by the Bank, including any investment advisory fees paid by the Bank to third party sub-advisers, within not more than one business day after the receipt of such fees by the Bank.

(g) The Second Fiduciary receives, in advance of investment by a Client Plan in the Funds, full and detailed written disclosure of information concerning the relevant Funds as set forth above in Section I(d).

(h) On the basis of the information described in paragraph (d) of Section I, the Second Fiduciary authorizes in writing:

(1) The ongoing investment of assets of the Client Plans in shares of the Funds, in connection with the transactions set forth in Section II;

(2) The investment portfolios of the Funds in which the assets of the Client Plans may be invested; and

(3) The fees to be paid by the Funds in which Client Plans invest to the Bank and the purchase of additional shares of the Funds by the Client Plan with the fees credited to the Client Plan by the Bank.

(i) The authorization referred to in paragraph (h) is terminable at will by the Client Plan, without penalty to the Client Plan. Such termination will be effected by the Bank selling the shares of the Funds held by the affected Client Plan within the period of time specified by the Client Plan but not more than one business day following receipt by the Bank from the Second Fiduciary, of the termination form (the Termination Form), as defined in paragraph (h) of Section III below, or any other written notice of termination; 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.

(j) In the event of an increase in the contractual rate of any fees paid by the Funds to the Bank regarding investment advisory services or fees for similar services that had been authorized by the Second Fiduciary in accordance with paragraph (h) of this Section II, the Bank provides written notice to the Second Fiduciary in a prospectus for the Funds or otherwise, of any increases in the contractual rate of fees charged by the Bank to the Funds for investment advisory services even though such fees will be credited to the Client Plans as required by paragraph (f) of Section II.

(k) In the event of an additional Secondary Service, as defined in paragraph (g) of Section III below, provided by the Bank to the Funds for which a fee is charged or an increase in the contractual rate of any fee due from the Funds to the Bank for any Secondary Service, as defined in paragraph (g) of Section III below, that results from an increase in the rate of such fee or from the decrease in the number or kind of services performed by the Bank for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Client Plan in accordance with paragraph (h) of this Section II, the Bank will, at least 30 days in advance of the implementation of such additional service for which a fee is charged or fee increased, provide written notice to the Second Fiduciary explaining the nature and amount of the additional service for which a fee is charged or the nature and amount of the increase in fees of the affected Fund. Such notice will be accompanied by the Termination Form, as defined in paragraph (h) of Section III below.

(l) The Second Fiduciary is supplied with a Termination Form at the times specified in paragraphs (k) and (m) of this Section II, which expressly provides an election to terminate the authorization, described above in paragraph (h) of this Section II, with instructions regarding the use of such Termination Form including statements that:

(1) The authorization is terminable at will by any of the Client Plans, without penalty to such Plans. The termination will be effected by the Bank selling the shares of the Funds held by the Client Plans requesting termination within the period of time specified by the Client Plan, but not later than one business day following receipt by the Bank from the Second Fiduciary of the Termination Form or any written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the sale of shares of such Client Plans cannot be executed within one business day, the Bank shall have one additional business day to complete such sale; and

(2) Failure by the Second Fiduciary to return the form on behalf of the Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees and will result in the continuation of the authorization, as described in paragraph (h) of this Section II, of the Bank to engage in the transactions on behalf of the Client Plan.

(m) The Second Fiduciary is supplied with a Termination Form, at least once in each calendar year, beginning with the calendar year that begins after the date of the grant of this proposed exemption is published in the **Federal Register** and continuing for each calendar year thereafter; provided that the Termination Form need not be supplied to the Second Fiduciary, pursuant to paragraph (m) of this Section II, sooner than six months after such Termination Form is supplied pursuant to paragraph (k) of this Section

II, except to the extent required by said paragraph (k) of this Section II to disclose an increase in fees.

(n) On an annual basis, the Bank will provide 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 which contains a description of all fees paid by the Funds to the Bank.

(2) A copy of the annual financial disclosure report prepared by the Bank which contains information about the portfolios of the Funds and includes audit findings of an independent auditor within 60 days of the preparation of the report.

In addition, the Bank will respond to oral or written responses to inquiries of the Second Fiduciary as they arise.

(o) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings between the Funds and other shareholders holding the same class of shares as the Client Plans.

(p) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (q) 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 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 (q) of Section II below; and

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

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

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

(iii) Any participant or beneficiary of a Client Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraphs (q)(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 III. Definitions*

For purposes of this exemption:

(a) The term ''Bank'' means Norwest Bank Minnesota, N.A. and any affiliate of the Bank, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of the Bank includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Bank. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

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

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

(c) The term ''Fund'' or ''Funds'' refers to the Norwest Funds or to any diversified open-end investment company or companies registered under the '40 Act for which the Bank serves as an investment adviser and may also serve as a custodian, shareholder servicing agent, transfer agent or provide some other ''Secondary Service'' (as defined below in paragraph (g) of this Section IV) which has been approved by such Funds.

(d) 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 a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities chargeable to each portfolio, by the number of outstanding shares.

(e) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or 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.

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

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

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

(3) Such Second 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 proposed exemption; provided, however that with respect to Bank Plans, the Second Fiduciary may receive compensation from the Bank in connection with the transactions contemplated herein, but the amount or payment of such compensation may not be contingent upon or be in any way affected by the Second Fiduciary's ultimate decision regarding whether the Bank Plans participate in such transactions.

With the exception of the Bank Plans, if an officer, director, partner, affiliate or employee of the Bank (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in: (i) The choice of the 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 of fees charged to or paid by the Client Plan, any of the transactions described in Sections I and II above, then paragraph (f)(2) of this Section IV, shall not apply.

(g) The term ''Secondary Service'' means a service, other than investment advisory or similar services which is provided by the Bank to the Funds, including, but not limited to, custodial or shareholder services. However, the term ''Secondary Service'' does not include any brokerage services provided by the Bank to the Funds.

(h) The term ''Termination Form'' means the form supplied to the Second Fiduciary at the times specified in paragraphs (i), (k), (l) and (m) of Section II which expressly provides an election to the Second Fiduciary to terminate on behalf of a Plan the authorization described in paragraph (h) of Section II. Such Termination Form is to be used at will by the Second Fiduciary to terminate such authorization without penalty to the Plan and to notify the Bank in writing to effect such termination by selling the shares of the Fund held by the Plan requesting termination not later than one business day following receipt by the Bank of written notice of such request for termination; provided that if, due to circumstances beyond the control of the Bank, the shares of such Client Plans cannot be executed within one business

day, the Bank shall have one additional business day to complete such sale.

**EFFECTIVE DATE:** This exemption is effective as of September 30, 1994 with respect to the transactions described in Section I and as of November 11, 1994 with respect to the transactions described in Section II.

Written Comments

The Department received two written comments with respect to the notice of proposed exemption and no requests for a public hearing. Both comments were submitted by the Bank. The first comment clarifies Section II(f) of the exemption and the parallel language contained in the Summary of Facts and Representations (the Summary). In pertinent part, Section II(f) states the following:

> Each Client Plan receives a credit, either through cash or, if applicable, the purchase of additional shares of the Funds, pursuant to an annual election, which may be revoked at any time, made by the Client Plan, of such Plan's proportionate share of all investment advisory fees charged to the Funds by the Bank, including any investment advisory fees paid by the Bank to a third party sub-adviser, within not more than one business day after the receipt of such fee by the Bank.

The Bank represents that in the future, some of the Funds may hire a third party sub-adviser directly. In this event, the Bank states that it will comply with the fee rebate mechanism described in the notice of proposed exemption with respect to any fees paid by the Funds to the third party sub-adviser. The Department does not have any objection to the proposed hiring arrangement, given that the same fee rebate mechanism will be in place. Accordingly, the Department concurs with the applicant's clarification of Section II(f) and the corresponding language in the Summary.

The second comment pertains to notification of interested persons. In this comment, the Bank represents that it did not comply with the notice to interested persons requirement for participants in the Bank Plans within the time frame stated in the exemption application. By letter dated May 23, 1995, the Bank explains that it reposted the notice of proposed exemption for an additional 16 days ending June 5, 1995 in each of the major work sites where the notice had been originally posted. No comments were received by the Department from Bank Plan participants.

After giving full consideration to the entire record, including the written comments that were submitted by the Bank, the Department has decided to grant the exemption as described and revised above. Comment letters have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

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 March 13, 1995 at 60 FR 13457.

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

**Paloma Securities L.P. (Paloma) and Boston Global Advisors, Inc. (BGA) Located in Boston, Massachusetts**

[Prohibited Transaction Exemption 95–49; Application No. D–09660]

*Exemption*

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (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 lending of securities to Paloma by employee benefit plans (including commingled investment funds holding plan assets) for which BGA, an affiliate of Paloma, acts as securities lending agent (or sub-agent) and to the receipt of compensation by BGA in connection with these transactions, provided that the following conditions are met:

1. Neither BGA, Paloma nor an affiliate of either has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c) with respect to those assets;

2. Any arrangement for BGA to lend plan securities to Paloma in either an agency or sub-agency capacity will be approved in advance by a plan fiduciary who is independent of Paloma and BGA;

3. A plan may terminate the agency or sub-agency arrangement at any time without penalty on five business days notice;

4. The plan will receive from Paloma (either by physical delivery or by book entry in a securities depository, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to Paloma, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than Paloma or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6, having, as of the close of business on the preceding business day, a market value initially equal to at least 102 percent of the market value of the loaned securities and, if the market value of the collateral falls below 100 percent, Paloma will deliver additional collateral on the following day such that the market value of the collateral will again equal 102 percent;

5. All procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of Prohibited Transaction Exemptions (PTEs) 81–6 and 82–63;

6. Paloma will indemnify the plan against any losses due to its use of the borrowed securities;

7. The plan will receive the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions;

8. Prior to any plan's approval of the lending of its securities to Paloma, a copy of this exemption, (and the notice of pendency) will be provided to the plan; and

9. Only plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to Paloma.

Written Comments

The applicant submitted the following comments regarding the notice of pendency.

The applicant suggests that the last sentence of paragraph 18 of the notice of pendency which stated that, ''BGA will lend securities to requesting borrowers on a first come, first served basis, as a means of assuring uniformity of treatment among borrowers,'' needs further clarification. The applicant suggests that this sentence should have been deleted and the following paragraph should have been inserted in its place, ''[w]hile BGA will normally lend securities to requesting borrowers on a first come, first served basis, as a means of assuring uniformity of treatment among borrowers, it should be recognized that in some cases it may not be possible to adhere to a first come, first served allocation. This can occur,

for instance, where: (a) The credit limit established for such borrower by BGA and/or the client-plan has already been satisfied; (b) the ''first in line'' borrower is not approved as a borrower by the particular client- plan whose securities are sought to be borrowed; or (c) the ''first in line'' borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different BGA representatives at or about the same time with respect to the same security. In situations (a) and (b), loans would normally be effected with the ''second in line.'' In situation (c), securities would be allocated equitably among all eligible borrowers.'' The Department concurs with this comment.

The applicant further represents that, pursuant to discussions with the Department subsequent to the publication of the Proposal, it will make the following commitments with respect to the exempted transactions. BGA shall make and retain, for six (6) months, tape recordings evidencing all securities loan transactions with Paloma. Also, if requested by the lending customer, BGA shall provide daily confirmations of securities lending transactions; and BGA shall provide to lending customers monthly account reports, or if requested by the customer, weekly or daily reports, setting forth for each transaction made or outstanding during the relevant reporting period, the loaned securities, the related collateral, rebates and loan premiums and such other information in such format as shall be agreed to by the parties.

Accordingly, after giving full consideration to the entire record, including the written comment from the applicant, the Department has decided to grant the exemption, as described and concurred in above. In this regard, the comment letter submitted by the applicant to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

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 April 14, 1995, at 60 FR 19086.

**FOR FURTHER INFORMATION CONTACT:** Louis Campagna of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

## The First National Bank of Boston and Its Affiliates (Collectively, the Bank) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 95–50; Application No. D–09682]

*Section I—Exemption for Receipt of Fees*

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 April 1, 1994 to: (1) The receipt by the Bank of fees from the 1784 Funds (the Funds), investment companies registered under the Investment Company Act of 1940 (the 1940 Act), for acting as an investment adviser to the Funds in connection with the investment by plans for which the Bank serves as a fiduciary (the Client Plans) in shares of the Funds; and (2) the receipt and retention of fees by the Bank from the Funds for acting as custodian and accountant to the Funds as well as for any other services to the Funds which are not investment advisory services (i.e. ''secondary services'' as defined in Section III(h) below) 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 II below are met:

(a) 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.

(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 III(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 to any Client Plan.

(d) Each Client Plan receives a credit, through a cash rebate, of such Plan's proportionate share of all fees charged to the Funds by the Bank for investment advisory services, including any investment advisory fees paid by the Bank to third party sub-advisors, no later than one business day after the receipt of such fees by the Bank. The crediting of all investment advisory fees to the Client Plans by the Bank 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.

(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.[7]

(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) A second fiduciary acting for the Client Plan which is independent of and unrelated to the Bank (the Second Fiduciary) receives, in advance of any initial 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, any secondary services as defined in Section III(h), and 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 Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, once such documents are published in the **Federal Register**.

(i) After consideration of the information described above in

[7] In addition, the Department notes that Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Thus, the Department believes that the Bank should ensure, prior to any investments made by a Client Plan for which it acts as a trustee or investment manager, that all fees paid by the Funds, including fees paid to parties unrelated to the Bank and its affiliates, are reasonable. In this regard, the Department is providing no opinion as to whether the total fees to be paid by a Client Plan to the Bank, its affiliates, and third parties under the arrangements described herein would be either reasonable or in the best interests of the participants and beneficiaries of the Client Plans.

paragraph (h) of Section I, the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in each particular Fund, the fees to be paid by such Fund to the Bank, and the cash rebate to the Client Plan of fees received by the Bank from the Funds for investment advisory services.

(j) All authorizations made by a Second 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 I 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) 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 the Bank of written notice from the Second Fiduciary; and

(2) Failure to return the Termination Form will result in continued authorization of the Bank to engage in the transactions described in paragraph (i) of Section 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 statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by the Bank to the Funds for secondary services at least 30 days prior to the effective date of such increase, accompanied by a copy of the Termination Form, and receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by the Bank to the Funds for investment advisory services even though such fees will be rebated as required by paragraph (d) of Section I above.

(l) In the event that the Bank provides an additional secondary service to a Fund for which a fee is charged or there is an increase in the amount of fees paid by the Funds to the Bank for any secondary services resulting from a decrease in the number or kind of services performed by the Bank for such fees in connection with a previously authorized secondary service, the Bank will, at least thirty days in advance of the implementation of such additional service or fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund. Such notice shall be accompanied by the Termination Form, as defined in Section III(i) below. However, if the Termination Form has been provided to the Second Fiduciary pursuant to this paragraph or paragraph (k) above, 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.

(m) On an annual basis, the Bank 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 the Bank;

(2) A copy of the annual financial disclosure report of the Funds in which such Client Plan is invested, 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.

(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 II—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 II 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 II 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 III—Definitions*

For purposes of this exemption:

(a) The term ''Bank'' means The First National Bank of Boston and any affiliate thereof as defined below in paragraph (b) of Section III.

(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 1784 Funds, each series thereof, or any other diversified open-end investment company registered under the 1940 Act for which the Bank serves as an investment adviser and may also serve as a custodian, Fund accountant, transfer agent 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 the Bank. For purposes of this exemption, the Second 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 Second 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 Section III 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 the Bank to the Funds. However, for purposes of this exemption, the term ''secondary service'' will not include any brokerage services provided to the Funds by the Bank 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. The Termination Form shall be used at will by the Second 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:** This exemption is effective as of April 1, 1994.

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 March 20, 1995 at 60 FR 14786.

**WRITTEN COMMENTS AND MODIFICATIONS:** The applicant submitted the following comments and requests for modifications regarding the notice of proposed exemption (the Proposal).

With respect to Section I(h) of the Proposal, the condition requires that a Second Fiduciary receive, in advance of any investment by the Client Plan in a Fund, full and detailed written disclosure of information concerning the Funds. However, the applicant states that the condition as written might be construed as requiring the disclosure of such information before every investment thereafter in the same Fund (i.e., if one reads ''any investment'' to mean ''each and every investment''). The applicant requests that, in order to avoid confusion on this point, the phrase ''* * * in advance of any investment'' be changed to read ''* * * in advance of any *initial* investment'' (emphasis added). The Department concurs with the applicant's requested clarification and has so modified the language of Section I(h) of the Proposal.

With respect to Section I(i) of the Proposal, the applicant states that this condition, which in general requires the Second Fiduciary for each Client Plan to have authorized in writing the investment of assets of the Client Plan in a particular Fund, begins with the clause ''[o]n the basis of the information described above in paragraph (h) of Section I.'' The applicant represents that while the Bank will be providing the information required by Section I(h), and anticipates that the Second Fiduciary will take such information into consideration in determining whether to approve any investment in a Fund, the Bank will not in every case be able to determine the precise basis on which a Second Fiduciary has approved use of a Fund as an investment vehicle. Thus, the applicant requests that this clause be either deleted or otherwise clarified. In this regard, the Department concurs with the applicant's requested clarification and has deleted the words ''[o]n the basis of * * *'' in the opening clause of Section I(i) and has substituted therefor the words ''[a]fter consideration of * * *''.

With respect to Section I(m)(2) of the Proposal, the condition requires that the Bank provide the Second Fiduciary of a Client Plan investing in the Fund with a copy of the ''* * * annual financial disclosure report prepared by the Bank'' which includes information about the Fund portfolios. The applicant requests that the information referred to here should be clarified to mean the annual financial reports of the Funds which are prepared by the Funds, not by the Bank. In addition, the applicant requests that the condition be clarified to require that only the annual reports of the Funds in which a Client Plan is invested need to be sent to the Second Fiduciary for that Client Plan. The Department concurs with the applicant's requested clarification and has modified the language of Section I(m)(2) by deleting the words ''* * * prepared by the Bank'' and substituting therefor the words ''* * * of the Funds in which such Client Plan is invested''.

With respect to Section III(d) of the Proposal, the applicant states that the 1784 Funds is a Massachusetts business trust with separate series recognized for tax purposes as a separate corporation, but which collectively is not recognized as a corporation. Thus, the applicant requests that the Department delete the word ''Inc.'' after the reference to the 1784 Funds in the definition contained in Section III(d). In addition, the applicant notes that references throughout the Proposal to the ''Fund'' are in fact generally meant as references to one or more of the separate series of the 1784 Funds. In this regard, the applicant requests that the definition in Section III(d) indicate that the term ''Fund'' or ''Funds'' ''* * * shall include the 1784 Fund, *each series thereof,* or any other * * *'' (emphasis added). The Department concurs with the applicant's requested clarification and has so modified the language of Section III(d) of the Proposal.

Finally, pursuant to telephone conversations with representatives of the Department, the applicant has confirmed in writing that when the Bank is engaged to provide investment advisory services for a Fund under the requested exemption, such services will be performed by the Bank or a third party sub-advisor retained by the Bank. The applicant represents that no ''sub-advisor'' to the Bank will be retained directly by a Fund. In this regard, the Bank states that the fees payable by a Fund ultimately for the account of a sub-advisor to the Bank will be rebated by the Bank to the Client Plans, as discussed in the Proposal and required by Section I(d) above.

Accordingly, based on the current exemption application file and record, the Department has determined to grant the proposed exemption as modified.

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

**AT&T Corporation (AT&T), and AT&T Investment Corporation (ATTIMCO) Located in New York, New York**

[Prohibited Transaction Exemption 95–51; Exemption Application Nos. D–09716 & D–09717]

*Exemption*

Part I—Exemption for Payment of Certain Fees to Asset Managers

The restrictions of section 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of Performance Fees by an AT&T Investment Fund to an Asset Manager in exchange for real estate management or advisory services rendered pursuant to an Agreement, provided that the conditions set forth in Parts II and III are satisfied.

Part II—General Conditions

(a) The Asset Manager is not an affiliate of AT&T and the terms of any Performance Fee are approved in writing by AT&T.

(b) The terms of any Performance Fee shall be at least as favorable to the AT&T Investment Fund as those obtainable in arm's-length transactions between unrelated parties.

(c) No AT&T Trust shall allocate, in the aggregate, more than twenty percent of its total assets to Arrangements which are the subject of this exemption, determined at the time any such Arrangement is established and at the time of any subsequent allocation of additional assets (including the reinvestment of assets) to such an Arrangement. The foregoing limitation shall not apply to an AT&T Plan Assets Entity. However, that percentage of the Assets of an AT&T Plan Assets Entity which is deemed to be ''plan assets'' of an AT&T Trust invested therein shall be treated as assets of such AT&T Trust for the purpose of applying the foregoing limitation to the AT&T Trust.

(d) AT&T shall receive the following written information with respect to assets subject to this exemption (Assets):

(1) annual audited financial statements prepared by independent certified public accountants approved by AT&T;

(2) quarterly and annual reports prepared by the Asset Manager relating to the overall financial position of the Assets (Each such report shall include a statement regarding the amount of fees paid to the Asset Manager during the period covered by such report); and

(3) annual reports indicating the fair market value of the Assets determined on the basis of the most recently available Independent Valuations.

(e) The total fees paid to an Asset Manager shall constitute no more than reasonable compensation.

(f) The Performance Fee shall be payable after Net Proceeds with respect to the Assets exceed the Threshold Amount. The Threshold Amount and the amount of the Performance Fee, expressed as a percentage (or percentages) of the Net Proceeds in excess of the Threshold Amount (or Threshold Amounts), shall be established by the Agreement. The Threshold Amount for any Performance Fee shall include at least a minimum rate of return to the AT&T Investment Fund, as described in Part III, Section (q).

(g) The provisions of this paragraph (g) shall apply only where an Asset Manager has discretion to sell Assets without prior approval of AT&T. For any sale of an Asset which gives rise to the payment of a Performance Fee to an Asset Manager prior to the Termination Date, the sales price of the Asset shall be at least equal to a Target Amount in order for the Asset Manager to sell the Asset and receive its Performance Fee without further approval. If the proposed sales price of the Asset is less than the applicable Target Amount, the proposed sale shall be disclosed to and subject to the approval of AT&T, in which event the Asset Manager shall be entitled to sell the Asset and receive its Performance Fee. If the proposed sales price is less than the applicable Target Amount and AT&T's approval is not obtained, the Asset Manager shall retain the authority to sell the Asset, provided that the Performance Fee that would have been payable to the Asset Manager by reason of the sale of the Asset shall be paid only at the termination of the Arrangement.

(h) In the event of termination of the Arrangement upon its Termination Date, the Asset Manager shall be entitled to receive a Performance Fee payable on the Termination Date. The amount of the Performance Fee upon termination shall be determined by assuming a sale for cash of the remaining Assets at their fair market value (determined on the basis of Independent Valuations) and no reinvestment of such cash in Assets subject to the Arrangement.

(i) In the event of the removal or resignation of an Asset Manager prior to the Termination Date, the Asset Manager shall be entitled to receive a Performance Fee payable on the Termination Date pursuant to this paragraph (i). The Performance Fee shall be calculated on a preliminary basis at the time of such removal or resignation by assuming a sale for cash of the remaining Assets at their fair market value (determined on the basis of Independent Valuations) and no reinvestment of such cash in Assets subject to the Arrangements. As of the Termination Date, the amount so determined on a preliminary basis shall be multiplied by a fraction, the numerator of which is the sum of: (1) The actual sales prices received by the AT&T Investment Fund on disposition of all Assets sold after the date of the Asset Manager's removal or resignation and prior to the Termination Date, and (2) in the case of Assets which have not been sold prior to the Termination Date, the value of the Assets as of the Termination Date (determined on the basis of Independent Valuations), and the denominator of which is the aggregate value of the Assets which was used in connection with the preliminary determination of the Performance Fee at the time of removal or resignation, provided that this fraction shall never exceed 1.0. The resulting amount shall be the Performance Fee payable to the Asset Manager upon the Termination Date.

(j) AT&T shall maintain or cause to be maintained with respect to the Assets, for a period of six years, the records necessary to enable the persons described in paragraph (k) of this Part II 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 AT&T, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest, other than AT&T, 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 Part III, Section (k) below.

(k) Notwithstanding any provisions of Section 504(a)(2) and 504(b) of the Act, the records referred to in Section (j) of this Part II shall be unconditionally available at their customary location for examination during normal business hours by:

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

(2) any contributing employer to any employee benefit plan the assets of which are held in the AT&T Investment Fund which has entered into the Arrangement or any duly authorized employee or representative of such employer;

(3) any participant or beneficiary of any employee benefit plan the assets of which are held in the AT&T Investment Fund or any duly authorized representative of such participant or beneficiary; and

(4) nothing in this paragraph (k) shall authorize any of the persons described in subsections (2) and (3) to examine any trade secrets of AT&T or information which is privileged or confidential.

Part III—Definitions

(a) An ''affiliate'' of a person means:

(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 of, or partner of any such person; and

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

(b) The term ''Agreement'' means the investment management, trust or other agreement entered into between an Asset Manager and AT&T for the provision of real estate management or advisory services.

(c) The term ''Arrangement'' means a fee arrangement entered into between AT&T and an Asset Manager pursuant to an Agreement providing for the payment of Performance Fees to the Asset Manager by an AT&T Investment Fund in exchange for real estate management or advisory services.

(d) The term ''Asset Manager'' means any person or entity providing real estate management or advisory services to an AT&T Investment Fund.

(e) The term ''Assets'' means assets of an AT&T Investment Fund which are the subject of an Arrangement with an Asset Manager.

(f) The term ''AT&T'' means AT&T Corporation, AT&T Investment Management Corporation and/or any Subsidiary.

(g) The term ''AT&T Investment Fund'' means an AT&T Trust or an AT&T Plan Assets Entity.

(h) The term ''AT&T Plan Assets Entity'' means any group trust, partnership or other entity (including without limitation the Telephone Real Estate Equity Trust), the assets of which are deemed to be ''plan assets'' by reason of the application of 29 C.F.R. 2510.3–101, but only if (1) fifty percent or more of the interests in such entity are held by one or more AT&T Trusts, and (2) AT&T is the named fiduciary or manager of the assets of such entity.

(i) The term ''AT&T Trust'' means the AT&T Master Pension Trust or any other trust (other than an AT&T Plan Assets Entity), one hundred percent of the assets of which are assets of employee benefit plans maintained by AT&T.

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

(k) The term ''Independent Valuations'' means valuations based on independent and objective third party sources acceptable to AT&T (including without limitation NASDAQ, newspapers, or other general publications, or brokers which are independent of the Asset Manager and its affiliates), or, if such sources are not available with respect to a particular asset or at the option of AT&T, valuations conducted by an appraiser independent of the Asset Manager and its affiliates which has been approved by AT&T; provided, however, that, solely for purposes of the reports described in Part II, Section (d)(3) above, no such appraisal will be required with respect to any Asset if AT&T determines, in its sole discretion, that such an appraisal is unnecessary.

(l) The term ''Net Proceeds'' means, with respect to an Arrangement, the aggregate amount of cash and other assets (valued at fair market value as determined on the basis of Independent Valuations) which cease to be Assets which are subject to such Arrangement, in accordance with the terms of the Agreement establishing such Arrangement.

(m) The term ''Performance Fee'' means a fee which equals a pre-specified percentage (or several pre-specified percentages) of all Net Proceeds in excess of the Threshold Amount (or several Threshold Amounts), subject to such limitations, if any, as AT&T may approve or impose.

(n) The term ''Subsidiary'' means a corporation, partnership, or other entity of which (or in which) fifty percent or more of:

(1) The combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of such corporation, (2) the capital interest or profits interest of such partnership, or (3) the beneficial interest of such other entity, is owned directly or indirectly by AT&T Corporation or AT&T Investment Management Corporation.

(o) The term ''Target Amount'' means a value assigned to each Asset either (1) at the time the Asset becomes subject to the Arrangement, by mutual agreement between the Asset Manager and AT&T, or (2) pursuant to an objective formula approved by the Asset Manager and AT&T at the time the Arrangement is established. However, in no event will the value be less than the value of the Asset at the time the Asset becomes subject to the Arrangement.

(p) The term ''Termination Date'' means the date, established in the Agreement, on which the Arrangement will terminate by reason of the passage of time, as the same may be amended from time to time with the approval of AT&T.

(q) The term ''Threshold Amount'' means with respect to any Arrangement an amount which equals one hundred percent of the AT&T Investment Fund's capital invested in the Assets plus a pre-specified annual compounded cumulative rate or rates of return, each of which is at least a minimum rate of return determined as follows:

(1) A non-fixed rate which is a least equal to the rate of change in the consumer price index (CPI) during the period from the time the Assets become subject to the Arrangement until Net Proceeds equal or exceed the applicable Threshold Amount; or

(2) a fixed rate which is at least equal to the average rate of change in the CPI over some period of time specified in the Agreement, which shall not exceed ten years.

**EFFECTIVE DATE:** This exemption is effective as of September 19, 1994, the date on which the notice of proposed exemption was published in the **Federal Register**.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on September 19, 1994 at 59 FR 47952.

**FOR FURTHER INFORMATION CONTACT:** Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

### Toyota Motor Sales, U.S.A., Inc. Money Purchase Pension Plan for Bargaining Unit Employees (the Plan) Located in Torrance, California

Exemption Application No. D–09875
Prohibited Transaction Exemption 95–52;

*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 by the Plan (the Sale) of group annuity contract No. GA–4564 (the

GAC) issued by Mutual Benefit Life Insurance Company (Mutual Benefit), located in Newark, New Jersey, to Toyota Motor Sales, U.S.A., Inc., a California corporation, (the Employer), a party in interest with respect to the Plan; provided that: (1) The Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; and (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GAC as determined by the trustee of the Plan on the date of the Sale, or an amount that is equal to the total funds expended by the Plan in acquiring and holding the GAC, plus the amount of interest earned and accrued by the Plan on the GAC to the date of the Sale, less all withdrawals from the Plan to the date of the Sale, and less all advances made to the Plan by the Employer to the date of the Sale.

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 April 27, 1995, at 60 FR 20766.

**WRITTEN COMMENTS:** With respect to the Notice of Proposed Exemption, the applicant noted that the last sentence in the penultimate paragraph of Section 4 under the Summary of Facts and Representations represents that the fair market value of the GAC is $2,349,840, as of September 30, 1994. The applicant believes that the fair market value of the GAC, if ascertainable, is considerably lower because of the rehabilitation proceedings affecting Mutual Benefit, which significantly restrict the withdrawal and payment provisions of the GAC.

The applicant also noted that had the Sale taken place on September 30, 1994, the Plan would have been paid approximately $2,349,840, which is the amount that would have been determined in accordance with the terms and provisions of the Proposed Exemption as of that date. Since the Sale did not take place on September 30, 1994, the Plan will receive as consideration an amount determined on the date of the Sale in accordance with the terms and provisions of the Proposed Exemption.

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

**Bob Murphy, Inc. Proft Sharing Plan (the Plan) Located in Boynton Beach, FL**

[Prohibited Transaction Exemption 95–53; Exemption Application No. D–09949]

*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 sale of certain works of art (the Art Work) by the Plan to Robert J. Murphy, Jr., a disqualified person with respect to the Plan.[8]

This exemption is conditioned upon the following requirements: (1) All terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction between unrelated parties; (2) the sale is a one-time cash transaction; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the sale; and (4) the Plan receives a sales price equal to the fair market value of the Art Work on the date of the sale as determined by a qualified, independent appraiser.

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 May 10, 1995 at 60 FR 24902.

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

**Employees' Thrift Plan of Columbia Gas System (the Plan) Located in Wilmington, Delaware**

[Exemption Application No. D–09959 Prohibited Transaction Exemption 95–54]

*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: (1) The loan of funds (the Loan) to the Plan by the Columbia Gas System, Inc., the sponsor of the Plan, and its wholly-owned subsidiary, Columbia Gas Transmission Corporation, with respect to the Guaranteed Investment Contract No. 61969 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation); and (2) the potential repayment by the Plan of the Loan upon the receipt by the Plan of payments under the GIC; provided the following conditions are satisfied: (a) No interest and/or expenses are paid by the Plan in connection with the Loan; (b) all the terms and conditions of the proposed Loan are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party; (c) the Loan will be the accumulated book value of the GIC as of August 12, 1994, less any amounts received by the Plan from Confederation since August 12, 1994; (d) the repayment of the Loan will not exceed the total amount of the Loan; (e) the repayment of the Loan by the Plan will be restricted to funds paid to the Plan under the GIC by Confederation, or State Guaranty Funds, or other third-party sources; (f) the repayment of the Loan is waived to the extent the Loan exceeds the proceeds the Plan receives from the GIC; and (g) any proceeds or future interest credited under the GIC after August 12, 1994, in accordance with the Rehabilitation Plan by the State of Michigan, will be allocated and disbursed to the affected participants of the Plan.

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 April 27, 1995, at 60 FR 20771.

**WRITTEN COMMENTS:** With respect to the Notice of Proposed Exemption, the applicant noted that item 2(c) of the first paragraph of the Proposed Exemption did not take into account amounts received by the Plan since August 12, 1994, from Confederation prior to the date the Loan is made. The applicant states that Confederation has paid some limited amounts on its GICs for certain withdrawal events and may pay some more funds before the date of the Loan.

The applicant also noted that amounts received by the Plan from Confederation since August 12, 1994, were not considered in determining the amount of the Loan as described in the fourth sentence of Section 5 and item 6(c) in Section 6 of the Summary of Facts and Representations.

In consideration of the comments, item 2(c) of the Exemption is changed to reflect that the Loan will be the accumulated book value of the GIC as of August 12, 1994, less any amounts received by the Plan from Confederation since August 12, 1994.

**FOR FURTHER INFORMATION CONTACT:** Mr. C.E. Beaver 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

[8] Because Mr. Murphy and his spouse, Gail F. Murphy, are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 21st day of June, 1995.

**Ivan Strasfeld,**

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

[FR Doc. 95–15521 Filed 6–23–95; 8:45 am]

BILLING CODE 4510–29–P

## NATIONAL SCIENCE FOUNDATION

### Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting an expedited notice of information collection that will affect the public. Interested persons are invited to submit comments by July 24, 1995. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Contracts, Policy and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243. Comments may also be submitted to:

(B) *OMB Desk Office.* Office of Information and Regulatory Affairs, ATTN: Jonathan Winer, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

*Title:* Evaluation of the Instrumentation and Laboratory Improvement Program.

*Affected Public:* Not for Profit institutions.

*Respondents/Reporting Burden:* 1,500 respondents: average 38 minutes per response.

*Abstract:* This study will evaluate NSF's Instrumentation and Laboratory Improvement Program in the years 1988–1994. It will document and evaluate the scope and coverage of the program during this period and will assess its impacts on affected students, faculty, and institutions.

Dated: June 20, 1995.

**Herman G. Fleming,**

*Reports Clearance Officer.*

[FR Doc. 95–15498 Filed 6–23–95; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–8027]**

### Sequoyah Fuels Corporation Facility in Gore, OK; Information Meeting

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of public meeting.

Information Meeting on the Remediation of Sequoyah Fuels Corporation Facility in Gore, Oklahoma.

**SUMMARY:** This notice is to inform the public of a meeting to share information related to the current status of and proposed decommissioning options for the Sequoyah Fuels Corporation (SFC) facility near Gore, OK. Interested individuals are invited to attend this meeting scheduled for June 27, 1995, at the Vian High School Auditorium. The purpose of the meeting is to bring together members of the U.S. Nuclear Regulatory Commission, U.S. Environmental Protection Agency (EPA) Region VI, SFC representatives, representatives from other Federal agencies, State officials, local officials, Cherokee Nation, and citizen groups to share information related to current and future actions at the SFC facility.

**BACKGROUND:** The Sequoyah Fuels facility is located in Sequoyah County, approximately 2 miles southeast of Gore, Oklahoma, above the Arkansas and Illinois Rivers. From 1970 through 1992, the SFC facility was used to convert uranium oxide (yellow cake) to uranium hexafluoride ($UF_6$) and from 1987 through 1993 to convert depleted $UF_6$ to depleted uranium tetrafluoride. In 1993, SFC ceased operations and submitted to NRC a preliminary plan that described a proposed remediation plan of the site.

During the operational period, radioactive materials generated at the Sequoyah Fuels facilities were disposed of on-site in accordance with the former 10 CFR 20.304, chemical and radioactively contaminated materials were transferred to on site ponds, and sludge and other process materials were disposed of by burial on-site. One remediation alternative under consideration by the licensee is an on-site disposal cell based on the criteria used at uranium mill tailings sites (10 CFR Part 40, Appendix A). SFC (the licensee) will be required to meet the NRC's decommissioning criteria, as described the Site Decommissioning Management Plan Action Plan (57 FR 13389, dated April 16, 1992) or the final requirements to be established through Enhanced Participatory Rulemaking (proposed rule published on August 22, 1994 [59 FR 43200]).

In 1990 and 1991, the licensee conducted characterization of the areas in the vicinity of the main process and solvent extraction buildings and the ponds. Results of this characterization effort are documented in the ''Facility Environmental Investigation Findings Report'' that was issued in July 1991. The licensee is currently performing characterization activities for the remainder of the site and will submit a Resource Conservation and Recovery Act Facility Investigation Report to EPA in December 1995, and a Site Characterization Report (SCR) to NRC in January 1996.

**CONDUCT OF MEETING:** NRC will conduct the first in a series of meetings on June 27, 1995, in the Vian High School Auditorium, 100 School St., Vian, OK (Exit 297 North from I–40). The meeting will begin at 7:00 p.m. and will end at 10:00 p.m. The meeting will be facilitated by F.X. Cameron, Special Counsel for Public Liaison at NRC. The purpose of this meeting is to share, with representative stakeholders and the public, information about the status of