

Mode Lingerie, Inc., adversely affected by increased imports. Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to NAFTA-00425 is hereby issued as follows:

All workers of workers of Val Mode Lingerie, Inc., Bridgeton, New Jersey (NAFTA-00425) and New York, New York (NAFTA-00425A), who became totally or partially separated from employment on or after March 29, 1994, are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 2nd day of August 1995.

Arlene O'Connor,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-19881 Filed 8-10-95; 8:45 am]

BILLING CODE 4510-30-M

[NAFTA-00392]

General Mills Inc., CFTO-South Chicago Plant, Chicago, Illinois; Negative Determination on Reconsideration

On June 20, 1995, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. This notice was published in the **Federal Register** on June 29, 1995 (60 FR 33849).

The petitioner submitted additional documents and claims that imports of cereal from Mexico impacted sales of the subject firm.

The Department's denial was based on the fact that the increased import criteria (3) and (4) were not met. There was no shift of production from the subject plant to Mexico or Canada, and General Mills did not import breakfast cereal from Mexico or Canada. The Department's survey of General Mills major customers revealed that customers importing ready-to-eat breakfast cereals from Mexico or Canada relied on imports for a very minor portion of their total needs. Most respondents did not import ready-to-eat breakfast cereal from Mexico or Canada.

Findings on reconsideration show that U.S. imports of cereals from Mexico and Canada declined in 1994 compared to 1993, but increased during the 12 month period of April 1994-March 1995 compared to April 1993-March 1994. However, aggregate U.S. imports of cereal from Mexico and Canada are negligible (less than one percent) when compared to General Mills sales and production.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for transitional adjustment assistance to workers and former workers of General Mills Incorporated, CFTO-South Chicago Plant, in Chicago, Illinois.

Signed at Washington, DC, this 2nd day of August 1995.

Arlene O'Connor,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95-19882 Filed 8-10-95; 8:45 am]

BILLING CODE 4510-30-M

U.S. National Administrative Office, North American Agreement on Labor Cooperation, National Advisory Committee; Appointment of Members

Notice is hereby given that appointments have been made to fill the vacancies on the National Advisory Committee (NAC).

The following twelve (12) individuals have been appointed to the Committee at this time:

Representing Labor

Mr. Steve Beckman, International Economist, United Auto Workers, Washington, DC;
Mr. Ron Blackwell, Assistant to the President, Amalgamated Clothing and Textile Workers Union, New York;
Mr. Morton Bahr, President, Communications Workers of America, Washington, DC;
Mr. John S. Gaal, Assistant Administrator, St. Louis Carpenters Joint Apprenticeship Program, United Brotherhood of Carpenters and Joiners of America, Missouri;

Representing Business

Mr. Frank P. Doyle, Executive Vice President, General Electric Company, Connecticut;
Mr. Abraham Katz, President, U.S. Council for International Business, New York;
Ms. Carroll E. Bostic, Director, Human Resources, Eastman Kodak Co., Washington, DC;
Mr. Edward A. Brill, Partner, Law Firm; Proskauer, Rose, Goetz, and Mendelsohn, New York;

Representing Academics

Ms. Maria L. Ontiveros, Associate Professor of Law, Golden Gate University, School of Law, California;
Ms. Margaret E. Montoya, Assistant Professor of Law, The University of New Mexico, School of Law, New Mexico;

Representing the Public at Large

Dr. Edward Williams, Professor, the University of Arizona, Arizona;
Ms. Marley S. Weiss, Associate Professor of Law, University of Maryland, School of Law, Maryland;

The Chairperson selected from the membership by the Secretary of Labor was Marley S. Weiss.

The NAC was established under article 17 of the North American Agreement on Labor Cooperation (NAALC) to advise on implementation and further elaboration of the Agreement.

DATES: These appointments will expire at the end of two years, subject to the Committee's being rechartered.

FOR ADDITIONAL INFORMATION CONTACT:

Irasema Garza, Secretary, National Administrative Office (NAO), Bureau of International Labor Affairs (ILAB), Department of Labor, 200 Constitution Avenue, NW., Room C-4327, Washington, DC 20210. Telephone 202-501-6653 (this is not a toll free number).

Signed at Washington, DC, this 4th day of August 1995.

Robert B. Reich,

Secretary, Department of Labor.

[FR Doc. 95-19877 Filed 8-10-95; 8:45 am]

BILLING CODE 4510-23-M

Pension and Welfare Benefits Administration

[Application No. D-09940, et al.]

Proposed Exemptions; Morgan Stanley & Co. Incorporated (MS&Co) and Morgan Stanley Trust Company (MSTC)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

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

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request

for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

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

Notice to Interested Persons

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

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

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file

with the Department for a complete statement of the facts and representations.

Morgan Stanley & Co. Incorporated (MS&Co) and Morgan Stanley Trust Company (MSTC) Located in New York, New York

[Application No. D-09940]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the 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 Morgan Stanley & Co., Incorporated (MS&Co) and to any other U.S. registered broker-dealers affiliated with Morgan Stanley Trust Company (the Affiliated Broker-Dealer, collectively, the MS Group) by employee benefit plans for which Morgan Stanley Trust Company (MSTC) acts as directed trustee or custodian and securities lending agent and to the receipt of compensation by MSTC in connection with these transactions, provided that the following conditions are met:

1. Neither MS&Co nor MSTC has discretionary authority or control over a client-plan's 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 MSTC to lend plan securities to the MS Group will be approved in advance by a plan fiduciary who is independent of MSTC and the MS Group;

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

4. The client-plans will receive collateral consisting of cash, securities issued or guaranteed by the U.S. government or its agencies or instrumentalities, bank letters of credit or other collateral permitted under PTE 81-6, from the MS Group by physical delivery, 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 the MS Group;

5. The market value of the collateral will initially equal at least 102 percent of the market value of the loaned

securities and, if the market value of the collateral falls below 100 percent, the MS Group will deliver additional collateral on the following day such that the market value of the collateral will again equal 102 percent;

6. 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;

7. MS&Co will indemnify each lending client-plan against any losses incurred by such plan in connection with the lending of securities to the MS Group;

8. The client-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;

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

10. With regard to the "exclusive borrowing" agreement (as described below), MS&Co will directly negotiate the agreement with a plan fiduciary who is independent of the MS Group and MSTC, and such agreement may be terminated by either party to the agreement at any time; and

11. Prior to any plan's approval of the lending of its securities to the MS Group, a copy of this exemption, if granted, (and the notice of pendency) will be provided to the plan.

Summary of Facts and Representations

1. MS&Co, a wholly owned subsidiary of Morgan Stanley Group Inc., is an investment services firm which is a member of the New York Stock Exchange and other principal securities exchanges in the United States and a member of the National Association of Securities Dealers. MS&Co is one of the largest investment firms in the United States. As of January 31, 1994, MS&Co's parent, Morgan Stanley Group Inc., had consolidated capital of over \$9.8 billion.

2. MS&Co and its Affiliated Broker-Dealers (collectively, the MS Group), acting as principal, borrows securities from institutions and either utilizes such securities to satisfy its own needs or re-lends these securities to brokerage firms and other entities which need a particular security for a certain period of time. Borrowers often need securities to satisfy deliveries in cases of short sales or where a broker fails to receive securities it is required to deliver. The MS Group, which borrows and lends

securities equal in value to approximately \$37 billion on an average daily basis, is among the largest institutional securities borrowers and lenders in the United States. In making such loans, the MS Group carefully reviews the credit worthiness of its counterparties.

3. MSTC is a wholly owned subsidiary of Morgan Stanley Group Inc. and an affiliate of MS&Co. MSTC is organized as a trust company in New York and provides a variety of services to its clients, including services as custodian and clearing agent and in the future may provide services as trustee.

4. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee in addition to any interest, dividends or other distributions paid on those securities. The lender generally requires that the security loans be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities such as U.S. Government or Federal Agency obligations or certain bank letters of credit. When cash is the collateral, the lender generally invests the cash and rebates a portion of the earnings on the collateral to the borrower. The "fee" received by the lender would then be the difference between the earnings on the collateral and the amount of rebate paid to the borrower. When a loan of securities is collateralized with Government or Federal Agency securities or bank letters of credit, a fee is paid directly by the borrower to the lender. Institutional investors often utilize the services of an agent in the performance of their securities lending transactions. The lending agent is paid a fee for its services which may be calculated as a percentage of the income earned by the investor from its securities lending activity. The applicants believe that the essential functions which define a securities lending agent are the identification of appropriate borrowers of securities and the negotiation of the terms of a loan to the borrowers. There are services ancillary to securities lending which include monitoring the level of collateral and the value of the loaned securities and investing the collateral in some instances.

5. MSTC and MS&Co request an exemption for the lending of securities owned by certain pension plans (client-plans) for which MSTC will serve as directed trustee or custodian to the MS Group, following disclosure of MSTC's affiliation with the MS Group, under either of the two arrangements described as Plan A and Plan B and for the receipt of compensation in

connection with such transactions. However, because MSTC under the proposed arrangements will have discretion with respect to whether there is a loan of plan securities to the MS Group, the lending of securities to the MS Group by plans may be outside the scope of relief provided by PTE 81-6¹ and PTE 82-63.²

6. When a loan is collateralized with cash, MSTC, at the plan's direction, will either transfer such cash collateral to the client-plan or its designated agent for investment or shall invest the cash in short-term securities or interest-bearing accounts and, in either case, will rebate a portion of the earnings on such collateral to the MS Group on behalf of the client-plan. The MS Group will pay a fee to the client-plan based on the value of the loaned securities where the collateral consists of obligations other than cash. Under Plan A and, in some instances, under Plan B (see paragraph 27 regarding the types of lending services which may be provided to plans by MSTC under Plan B), the client-plan will pay a fee to MSTC for providing lending services to the plan which will reduce the income earned by the client-plan from the lending of securities to the MS Group. The client-plan and MSTC will agree in advance to this fee which will represent a percentage of the income the client-plan earns from its lending activities. Several safeguards, described more fully below, are incorporated in the application in order to ensure the protection of the client-plan assets involved in the transactions. In addition, the applicants represent that each of the two arrangements incorporates the relevant conditions contained in PTE 81-6 and PTE 82-63.

7. *Plan A.* A fiduciary of a client-plan who is independent of MSTC and The MS Group will sign a securities lending authorization (the Authorization) before the client-plan may participate in MSTC's securities lending program. This Authorization describes the

¹ PTE 81-6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) provides an exemption under certain conditions from section 406(a)(1) (A) through (D) of ERISA and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker dealers or banks which are parties in interest.

² PTE 82-63 (47 FR 14804, April 6, 1982) provides an exemption under specified conditions from section 406(b)(1) of ERISA and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities. PTE 82-63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services only if the loan of securities itself is not prohibited under section 406(a) of ERISA.

operation of the lending program and allows MSTC to lend securities held by the client-plan to securities brokers, including the MS Group, as selected by MSTC. The Authorization also sets forth, in an attachment, the basis and rate for MSTC's compensation from the client-plan for the performance of securities lending services.

8. The independent fiduciary also must sign an Affiliated Broker-Dealer Lending Authorization before MSTC may include security loans to the MS Group in the lending activities of the client-plan. The Affiliated Broker-Dealer Lending Authorization will specify, in an attached exhibit, the method of determining the daily securities lending rates (fees and rebates), the minimum lending fees payable by the MS Group and the maximum rebate rate payable to the MS Group. A client-plan may terminate both the Authorization and the Affiliated Broker-Dealer Lending Authorization at any time.

9. MSTC, as securities lending agent, will negotiate a Customer Securities Loan Agreement (Basic Loan Agreement) with the MS Group on behalf of its client-plans. An independent fiduciary of the client-plan will approve the form of the agreement before that fiduciary executes the Affiliated Broker-Dealer Lending Authorization. The Basic Loan Agreement will specify, among other things, the right of the client-plan to terminate a loan at any time (subject to the customary notification period) and the client-plan's rights in the event of any default by the MS Group. The agreement will explain the basis for compensation to the client-plan for lending securities to the MS Group under each category of collateral. The agreement will also contain a requirement that the MS Group must pay all transfer fees and transfer taxes related to the security loans.

10. Before entering into the Basic Loan Agreement, the MS Group will furnish its most recent publicly available audited and unaudited financial statements to MSTC, who, in turn, will provide such statements to a client-plan before the plan is asked to approve the terms of the Basic Loan Agreement. The Basic Loan Agreement will contain a requirement that the MS Group must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, MSTC will request that an independent fiduciary of the client-plan approve the loan in view of the changed financial condition.

11. The client-plan and MSTC will agree to the fee MSTC will receive for its services as lending agent prior to the commencement of any lending activity. The agreement by MSTC to provide securities lending services to a client-plan will be in writing and subject to the prior written approval of a fiduciary of the client-plan who is independent of the MS Group and MSTC.³ The Basic Loan Agreement will allow termination by the client-plan without penalty to the plan within five business days of written notice. Before entering into an agreement, MSTC will provide the client-plan with any reasonably available information which it believes is necessary for the plan to make a determination whether to enter into or renew the agreement and such other information as the plan may request.

12. Each time a client-plan loans securities to the MS Group pursuant to the Basic Loan Agreement, the MS Group will execute a designation letter specifying the material terms of the loan, including the securities to be loaned, the required level of collateral, the fee or rebate payable, and any special delivery instructions. The terms of each loan will be at least as favorable to the client-plan as those of a comparable arm's-length transaction between unrelated parties.

13. MSTC will credit to the account of the client-plan all interest, dividends and the like received on the loaned securities during the loan period, including distributions and rights of any kind. The Basic Loan Agreement will provide that the client-plan may terminate any loan at any time. Upon a termination, the MS Group will return the loaned securities to the client-plan within five business days of written notification. If the MS Group fails to return the securities within the designated time, the client-plan has certain rights that it may exercise under the Basic Loan Agreement.

14. MSTC will establish each day separate written schedules of lending fees and rebate rates to assure uniformity of treatment among borrowing brokers and to limit the discretion MSTC would have in negotiating securities loans to the MS Group. Loans to all borrowers of a given security on that day will be made at rates or lending fees on the relevant daily schedules or at rates or lending fees which may be more advantageous to the client-plans. In no case will loans

be made to the MS Group at rates or lending fees less advantageous to the client-plan than those on the schedule. The daily schedule of rebate rates will be based on the current value of the clients' reinvestment vehicles and on market conditions, as reflected by demand for securities by borrowers other than the MS Group. As with rebate rates, the daily schedule of lending fees will also be based on market conditions, as reflected by demand for securities by borrowers other than the MS Group, and will generally track the rebate rates with respect to the same security or class of securities.

15. MSTC will adopt maximum daily rebate rates for cash collateral payable to the MS Group on behalf of a lending plan. Separate maximum daily rebate rates will be established with respect to loans of designated classes of securities such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities and international equities. With respect to each designated class of securities, the maximum rebate rate will be the lower of (i) the 7 day LIBOR rate, minus a stated percentage of such LIBOR rate and (ii) the client's actual reinvestment rate for the relevant cash collateral, minus a stated percentage of such reinvestment rate, as pre-approved by the independent fiduciary. Thus, when cash is used as collateral, the daily rebate rate will always be lower than the rate of return to the client-plans from authorized investments for cash collateral by such stated percentage as shall be pre-approved by the independent fiduciary. MSTC will submit the formula for determining the maximum daily rebate rates to an independent fiduciary of the client-plan for approval before lending any securities to the MS Group on behalf of the plan.

16. MSTC will also adopt minimum daily lending fees for non-cash collateral payable by the MS Group to MSTC on behalf of a plan. Separate minimum daily lending fees will be established with respect to loans of designated classes of securities, such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities and international equities. With respect to each designated class of securities, the minimum lending fee will be stated as a percentage of the principal value of the loaned securities. MSTC will submit such minimum daily lending fees to an independent fiduciary of the client-plan for approval before initially lending any securities to the MS Group on behalf of the plan.

17. For collateral other than cash, the lending fees charged the previous day are reviewed by MSTC for competitiveness. Based on the demand of the marketplace, this daily fee tends to remain constant and, with respect to domestic securities and international debt securities, is currently at least one tenth of one percent of the principal value of the loaned securities. With respect to international equity securities, the daily fee is currently one fifth of one percent of the principal value of the loaned securities. Because 50 percent or more of securities loans by client-plans will be to unrelated brokers or dealers,⁴ the competitiveness of MSTC's fee schedule will be continuously tested in the marketplace. Accordingly, loans to the MS Group should result in a competitive rate of income to the lending client-plan.

18. Should MSTC recognize prior to the end of a business day that, with respect to new and/or existing loans, it must change the rebate rate or lending fee formula in the best interest of client-plans, it may do so (i) with respect to borrowers other than the MS Group, at the end of such business day, and (ii) with respect to the MS Group, upon MSTC's receipt of a written approval of the client-plan's independent fiduciary.⁵

MSTC may propose a change in the lending fee or rebate rate determination, as applicable, with respect to an outstanding loan by delivering written notice of the effective date and the new determination pursuant to which a lending fee or rebate rate, as the case may be, may be determined at least five business days before the date of the proposed change. In the event that the client-plan does not consent to such change by not providing MSTC acknowledgement of its consent in writing by such means that will ensure receipt by MSTC prior to 10:00 a.m. New York time, on the effective date of the change, then MSTC will not make such change. The applicants represent that allowing MSTC to request a modification to the lending fee or the rebate rate formula with respect to an existing loan to the MS Group when market conditions change will be beneficial to the client-plans. According to the applicants, in the absence of the ability to make such modification, the MS Group may be forced by market conditions to terminate the loan and seek better terms elsewhere. Such termination may then force the client-

³This closely parallels conditions c and d of PTE 82-63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary".

⁴This 50 percent requirement applies regardless of the type of collateral used to secure the loan.

⁵MSTC represents that it will not initiate any modification in such rates or fees which would be detrimental to the client-plans.

plan to seek new borrowers for its securities who, in light of the changed market conditions, are likely to negotiate for the lending fee or rebate rate which the MS Group would have received or paid had MSTC had the written authority from the independent fiduciary to decrease the lending fee or increase the rebate rate.

19. While MSTC will normally loan securities to requesting borrowers on a first come, first served basis, as a means of assuring uniformity of treatment among borrowing brokers, 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 example, in instances where (a) the credit limit established for a "first in line" borrower by 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 differed MSTC representatives at or about the same time with respect to the same security. In situation (a) and (b), loans would normally be effected with the "second in line" borrower. In situation (c), securities would be allocated equitably among all eligible borrowers.

20. MS&Co will indemnify each lending client-plan against any losses due directly to the lending of such plan's securities to the MS Group. Accordingly, MS&Co will assure the client-plan that the rate of return on each loan will at a minimum equal the transactional cost to the plan of lending securities to The MS Group. The applicants contend that, as a result of this indemnity, the rate of return earned by client-plans from lending to the MS Group will, in total, exceed the return from lending securities to other brokers.

21. By the close of business on the day the loaned securities are delivered to the MS Group, MSTC will receive from the MS Group non-cash collateral by physical delivery or book entry in a securities depository, or, cash collateral by wire transfer or book entry. At the discretion of the client-plan, cash collateral may be managed either by the plan, by its designated agent or by MSTC. If a client-plan chooses to manage its cash collateral, MSTC will promptly forward the cash collateral to the client-plan. The non-cash collateral will consist of securities issued or guaranteed by the U.S. Government or its agencies or irrevocable bank letters of credit (issued by a person other than MS&Co or its affiliates) or other collateral permitted under PTE 81-6 or

any successor. The market value of the collateral on the day the loan settles will be at least 102 percent of the market value of the loaned securities. The Basic Loan Agreement will give the client-plan a continuing security interest in and a lien on the collateral. MSTC will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent of that of the loaned securities, MSTC will require the MS Group to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent.

22. A client-plan that loans securities to the MS Group will receive a weekly report with which to monitor lending activity, rates on loans to the MS Group compared with loans to other brokers, and the level of collateral on the loans. The weekly report will show, on a daily basis, the market value of all outstanding security loans to the MS Group and to other borrowers as compared to the total collateral held for both categories of loans.

23. The weekly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The weekly report also will state, on a daily basis, the rates at which securities are loaned to the MS Group compared with those at which securities are loaned to other brokers. This statement will give an independent fiduciary information which can be compared to that contained in the daily rate schedule.

24. MSTC will send a monthly transaction report to each client-plan participating in the lending program. The monthly report will provide a list of all security loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rate at which the security is loaned, and the number of days the security has been on loan.

25. Only client-plans with assets having an aggregate market value of at least \$50 million will be permitted to lend securities to the MS Group. The applicants maintain that this restriction is intended to assure that any lending to the MS Group will be monitored by an independent fiduciary of above average experience and sophistication in matters of this kind.

26. MSTC will record on audio tape all telephone traffic between its securities lending department and all borrowers, including the MS Group. The telephone tapes will be retained for a

period of at least six months. This recording procedure will enable client-plans and the Department to review MSTC's adherence to its policy of lending securities to the first interested borrower at rates or lending fees on the daily schedule, or at rates or lending fees which are more advantageous to the client-plans.

27. *Plan B.* MS&Co will directly negotiate "exclusive borrowing" agreements with fiduciaries of plans, including plans for which MSTC serves as custodian or in the future may serve as directed trustee, where such fiduciary is independent of the MS Group and MSTC. Under such an agreement, the MS Group will have exclusive access for a specified period of time to borrow certain securities of the plan pursuant to certain conditions. MSTC will not participate in the negotiation of the agreement. The involvement of MSTC, if any, will be limited to such activities as holding securities available for lending, handling the movement of borrowed securities and collateral and investing or depositing any cash collateral and supplying the plans with certain reports. The applicants represent that, under the exclusive borrowing agreement, neither the MS Group nor MSTC will perform for client-plans the functions which constitute the essential functions of a securities lending agent.

28. Upon delivery of loaned securities to the MS Group, MSTC, or another custodian, on behalf of a client-plan, will receive from the MS Group, the same day by wire transfer or book entry cash collateral or, by physical delivery or book entry in a securities depository, collateral consisting of securities issued or guaranteed by the U.S. Government or its agencies, irrevocable bank letters of credit, or other non-cash collateral permitted under PTE 81-6. The market value of the collateral on the day the loan settles will be at least 102 percent of the market value of the loaned securities. MSTC or such other custodian will monitor the level of the collateral daily and, if its market value falls below 100 percent, the MS Group will deliver sufficient additional collateral on the following day such that the market value of all collateral will equal at least 102 percent of the market value of the loaned securities. The MS Group or, in the case of some client plans, MSTC, will provide a weekly report to the plan showing, on a daily basis, the aggregate market value of all outstanding security loans to the MS Group and the aggregate market value of the collateral.

29. Before entering into an exclusive borrowing agreement, the MS Group will furnish to the plan the most recent

publicly available audited and unaudited statements of its financial condition. Further, the agreement will contain a representation by the MS Group, as provided in section 18(c)(ii) of the Securities Lending Agreement, that as of each time it borrows securities, there have been no material adverse changes in its financial condition. All the procedures under the agreement will, at a minimum, conform to the applicable provisions of PTE 81-6 and PTE 82-63.

30. In exchange for the exclusive right to borrow certain securities from a client-plan, the MS Group will pay the plan either a flat fee, or a minimum flat fee plus a percentage (negotiated at the time the exclusive borrowing agreement is entered into) of the total balance outstanding of borrowed securities, or a percentage of the total balance outstanding without any flat fee. In light of this fee arrangement, all earnings generated by cash collateral will be returned to the MS Group. The client-plan will receive credit for all interest dividends or other distributions on any borrowed securities.

31. The exclusive borrowing agreement may be terminated by either party to the agreement at any time. MS&Co will agree that upon termination it will deliver any borrowed securities back to the client-plan within five business days of written notice of termination. If the MS Group fails to return the securities or the equivalent thereof, the client-plan will have certain rights under the agreement to realize upon the collateral. Pursuant to the terms of the agreement, the MS Group will indemnify the plan against any losses due to its use of the borrowed securities equal to the difference between the replacement cost of the securities and the market value of the collateral on the date a loan is declared to be in default.

32. With regard to those plans for which MSTC provides custodial, clearing and/or reporting functions relative to securities loans, MSTC and a plan fiduciary independent of MSTC and the MS Group will agree in advance and in writing to any fee that MSTC is to receive for such services. Such fees, if any, would be fixed fees (e.g., MSTC might negotiate to receive a fixed percentage of the value of the assets with respect to which it performs these services or to receive a stated dollar amount) and any such fee would be in addition to any fee MSTC has negotiated to receive from any such client-plan for standard custodial or other services unrelated to the securities lending activity. The arrangement to have MSTC provide such functions relative to

securities loans to the MS Group will be terminable by the client-plan within five business days of receipt of written notice without penalty to the plan except for the return to the MS Group of part of any flat fee paid by the MS Group to the plan, if the client-plan has also terminated its exclusive borrowing agreement with the MS Group. Before entering into an agreement with a plan to provide such functions relative to securities loans to the MS Group, MSTC will furnish to the plan any publicly available information which it believes is necessary for the plan to determine whether to enter into or renew the agreement.

33. In summary, the applicants represent that the described transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) Plan A requires approval of the form of a basic loan agreement and the execution of the Affiliated Broker-Dealer Lending Authorization by a plan fiduciary independent of the MS Group and MSTC before a client-plan lends any securities to the MS Group, while under Plan B, The MS&Co will directly negotiate exclusive borrowing agreements with a client-plan; (b) the lending arrangements will permit the client-plans to benefit from the MS Group's substantial market position as securities lenders and will enable the plans to earn additional income from the loaned securities while still receiving dividends, interest and other distributions on those securities; (c) the client-plan will receive sufficient information concerning the MS Group's financial condition before the plan lends any securities to the MS Group; (d) the collateral on each loan to the MS Group initially will be at least 102 percent of the market value of the loaned securities, which is in excess of the 100 percent collateral required under PTE 81-6, and will be monitored daily by MSTC; (e) the client-plans will receive a weekly report and monthly report, so that an independent fiduciary of the client-plans also may monitor loan activity, fees, the level of the collateral and loan return/yield; (f) MSTC will have no discretionary authority or control over the plan's acquisition or disposition of securities available for loan; (g) the terms of each loan will be at least as favorable to the plans as those of a comparable arm's-length transaction between unrelated parties; and (h) all the procedures under the proposed transactions will, at a minimum, conform to the applicable provisions of PTE 81-6 and PTE 82-63.

FOR FURTHER INFORMATION CONTACT: Virginia J. Miller of the Department,

telephone (202) 219-8971. (This is not a toll-free number.)

Central Freight Lines Employees Profit Sharing and Retirement Plan (the Plan) Located in Waco, TX

[Application No. D-09994]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed cash sale by the Plan of certain unimproved real property (the Property) to Central Freight Lines, Inc. (the Employer), a party in interest with respect to the Plan.

This proposed 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 with an unrelated party; (2) the sale is a one-time transaction for cash; (3) the Plan is not required to pay any real estate commissions or fees in connection with the proposed transaction; and (4) the Plan receives a sales price for the Property which is not less than the greater of (a) the fair market value of the Property as determined by a qualified, independent appraiser, or (b) the net acquisition cost of the Property.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 3,149 participants and net assets available for benefits of approximately \$103,639,097 as of December 31, 1994. The trustee of the Plan and decisionmaker with respect to Plan investments is A.G. Edwards Trust Company of St. Louis, Missouri.

2. The Employer, which maintains its general offices in Waco, Texas, is a trucking company that is involved in the transportation and delivery of freight throughout the midwestern and southwestern United States. The Employer is a wholly-owned subsidiary of Roadway Services, Inc. (Roadway), a publicly-owned trucking company which maintains its corporate offices in Akron, Ohio.

3. Prior to 1989, the Plan, through two separate purchases, acquired a 38.810 acre tract of undeveloped land for a total purchase price of \$1,495,352. The

Property is located on the northwest side of Spur 482 (Storey Lane) and approximately 1,500 feet northeast of State Highway 114 in the City of Irving, Dallas County, Texas. The Property adjoins the Employer's Dallas freight terminal.

The Plan acquired the Property for investment purposes from unrelated parties. On July 12, 1976, the Plan purchased 36.464 acres of land (Tract A) from the University of Dallas. The Plan paid a purchase price of \$1,284,009 for Tract A and closing costs of \$697. Thus, the total acquisition price paid by the Plan for Tract A was \$1,284,706.

On August 1, 1980, the Plan purchased 1.928 acres of adjoining land (Tract B) from Jack H. Beachum. The Plan paid a purchase price for Tract B of \$210,624 plus closing costs of \$22. Thus, the total acquisition price paid by the Plan for Tract B was \$210,646.⁶

4. On December 30, 1983, the Plan sold the Property to FrittsSesler Investments, Inc. (FrittsSesler), a real estate investment company and an unrelated party, for \$4,226,418. The terms of the sale provided for a cash downpayment of \$845,284 with the balance to be paid over 10 years. The unpaid portion of the purchase price was evidenced by a promissory note in the amount of \$3,381,134. The note carried interest at 11 percent interest per annum and provided for interest only payments for the first 5 years and payments of principal and interest for the last 5 years of the loan. The note was secured by a deed of trust on the Property.

From the date of closing until January 1987, the Plan received \$845,284 in principal and \$1,115,774 in interest on the note. In 1987, FrittsSesler defaulted on the note. The note was then accelerated and the Property was posted for foreclosure. In January 1988, the Property was deeded back to the Plan by a Deed in Lieu of Foreclosure. At the time of the foreclosure, an appraisal completed of the Property on January 13, 1988 by Messrs. Scott D. Evans, Associate Appraiser, and Mr. Ronald W. Potts, MAI, SRPA, independent appraisers affiliated with Cushman & Wakefield of Texas, Inc., located in

⁶The Department notes, that the dimensions of Tract A and Tract B, if aggregated, equal 38.392 acres instead of 38.810 acres. In attempting to explain this discrepancy, the applicant has advised that the subject Property does consist of 38.810 acres of land based on a survey of the Tracts. The applicant attributes the size references and legal descriptions of Tract A and Tract B to "old field notes." When the Property was subsequently surveyed, the applicant states that either the dimensions of the Tracts, individually, or when taken together, were larger than originally thought.

Dallas, Texas, placed the fair market value of the Property at \$4,280,000.

5. It is represented that the Property has never been used by or leased to parties in interest since its initial acquisition and reacquisition by the Plan. It is also represented that the Plan has incurred certain costs totaling \$512,598 in connection with its reacquisition of the Property. These costs represent expenses of \$58,942 that are associated with the Plan's acceptance of the Deed in Lieu of Foreclosure; \$90 for closing costs; and \$453,566 for real estate taxes.

6. Since repossessing the Property, the Plan has continually advertised it for sale. However, due to the depressed real estate market in the State of Texas and because of changes in growth patterns of the Dallas-Fort Worth area, no interest has been expressed in purchasing the Property. In addition, the Property has generated no income to the Plan and has declined in value. Therefore, the Employer requests an administrative exemption from the Department in order that it may purchase the Property from Plan. The proposed sales price for the Property will represent not less than the greater of the (a) fair market value of the Property as determined by a qualified, independent appraiser or (b) \$46,892 representing the net acquisition cost of the Property.⁷

7. The Employer has obtained an independent appraisal of the Property from Bill C. Dotson, MAI and Richard S. Neely, Associate Appraiser, independent appraisers affiliated with the Alliance Appraisal Group, Inc. of Dallas, Texas. In an appraisal report dated January 16, 1995, Messrs. Dotson and Neely have placed the fair market value of the Property at \$1,270,000 as of January 3, 1995.

In an addendum to the appraisal report dated July 13, 1995, Mr. Dotson states that he has re-analyzed the initial valuation of the Property to determine whether there is any assemblage value due to the proximity of the Property to other real property owned by the Employer. In making this determination, Mr. Dotson represents that he has considered (a) the Employer's existing facility which he believes is in no need for further expansion, (b) larger tracts of commercial land in the vicinity of the Property for which he can ascertain no significant assemblage value and (c) the

⁷The \$46,892 net acquisition cost of the Property is determined as follows: \$2,007,950 [representing the total acquisition price plus certain costs incurred by the Plan since its reacquisition of the Property (i.e., \$1,495,352+\$512,598)] minus \$1,961,058 [representing the total revenues received by the Plan for the Property (i.e., \$845,284+\$1,115,774)].

valuation adage that "Property is worth more to the adjacent owner than to a third party." He notes that for the adage to be true, there has to be a proven demand for the property for there to be assemblage value. In his opinion, the Employer has not shown a demand factor over and above common market forces.

Mr. Dotson asserts that the subject Property is a stand alone tract which can be utilized for a number of purposes. In his view, the Property is not co-dependent on any other tracts of land for frontage, access or visibility. Thus, Mr. Dotson concludes that the Property has no assemblage or premium value by reason of its proximity to other existing real property that is owned by the Employer.

8. Because the fair market value of the Property is greater than its net acquisition cost, the Plan will sell the Property to the Employer for \$1,270,000. The Employer will pay the consideration to the Plan in cash. In addition, the Plan will not be required to pay any real estate fees or commissions in connection with the proposed sale.

9. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) All terms and conditions of the sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (b) the sale will be a one-time transaction for cash; (c) the Plan will not be required to pay any real estate commissions or fees in connection with the proposed sale; and (d) the Plan will receive a sales price for the Property which is not less than the greater of (i) the fair market value of the Property as determined by a qualified, independent appraiser, or (ii) the net acquisition cost of the Property.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons within 5 days of the date of publication of the notice of pendency in the **Federal Register**. Notice will be posted at the Employer's work sites. Such notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment. Comments with respect to the notice of proposed exemption are due within 35 days after the date of publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department,

telephone (202) 219-8881. (This is not a toll-free number.)

Donald D. Busker Individual Retirement Account (the IRA) Located in Detroit Lakes, Minnesota

[Application No. D-10005]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of two parcels of unimproved real property (the Properties) by the IRA to Donald D. Busker, a disqualified person with respect to the IRA⁸ provided the following conditions are met:

(a) The sale is a one-time transaction for cash;

(b) The terms and conditions of the sale are at least as favorable to the IRA as those obtainable in an arm's-length transaction with an unrelated party;

(c) The IRA receives the fair market value of the Properties as established at the time of the sale by an independent qualified appraiser; and

(d) The IRA is not required to pay any commissions, costs or other expenses in connection with the sale.

Summary of Facts and Representations

1. The IRA is an individual retirement account, as described under section 408(a) of the Code, which was established by Donald D. Busker (Mr. Busker). As of June 14, 1995, the IRA had assets valued at \$362,470. The trustee of the IRA is the First Trust Company of North Dakota, N.A.

2. The applicants states that a portion of the IRA's existing assets, including the Properties, were obtained from a rollover of assets received by Mr. Busker in 1990 from distributions to which he was entitled as a participant in the Country Equities Inc. Retirement Plan (the CER Plan). The applicant states further that the CER Plan had received such assets from prior rollovers made to Mr. Busker from the Donald D. Busker and Associates Pension Trust (the Busker Pension Plan), which had been terminated in January 1982.

The Properties consist of two parcels of unimproved real property.

The first parcel (Property I) is located in Shell Lake Township in Becker County, east of Detroit Lakes, Minnesota. Property I consists of approximately eighty acres of unimproved wooded lowland in a fairly remote part of Becker County. The applicant states that access to Property I is available by easement over county land to the south.

The second parcel (Property II) is located near Frazee, Minnesota, on Murphy and Silver Lakes in Gorman Township, Otter Tail County. Property II currently consists of approximately 144 acres of unimproved land, part of which is zoned for agricultural conservation and part of which is zoned for potential development as a recreational area. In this regard, the applicant states that approximately 53 acres on Property II are part of the Conservation Reserve Program (CRP), a U.S. Government subsidy program for farmland that is not being used for agricultural purposes. In addition, part of the remaining acres which comprise Property II are located adjacent to Murphy Lake and are available for recreational uses. However, the applicant states that only about 3000 feet of this part of Property II is useable and that the remaining parts of Property II adjacent to the lakes are not currently capable of development because the land is excessively low and wet.

Mr. Busker represents that he does not own any land which is adjacent to either of the Properties and that the Properties have not been leased to or used by any disqualified person.

3. The Properties were originally acquired as a real estate investment by the Busker Pension Plan. The applicant states that the Properties were acquired from unrelated parties in two separate cash transactions. Specifically, Property I was acquired by the Busker Pension Plan in 1978 for \$4,250. Property II was acquired in 1978 as part of a larger parcel of real estate, which included a residential house and other improvements, for a total of \$98,500 (the Original Property II). Portions of the Original Property II were subsequently platted for development and, along with the house, sold by the Busker Pension Plan to unrelated parties. However, Mr. Busker has not been able to sell the remaining portions of the Original Property II, currently owned by the IRA (i.e. Property II as described above). The applicant states that parts of Property II have also been platted for possible sale as separate parcels. The applicant states further that the IRA has received approximately \$2992 in CRP subsidy payments as a result of its ownership of

the acres on Property II which are subject to the CRP subsidy program.

4. Roger K. Tinjum, an accredited rural appraiser associated with Tinjum Appraisal Company, located in Detroit Lakes, Minnesota, appraised the Properties in December 1993 and updated his appraisal in June 1995. Mr. Tinjum states that he is a qualified real estate appraiser with over thirty years of experience and is familiar with the Properties and other similar properties located in the area. In addition, Mr. Tinjum represents that both he and his firm are independent of, and unrelated to, Mr. Busker.

Mr. Tinjum's appraisal of the Properties relied primarily on the market approach, with an analysis of recent sales of similar properties in the area, to establish the fair market value of the Properties. Mr. Tinjum states that his analysis took into consideration the potential of the Properties for further development. In this regard, Mr. Tinjum represents that the highest and best use for the Properties would be recreational use. Based on this analysis, Mr. Tinjum concluded that the fair market values of Property I and Property II were \$20,000 and \$72,000, respectively, as of December 10, 1993.

By letter dated June 15, 1995, Mr. Tinjum states that the present fair market value of the Properties has not changed since December 10, 1993.

The applicant states that Mr. Tinjum will update his appraisal of the Properties at the time of the proposed transaction to establish their fair market value. Such appraisal will take into consideration any recent sales of comparable properties in the area since the date of Mr. Tinjum's last appraisal.

5. The applicant requests an exemption for the proposed sale of the Properties by the IRA to Mr. Busker. As noted above, the IRA would receive cash in exchange for the Properties in an amount equal to the fair market value of the Properties, as determined by an independent, qualified appraiser at the time of the transaction.

The applicant represents that the proposed transaction would be in the best interests of the IRA because it would allow the IRA to dispose of the Properties, which at the present time are illiquid investments which have not been appreciating in value, and reinvest the sale proceeds in more liquid investments which would offer greater returns. The applicant states that the terms and conditions of the sale would be at least as favorable to the IRA as the terms and condition which the IRA could obtain in an arm's-length transaction with an unrelated party. The applicant states further that the IRA

⁸Pursuant to 29 CFR 2510.3-2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

would not pay any commissions or other expenses in connection with the transaction.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because: (a) The terms and conditions of the sale would be at least as favorable to the IRA as those obtainable in an arm's-length transaction with an unrelated party; (b) the sale would be a one-time cash transaction which would allow the IRA to dispose of illiquid assets which have not been appreciating in value; (c) the IRA would receive the fair market value of the Property, as established at the time of the sale by an independent, qualified appraiser; (d) the IRA would not be required to pay any commissions, costs or other expenses in connection with the sale; and (e) Mr. Busker has determined that the proposed sale of the Properties would be in the best interests of the IRA.

NOTICE TO INTERESTED PERSONS: Because Mr. Busker is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of this notice in the **Federal Register**.

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

Profit Sharing Plan for Employees of Athens Disposal Co., Ranco Leasing, Covina Disposal Co., and South Pasadena Disposal Co. (the Plan), Located in City of Industry, California

[Application No. D-10029]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the 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 on March 24, 1994, for \$300,000 (the Sale) of 7,500 shares (the Shares) of common stock issued by Garfield Bank (the Bank), chartered in California and located in Montebello, California, by the Plan to Athens Disposal Co., Inc., a party in interest with respect to the

Plan; provided that (1) the Plan experienced no loss nor incurred any expense from the Sale; and (2) the Plan received as consideration from the Sale an amount that was no less than the fair market value of the Shares on the date of the Sale.

EFFECTIVE DATE: If this proposed exemption is granted, the effective date of the exemption will be March 24, 1994.

Summary of Facts and Representations

1. There are three closely-held corporations that currently sponsor the Plan (the Employers) that are all incorporated in California and are wholly owned by various members of the Arakelian family. One of the three corporations that make up the Employers is the Athens Disposal Co., Inc. (the Applicant), incorporated on July 1, 1958, which is headquartered in City of Industry, California and is engaged in the business of municipal solid waste collection and disposal. The second of the Employers is the South Pasadena Disposal Co., Inc. (South Pasadena), incorporated September 5, 1992, which provides the same services as the Applicant for the City of Pasadena, California. The third member of the Employers is the Ranco Leasing Co., Inc. (Ranco), incorporated November 21, 1981, which owns rubbish collection vehicles that it leases to the Applicant and to South Pasadena and provides fleet maintenance services for the leased vehicles.⁹

2. The Plan is a profit sharing plan that maintains individual accounts for its 254 participants and beneficiaries with net assets of \$4,975,373, as of June 30, 1994. The Plan is intended to satisfy the qualification requirements of section 401(a) of the Code. The named fiduciary of the Plan is a committee (the Committee) currently consisting of two individuals, Messrs. Ron Arakelian and Ron Arakelian, Jr., who are controlling shareholders as well as officers and directors of the Applicant. The Committee is appointed by the Board of Directors of the Applicant and charged with the responsibility to administer the Plan, which includes among other things directing investments of Plan assets and appointing legal counsel, accountants, plan administrator, and trustees.

The Committee has employed and delegated responsibility for

⁹ Covina Disposal Co., Inc., incorporated in California on October 3, 1985, a wholly-owned subsidiary of the Applicant, had been another sponsor of the Plan, but was liquidated on June 30, 1990, and had its assets and liabilities distributed to the Applicant with its participants in the Plan absorbed by the Applicant.

administering the accounting and recordkeeping services for the Plan to Page Services Corporation, a California corporation, located in Los Angeles, California. Messrs. Ron Arakelian and Ron Arakelian, Jr. also serve the Plan as the trustees (the Trustees) of its assets.

3. During the Plan's fiscal year ended June 30, 1985, the Applicant conveyed the 7,500 Shares to the Plan as its \$300,000 funding contribution for the fiscal year.¹⁰ The Shares, originally purchased by the applicant over a 10 year period at a price of \$40 per share, were determined to have a fair market value of \$40 per share on the date that they were contributed to the Plan.

While the Plan continued to hold the Shares the Bank began experiencing a poor financial performance resulting in net losses from operations for the years ended December 31, 1993 and 1994. The poor financial performance of the Bank was also manifested by limited dividend payments of the Bank to the holders of the Shares. The only dividend payments made to the Plan totalled \$1,875 for each of the years 1992 and 1993.

The Applicant represents that the Bank became the subject of examinations during 1993 by both the Federal Reserve Bank (the FRB) and the Superintendent of Banks for the State of California (the State). The State completed its examination by September 24, 1993, whereas, the FRB took an additional year to complete its examination on September 24, 1994. In preliminary letters in 1993 from both the FRB and the State, the Bank was notified, among other things, that it was in an unsafe and unsound condition with a continuing deterioration in asset quality, an inadequate loan loss reserve, and a decline in capital and liquidity. The FRB concluded that the continued deterioration in asset quality threatened the already marginal capital position of the Bank and negatively impacted on its future earnings prospects. The Applicant further represents that the FRB reclassified the Bank as significantly undercapitalized for purposes of federal regulations which resulted in restrictions (a) on the ability of the Bank to pay dividends and management fees; (b) on the growth of its total assets; and (c) on its ability to expand through acquisitions, branching, or new lines of business. According to the Applicant the State also issued an order to the Bank that its capital is considered to be impaired as of September 30, 1994, which subjects the

¹⁰ The Applicant represents that the contribution of the Shares was not a prohibited transaction under the Act. The Department expresses no opinion as to whether the contribution was a prohibited transaction.

Shares to assessment under certain circumstances and potential forfeiture.

The common stock of the Bank was appraised on January 21, 1994, and February 11, 1994, by an independent appraiser, Mr. Glenn Garlick, Principal of Houlihan Valuation Appraisers located in Costa Mesa, California. When making the appraisals Mr. Garlick understood that the Applicant intended to purchase the Shares from the Plan at the greater of either \$40 per share or the fair market value based upon an independent appraisal. In the February 11, 1994, appraisal, Mr. Garlick concluded that without consideration of the intent of the applicant to purchase the Shares, the fair market value of the Shares is not greater than \$27 per share.

The Applicant further represents that another indication of the continued decline in the fair market value of the Shares was manifested in the private placement offering of Units in March 1995 by the Bank to individual subscribers for \$10 per Unit. Each Unit consists of one share of common stock of the Bank plus one five-year warrant convertible into one share common stock for the additional consideration of \$10.

4. In order to eliminate the ever increasing risk associated with the continued investment in the Shares by the Plan and to permit the Plan to distribute or otherwise invest the original value of the assets in the Plan, the Applicant on March 24, 1994, made a \$300,000 cash purchase of the Shares from the Plan. The Plan incurred no expenses or commissions from the Sale. Furthermore, the Applicant represents that the Plan was able to invest the proceeds from the Sale into more liquid and income producing investments; such as, U.S. Treasury Bills, money market accounts, and publicly traded common stock.

The Applicant represents that the Plan's elimination of the risks inherent in the continued investment in the Shares by the Sale to the Applicant was in the best interests of the Plan and its participants and beneficiaries, and also served to protect the rights of the participants and beneficiaries. The Trustees of the Plan made these determinations based on their knowledge that the Bank was subject to the FRB and State examinations and resulting enforcement actions described above that presented significant risks to the Plan if it continued to hold the Shares. In addition, the Trustees were motivated to act because the Shares were providing little or no income for the Plan, plus there was little or no likelihood that there would be income

received in the foreseen future by the Plan.

5. In summary, the applicant represents that the transaction satisfies the criteria for an exemption under section 408(a) of the Act because (a) the Plan received from the Applicant in a one-time transaction cash in an amount that was no less than the fair market value of the Shares on the date of the Sale; (b) the transaction enabled the Plan and its participants and beneficiaries to avoid the continuing risks associated with holding the Shares; (c) the Plan incurred no loss or expense from the Sale; (d) the Trustees have determined that the transaction was in the best interests of the Plan and its participants and beneficiaries and was protective of their rights under the Plan.

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

Banc One Capital Corporation (Banc One) Located in Columbus, OH

[Application No. D-10046]

Proposed Exemption

Section I. Transactions

A. Effective June 2, 1995, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

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

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

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

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

with respect to the assets of that Excluded Plan.¹¹

B. Effective June 2, 1995, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

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

(i) The plan is not an Excluded Plan; (ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

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

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.¹² For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions

¹¹ Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(a)(ii) and regulation 29 CFR 2510.3-21(c).

¹² For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

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

C. Effective June 2, 1995, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

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

(2) The pooling and servicing agreement is provided to or described in all material respects in the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.¹³

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

D. Effective June 2, 1995, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

Section II. General Conditions

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

¹³ In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

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

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

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

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

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

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

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision of Subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private

placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in Subsection II.A.(6) above.

Section III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate—

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

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

(2) A certificate denominated as a debt instrument—

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

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

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

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

(1) Either—

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

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

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential,

multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

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

(e) "guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3-101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)-(e) of this Section B.(1);

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

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

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

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) Banc One;

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

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

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

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for

servicing, directly or through subservicers, the assets of the trust.

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

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

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

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

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

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

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

- (1) Each underwriter;
- (2) Each insurer;
- (3) The sponsor;
- (4) The trustee;
- (5) Each servicer;
- (6) Any obligor with respect to

obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

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

M. "Affiliate" of another person includes:

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

(2) Any officer, director, partner, employee, relative (as defined in section

3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

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

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

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

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

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

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

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

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

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

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

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

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

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

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

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

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

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

- (1) Which is secured by equipment which is leased;
- (2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and
- (3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

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

- (1) The trust holds a security interest in the lease;
- (2) The trust holds a security interest in the leased motor vehicle; and
- (3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

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

W. "Banc One" means Banc One Capital Corporation, an Ohio corporation, and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in Section V(h) of Prohibited Transaction Exemption (PTE) 95-60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, at 35932.

EFFECTIVE DATE: If granted, this proposed exemption will be effective for transactions occurring on or after June 2, 1995.

Summary of Facts and Representations

1. Banc One, formerly Meuse, Rinker, Chapman, Endres and Brooks, is the wholly owned, separately capitalized investment banking subsidiary of Banc One Corporation, a Columbus, Ohio-based holding company which had assets of \$88.9 billion as of December 31, 1994 and operates 69 affiliate banks with 1,418 offices in 12 states. Banc One Corporation also owns and operates subsidiaries that engage in data processing, trust, brokerage, investment management, equipment leasing, mortgage banking, consumer finance and insurance.

Banc One was established in 1981 and it maintains its principal place of business in Columbus, Ohio. Banc One has branch operations located in Dallas, Milwaukee, Chicago, Indianapolis, Los Angeles, Phoenix, Louisville and Washington, D.C. As a member of the National Association of Securities Dealers, Banc One maintains a fixed income securities brokerage for the initial placement and remarketing of offerings originated by the firm as well as other issues traded in the secondary market. As of December 31, 1994, Banc One had total assets of \$437,336,000.

Since 1988, Banc One has been securitizing assets ranging from mobile home loans to development lots. Its professional staff has a combined experience of working as an underwriter and financial advisor. Banc One's investment bankers have extensive experience in creating taxable and tax-exempt obligations having a wide range of structural characteristics as well as security arrangements.

Banc One represents that it has the legal authority to underwrite asset-backed securities. In an order dated July 16, 1990, the Federal Reserve Board granted Banc One the power to underwrite and deal in mortgage-backed securities and other asset-backed securities. This order is subject to the condition that Banc One does not derive more than 10 percent of its total gross revenues from such activities. In addition, Banc One's affiliates have the power to sell interests in their own assets in the form of asset-backed securities.

Trust Assets

2. Banc One seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts;¹⁴ (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.¹⁵

¹⁴The Department notes that PTE 83-1 (48 FR 895, January 7, 1983), a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83-1 are met. Banc One and its affiliates request relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Banc One has stated that it may still avail itself of the exemptive relief provided by PTE 83-1.

¹⁵Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.¹⁶

Trust Structure

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

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

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

¹⁶Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90-32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

and an agency basis. Banc One may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders are entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

5. Some of the certificates will be multi-class certificates. Banc One requests exemptive relief for two types of multi-class certificates: “strip” certificates and “fast-pay/ slow-pay” certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.¹⁷

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

than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a *pro rata* basis.¹⁸

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor’s discretion and the servicer’s discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

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

Parties to Transactions

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

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

8. The sponsor of a trust will be one of three entities: (i) a special-purpose corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the

sponsor’s role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee and assigning the receivables to the trust.

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

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

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

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as

¹⁷ It is the Department’s understanding that where a plan invests in REMIC “residual” interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

¹⁸ If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a *pro rata* basis with the senior certificateholders. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

having been sold. To protect the investor's interest, the servicer ordinarily covenants that this "sold flag" will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

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

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

The underwriter will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placements of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead or co-managing underwriter will make a market in certificates offered to the public.

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

Certificate Price, Pass-Through Rate and Fees

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

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

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

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.¹⁹ This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon rate, together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

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

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid in a lump sum

at the time the trust is established, or on the receivables in excess of the pass-through rate.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession or other conversion of a secured position into cash proceeds upon default of an obligation.

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

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

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

¹⁹ The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

underwriter may buy certificates as principal, in which case, its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

17. As the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

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

Certificate Ratings

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

Provision of Credit Support

19. In some cases, the master servicer or an affiliate of the master servicer may provide credit support to the trust (i.e., act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be itself), or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. In some transactions, the master servicer may not be obligated to advance funds, but instead, would be called upon to provide funds to cover defaulted payments to the full extent of its

obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support from the future payment stream. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover defaulted payments or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

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

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

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent

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

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the master servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

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

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

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

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

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

(e) A description of the sponsor and servicer;

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

(g) A description of the credit support;

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

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

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

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

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10-Q and Annual Reports on Form 10-K, many trusts obtain, by application to the

Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10-Q and a modification of the disclosure requirements for annual reports on Form 10-K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8-K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

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

Forward Delivery Commitments

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

Secondary Market Transactions

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

Retroactive Relief

26. Banc One represents that it has not engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would be granted prior to the date of this application. However, Banc One requests the exemptive relief granted to be retroactive to June 2, 1995, the date of this application, and would like to rely on such retroactive relief for transactions entered into prior to the date exemptive relief may be granted.

Summary

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

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

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

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

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

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

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83-1

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

PTE 83-1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or

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

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

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

section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.²⁰

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

Banc One represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.²¹ In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of

²⁰ In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

²¹ In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which Banc One or any of its affiliates is either (a) the sole underwriter or manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent.

the Act.²² Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

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

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

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

Notice to Interested Persons

The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

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

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other

²² The applicant represents that where a trust sponsor is an affiliate of Banc One, sales to plans by the sponsor may be exempt under PTE 75-1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if Banc One is not a fiduciary with respect to plan assets to be invested in certificates.

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

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

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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and 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, DC, this 7th day of August, 1995.

Ivan Strasfeld,

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

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-26351]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

August 4, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 28, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Columbia Gas System, Inc. (70-8659)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act.

Columbia seeks authority to enter into interest rate hedge transactions to limit its exposure to a potential rise in long-term interest rates from now until the interest rates on its long-term debt are fixed upon its emergence from bankruptcy. Columbia's interest rate exposure is due to a projected fixed rate debt issuance of approximately \$2.1 billion to fund Columbia's proposed plan or reorganization ("Columbia Plan"). An application by Columbia to issue this debt was filed on May 7, 1995 (File No. 70-8627) and is currently pending.

Among other things, the Columbia Plan contemplates the issuance of up to \$2.1 billion in debentures (the "New Indenture Securities") to be issued under a new form of indenture on the date the Columbia Plan becomes effective (the "Effective Date"), currently anticipated to be December 31, 1995. The New Indenture Securities are to be issued in seven series, each series bearing a maturity that will range from approximately 5 to thirty years. The principal amount of each series will be substantially the same as that of each other series; provided, however, that no series other than series A will have an initial principal amount that is more than 150% of that of any other series. The rate of interest to be borne by the New Indenture Securities of each series will be determined prior to the Effective Date based on market rates for securities of similar maturities and debt rating and in accordance with the pricing methodology set forth in the Columbia Plan.

Recent declines in long-term interest rates permit Columbia to lock in historically attractive interest rates on its New Indenture Securities. To take advantage of these rates, Columbia requests authorization to enter into certain interest rate hedging transactions prior to the issuance of the New Indenture Securities. These transactions include any or all of the following: (i) A sale of exchange-traded U.S. Treasury futures contracts, a forward sale of U.S. Treasury securities and/or a forward interest rate swap, (ii) the purchase of put options on U.S. Treasury securities (each a "Put Options Purchase"), (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury securities, or (iv) some combination of the above. These transactions may be executed on the Chicago Board of Trade ("CBOT") with brokers through the opening of futures and/or options positions traded on the CBOT, the opening of over-the-counter positions with one or more counterparties or a combination of the two.

In a sale of exchange-traded U.S. Treasury futures contracts or in a forward sale of U.S. Treasury securities, Columbia would "lock-in" the U.S. Treasury security component of the New Indenture Securities at the then current Treasury forward yield by selling U.S. Treasury futures and/or by selling spot U.S. Treasury securities forward. Columbia would then reverse its short positions on or around the Effective Date by purchasing the U.S. Treasury futures contracts and/or U.S. Treasury securities previously sold.