APPENDIX—Continued

[Petitions Instituted on 04/01/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,141	Spartan Mills, Whitney (Comp)	Spartanburg, SC	03/11/96	Yarn.
32,142	Stephenson Enterprises (Comp)	Folkston, GA	03/19/96	Dress Pants and Shorts.
32,143	Sun Belt Fixtures, Inc (Wkrs)	El Paso, TX	03/06/96	Paint Clothes Racks.
32,144	Plastic Manufacturing Co (Wkrs)	Dallas, TX	03/22/96	Styrene Drinkware and Melamine Dinnerware.
32,145	Tampella Power Corp. (Comp)	Williamsport, PA	02/26/96	Municipal Solid Waste Boilers.
32,146	TEX–MEX Sportswear (Wkrs)	El Paso, TX	03/14/96	Ladies' and Men's Pants, Shorts.
32,147	Terminal Fabrication, Inc (Comp)	Freeport, IL	02/28/96	Terminal Blocks for HVAC Industry.
32,148	Ultima Fashions, Inc (Wkrs)	Clifton, NJ	02/02/96	Ladies' Jackets.
32,149	Vanity Fair Mills (Wkrs)	McAllen, TX	03/15/96	Bras, Panties, Girdles.
32,150	Wave Tek Corp (Wkrs)	San Diego, CA	03/15/96	Multimeters, Portable Generators.
32,151	Western Publishing Co (UAW)	Racine, WI	02/17/96	Books–Printed Material.
32,152	Weyerhaeuser Western Lum. (Wkrs)	Kamiah, ID	03/01/96	Lumber.
32,153	Zenith Electronics Corp (Wkrs)	McAllen, TX	03/20/96	Televisions.
32,154	Eastland Shoe Mfg. Corp. (Wkrs)	Freeport, ME	01/16/96	Men's, Women's and Children's Casual Shoes.

[FR Doc. 96–10200 Filed 4–24–96; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Application No. D–09844, et al.]

Proposed Exemptions; Jacor Communications Inc. Retirement Plan (the Plan)

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 restrictions 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.

Jacor Communications Inc. Retirement Plan (the Plan), Located in Cincinnati, Ohio

[Application No. D–09844]

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), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the past receipt by the Plan of certain stock-purchase warrants (the Warrants) pursuant to the restructuring of Jacor Communications, Inc. (Jacor), excluding that portion of Warrants which was acquired by the Plan's Qualified Matching Contribution Account (the QMCA, as described below); (2) the past and proposed future holding of the Warrants by the Plan; and (3) the

disposition or exercise of the Warrants by the Plan; provided that the following conditions are satisfied:

(A) With respect to all participant accounts other than the QMCA, the Warrants were acquired pursuant to Plan provisions for individually-directed investment of such accounts;

(B) The Plan's receipt and holding of the Warrants occurred in connection with the restructuring of Jacor and the Warrants were made available to all shareholders of common stock of Jacor;

(C) The Plan's receipt and holding of the Warrants resulted from an independent act of Jacor as a corporate entity, and all holders of the common stock of Jacor, including the Plan, were treated in the same manner with respect to the restructuring of Jacor; and

(D) With respect to Warrants allocated to the QMCA, the authority for all decisions regarding the holding, disposition or exercise of the Warrants by the Plan will be exercised by an independent fiduciary acting on behalf of the Plan, to the extent that such decisions have not been passed through to Plan participants; and

(E) With respect to all other accounts (described below), the decisions regarding the holding, disposition or exercise of the Warrants have been, and will continue to be made in accordance with Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Warrants in connection with the restructuring.

EFFECTIVE DATE: This exemption, if granted, will be effective as of January 11, 1993, except with respect to the Warrants held by the QMCA. With respect to those Warrants, the exemption, if granted, will be effective July 26, 1995.

Summary of Facts and Representations

1. Jacor, the Plan sponsor, has its principal place of business in Cincinnati, Ohio. Jacor owns and operates radio stations across the United States and is the parent company of an affiliated group of corporations. The Plan is a defined contribution employee benefit plan intended to satisfy the requirements of sections 401(a) and 401(k) of the Code. The Plan provides for individual participant accounts (the Accounts) and participant-directed investment of the Accounts among five investment funds, one of which invests exclusively in common stock of Jacor (the Jacor Securities Fund). Participants can also choose to invest in the Money Market Fund (replaced by the Stable Asset Fund as of April 1, 1994), the Bond Fund (replaced by the International Fund as of April 1, 1994), the Balanced Fund and the Growth Fund. The various funds can be described as follows:

(a) *Money Market Fund,* which invests exclusively in short-term U.S. Treasury obligations. The objective of this Fund is to provide stability of principal and current income consistent with that stability;

(b) *Bond Fund,* which invests in U.S. government and federal agency securities along with high quality corporate obligations. The objective of this Fund is to provide more income than short-term obligations, but greater stability than long-term bonds;

(c) *Balanced Fund,* which invests in equity securities issued by a broad range of companies along with corporate and government bonds. The objective of this Fund is to provide a balance between the growth potential of stock and the current income of bonds;

(d) *Growth Fund,* which invests in equity securities issued by a broad range of companies. The objective of this Fund is long-term growth;

(e) *Jacor Securities Fund,* which invests in equity securities issued by Jacor;

(f) *Stable Asset Fund,* which invests in public and private debt securities and mortgage loans. This Fund provides a fixed rate of return that is adjusted annually; and

(g) *International Fund,* which invests in equity securities of foreign corporations. The objective of this Fund is to provide long-term growth with international diversification.

2. Each participant may have as many as four Accounts under the Plan, known as the Elective Deferral Account, the Qualified Non-Elective Contribution Account, the QMCA and the Rollover Account. As of December 31, 1993, there were 416 participants in the Plan, all of whom had at least one Account with an investment in the Jacor Securities Fund. As of that same date, the Plan held total assets of approximately $3,390,755. The trustees of the Plan as of January 8, 1993, were Terry S. Jacobs, R. Christopher Weber and Jon M. Berry, all of whom were officers and shareholders of Jacor. Terry S. Jacobs resigned as trustee and officer of Jacor effective June 7, 1993 and as of the same date was replaced by Randy Michaels.

3. *Investment Direction.*

In general, all contributions (and related earnings) allocated to any of the Accounts on or before December 31, 1991 are invested in the Jacor Securities Fund. Contributions (and related earnings) allocated on or after January 1, 1992 to any Account other than the QMCA are subject to participant-directed investment. In general, all contributions (and related earnings) allocated to the QMCA on or after January 1, 1992 continue to be invested in the Jacor Securities Fund.[1]

In 1995, participants were given the authority to transfer all contributions (and related earnings) allocated to the QMCA and all other pre-1992 contributions and earnings to any of the other investment funds available under the Plan, in accordance with the following schedule:

(1) First Quarter of 1995—up to 25% of formerly restricted funds
(2) Second Quarter of 1995—up to 50% of formerly restricted funds
(3) Third Quarter of 1995—up to 75% of formerly restricted funds
(4) Fourth Quarter of 1995—up to 100% of formerly restricted funds

4. Jacor represents that it entered into a restructuring agreement with Zell/Chilmark in September, 1992. Zell/Chilmark is a Delaware limited partnership controlled by Samuel Zell and David Schulte. Zell/Chilmark was formed to invest in and provide capital and management support to companies that are engaged in significant recapitalizations or corporate restructuring. At the time of Jacor's restructuring, Zell/Chilmark had capital commitments or investments in excess of $1 billion. The Board of Directors of Jacor selected Zell/Chilmark to work with Jacor's creditors to formulate a restructuring plan. Zell/Chilmark was chosen because Jacor's Board believed that it would be able to raise the cash necessary to make a substantial equity investment and because of its experience in working with creditor groups.

5. The restructuring consisted of an equity infusion of approximately $6 million by Zell/Chilmark and was accomplished by way of a merger of a corporation wholly owned by Zell/Chilmark into Jacor. As part of this process, Zell/Chilmark acquired approximately 91.44% of Jacor's outstanding Common Stock. Upon approval by the Federal Communications Commission of the transfer of control of Jacor to Zell/Chilmark on April 23, 1994, Jacor's Class B Common Stock automatically converted to Class A Common Stock (the combination of the 2 classes of stock is now referred to as the New Common Stock). As a result of the restructuring, on January 11, 1993, all shareholders not electing to receive

[1] The Plan has special provisions which provide increased investment options to Plan participants once they attain age 55.

cash, including the Plan, received for each share of Common Stock held .0423618 shares of New Common Stock and .1611234 Warrants to purchase New Common Stock. The New Common Stock and the Warrants trade on the National Association of Securities Dealers Automated Quotation (NASDAQ) National Exchange. The Warrants are exercisable at $8.30 per share and expire on January 14, 2000. Jacor represents that the decision as to whether to keep the New Common Stock and Warrants held in the Jacor Securities Fund or to sell those securities for cash was passed through to Plan participants for all Accounts under the Plan other than the funds in the QMCA.[2] Decisions regarding securities held in the QMCA were made by the Trustees.

6. Along with the option of receiving New Common Stock and Warrants, shareholders who held shares as of November 27, 1992, were given the right to purchase additional New Common Stock (the Additional Rights Offering) at $5.74 per share.[3] Holders of New Common Stock could purchase 0.1237 additional shares of New Common Stock for each share of New Common Stock held immediately after the merger of the subsidiary of Zell/Chilmark with Jacor and after certain stock sales by creditors of Jacor (who had been issued stock in exchange for debt obligations) to Zell/Chilmark.[4] Pursuant to the Additional Rights Offering, Jacor sold a total of 1,000,000 shares of New Common Stock. The Plan Trustees made the decision, on behalf of the Plan, to purchase 4,457 shares of New Common Stock in the Additional Rights Offering.

7. Since the Warrants acquired by the Plan fail to satisfy the definition of ''qualifying employer securities'' contained in section 407(d)(5) of ERISA, the applicant is aware of the fact that prohibited transactions have occurred in violation of the Act. Accordingly, Jacor represents that within 90 days of the grant of this proposed exemption, Jacor will file Forms 5330 with the Internal Revenue Service and will pay all applicable excise taxes due with respect to past prohibited transactions not covered by this exemption.

8. Under the restructuring described above, the Plan received 36,038 shares of New Common Stock and 137,074 Warrants. Prior to the restructuring, there were 9,004,093 shares of Jacor common stock, of which 866,514 shares,[5] or approximately 9.6%, were in the Plan. After the restructuring, there were 9,004,093 shares of New Common Stock, so that the Plan held less than .5% of that amount. Jacor represents that, at the time the 137,074 Warrants were issued to the Plan, they represented 2.6% of the assets of the Plan. Since that time, 11,290 of the Warrants have been distributed to terminated participants. As of December 31, 1993, the remaining 125,784 Warrants represented 22.6% of the assets of the Plan. This increase is due to the increase in the value of each Warrant from $.20 on January 11, 1993 to $6.09 on December 31, 1993. Jacor represents that the decision of whether to hold, sell, or exercise the Warrants for all Accounts under the Plan other than the QMCA were passed through to the Plan participants.

9. To the extent that Plan participants do not have investment authority over the Warrants, decisions regarding Warrants held in the QMCA will be made by an independent fiduciary retained specifically for that purpose. The Fifth Third Bank (the Bank) has been retained as an independent fiduciary to represent the interests of the Plan with respect to all securities issued by Jacor including the Warrants, except to the extent that such investment authority is being exercised by participants in the Plan. At such time that the participants in the Plan are given full authority over all employer securities held in the Plan, the Bank states that it will no longer have any investment authority under the terms of its Trust Agreement. The Bank represents that, as of February 23, 1996, participants in the Plan have full investment authority over employer securities held by the Plan (see rep. 3, above).

10. The Bank is a subsidiary of Fifth Third Bancorp, Inc., a bank holding company that is headquartered in Cincinnati, Ohio. The Bank has been in existence for over 100 years. The trust department of the Bank has $6.6 billion of assets under management, of which $2.5 billion of assets is held by the Bank as fiduciary of over 500 plans that are subject to the Act. The Bank is not related to Jacor.

11. The Bank represents that it is fully aware of its duties and responsibilities as a fiduciary under the Act. In fulfilling its duties, the Bank reviewed the terms and conditions of the Common Stock and Warrants issued by Jacor and reviewed the most recent financial statements of Jacor and other material it considered appropriate to determine the financial condition of Jacor. Based on this review, and a review of the current market for the securities issued by Jacor, the Bank concluded, as of July 26, 1995, that it was currently in the best interest of the Plan's participants and beneficiaries for the Plan to retain all securities issued by Jacor that were currently held by the Plan and that were subject to the investment discretion of the Bank.

12. The Bank represents that it will continue to monitor the Plan's holding of those securities issued by Jacor that are subject to the investment discretion of the Bank. In exercising that discretion as a fiduciary under the Act, the Bank will on an on-going basis review all relevant financial information related to Jacor to determine whether the Plan should continue to hold or should sell the Jacor Common Stock and to determine whether the Plan should hold, sell or exercise the Warrants, or let the Warrants expire without exercise.[6]

13. In summary, the applicant represents that the transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) the Plan's acquisition of the Warrants resulted from an independent act of the Employer; (b) with respect to all aspects of the restructuring, all holders of the Common Stock were treated in the same manner, including the Plan; (c) all decisions with respect to the Plan's acquisition, holding and control of the Warrants were made by the individual participants whose Accounts held interests in the Jacor Securities Fund, except with respect to the QMCA; (d) with respect to the QMCA, the Bank, an independent fiduciary reviewed the investments as of July 26, 1995 and determined that the Plan's continued holding of the employer securities was

[2] The applicant explains that, although Plan participants had no authority over the investment of pre-1992 contributions, they were given the authority to make decisions regarding the acquisition of employer securities for all funds in their Accounts other than the QMCA.

[3] The Department is not providing any exemptive relief for any prohibited transactions that may have arisen in connection with the Plan's ability to acquire such additional shares of New Common Stock.

[4] Zell/Chilmark and creditors who retained New Common Stock in the debt restructuring were also given the opportunity to purchase stock in the Additional Rights Offering.

[5] As part of the restructuring, 15,774 shares of Jacor common stock were tendered by Plan participants for cash. The remaining 850,740 shares were converted to New Common Stock in the restructuring.

[6] The Bank represents that it would only let the Warrants expire without exercise if they had no value, which could occur if the value of the New Common Stock drops below the exercise price of the Warrants ($8.30 per share) prior to the expiration of the Warrants on January 14, 2000. As of February 20, 1996, the value of the New Common Stock was $21.25. As a result, it is not likely that the Warrants would be allowed to expire without exercise. In any case, it is not anticipated that the Bank would be responsible for that decision since all investment authority in connection with the Warrants is currently with Plan participants.

appropriate and in the Plan's best interest; and (e) the Bank continued to monitor the holding of the employer securities by the QMCA until such time as Plan participants were given full authority over the investment, and determined whether the Plan should hold, sell or exercise the Warrants or let the Warrants expire without exercise.

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

EAI Partners, L.P. (EAI), Located in Norwalk, CT

[Application No. D–10147]

Proposed Exemption

Based on the facts and representations set forth in the application, 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).[7]

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

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply, as of December 29, 1995, to the in-kind transfer of assets of employee benefit plans that are participant-directed account plans intended to satisfy section 404(c) of the Act and as to which EAI serves as a fiduciary (the Client Plans), including a plan established by EAI (the EAI Plan), as well as two plans that are sponsored by affiliates of EAI, namely, the Harding Service Corporation *et al.* Profit Sharing Plan and Trust (the Harding Plan) and the Stockwood VII, Inc. 401(k) Plan (the Stockwood Plan),[8] that are held in the Small Managers Equity Fund Trust (SMEF) maintained by EAI in exchange for shares of the EAI Select Managers Equity Fund (the Fund), an open-end investment company registered under the Investment Company Act of 1940 (the '40 Act) for which Evaluation Associates Capital Markets, Inc. (EACM), a wholly owned subsidiary of EAI, acts as investment adviser, in connection with the partial termination of SMEF.

This proposed exemption is subject to the following conditions:

(a) No sales commissions or other fees, including any fees payable pursuant to Rule 12b–1 of the '40 Act (the 12b–1 Fees), are paid by a Plan in connection with the purchase of Fund shares through the in-kind transfer of SMEF assets.

(b) All of the assets of a Plan that are held in SMEF are contributed by such Plan in-kind to the Fund in exchange for shares of such Fund. A Plan not electing to invest in the Fund receives a distribution of its allocable share of the assets of SMEF either in cash or in-kind.

(c) Each Plan receives shares of the Fund which have a total net asset value that is equal in value to such Plan's allocable share of the assets of SMEF as determined in a single valuation performed in the same manner at the close of the same business day, using independent sources in accordance with the procedures set forth in Rule 17a–7(b) (Rule 17a–7) under the 1940 Act, as amended, and the procedures established by the Fund pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the in-kind contribution of SMEF assets to the Fund, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of EAI.

(d) On behalf of each Plan, a second fiduciary who is independent of and unrelated to EAI (the Second Fiduciary) receives advance written notice of the in-kind transfer of assets of SMEF to the Fund and full written disclosure, which includes, but is not limited to, the following information concerning the Fund:

(1) A current prospectus for the Fund in which a Plan is considering investing.

(2) A statement describing the fees for investment advisory or similar services that are to be paid by the Fund to EACM; the fees retained by EACM for secondary services (the Secondary Services), as defined in paragraph g of Section II below; and all other fees to be charged to or paid by the Plan and by such Fund to EAI, EACM or to unrelated parties, including the nature and extent of any differential between the rates of the fees.

(3) The reasons why EAI considers such investment to be appropriate for the Plan.

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

(e) On the basis of the foregoing information, the Second Fiduciary authorizes in writing the in-kind transfer of a Plan's assets invested in SMEF to the Fund, in exchange for shares of the Fund, and the fees received by EACM in connection with its investment advisory services to the Fund. Such authorization by the Second Fiduciary will be consistent with the responsibilities, obligations and duties imposed on fiduciaries under Part 4 of Title I of the Act.

(f) EAI sends by regular mail to the Second Fiduciary of each affected Plan, the following information:

(1) Not later than 30 days after the completion of the in-kind transfer transaction, a written confirmation which contains—

(A) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) of the '40 Act;

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

(C) The identity of each pricing service or market maker consulted in determining the value of such securities.

(2) Within 90 days after the completion of each transfer, a written confirmation which contains—

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

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

(g) On an ongoing basis, EAI provides a Plan investing in the Fund with—

(1) A copy of an updated prospectus of such Fund, at least annually; and

(2) Upon request, a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) containing a description of all fees paid by the Fund to EAI and its affiliates.

(h) As to each Plan, the combined total of all fees received by EAI and/or its affiliates for the provision of services to the Plan, and in connection with the provision of services to the Fund in

[7] For purposes of this proposed exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[8] The Client Plans, the EAI Plan, the Harding Plan and the Stockwood Plan are collectively referred to herein as the Plans. In addition, the EAI Plan, the Harding Plan and the Stockwood Plan are collectively referred to herein as the Related Plans.

which the Plan invests, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(i) All dealings between a Plan and the Fund are on a basis no less favorable to the Plan than dealings between the Fund and other shareholders.

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

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

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

(B) Any fiduciary of a Plan who has authority to acquire or dispose of shares of the Fund owned by such Plan, or any duly authorized employee or representative of such fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraph (k)(1)(B)–(D) shall be authorized to examine trade secrets of EAI, or commercial or financial information which is privileged or confidential.

Section II. Definitions

For purposes of this proposed exemption:

(a) The term ''EAI'' means EAI Partners, L.P. and the term ''EACM'' refers to Evaluation Associates Capital Markets, Inc.

(b) An ''affiliate'' of EAI includes—

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

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

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

(c) The term ''Fund'' refers to the EAI Select Managers Investment Fund, a diversified open-end investment company registered under the '40 Act for which EACM serves as an investment adviser and may also provide some other ''Secondary Service'' (as defined below in paragraph (g) of this Section II) which has been approved by the Fund.

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

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

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

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

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

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption. However, with respect to the Related Plans (i.e., the EAI Plan, the Harding Plan and the Stockwood Plan), the Second Fiduciary may receive compensation from EAI in connection with the transaction contemplated herein, but the amount or payment of such compensation may not be contingent upon or be in any way affected by the Second Fiduciary's ultimate decision regarding whether the Related Plans may participate in such transaction.

With the exception of the Related Plans, if an officer, director, partner or employee of EAI (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in the choice of a Client Plan's investment adviser, the approval of any such purchase or sale between a Client Plan and the Fund, and the approval of any change of fees charged to or paid by the Client Plan, the transaction described in Section I above, then paragraph (f)(2) of this Section II, shall not apply.

(g) The term ''Secondary Service'' means a service, other than investment advisory or similar service which is provided by EACM to the Fund. However, the term ''Secondary Service'' does not include any brokerage services provided by EAI Securities Inc. (EAISI) to the Fund.

EFFECTIVE DATE: If granted, this proposed exemption will be effective December 29, 1995.

Summary of Facts and Representations

Description of the Parties

1. The parties involved in the subject transaction are described as follows:

(a) *EAI* is a Delaware limited partnership maintaining its principal executive office in Norwalk, Connecticut. EAI provides investment consulting services to a number of employee benefit plan clients through SMEF, a collective investment fund. As of October 1, 1995, EAI had approximately $216 million of Plan assets under management in SMEF, of which $62 million was held for participant-directed plans.

(b) *SMEF*, a collective investment fund established by EAI, has been organized to comply with Revenue Ruling 81–100. SMEF is trusteed by Boston Safe Deposit and Trust Company. Following the in-kind transfer transaction that is described herein, SMEF has continued to exist albeit with reduced assets.

(c) *The Fund* was organized on September 27, 1995 as a Massachusetts business trust. It is registered as a no-load, open-end investment company with the SEC under the '40 Act. Shares of beneficial interest are being offered and sold pursuant to a registration statement under the Securities Exchange Act of 1933 Act, as amended.

(d) *EACM*, a wholly owned subsidiary of EAI, manages the Fund and

negotiates investment advisory contracts and contracts for Secondary Services. EACM also serves as the investment adviser to the Fund and will receive investment advisory fees from the Fund.

(e) *EAISI*, a wholly owned subsidiary of EAI, serves as the distributor of shares of the Fund but it does not receive any compensation from the Fund.

(f) *The Plans* which are covered by the subject transaction include certain Client Plans that are participant-directed account plans within the meaning of section 404(c) of the Act for which EAI formerly served as a fiduciary through its management of Plan assets that had been invested in SMEF. Also covered by the subject transaction are the EAI Plan as well as Plans that are sponsored by the Harding Services Corporation (Harding) and Stockwood VII, Inc. (Stockwood), which are affiliates of EAI.[9] EAI formerly provided investment management services to the Related Plans by reason of their investment in SMEF through the end of 1995 but it did not charge the Related Plans any fees with respect to such services. The EAI Plan, the Harding Plan and the Stockwood Plan are participant-directed, defined contribution plans.

As of September 30, 1995, the participant, asset breakdown and the identities of the trustees of the Related Plans were as follows:

Related plans	No. participants	Total assets	Trustees
EAI Plan	121	$11,877,063	Elke Bartel, Jeanne Gustafson and Malin Zergiebel.
Harding Plan	99	9,800,000	Kurt Borowsky and Frank Richardson.
Stockwood Plan	10	371,000	Kurt Borowsky and Frank Richardson.

It is represented that none of the Related Plans is a party in interest with respect to the other within the meaning of section 3(14) of the Act.

(g) *Wilmington Trust Company (WTC)* of Wilmington, Delaware, has been retained by EAI to serve as the Second Fiduciary for the Related Plans. In such capacity, WTC was hired to approve the in-kind transfer of the assets of the Related Plans that had been invested in SMEF to the Fund, in exchange for shares of the Fund. WTC, the primary subsidiary of Wilmington Trust Corporation, was established in 1903. WTC is wholly independent of EAI and its affiliates.

As of December 31, 1994, WTC exercised discretionary authority over approximately $26.5 billion of fiduciary assets, including approximately $14.8 billion of the assets of plans covered by the Act as well as non-qualified plans. Also as of December 31, 1994, WTC served as directed trustee, agent or custodian with respect to more than $5 billion of assets of plans covered by the Act and nonqualified employee benefit plans.

Description of the Transaction

2. Prior to December 29, 1995, EAI required the Plans involved herein to withdraw their assets from SMEF. It then provided these Plans with the opportunity to contribute their withdrawn SMEF assets to the Fund in exchange for shares of the Fund. The principal reason for the in-kind transfer of the Plans' assets that had been invested in SMEF to the Fund was an SEC ruling pertaining to section 3(c)(1) of the '40 Act.[10] In that ruling, the SEC opined that each participant in a Plan providing for participant-directed investments would be counted for purposes of subjecting a collective investment fund, such as SMEF, to reporting and disclosure requirements applicable to open-end companies. In accordance with the SEC interpretation, EAI believed that the assets of the affected Plans had to be removed from SMEF prior to January 1, 1996.

In addition, EAI believed that the interests of these Plans would be appropriately served by use of a mutual fund, such as the Fund. According to EAI, mutual funds are under the supervision of the SEC, which places a greater emphasis on participant disclosure and which provides a mechanism for approval of disclosure documentation for the Fund. Moreover, EAI noted that mutual funds would afford Plan sponsors and participants with easier monitoring of investments since information concerning investment performance of the Fund would be available in daily newspapers of general circulation.

Accordingly, EAI requests retroactive exemptive relief from the Department with respect to the in-kind transfer of the assets of certain Plans that had been invested in SMEF, in exchange for shares of the Fund. The in-kind transfer transaction occurred on December 29, 1995 in connection with the partial termination of SMEF. If granted, the proposed exemption would be effective as of December 29, 1995.[11]

3. Plan assets formerly invested in SMEF that were exchanged for shares of the Fund occurred in two simultaneous phases. First, EAI obtained written approvals from all Second Fiduciaries with respect to the in-kind transfer. EAI then transferred to each Plan its allocable share of all assets of SMEF. It is represented that such assets consisted of marketable securities and cash balances. Second, the distributed assets were transferred by the Plan to the Fund, and, in exchange, the Fund issued to each Plan an appropriate number of shares of the Fund. These shares had an aggregate value equal to the aggregate value of each Plan's allocable share of SMEF assets that were transferred to the Fund.

4. With respect to the initial disclosures provided to each Second Fiduciary, EAI represents that prior to

[9] Specifically, EAI and EACM both have officers and directors and, in the case of EAI, equity holders who are officers, directors and affiliates of Harding and Stockwood.

[10] See *Latham & Watkins*, SEC No-Action Letter, 1994 SEC No Act. LEXIS 910 (December 28, 1994).

[11] EAI is not requesting an exemption with respect to the investment in the Fund by the EAI Plan, the Harding Plan or the Stockwood Plan. EAI represents that the Related Plans may acquire or sell share of the Fund pursuant to Prohibited Transaction Exemption (PTE) 77–3 (42 FR 18734, April 8, 1977). PTE 77–3 permits the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met. The Department expresses no opinion on whether any transactions between the Fund and the Related Plans would be covered by PTE 77–3.

Similarly, EAI is not requesting exemptive relief with respect to future acquisitions or sales of shares of the Fund by the Client Plans. EAI represents that such transactions would be covered under PTE 77–4 (42 FR 18732, April 8, 1977). In pertinent part, PTE 77–4 permits the purchase and sale by an employee benefit plan of shares of a registered open-end investment company when a fiduciary with respect to the plan is also the investment adviser of the investment company. However, again, the Department expresses no opinion on whether any transactions between the Client Plans and the Fund would be covered by PTE 77–4.

investing in the Fund, it obtained the affirmative written approval of a Second Fiduciary of a Plan who was generally the Plan's named fiduciary, trustee or sponsoring employer. In the case of the Related Plans, WTC was retained for this purpose. EAI provided each Second Fiduciary with a current prospectus for the Fund. The disclosure statement described the fees for investment advisory or similar services, the fees for Secondary Services and all other fees to be charged to, or paid by, a Plan (and by such Fund) to EACM or to unrelated parties, including the nature and extent of any differential between the rates of the fees. In addition, the disclosure statement specified the reasons why EAI considered an investment in the Fund was appropriate for a Plan.

On the basis of such information, the Second Fiduciary authorized the investment of Plan assets in the Fund through an in-kind transfer of assets received from SMEF. Such authorization was given by the Second Fiduciary to EAI in writing.

5. EAI represents that the in-kind transfer transaction was conducted over the weekend of December 29, 1995 in accordance with Rule 17a–7 under the '40 Act and the procedures established by the Fund pursuant to Rule 17a–7 for the valuation of such assets. EAI notes that Rule 17a–7 provides an exemption from section 17(a) of the '40 Act, which prohibits, among other things, principal transactions between an investment company and its investment adviser or affiliates of the investment adviser.

Among the conditions of Rule 17a–7 [12] is the requirement that the transaction be effected at the ''independent current market price'' for the security involved. In this regard, the ''current market price'' for specific types of SMEF assets involved in the in-kind transfer was determined as follows:

(a) If the security was a ''reported security'' as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (the '34 Act), the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System) for December 29, 1995; or if there were no reported transactions in the Consolidated System that day, the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1–1 under the '34 Act), as of the close of business on December 29, 1995; or

(b) If the security was not a reported security, and the principal market for such security was an exchange, then the last sale on such exchange on December 29, 1995; or if there were no reported transactions on such exchange that day, the average of the highest current independent bid and lowest current independent offer on such exchange as of the close of business on December 29, 1995; or

(c) If the security was not a reported security and was quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ as of the close of business on December 29, 1995 or

(d) For all other securities, the average of the highest current independent bid and lowest current independent offer as of the close of business on December 29, 1995, determined on the basis of reasonable inquiry.

6. As stated above, the in-kind transfer transaction occurred over the weekend of December 29, 1995, using the market values as of the preceding Friday. The value of SMEF was determined by the custodian and portfolio accountant for the Fund in coordination with EAI. Securities listed on the exchange were valued at their closing prices on that Friday. Other securities were valued based on the average of current independent bid and ask quotations as of that Friday obtained from three independent brokers (or under a method otherwise in accordance with Rule 17a–7). Any fees charged by independent brokers were the responsibility of EAI. The contribution of securities was completed by the opening of business on January 2, 1996, such that Plans whose SMEF assets were contributed to the Fund held shares of the Fund which had the same aggregate value as their units in SMEF as of the preceding Friday. No sales commissions or other fees, including 12b–1 Fees, were paid by the Plans in connection with the purchase of Fund shares through the in-kind transfer of a Plan's assets that were invested in SMEF.

7. Following the in-kind transfer transaction, EAI provided each affected Plan with a written confirmation statement on January 31, 1996. This statement set forth (a) the number of SMEF units held by the Plan immediately before the conversion, the related per unit value and the total dollar amount of such SMEF units; and (b) the number of shares of the Fund that are held by the Plan following the conversion, the related per share net asset value and the total dollar amount of such shares.

In addition, on January 31, 1996, EAI provided each affected Plan with written confirmation of (a) the identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4); (b) the price of each such security for purposes of the transaction; and (c) the identity of each pricing service or market maker consulted in determining the value of such securities.

Representations of the Second Fiduciary for the Related Plans Regarding the In-Kind Transfer

8. As stated above, WTC was retained by EAI as the Second Fiduciary to oversee the in-kind transfer transaction on behalf of the EAI Plan, the Stockwood Plan and the Harding Plan. In such capacity, WTC represented that it understood and accepted the duties, responsibilities and liabilities in acting as a fiduciary with respect to the Related Plans including those duties, responsibilities and liabilities that are imposed on fiduciaries under the Act.

WTC stated that it considered the effect and the implications of the transaction on the Related Plans as well as other Plan clients of EAI which had invested in SMEF. WTC noted that although SMEF would continue to exist after December 31, 1995, it would be maintained for Plans that were not participant-directed. Thus, WTC explained that the in-kind transfer transaction was being offered to certain Plans invested in SMEF on terms that were comparable to and no less favorable than the terms that would have been reached among unrelated parties.

WTC represented that the in-kind transfer transaction was in the best interest of the Related Plans and their participants and beneficiaries for the following reasons: (a) In terms of the investment policies and objectives pursued, the Fund substantially replicates SMEF and thus the impact of the transaction on a Related Plan and its participants would be *de minimis*; (b) the Fund would probably continue to experience relative investment performance similar in nature to SMEF given the continuity of investment objectives and policies, management oversight and portfolio management personnel; (c) the in-kind transfer

[12] Rule 17a–7 also includes the following requirements: (a) the transaction must be consistent with the investment objectives and policies of the Fund, as described in its registration statement; (b) the security that is the subject of the transaction must be one for which market quotations are readily available; (c) no brokerage commissions or other remuneration may be paid in connection with the transaction; and (d) the Fund's board of directors (i.e., those directors who are independent of the Fund's investment adviser) must adopt procedures to ensure that the requirements of Rule 17a–7 are followed, and determine no less frequently than quarterly that the transactions during the preceding quarter were in compliance with such procedures.

transaction would not adversely affect the cash flows, liquidity or investment diversification of a Related Plan; (d) the benefits to be derived by the Related Plans and their participants investing in the Fund (e.g., broader distribution permitted of the Fund to different types of plans impacting positively on the asset size of the Fund and resulting in cost savings to shareholders) would more than offset the impact of minimum additional expenses that might be borne by the Related Plans.

In opining on the appropriateness of the in-kind transfer transaction, WTC represented that it conducted an overall review of the Related and their respective Plan documents. WTC also stated that it examined the total investment portfolios for the Related Plans to determine whether or not the Related Plans were in compliance with their investment objectives and policies. Further, WTC stated that with respect to the Related Plans, it examined their overall liquidity requirements and reviewed the concentration of their assets that had been invested in SMEF as well as the portion of SMEF that comprised their assets. Finally, WTC represented that it reviewed the diversification provided by the investment portfolios of the Related Plans. Based upon its review and analysis of the foregoing, WTC represented that the in-kind transfer transaction would not adversely affect the total investment portfolios of the Related Plans or compliance by the Related Plans with their stated investment objectives, policies, cash flows, liquidity positions or diversification requirements.

As the Second Fiduciary, WTC represented that it was provided by EAI with the confirmation statements described in Representation 7. In addition, WTC stated that it supplemented its findings following review of the post-transfer account information to confirm whether or not the in-kind transfer transaction had resulted in the receipt by the Related Plans of shares of the Fund equal in value to of each Related Plan's *pro rata* share of assets of SMEF on the conversion date.

Ongoing Disclosures and Other Exemptive Conditions

9. On an annual basis, EAI will provide each affected Plan with a copy of an updated prospectus for the Fund. Upon request, the Plan will be provided with a report or statement (which may take the form of the most recent statement of additional information, or some other written statement) containing a description of all fees paid by the Fund to EACM.

In addition, as to each individual Plan, the combined total of all fees received by EAI and/or its affiliates for the provision of services to the Plans, and in connection with the provision of services to the Fund will not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act. Further, all dealings by or between the Plans and the Fund will remain on a basis which is at least as favorable to the Plans as such dealings are with other shareholders of the Fund.

10. In summary, EAI represents that the in-kind transfer transaction described herein satisfies the statutory criteria for an exemption under section 408(a) of the Act because:

(a) A Second Fiduciary authorized in writing, such in-kind transfer prior to the transaction and only after such Second Fiduciary received full written disclosure of information concerning the Fund.

(b) Each Plan received shares of the Fund in connection with the in-kind transfer of assets from SMEF to the Fund which were equal in value to the Plan's allocable share of assets that had been invested in SMEF on the date of the transfer as determined in a single valuation performed in the same manner and at the close of the business day, using independent sources in accordance with procedures established by the Fund which complied with Rule 17a–7 of the '40 Act, as amended, and the procedures established by the Fund pursuant to Rule 17a–7 for the valuation of such assets.

(c) Within 30 days following the completion of the in-kind transfer transaction, EAI provided the Second Fiduciary of each affected Plan with written confirmation containing (1) the identity of the security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) of the '40 Act, (2) the price of the security involved in the transaction; and (3) the identity of the pricing service or market maker consulted in determining the value of such securities.

(d) Within 90 days following the in-kind transfer, EAI mailed to the Second Fiduciary of each Plan, written confirmation containing (1) the number of SMEF units held by the Plan immediately before the transfer, the related per unit value and the total dollar amount of such SMEF units; and (2) the number of shares in the Fund that were held by the Plan following the transfer, the related per share net asset value and the total dollar amount of such shares.

(e) As to each Plan, the combined total of all fees received by EAI and/or its affiliates for the provision of services to the Plans, and in connection with the provision of services to the Fund will not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(f) No sales commissions were paid by a Plan in connection with the acquisition of shares of the Fund.

(g) With respect to investments in a Fund by the Plans, each Second Fiduciary received full and detailed written disclosure of information concerning the Fund, including a current prospectus and a statement describing the fee structure, and such Second Fiduciary authorized, in writing, the investment of the Plan's assets in the Fund and the fees paid by the Fund to the EACM.

(h) EAI will provide ongoing disclosures to Second Fiduciaries of Plans to verify the fees charged by the EACM to the Fund.

(i) All dealings by or between the Plans and the Fund have been and will remain on a basis which is at least as favorable to the Plans as such dealings are with other shareholders of the Fund.

Notice to Interested Persons

Notice of the proposed exemption will be given to Second Fiduciaries of Plans that have investments in SMEF and from whom approval was sought for the in-kind transfer of Plan assets to the Fund. Such notice will be provided to interested persons by first class mail within 14 days following the publication of the notice of pendency in the Federal Register. Such notice will include a copy of the notice of proposed exemption as published in the Federal Register as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing. Comments and requests for a public hearing are due within 44 days of the publication of the 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.)

Pension Plan of Roper Hospital, Inc. (the Plan) Located in Charleston, South Carolina

[Application No. D–10163]

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), 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 proposed cash sale (the Sale) by the Plan of Separate Investment Account Group Annuity Policy No. GA–4619 (the Policy) maintained by New England Mutual Life Insurance Company (NEL) to Roper Health System, Inc. (the Hospital), the Plan sponsor and a party in interest with respect to the Plan, provided the following conditions are satisfied: (a) The Sale is a one-time transaction for cash; (b) the Plan receives no less than the greater of the fair market value of the Policy at the time of the Sale, or $494,130; and (c) the Plan does not pay any commissions or other expenses in connection with the transaction.

Summary of Facts and Representations

1. The Hospital is a non-profit corporation with its principal office at Charleston, South Carolina. The Hospital sponsors the Plan, which is a defined benefit plan which had 2,431 participants and assets of approximately $22,936,604 as of December 31, 1994. Wachovia Bank of South Carolina, N.A. (the Bank) is the Plan's trustee. The Finance Committee of the Board of Trustees of the Hospital (the Finance Committee), however, has investment discretion with respect to the Policy. The Finance Committee consists of officers of the Hospital.

2. In order to better serve the retirement goals of its employees, the Board of Trustees of the Hospital (the Board) has determined to restructure its retirement program. To that end, the Board has approved the termination of the Plan effective as of September 30, 1995. In place of the Plan, the Board has approved the adoption of a tax-deferred savings plan under section 403(b) of the Code and an annuity plan under section 403(a) of the Code. Pursuant to the termination agreement (the Agreement), any assets remaining in the Plan after all benefit liabilities have been satisfied in accordance with the Act will be allocated and distributed to Plan participants in accordance with the allocation formulas specified in the Agreement. Accordingly, it is the Hospital's intent that the assets in the Plan be liquidated and distributed or applied for the benefit of participants and beneficiaries of the Plan. The applicant represents that pursuant to the terms of the Agreement participants' accrued benefits (although not surplus assets) were distributed on or about December 15, 1995. Distribution of the surplus assets, which will include the proceeds from the sale of the Policy to the Hospital (if the exemption proposed herein is granted), will not occur until later in 1996.

3. Commencing in March of 1987 and continuing until March of 1988, the Plan's prior trustees (the Prior Trustees), who consisted of individuals who were officers of the Hospital, invested a total of $1,398,064 in the Policy maintained by NEL. NEL maintains a separate investment fund under the Policy known as the Developmental Properties Account (the DPA). The DPA is invested in income-producing properties throughout the United States. During the early 1990's, the DPA declined significantly in value due to the recession and general downturn in the real estate market, both of which adversely affected virtually all real estate investment funds. The DPA currently is ''frozen'', meaning that no withdrawal requests are being honored by NEL. In fact, withdrawal requests have not been honored by NEL since June 30, 1991. Since that date, the Policy has declined in value by approximately $909,316. The Hospital first became aware that the DPA had been frozen at the same time as other investors, on or about November 15, 1991, through the 1991 Third Quarter Report provided by NEL, and without any opportunity to liquidate the Plan's investment. Accordingly, despite the DPA's decline in value, the Plan has been forced to continue to hold the Policy.[13] As of December 31, 1995, the fair market value of the Plan's interest in the DPA was $494,130. The fair market value was determined by NEL by multiplying the Plan's percentage ownership in the DPA by the aggregate fair market value of the assets of the DPA.

4. The applicant states that Mr. Fred Hyder of NEL has represented that at least one investor in the DPA sold its interest in the DPA to an unrelated buyer for one-third of its fair market value as determined by NEL. The investor was a retirement plan that had been terminated by the sponsoring employer. The trustee of the retirement plan was forced to sell its interest in the DPA to an unrelated buyer well below its stated fair market value in order to make distributions to participants upon termination. Mr. Hyder also indicated that in his opinion there is very little activity in the secondary market due to the inability of a DPA investor to sell its interest in the DPA to an unrelated buyer for its stated fair market value.

5. The Hospital has offered to purchase the Plan's interest in the DPA for the greater of its current fair market value as determined by NEL (without any diminution in value as described in rep. 4, above), or $494,130. Under Section V of the Policy, the Plan cannot sell its interest in the DPA without the consent of NEL (which consent cannot be unreasonably withheld). However, NEL has agreed to the transfer of the Plan's interest in the DPA to the Hospital, provided the exemption proposed herein is granted. The applicant represents that the Finance Committee has determined that the sale of the Policy to the Hospital is in the best interests of the Plan and its participants and beneficiaries because the sale will allow the Bank to liquidate the Plan's investment in the DPA for the investment's current fair market value and to distribute or apply the proceeds from the sale to participants and beneficiaries in accordance with the Agreement. If the exemption proposed herein is denied, there is no viable purchaser for the DPA other than the Hospital. In addition, the Finance Committee represents that if the exemption were denied, then the Plan would be required to continue as a wasting trust solely for the purpose of holding the Policy until it can be liquidated, which is unlikely to occur in the near future.

6. The fair market value of the Policy will be determined by the value reported by NEL as of the end of the quarter preceding the date of sale. There will be no reduction in this value as described in rep. 4, above. Copley Real Estate Advisors (Copley), an indirect subsidiary of NEL, acts as an asset manager and advisor to NEL with respect to the DPA. Copley selects qualified appraisal firms to conduct annual outside appraisals on the properties which make up the DPA. At quarterly dates between annual appraisals, Copley's asset management group prepares internal valuations. Copley represents that the internal valuations are based on the work that is completed by the outside appraiser and the same basic valuation methods used by the outside appraisers are used for the internal valuation. The Hospital represents that the valuations reported by NEL provide a reliable indication of the fair market value of the Policy and

[13] The Department notes that the decisions to acquire and hold the Policy are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the Policy issued by NEL.

the DPA. NEL and Copley are independent of the Hospital and the Bank.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 408(a) of the Act because: (a) The Sale is a one-time transaction for cash, and the Plan will pay no commissions or other expenses in connection with the Sale; (b) the Plan will receive cash for the Policy in an amount not less than the greater of the fair market value of the Policy as of the date of the Sale, or $494,130; (c) the fair market value of the Policy will be established by NEL, a party unrelated to the Plan and the Hospital; and d) the Sale will remove the Policy, which has been declining in value and is illiquid, from the Plan.

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

First Virginia Banks, Inc., Located in Falls Church, Virginia

[Application Nos. D–10175 thru D–10177]

Proposed Exemption

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

Section I—Transactions

The restrictions of sections 406(a), 406(b)(1) and 406(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 following transactions provided that all of the conditions set forth in Section II below are met:

(a) The cash sale on December 23, 1994 of certain variable rate certificates of deposit (CDs) issued by Merrill Lynch National Bank, Salt Lake City, Utah (the Merrill Lynch CDs) by forty (40) employee benefit plans, Keogh plans and individual retirement accounts (IRAs), for which First Knoxville Bank in Knoxville, Tennessee (the Bank) serves as a fiduciary, to First Virginia Banks, Inc. (First Virginia), a party in interest or disqualified person with respect to such plans and IRAs;

(b) The cash sale on various dates during 1995 of certain fixed rate CDs issued by various unrelated financial institutions (the Fixed Rate CDs) by eighteen (18) employee benefit plans, Keogh plans and IRAs, for which the Bank serves as a fiduciary to First Virginia, a party in interest or disqualified person with respect to such plans and IRAs; and

(c) The proposed cash sale of certain additional fixed rate CDs issued by various unrelated financial institutions (the Additional Fixed Rate CDs) by approximately twenty-one (21) employee benefit plans, Keogh plans and IRAs, for which the Bank serves as a fiduciary, to First Virginia, a party in interest or disqualified person with respect to such plans and IRAs.

Section II—Conditions

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

(b) Each plan or IRA (hereafter referred to as ''Plan'') receives an amount which is equal to the greater of (i) the face amount of the CDs owned by the Plan, plus accrued but unpaid interest, at the time of sale, or (ii) the fair market value of the CDs owned by the Plan as determined by an independent, qualified appraiser at the time of the sale;

(c) The Plans do not pay any commissions or other expenses with respect to the sale of such CDs;

(d) The Bank, as trustee of the Plans, determines that the sale of the CDs is in the best interests of each Plan and its participants and beneficiaries at the time of the transaction;

(e) The Bank takes all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the transactions;

(f) Each Plan receives a reasonable rate of interest on the CDs during the period of time such CDs are held by the Plan;

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

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

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

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

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

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

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of December 23, 1994, for the transactions described in Section I(a) above, and the various appropriate sale dates in 1995 for the transactions described above in Section I(b).

Summary of Facts and Representations

1. The Bank is a wholly-owned subsidiary of First Virginia. The Bank, formerly called the First National Bank of Knoxville, was acquired by First Virginia in June 1994. The Bank serves as trustee, directed trustee, or custodian of various small employee benefit plans, Keogh plans and IRAs (collectively, the Plans). The Bank, as trustee, has investment discretion for the assets of the Plans.

The Bank represents that following its acquisition by First Virginia, a number of problems surfaced upon review of the investment portfolios of the Plans regarding their acquisition and holding of certain CDs, as discussed below.[14]

[14] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the CDs by the Plans violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In this regard, the Department is not providing any opinion as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that,

The Merrill Lynch CDs

2. On October 18, 1993, the Bank, in its capacity as a fiduciary of certain Plans, purchased the Merrill Lynch CDs through the brokerage firm of Dunham & Associates Investment Counsel, Inc. (Dunham) of San Diego, California. The Bank states that Dunham did not provide any investment advice as a fiduciary regarding the investments made by the Bank in the Merrill Lynch CDs for the Plans.

There were 40 Plans involved in the purchase of the Merrill Lynch CDs by the Bank. Of these 40 Plans, approximately 32 Plans had only one participant covered by the Plan. The Plan with the largest number of participants was the Collier Development Company Profit Sharing Plan (the Collier P/S Plan), which had 83 participants and beneficiaries. The Collier P/S Plan had $101,149 in total assets, of which $26,000 or approximately 26 percent was invested in the Merrill Lynch CDs. The Plan with the largest amount of assets was the Theodore Haase, M.D., IRA (the Haase IRA) which had total assets of $1,172,511, at the time of the transactions. The Haase IRA had $21,000 invested in the Merrill Lynch CDs, which represented approximately two (2) percent of its total assets. The Plan with the largest investment in the Merrill Lynch CDs was the Gordon S. Hutchins IRA, which had such CDs with a face amount of $99,000. This amount represented approximately 64 percent of such Plan's total assets.

The percentage of a Plan's total assets represented by investments in the Merrill Lynch CDs varied from as little as one (1) percent [e.g. the Mulford Enterprises Profit Sharing Plan] to as much as 92 percent [e.g. the Audrey Denton IRA]. However, most of the Plans had less than 25 percent of their total assets invested in the Merrill Lynch CDs.

3. The Merrill Lynch CDs were issued by Merrill Lynch National Bank in Salt Lake City, Utah, with a total face value of $1,995,000, and are scheduled to mature on October 18, 1998. The Merrill Lynch CDs owned by the Plans had a total face value of $894,500. The Bank states that the interest rate on the Merrill Lynch CDs was fixed at 5.00 percent per annum for the first year. However, the interest rate in the subsequent years until maturity on October 18, 1998, is a stated interest rate offset by the current six-month London Interbank Offered Rate (LIBOR) as follows: (i) years two and three—8.50 percent per annum minus six-month LIBOR; and (ii) years four and five—10.50 percent minus six-month LIBOR.

4. The Bank represents that the information provided by Dunham to the Bank prior to the Bank's purchase of the Merrill Lynch CDs on behalf of the Plans indicated that there was no early withdrawal penalty. However, the Bank states that when it requested to redeem the Merrill Lynch CDs without a withdrawal penalty, the request was declined by Dunham, who indicated that such CDs could not be redeemed prior to maturity, with or without penalty.

5. The Bank represents that the fair market value of the Merrill Lynch CDs was significantly below their face value as of December 1994. The Bank states that the significant decline in the fair market value of the Merrill Lynch CDs was attributable to two factors: (i) the fact that the interest rate on the CDs dropped to 2.54 percent (8.50 percent minus LIBOR), effective for the six-month period beginning October 18, 1994; [15] and (ii) rising interest rates in the marketplace for comparable fixed income investments of the same duration, as measured by various interest rate indexes at the time.

Therefore, the Bank made a determination that it would be in the best interests of the Plans to sell the CDs to the Holding Company to avoid the investment losses which would result to the Plans from any sale on the open market.

6. Davenport & Company of Virginia, Inc. (Davenport), an independent qualified appraiser located in Richmond, Virginia, appraised the Merrill Lynch CDs as having a fair market value of approximately $70.75 per $100 of face value, as of December 23, 1994. Davenport's analysis described the Merrill Lynch CDs as ''inverse floaters'' paying below market interest rates at the time of the transaction. Davenport states that the Merrill Lynch CDs are a ''derivative type of security'' which involves a complicated pricing process to determine market value. Davenport represents that dealers trading such securities use data from the interest rate swap market and various interest rate forecasts to determine their bid prices. In addition, Davenport notes that since the Merrill Lynch CDs are traded over-the-counter and are not listed on an exchange, dealers have different options as to how to value such securities. Davenport concluded that as a result of the then current interest rates, as measured by LIBOR and other indexes at the time of the transaction, and market data concerning interest rate forecasts, there were few dealers or other buyers interested in purchasing the Merrill Lynch CDs without a significant discount on their face value.

7. On December 23, 1994, the Holding Company purchased the Merrill Lynch CDs from the Plans for cash at their full face value, an amount which was significantly above the fair market value of the CDs at that time as determined by Davenport. In addition, the Holding Company paid the Plans interest at the originally stated rate of 5.00 percent per annum through the date of purchase, even though the Merrill Lynch CDs began earning interest at an annual rate of 2.54 percent on October 18, 1994. The Plans did not pay any commissions or other expenses with respect to the transactions.

The Bank states that it engaged in the transaction on behalf of the Plans for the following reasons: (i) the purchase of the Merrill Lynch CDs by the Holding Company provided the Plans with full access to the total face value of the CDs, without any withdrawal penalty, and avoided the investment loss which would have occurred from a sale of the CDs on the open market; (ii) as a result of the transaction, the Plans had the funds immediately available for either reinvestment at the current higher market interest rates or for distribution to the Plan participants and beneficiaries, as appropriate; (iii) the interest rate of 5.00 percent per annum paid on the CDs by the Holding Company was significantly higher than the effective interest rate of 2.54 percent per annum being paid on the CDs at the time of the transaction; and (iv) since the Merrill Lynch CDs could not be redeemed prior to maturity, such CDs became effectively an illiquid

given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a–1). The Department also notes that in order to act prudently in making such investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than comparable investments offering a similar return or result.

[15] In this regard, the applicant states that the six-month LIBOR rate was 3.375 percent on October 18, 1993, the date on which the Merrill Lynch CDs were acquired, and 6.9375 percent on December 13, 1994, prior to the sale of such CDs to the Holding Company discussed herein. The interest paid originally on the Merrill Lynch CDs was 5.00 percent as of October 18, 1993, and 2.54 percent as of December 13, 1994.

investment which was unsuitable for the Plans.

Certain Fixed Rate CDs

8. On various dates prior to June 1994, the Bank, in its capacity as a fiduciary of certain Plans, purchased the Fixed Rate CDs through brokerage firms unrelated to the Bank and its affiliates. The Bank states that these brokerage firms did not provide any investment advice as a fiduciary regarding the investments made by the Bank in the Fixed Rate CDs for the Plans. There were approximately forty-three (43) different Fixed Rate CDs held by such Plans as of December 1994.

There were 18 Plans involved in the purchase of the Fixed Rate CDs by the Bank. Of these 18 Plans, approximately 13 Plans had only one participant covered by the Plan. The Plan with the largest number of participants was the Farragut Ditching Profit Sharing Plan (the Farragut P/S Plan), which had approximately 50 participants and beneficiaries and total assets of $694,803 at the time of the transactions. The Farragut P/S Plan had $196,000 invested in the Fixed Rate CDs, which represented approximately 28 percent of its total assets. The Plan with the largest amount of total assets was the Jayne C. Tilley IRA (the Tilley IRA), which had approximately $989,733 at the time of the transactions. The Plan with the largest investment in the Fixed Rate CDs was also the Tilley IRA, which had such CDs with a face amount of $209,000. This amount represented approximately 21 percent of such Plan's total assets at the time of the transactions.

The percentage of a Plan's total assets represented by investments in the Fixed Rate CDs varied from as little as one (1) percent [e.g. the Dean Cox IRA] to as much as 96 percent [e.g. the National Fuel SEP]. However, most of the Plans had less than 30 percent of their total assets invested in the Fixed Rate CDs.

9. The Fixed Rate CDs were issued by various financial institutions, all of which were unrelated to the Bank and its affiliates. These financial institutions were: (a) First USA Bank, in Wilmington, Delaware; (b) Bluebonnet Savings Bank, FSB, in Dallas, Texas; (c) State Bank of India, in New York, New York; (d) Columbia First Bank, in Arlington, Virginia; (e) Amerifed Bank, FSB, in Joliet, Illinois; (f) Home Savings of America, in Los Angeles, California; (g) FNB Boston, in Boston, Massachusetts; (h) Provident Bank, in Cincinnati, Ohio; (i) Home Federal Bank of Tennessee, FSB, in Knoxville, Tennessee; (j) Investors Thrift and Loan, in Monterey, California; (k) Greenwood Trust Company, in New Castle, Delaware; and (l) Merrill Lynch National Bank, in Salt Lake City, Utah.

The Fixed Rate CDs held by the Plans had a total face value of $1,199,150, with maturity dates ranging from May 1995 to January 1999. The Bank states that the interest rates on these CDs was fixed in each case for the entire length of the CDs. The interest rates paid on the Fixed Rate CDs ranged from 4.80 percent per annum for the CD issued by Amerifed Bank [with a par value of $10,000 and maturity on August 18, 1995] to 6.25 percent per annum for the CD issued by FNB Boston [with a par value of $20,100 and maturity on January 1, 1999]. However, subsequent to the purchase of the Fixed Rate CDs by the Plans, the Bank learned that these CDs could not be redeemed prior to maturity, with or without penalty.

10. The Bank represents that the fair market value of each of the Fixed Rate CDs was below its face value during 1995. The Bank states that the decline in the fair market value of the Fixed Rate CDs was attributable to rising interest rates in the marketplace for comparable fixed income investments of the same duration, as measured by various interest rate indexes at the time.

Therefore, the Bank made a determination that it would be in the best interests of the Plans to sell the Fixed Rate CDs to the Holding Company prior to their maturity to avoid any investment losses which could result to the Plans from a sale of such CDs on the open market.

11. Davenport also appraised each of the Fixed Rate CDs as having a fair market value which was below its face value at the time of the subject transactions in 1995. These valuations ranged from approximately $91.658 per $100 of face value, as of March 14, 1995, for the Fixed Rate CD issued by Greenwood Trust [which pays 5.00 percent per annum and is due to mature on September 28, 1998], to approximately $99.216 per $100 face value, as of April 19, 1995, for the Fixed Rate CD issued First USA Bank [which paid 6.15 percent per annum and matured on May 29, 1995].

Davenport's analysis was based on information from brokerage firms and banks that trade such CDs. Davenport represents that the Fixed Rate CDs are not as liquid as other fixed income securities due to a number of factors including par amount, lack of issuer recognition, limited secondary market, lack of knowledge of the issuers financial strength and their non-rated status. Davenport states that dealers that trade such CDs usually demand yields between 50–70 basis points above the yield for comparable U.S. Treasury securities to account for these factors, despite the U.S. Government guarantee for CDs with face amounts under $100,000. Davenport's analysis estimated that bids for the Fixed Rate CDs would require an average yield of approximately 60 basis points above the yield for comparable U.S. Treasury securities, before deducting approximately $7.50 per $1,000 face amount as an average commission for an open market transaction. Davenport's conclusions regarding the market value of the Fixed Rate CDs supported the Bank's determinations to sell these CDs to the Holding Company.

12. On various dates during 1995, the Holding Company purchased the Fixed Rate CDs from the Plans for cash prior to maturity at their full face value, an amount which was above the fair market value of the CDs at that time as determined by Davenport. The Bank states that these transactions occurred on the following dates: (i) 10 Fixed Rate CDs were sold on March 14, 1995; (ii) one Fixed Rate CD was sold on March 31, 1995; (iii) three Fixed Rate CDs were sold on April 7, 1995; (iv) two Fixed Rate CDs were sold on April 19, 1995; (v) one Fixed Rate CD was sold on April 27, 1995; (vi) three Fixed Rate CDs were sold on May 26, 1995; (vii) four Fixed Rate CDs were sold on June 1, 1995; (viii) three Fixed Rate CDs were sold on June 2, 1995; (ix) one Fixed Rate CD was sold on August 2, 1995; (x) five Fixed Rate CDs were sold on August 7, 1995; (xi) four Fixed Rate CDs were sold on August 8, 1995; and (xii) six Fixed Rate CDs were sold on August 11, 1995. In each case, the Holding Company paid the Plans any accrued but unpaid interest at the stated fixed rate for the CD through the date of purchase. The Plans did not pay any commissions or other expenses with respect to the transactions.

The Bank states that it engaged in these transactions on behalf of the Plans for the following reasons: (i) The purchase of the Fixed Rate CDs by the Holding Company provided the Plans with full access to the total face value of the CDs, without any withdrawal penalty, and avoided the investment loss which would have occurred from a sale of the CDs on the open market; (ii) as a result of the transaction, the Plans had the funds immediately available for either reinvestment at the current higher market interest rates or for distribution to the Plan participants and beneficiaries, as appropriate; and (iii) since the Fixed Rate CDs could not be redeemed prior to maturity, such CDs became effectively illiquid investments which were unsuitable for the Plans.

Additional Fixed Rate CDs

13. On various dates prior to June 1994, the Bank, in its capacity as a fiduciary of certain Plans, purchased the Additional Fixed Rate CDs through brokerage firms unrelated to the Bank and its affiliates. The Bank states that these brokerage firms did not provide the Bank with any investment advice as a fiduciary regarding the investments in the Additional Fixed Rate CDs made for the Plans. There are approximately sixteen (16) different Additional Fixed Rate CDs held by such Plans.

There were 21 Plans involved in the purchase of the Additional Fixed Rate CDs by the Bank. Of these 21 Plans, approximately 16 Plans currently have only one participant covered by the Plan. The Plan with the largest number of participants is the Bandit Lites Profit Sharing Plan (the Bandit Lites P/S Plan), which has approximately 37 participants and beneficiaries. The Bandit Lites P/S Plan has approximately $240,935 in total assets, of which $53,000 or approximately 21 percent of such assets are invested in the Additional Fixed Rate CDs. The Plan with the largest amount of assets is the Douglas G. Slater IRA (the Slater IRA), which has approximately $2,454,803. The Plan with the largest investment in the Additional Fixed Rate CDs is also the Slater IRA, which has such CDs with a face amount of $383,000. This amount represents approximately 15.5 percent of such Plan's total assets.

The percentage of a Plan's total assets represented by investments in the Additional Fixed Rate CDs varies from as little as two (2) percent [e.g. the Donald Campbell SEP–IRA] to as much as 87 percent [e.g. the William Myers IRA]. However, most of the Plans have less than 30 percent of their total assets invested in the Additional Fixed Rate CDs.

14. The Additional Fixed Rate CDs were issued by various financial institutions unrelated to the Bank and its affiliates (see list in Paragraph 9 above). The Additional Fixed Rate CDs held by the Plans have a total face value of $875,150, with maturity dates ranging from June 1996 until January 1999. The Bank states that the interest rates on these CDs are fixed in each case for the entire length of the CDs. The interest rates on the Additional Fixed Rate CDs range from 5.00 percent per annum for the CD issued by Bluebonnet Savings Bank [with a par value of $10,000 and maturity on June 14, 1996] to 5.50 percent per annum for the CD issued by Provident Bank [with a par value of $19,000 and maturity on December 10, 1997].

The Bank represents that at the time the Additional Fixed Rate CDs were purchased, the Bank believed that there was no early withdrawal penalty. However, the Bank states that it subsequently learned that these CDs cannot be redeemed prior to maturity, with or without penalty.

15. The Bank proposes to sell the Additional Fixed Rate CDs to the Holding Company for cash prior to their maturity at an amount equal to the greater of either: (i) The face amount of such CDs, plus accrued interest; or (ii) the fair market value of such CDs, plus accrued interest, as determined by an independent, qualified appraiser at the time of the transaction.

Davenport has provided an opinion as to the market value of the Additional Fixed Rate CDs, as of September 21, 1995. Davenport's valuations for these CDs as of such date ranged from approximately $95.112 per $100 of face value for the Additional Fixed Rate CD issued by Greenwood Trust [which pays 5.00 percent per annum and is due to mature on September 29, 1998], to approximately $98.28 per $100 of face value for the Additional Fixed Rate CD issued by Bluebonnet Savings Bank [which pays 5.00 percent per annum and is due to mature on June 14, 1996].

The Bank states that it wants to engage in the proposed transactions on behalf of the Plans for the following reasons: (i) The purchase of the Additional Fixed Rate CDs by the Holding Company would provide the Plans with full access to the total face value of the CDs, without any withdrawal penalty, and would avoid the possibility of investment losses that may occur in a sale of the CDs on the open market; (ii) as a result of the transaction, the Plans will have the funds immediately available for either reinvestment at any higher market interest rates currently available at the time of the proposed transaction or for distribution to the Plan participants and beneficiaries, as appropriate; and (iii) since the Additional Fixed Rate CDs cannot be redeemed prior to maturity, such CDs are effectively illiquid investments which are unsuitable for the Plans.

Therefore, the Bank believes that it would be in the best interests of the Plans to sell certain of the Additional Fixed Rate CDs to the Holding Company prior to their maturity. The Bank states that the Plans will not pay any commissions or other expenses with respect to the sale.

16. In summary, the Bank represents that the subject transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) Each sale has been and will be a one-time transaction for cash; (b) each Plan has received or will receive an amount which is equal to the greater of (i) the face amount of the CDs owned by the Plan, plus accrued but unpaid interest, at the time of sale, or (ii) the fair market value of the CDs owned by the Plan as determined by an independent, qualified appraiser at the time of the sale; (c) the Plans have not paid and will not pay any commissions or other expenses with respect to the sales of the CDs; (d) the Bank, as trustee of the Plans, has determined and will determine that each sale of the CDs was or will be in the best interests of the Plan and its participants and beneficiaries at the time of the transaction; (e) the Bank has taken and will take all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the transactions; and (f) each Plan has received and will receive a reasonable rate of interest on the CDs during the period of time such CDs were or are held by the Plan.

Notice to Interested Persons

The applicant states that notice of the proposed exemption shall be made by first class mail to the appropriate Plan fiduciaries within fifteen days following the publication of the proposed exemption in the Federal Register. This notice shall include a copy of the notice of proposed exemption as published in the Federal Register and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five days following the publication of the proposed exemption in the Federal Register.

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

First Security Group Life Insurance Plan (the Plan) Located in Salt Lake City, Utah

[Application No. L–10178]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act 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 (b) of the Act shall not apply to the reinsurance of risks and the receipt of

premiums therefrom by First Security Life Insurance Company of Arizona (FSLIA) from the insurance contracts sold by Minnesota Mutual Life Insurance Company (MM) or any successor insurance company to MM which is unrelated to First Security Corporation (FSC), to provide life insurance benefits to participants in the Plan, provided the following conditions are met:

(a) FSLIA—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with FSC that is described in section 3(14) (E) or (G) of the Act,

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one of the United States or in the District of Columbia,

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state which has neither been revoked nor suspended, and

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its current domiciliary State, Arizona) by the Insurance Commissioner of the State of Arizona within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid with respect to the direct sale of such contracts or the reinsurance thereof; and

(d) For each taxable year of FSLIA, the gross premiums and annuity considerations received in that taxable year by FSLIA for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which FSLIA is a party in interest by reason of a relationship to such employer described in section 3(14) (E) or (G) of the Act does not exceed 50% of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by FSLIA. For purposes of this condition (d):

(1) the term ''gross premiums and annuity considerations received'' means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by FSLIA. This total is to be reduced (in both the numerator and the denominator of the fraction) by experience refunds paid or credited in that taxable year by FSLIA.

(2) all premium and annuity considerations written by FSLIA for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective August 1, 1993.

Preamble

On August 7, 1979, the Department published a class exemption [Prohibited Transaction Exemption 79–41 (PTE 79–41), 44 FR 46365] which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans if certain conditions are satisfied.

In PTE 79–41, the Department stated its views that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction.

The Department further stated that as of the date of publication of PTE 79–41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and the unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

1. FSC is incorporated under the laws of the State of Delaware and is a regional bank holding company with banking subsidiaries in six western states. In addition, it has ten other subsidiaries, including a leasing company, a mortgage company, a life insurance company (FSLIA), an insurance agency company, a discount securities brokerage company, two financial services companies, and two companies providing technical and logistical services to other FSC subsidiaries.

2. FSLIA is a corporation organized under the laws of Arizona with its principal administrative offices in Salt Lake City, Utah. FSLIA was originally organized in Texas in August, 1954 and operated as a life insurance company domiciled in that State until 1991. On December 20, 1991, FSLIA moved its corporate domicile from Texas to Arizona. FSLIA has always been a wholly owned subsidiary of FSC and is currently licensed to underwrite life insurance business in Arizona. FSLIA is primarily engaged in the businesses of: (i) Fully underwriting credit life and disability insurance indirectly to the general public through an unrelated insurance underwriter; and (ii) reinsurance of credit life and disability policies sold by other insurance companies.

3. The Plan is sponsored by FSC and most of its subsidiaries. The Plan is composed of two parts, the First Security Basic Group Term Life Insurance Plan, and the First Security Add-on Group Life Insurance Plan (which provides both optional add-on employee coverage and optional dependent coverage. It is a welfare benefit plan providing life insurance on the lives of all employees who are regularly scheduled to work 25 hours per week, as well as add-on life insurance on the lives of such employees and life insurance on the lives of the dependents of such employees who voluntarily elect to have and pay for the coverage. The Basic Term Life Insurance Plan had 7,044 participants as of September 30, 1995, and the Add-on Group Life Insurance Plan had 3,333 participants with coverage on their own lives and 2,698 participants with dependent coverage as of that date. Premiums for basic coverage are paid for by the employers, while premiums for add-on and dependent insurance are wholly paid for by the employees through payroll deduction. The premiums are transferred twice monthly to a VEBA, from which they are remitted monthly to the direct insurer.

4. The life insurance is currently underwritten by MM, an unaffiliated insurance carrier. The life insurance benefits under the Plan are provided by MM and reinsured on a 50% basis by FSLIA, i.e., FSLIA receives 50% of the premiums paid and pays 50% of the claims under the MM policy. The

reinsurance contract between FSLIA and MM was entered into effective August 1, 1993, and was actually implemented in stages between that date and December 31, 1993. The applicants have requested that this proposed exemption apply to any successor company to MM that is also unrelated to FSC should FSC decide to insure this life insurance coverage with another carrier under the same kind of arrangement.

5. The applicants represent that the subject transaction has not and will not in any way affect the cost to the insureds of the group life insurance contracts, and the Plan has paid and will pay no more than adequate consideration for the insurance. Also, Plan participants are afforded insurance protection from MM, one of the largest and most experienced group insurers in the United States, at competitive rates arrived at through arm's-length negotiations. MM is rated A++ by the A.W. Best Company, whose insurance ratings are widely used in financial and regulatory circles. MM has assets in excess of $8.5 billion and reserves set aside for group life and accident and health policies of nearly $346 million. MM will continue to have the ultimate responsibility in the event of loss to pay insurance benefits to the employee's beneficiary.[16] The applicants represent that FSLIA is a sound, viable company which does a substantial amount of business outside its affiliated group of companies. FSLIA is substantially dependent upon insurance customers that are unrelated to itself and its affiliates for premium revenue.

6. The applicants represent that the subject reinsurance transaction has met and will continue to meet all of the conditions of PTE 79–41 covering direct insurance transactions:

(a) FSLIA is a party in interest with respect to the Plan (within the meaning of section 3(14)(G) of the Act) by reason of stock affiliation with FSC, which maintains the Plan.

(b) FSLIA is licensed to do business in Arizona;

(c) FSLIA has been audited by the independent certified public accounting firm of Deloitte & Touche for each of its fiscal years since 1992 and has therefore undergone such an examination for each completed taxable year of the reinsurance transaction.

(d) FSLIA has received Certificates of Authority from its respective domiciliary states (first Texas, then Arizona) which have been audited or reviewed annually since its organization and which have neither been revoked nor suspended.

(e) The Plan has paid and will pay no more than adequate consideration for the insurance. The subject transaction has not and will not in any way affect the cost to the insureds of the group life insurance transaction.

(f) No commissions have been or will be paid with respect to the direct insurance or the reinsurance agreements between MM (or any successor thereto) and FSC and FSLIA.

(g) For each taxable year of FSLIA, the ''gross premiums and annuity considerations received'' in that taxable year for group life and health insurance (both direct insurance and reinsurance) for all employee benefit plans (and their employers) with respect to which FSLIA is a party in interest by reason of a relationship to such employer described in section 3(14)(E) or (G) of the Act have not exceeded and will not exceed 50% of the ''gross premiums and annuity considerations received'' by FSLIA from all lines of insurance in that taxable year. Most of the premium income of FSLIA comes from reinsurance, but some is credit life insurance written on a direct basis. FSLIA is principally in the business of reinsurance. The applicants represent that the premiums for the Plan insurance have never exceeded 18.8% of FSLIA's total premiums. In 1995, the premium income of FSLIA came from the following sources in the following amounts:

(1) MM reinsurance on the subject Plan group policy: $559,209.

(2) Reinsurance of credit life insurance sold to individual customers of FSC group—

(A) American Bankers Credit reinsurance: $1,463,747

(B) Central States of Omaha Visa Credit reinsurance: $807,049

(C) Balboa Credit reinsurance on commercial loans: $154,000.

Thus, more than 81% of FSLIA's premiums for 1995 were derived from insurance (or reinsurance thereon) sold to entities other than FSC and its affiliated group.

7. In summary, the applicants represent that the subject transaction has met and will continue to meet the criteria of section 408(a) of the Act because: a) Plan participants and beneficiaries are afforded insurance protection by MM, one of the largest and most experienced group insurers in the United States, at competitive market rates arrived at through arm's-length negotiations; b) FSLIA is a sound, viable insurance company which does a substantial amount of public business outside its affiliated group of companies; and c) each of the protections provided to the Plan and its participants and beneficiaries by PTE 79–41 has been and will continue to be met under the subject reinsurance transaction.

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

Chicago Trust Company (Chicago Trust) Located in Chicago, IL

[Application No. D–10222]

Proposed Exemption

Based on the facts and representations set forth in the application, 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).[17]

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

If the exemption is granted, the restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (F) shall not apply, effective September 21, 1995, to the in-kind transfer to any diversified open-end investment company (the Fund or Funds) registered under the Investment Company Act of 1940 (the '40 Act) to which Chicago Trust or any of its affiliates (collectively, Chicago Trust) serves as investment adviser and/or may provide other services, of the assets of various employee benefit plans (the Client Plans), including plans established or maintained by Chicago Trust (the In-House Plans; collectively, the Plans) that are either held in certain collective investment funds (the CIF or CIFs) maintained by Chicago Trust as trustee, investment manager, in exchange for shares of such Funds, provided that the following conditions are met:

(a) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected In-House Plan or Client Plan and who is independent of and unrelated to Chicago Trust, as defined in paragraph (h) of Section III below, receives advance written notice of the in-kind transfer of assets of the CIFs in exchange

[16] The applicants represent that any successor to MM would be a legal reserve life insurance company with assets of not less than $500,000,000, and thus be of such a size as to afford similar protection and responsibility.

[17] For purposes of this proposed exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

for shares of the Funds and the disclosures described in paragraph (f) of Section II below.

(b) On the basis of the information described in paragraph (f) of Section II below, the Second Fiduciary authorizes in writing the in-kind transfer of assets of an In- House Plan or a Client Plan in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, and, in the case of a Client Plan, the fees received by Chicago Trust pursuant to its investment advisory agreement with the Funds. Such authorization by the Second Fiduciary is to be consistent with the responsibilities, obligations and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(c) No sales commissions or redemption fees are paid by an In-House Plan or a Client Plan in connection with the in-kind transfers of assets of the CIFs in exchange for shares of the Funds.

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

(e) The CIFs receive shares of the Funds that have a total net asset value equal in value to the assets of the CIFs exchanged for such shares on the date of transfer.

(f) The current value of the assets of the CIFs to be transferred in-kind in exchange for shares is determined in a single valuation performed in the same manner and at the close of business on the same day, using independent sources in accordance with the procedures set forth in Rule 17a–7(b) (Rule 17a–7) under the '40 Act, as amended from time to time or any successor rule, regulation, or similar pronouncement and the procedures established pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of Chicago Trust.

(g) Not later than 30 days after completion of each in-kind transfer of assets of the CIFs in exchange for shares of the Funds, Chicago Trust sends by regular mail to the Second Fiduciary, who is acting on behalf of each affected Plan and who is independent of and unrelated to Chicago Trust, as defined in paragraph (h) of Section III below, a written confirmation that contains the following information:

(1) The identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) under the '40 Act;

(2) The price of each such assets for purposes of the transaction; and

(3) The identity of each pricing service or market maker consulted in determining the value of such assets.

(h) Not later than 90 days after completion of each in-kind transfer of assets of the CIFs in exchange for shares of the Funds, Chicago Trust sends by regular mail to the Second Fiduciary, who is acting on behalf of each affected In-House Plan or Client Plan and who is independent of and unrelated to Chicago Trust, as defined in paragraph (h) of Section III below, a written confirmation that contains the following information:

(1) The number of CIF units held by each affected Plan immediately before the in-kind transfer (and the related per unit value and the aggregate dollar value of the units transferred); and

(2) The number of shares in the Funds that are held by each affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

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

Section II. Exemption for the Receipt of Fees From Funds

If the exemption is granted, the restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply, effective September 21, 1995, to (1) the receipt of fees by Chicago Trust from the Funds for investment advisory services to the Funds; and (2) the receipt or retention of fees by Chicago Trust from the Funds for acting as custodian or shareholder servicing agent to the Funds, as well as any other services provided to the Funds which are not investment advisory services (i.e., the Secondary Services), in connection with the investment of shares in the Funds by the Client Plans for which Chicago Trust acts as a fiduciary, provided that—

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

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

(c) Chicago Trust, any of its affiliates or their officers or directors do not purchase from or sell to any of the Client Plans shares of any of the Funds.

(d) For each Client Plan, the combined total of all fees received by Chicago Trust for the provision of services to such Plan, and in connection with the provision of services to any of the Funds in which the Client Plans may invest, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(e) Chicago Trust does not receive any fees payable, pursuant to Rule 12b-1 (the 12b-1 Fees) under the '40 Act in connection with the transactions involving the Funds.

(f) A Second Fiduciary who is acting on behalf of a Client Plan and who is independent of and unrelated to Chicago Trust, as defined in paragraph (h) of Section III below, receives in advance of the investment by a Client Plan in any of the Funds a full and detailed written disclosure of information concerning such Fund including, but not limited to—

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

(2) A statement describing the fees for investment advisory or other similar services, any fees for Secondary Services, as defined in paragraph (i) of Section III below, and all other fees to be charged to or paid by the Client Plan and by such Funds to Chicago Trust, including the nature and extent of any differential between the rates of such fees;

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

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

(5) A copy of the proposed exemption and/or a copy of the final exemption, if

granted, upon the request of the Second Fiduciary; and

(6) The last date as of which consent to an in-kind transfer may be given by the Second Fiduciary, along with the disclosure that if consent is not given by that date, the Second Fiduciary will be deemed to have withheld consent to an in-kind transfer.

(g) On the basis of the information described in paragraph (f) of this Section II, the Second Fiduciary authorizes in writing—

(1) The investment of assets of the Client Plan in shares of the Fund, in connection with the transaction set forth in Section II;

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

(3) The fees received by Chicago Trust in connection with investment advisory services and Secondary Services provided to the Funds; such authorization by the Second Fiduciary to be consistent with the responsibilities obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(h) The authorization, described in paragraph (g) of this Section II, is terminable at will by the Second Fiduciary of a Client Plan, without penalty to such Client Plan. Such termination will be effected by Chicago Trust selling the shares of the Funds held by the affected Client Plan within one business day following receipt by Chicago Trust, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of written notice of termination (the Termination Form), as defined in paragraph (i) of Section III below; provided that if, due to circumstances beyond the control of Chicago Trust, the sale cannot be executed within one business day, Chicago Trust shall have one additional business day to complete such sale.

(i) The Client Plans do not pay any Plan-level investment advisory fees to Chicago Trust with respect to any of the assets of such Client Plans which are invested in shares of the Funds. This condition does not preclude the payment of investment advisory fees by the Funds to Chicago Trust under the terms of an investment advisory agreement adopted in accordance with section 15 of the '40 Act or other agreement between Chicago Trust and the Funds or the retention by Chicago Trust of fees for Secondary Services paid to Chicago Trust by the Funds.

(j) In the event of an increase in the rate of any fees paid by the Funds to Chicago Trust regarding investment advisory services that Chicago Trust provides to the Funds over an existing rate for such services that had been authorized by a Second Fiduciary of a Client Plan, in accordance with paragraph (g) of this Section II, Chicago Trust will, at least 30 days in advance of the implementation of such increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the increase in fees) to the Second Fiduciary of each Client Plan invested in a Fund which is increasing such fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (j) of Section III below;

(k) In the event of an (1) addition of a Secondary Service, as defined in paragraph (h) of Section III below, provided by Chicago Trust to the Funds for which a fee is charged or (2) an increase in the rate of any fee paid by the Funds to Chicago Trust for any Secondary Service that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by Chicago Trust for such fee over an existing rate for such Secondary Service which had been authorized by the Secondary Fiduciary in accordance with paragraph (g) of this Section II, Chicago Trust will, at least 30 days in advance of the implementation of such Secondary Service or fee increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Funds and which explains the nature and amount of the additional Secondary Service for which a fee is charged or the nature and amount of the increase in fees) to the Second Fiduciary of each of the Client Plans invested in a Fund which is adding a service or increasing fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (j) of Section III below.

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

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

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

(m) The Second Fiduciary is supplied with a Termination Form at least once in each calendar year, beginning with the calendar year that begins after the grant of this proposed exemption is published in the Federal Register and continuing for each calendar year thereafter; provided that the Termination Form need not be supplied to the Second Fiduciary, pursuant to this paragraph, sooner than six months after such Termination Form is supplied pursuant to paragraphs (j) and (k) of this Section II, except to the extent required by said paragraphs (j) and (k) of this Section II to disclose an additional Secondary Service for which a fee is charged or an increase in fees;

(n)(1) With respect to each of the Funds in which a Client Plan invests, Chicago Trust will provide the Second Fiduciary of such Plan—

(A) At least annually with a copy of an updated prospectus of such Fund;

(B) A report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to Chicago Trust within 15 days of such document's availability; and

(2) With respect to each of the Funds in which a Client Plan invests, in the event such Fund places brokerage transactions with Chicago Trust or any adviser or sub-adviser to a Fund or any of their affiliates (collectively, Related Party Brokerage), Chicago Trust will provide the Second Fiduciary of such Client Plan at least annually with a statement specifying—

(A) The total, expressed in dollars, attributable to each Fund's investment portfolio which represent Related Party Brokerage;

(B) The total, expressed in dollars, of brokerage commissions attributable to each Fund's investment portfolio other than Related Party Brokerage;

(C) The average brokerage commissions per share, expressed as cents per share, paid for Related Party Brokerage by each Fund; and

(D) The average brokerage commissions per share, expressed as cents per share, paid by each Fund for brokerage other than Related Party Brokerage.

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

(p) Chicago Trust maintains for a period of 6 years the records necessary to enable the persons, as described in paragraph (q) of Section II below, to determine whether the conditions of this proposed exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Chicago Trust, the records are lost or destroyed prior to the end of the 6 year period; and

(2) No party in interest, other than Chicago Trust, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (q) of Section II below.

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

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

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

(C) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (q)(1)(B) and (q)(1)(C) of Section II shall be authorized to examine trade secrets of Chicago Trust, or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption,

(a) The term ''Chicago Trust'' means Chicago Trust Company and any affiliate of Chicago Trust, as defined in paragraph (b) of this Section III.

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

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

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

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

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

(d) The terms ''Fund or Funds'' mean any diversified open-end investment company or companies registered under the '40 Act for which Chicago Trust serves as investment adviser and may also provide custodial or other services such as Secondary Services as approved by such Funds.

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

(f) The term ''Plan'' means any ''employee benefit pension plan'' within the meaning of section 3(2) of the Act or any ''plan'' within the meaning of section 4975(e)(1) of the Code. The term ''Plan'' includes any plan maintained by an entity other than Chicago Trust (referred to collectively herein as the ''Client Plans'') and any of the following Plans sponsored or maintained by Chicago Trust (referred to collectively as the ''In-House Plans''): the Chicago Trust Pension Plan, the Chicago Trust Savings and Profit Sharing Plan, the Celite Employees' Thrift Plan, the Celite Hourly Retirement Savings 401(k) Plan, the Celite Employees' Retirement Plan and the Heads & Threads Savings and Profit Sharing Plan.

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

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

(1) Such Second Fiduciary directly or indirectly controls is controlled by or is under common control with Chicago Trust;

(2) Such Second Fiduciary, or any officer, director, partner, employee or relative of such Second Fiduciary is an officer, director, partner or employee of Chicago Trust (or is a relative of such persons); and

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; provided, however, that nothing shall prevent a Second Fiduciary's receipt of its customary fees from a Plan or the Plan's sponsoring employer for serving as a fiduciary to such Plan.

If an officer, director, partner, or employee of Chicago Trust (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in the choice of the Plan's investment manager/adviser, the approval of any purchase or sale by the Plan of shares of the Funds, and the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in Sections I and II above, then paragraph (h)(2) of Section III above, shall not apply.

(i) The term ''Secondary Service'' means a service, other than an investment advisory or similar service, which is provided by Chicago Trust to the Funds, including but not limited to custodial, accounting, brokerage, administrative, or any other service.

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

Chicago Trust shall have one additional business day to complete such sale.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of September 21, 1995.

Summary of Facts and Representations

Description of the Parties

1. The parties or entities involved in the subject transactions are described as follows:

(a) *Chicago Trust,* a trust company chartered under the laws of the State of Illinois, maintains its principal office at 171 North Clark Street, Chicago, Illinois. Chicago Trust is a wholly owned subsidiary of the Allegheny Corporation (Allegheny) whose principal place of business is at Park Avenue Plaza, New York, NY. As of December 31, 1995, Chicago Trust had approximately $6 billion in consolidated assets and it engages in two principal lines of business, directly or through subsidiaries. In this regard, Chicago Trust is the largest real estate title insurer in the world. In addition, Chicago Trust provides trustee, investment management and related services, primarily to high net worth individuals, families, tax-qualified pension and profit sharing plans (including plans subject to provisions of the Act), individual retirement accounts and insurance companies. As of December 31, 1995, Chicago Trust managed approximately $1.3 billion of client assets.

(b) *The Client Plans* consist of 351 separate employee benefit plan clients of Chicago Trust.[18] Of those Client Plans, 239 are employee pension benefit plans as defined in section 3(2) of the Act or Plans covering only partners or proprietors and their spouses, as described in 29 CFR 2510.3–3 (b) and (c). The Client Plans also consist of 112 individual retirement accounts With respect to the Client Plans, Chicago Trust may serve as trustee, either with or without investment discretion, or as an ''investment manager'' within the meaning of section 3(38) of the Act. Chicago Trust may also provide ''Plan-level'' administrative services to the Client Plans that include maintaining custody of Plan assets, maintaining Plan records, preparing periodic reports of Plan assets and participant accounts, effecting participant investment directions, processing participant loans and accounting for contributions, payment of benefits and other receipts and distributions. Chicago Trust does not have any ownership in or common ownership with any broker-dealer.

Chicago Trust is compensated for its Plan-level investment management services according to a percentage of assets under management formula. Its fees for Plan-level administrative services are separately negotiated with each Client Plan for which such services are performed.

(c) *The In-House Plans* consist of various plans that are sponsored by Chicago Trust and its affiliates. In this regard, Chicago Trust is the sponsoring employer of the Chicago Trust Company Pension Plan and the Chicago Trust Company Savings and Profit Sharing Plan (collectively, the Chicago Trust Plans). Celite Corporation, a third-tier subsidiary of Allegheny, is the sponsoring employer of the Celite Employees Thrift Plan, the Celite Hourly Retirement Savings 401(k) Plan, the Celite Hourly Retirement Plan and the Celite Employees Retirement Plan (collectively, the Celite Plans). Heads and Threads, a division of Allegheny, is the sponsoring employer of the Heads and Threads Profit Sharing and Savings Plan (the Heads and Threads Plan). Each of these plans is an ''employee pension benefit plan within the meaning of section 3(2) of the Act. Collectively, the Chicago Trust Plans, the Celite Plans and the Heads and Threads Plan are referred to herein as the ''In-House Plans.'' The following table shows the participant breakdowns and asset totals for the In-House Plans as of December 31, 1995.

Plans	No. participants	Total assets
Chicago Trust:		
Pension	10,880	$86,639,464
Savings and Profit Sharing	6,938	222,865,196
Celite:		
Employees Thrift	204	10,702,672
Hourly Ret. Savings	257	2,385,675
Hourly Retirement	326	7,747,333
Employees Retirement	275	10,308,572
Heads & Threads:		
Profit Sharing and Savings	196	11,800,983

Chicago Trust is trustee for each In-House Plan and also performs, at the Plan-level, related services for each In-House Plan. These services include maintaining custody of plan assets, maintaining plan records, preparing periodic reports of plan assets and participant accounts, effecting participant investment directions, processing participant loans and accounting for contributions, payments of benefits and other receipts and distributions. Chicago Trust's compensation from the In-House Plans for the performance of these Plan-level services is limited to the reimbursement of direct expenses.

(d) *The CIFs,* which are maintained pursuant to several declarations of trust, are the primary investment vehicles used by Chicago Trust in its investment management of plan assets of the In-House Plans and the Client Plans. The Chicago Trust Company Investment Trust for Employee Benefit Plans (the Investment Trust), which was created by a Declaration of Trust dated January 17, 1968 and restated several times, most recently as of January 31, 1994, is organized as a group trust within the meaning of Revenue Ruling 81–100, 1981–1 CB 326. The Investment Trust formerly included the assets of the Balanced Fund, the Core Equity Fund and the Fixed Income Fund, three CIFs which were terminated on September 21, 1995. The Investment Trust presently holds the assets of the Capital Appreciation Fund, the Growth Fund, the Index Fund, the International Equity Fund and the US Government Fund.

Chicago Trust also utilizes its Safety of Principal Fund in the management of employee benefit plan assets. The Safety of Principal Fund is a vehicle which is permitted to invest in stated return contracts, certificates of deposit, institutional money market funds and certain other obligations. It is maintained pursuant to a declaration of trust dated April 24, 1985, titled the ''Chicago Trust Stated Principal Value Investment Trust for Employee Benefit Plans,'' and is organized as a ''group trust'' within the meaning of Revenue Ruling 81–100, 1981–1 CB 326.

Until it was terminated on September 21, 1995, Chicago Trust utilized its Short Term Investment Fund in the management of employee benefit plan assets. The Short Term Investment Fund was a money-market vehicle which was maintained pursuant to a declaration of trust dated July 22, 1981, titled the ''Chicago Trust Company Short Term Investment Fund for Employee Benefit Plans'' which established the Short Term Investment Fund as a ''group trust'' within the meaning of Revenue Ruling 81–100, 1981–1 CB 326.

Under section 3.02 of the respective Declarations of Trust which established the Investment Trust, the Safety of Principal Fund and the Short Term Investment Fund, Chicago Trust has had exclusive management and control of the assets of the CIFs. Chicago Trust has

[18] Although the Client Plans may also include participant-directed plans subject to the provisions of section 404(c) of the Act, the Department is not providing, nor is the applicant requesting, exemptive relief for such Client Plans to the extent such transactions are covered under section 404(c) of the Act.

charged no fee for its investment advisory services to these CIFs, but it has received reimbursement for its expenses. No CIF has imposed a minimum investment or maximum limit on investments in it by an In-House Plan or a Client Plan.

(e) *The Funds* constitute a Delaware business trust organized on September 10, 1993 and registered as an open-end, management investment company under the provisions of the '40 Act. The Funds are managed by a Board of Trustees, a majority of whose members are persons independent of Chicago Trust. At present, the Funds offer seven separate, diversified series of shares of mutual fund portfolios. They are the Chicago Trust Growth & Income Fund, the Chicago Trust Intermediate Fixed Income Fund, the Chicago Trust Intermediate Municipal Bond Fund, the Chicago Trust Money Market Fund, the Montag & Caldwell Growth Fund, the Montag & Caldwell Balanced Fund and the Chicago Trust Talon Fund.

Each Fund comprising the Funds is subject to a separate advisory agreement and pays an investment advisory fee to its respective investment adviser. Chicago Trust is the investment adviser to the Chicago Trust Growth & Income Fund, the Chicago Trust Intermediate Fixed Income Fund, the Chicago Trust Intermediate Municipal Bond Fund and the Chicago Trust Money Market Fund and it receives investment advisory fees, respectively, of 0.70 percent, 0.55 percent, 0.60 percent and 0.40 percent of average daily net assets. Montag & Caldwell, a registered investment adviser which is a wholly-owned subsidiary of Chicago Trust, is the investment adviser to the Montag & Caldwell Growth Fund and the Montag & Caldwell Balanced Fund. For services rendered, Montag & Caldwell receives investment advisory fees of 0.80 percent and 0.75 percent of average daily net assets from the Growth Fund and Balanced Fund.

In addition, Chicago Trust is the investment adviser to the Chicago Trust Talon Fund and it receives an investment advisory fee of 0.80 percent of average daily net assets from this Fund. Pursuant to a sub-advisory agreement, Chicago Trust pays, out of its investment advisory fee, a subadvisory fee to Talon Asset Management, Inc. (Talon), an unrelated investment adviser, to manage this Fund, subject to Chicago Trust's supervision. Talon's subadvisory fee ranges from 0.40 percent to 0.75 percent of daily net assets.

The Funds maintain a written ''distribution and services plan'' pursuant to Rule 12b–1 of the '40 Act. Under the plan of distribution, each Fund (other than the Chicago Trust Money Market Fund) can charge a fee of 0.25 percent of average daily net assets. This fee is paid by the Chicago Trust Funds to parties other than Chicago Trust or its affiliates to finance activities that will result in the marketing or distribution of shares of the Funds.

The minimum investment for an In-House Plan or a Client Plan in a Fund is $1,000 for the Chicago Trust Money Market Fund and $500 for each other Fund. No Fund imposes a maximum limit on investments in it by a Client Plan or an In-House Plan.

(f) *Cole Taylor Bank of Chicago, Illinois (Cole Taylor)* has been retained by Chicago Trust to serve as the Second Fiduciary for the In-House Plans currently investing in the Funds. Cole Taylor, which was established in 1929, is independent of and unrelated to Chicago Trust and each of its affiliates.

As of December 31, 1995, Cole Taylor exercised discretionary investment authority over approximately $362,601,000 of fiduciary assets, including approximately $171,511,000 of assets of employee benefit plans covered by the Act and non-qualified employee benefit plans. As of December 31, 1995, Cole Taylor also served as directed trustee, agent or custodian with respect to approximately $238,131,900 of assets of employee benefit plans covered by the Act and non-qualified employee benefit plans.

Description of the Transactions

2. Chicago Trust requests retroactive exemptive relief with respect to the in-kind transfer of all or a *pro rata* portion of an In-House Plan's or a Client Plan's assets from the terminating CIFs identified above to the Funds, in exchange for shares of the Funds. In addition, Chicago Trust requests retroactive exemptive relief for the receipt of fees from the Funds in connection with the investment of assets of Client Plans for which the Bank acts as a trustee, investment manager, or custodian, in shares of the Funds in instances where Chicago Trust is an investment adviser, custodian, and shareholder servicing agent for the Funds.[19] The exemptive relief provided for the receipt of fees would cover the Client Plans only, specifically those Plans for which Chicago Trust exercises investment discretion as well as Client Plans where investment decisions are made a Second Fiduciary.[20] If granted, the exemption would be effective as of September 21, 1995.

In-Kind Transfers to the Funds by In-House Plans and Client Plans

3. Although Chicago Trust has maintained CIFs in which In-House Plans and Client Plans have invested as investment options in accordance with requirements under Federal or state banking laws that apply to collective investment trusts, it decided to terminate certain of its CIFs and offer to the Plans participating in such CIFs appropriate interests in certain Funds as alternative investments. Chicago Trust believes that the interests of the Plans invested in the CIFs would be better served by investment in shares of the Funds. According to Chicago Trust, by investing in the Funds, a Plan would be afforded daily valuations reported in newspapers of general circulation and increased liquidity.

To avoid the potentially large brokerage expenses that would otherwise be incurred, Chicago Trust proposes that from time-to-time, the assets of its remaining CIFs (or similar future CIFs [21]) be transferred in-kind to corresponding portfolios of the Funds in exchange for shares of such Funds. No brokerage commissions or other fees or expenses (other than customary transfer charges paid to parties other than Chicago Trust or its affiliates) would be charged to the CIFs in connection with the in-kind transfers of assets into the Funds and the acquisition of shares of the Funds by the CIFs. In addition, no 12b–1 Fees would be paid to Chicago Trust or its affiliates in connection with such transactions.

4. On September 21, 1995, Chicago Trust made in-kind transfers of assets of the In-House Plans and the Client Plans that had been held in the Balanced Fund, the Core Equity Fund, the Fixed Income Fund and the Short-Term Investment Fund, in exchange for shares of the Funds. The affected CIFs had the same investment characteristics as their

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

[20] Chicago Trust is not requesting exemptive relief for the provision of sweep services to Client Plans. Chicago Trust represents that since both the CIFs and the Funds employ daily valuations, there is no need for sweep services.

[21] For example, CIFs acquired through mergers with or acquisitions of other Banks.

corresponding Fund portfolios. The shares of such Funds were equal in value to the CIF assets exchanged. All in-kind transfers were effected as of a single valuation date. Following the in-kind transfers, each CIF was terminated in accordance with the provisions of the applicable Declarations of Trust and law. Any remaining assets in the CIFs from which the in-kind transfers were made were converted into cash. No in-kind transfers were made from the Capital Appreciation Fund, the Growth Fund, the International Equity Fund, the Safety of Principal Fund or the U.S. Government Fund. As stated above, these CIFs were to be continued.

Fund shares received by the terminated CIF were distributed to the accounts of the In-House Plans and the Client Plans, in proportion to such Plans' investment in the CIFs, so that each In-House Plan or Client Plan would be credited with Fund shares that were equal in value to its *pro rata* share of the CIFs assets which were transferred. A Plan not electing to participate in the Funds received a cash payment representing a *pro rata* portion of the assets of the terminating CIF before the final liquidation took place.

A single lot of each in-kind security on the records of the CIF was established. The cost-basis of each in-kind security was the market value on the conversion date. The trade date of each in-kind transaction was the actual date the security was received by the custodian bank. The same custodian bank would hold the assets of the Funds and the CIFs. The in-kind securities were valued using the same pricing vendor and methodologies as the Fund and in accordance with the valuation procedures described in Rule 17a–7(b) under the '40 Act, as amended from time to time or any successor rule, regulation, or similar pronouncement. In this regard, Chicago Trust represents that the ''current market price'' for specific types of CIF securities involved in the transaction was determined as follows:

(a) If the security was a ''reported security'' as the term is defined in Rule 11Aa3–1 under the '34 Act, the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System); or if there were no reported transactions in the Consolidated System that day, the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1–1 under the '34 Act), as of the close of business on the CIF valuation date.

(b) If the security was not a reported security, and the principal market for such security was an exchange, then the last sale on such exchange; or if there were no reported transactions on such exchange that day, the average of the highest current independent bid and lowest current independent offer on such exchange as of the close of business on the CIF valuation date.

(c) If the security was not a reported security and was quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ as of the close of business on the CIF valuation date.

(d) For all other securities, the average of the highest current independent bid and lowest current independent offer as of the close of business, determined on the basis of reasonable inquiry. (For securities in this category, Chicago Trust represents that it obtained quotations from at least three sources that were either broker-dealers or pricing services independent of and unrelated to Chicago Trust and, where more than one valid quotation was available, used the average of the quotations to value the securities, in conformance with interpretations by the SEC and practice under Rule 17a–7.)

The same vendor performing fund accounting for the CIFs performed fund accounting for the Funds. The number of Fund shares to be issued was computed by dividing the total transferred fund market value by the net asset value of the Fund at the close of business on the conversion date. The number of shares of the Funds issued was allocated to the holders of the predecessor CIFs in the same proportion as the holdings in the CIFs.[22]

No in-kind transfer was made except in accordance with pre-established objective procedures which were approved by the Board of Directors of the Funds which provided that such in-kind transfers would: (a) Consist solely of assets which were consistent with the investment objectives, policies and restrictions of the transferee Fund; (b) satisfy the applicable requirements of the '40 Act and the Code; and (c) consist of assets which had a readily ascertainable market value (determined as of the close of business on the effective date of such in-kind transfer by reference to independent sources in accordance with the valuation procedures described in Rule 17a–7, are liquid and are not subject to restrictions on resale). Non-conforming assets were sold on the open market through an unaffiliated brokerage firm and the proceeds of such sale were transferred in cash.

In addition, no in-kind transfer was made unless an In-House Plan or a Client Plan was represented by a Second Fiduciary who was independent of and unrelated to Chicago Trust. Such Second Fiduciary was required to give written approval of the in-kind transfer in advance following such fiduciary's receipt of written notice of the in-kind transfer transaction and disclosure of the following information: (a) A current prospectus of the Funds; (b) a description of the fees, including investment advisory fees and all other fees to be charged to or paid by the Plan and by the Funds to Chicago Trust, including the nature and extent of any differential between the rates of such fees; (c) the reasons why Chicago Trust considered the in-kind transfer to be appropriate for the In-House Plan or the Client Plan; (d) a description of any limitations applicable to the in-kind transfer of assets from the CIFs to the Funds; and (e) the last date as of which consent to an in-kind transfer could be given by the Second Fiduciary, along with the disclosure that if consent was not given by that date, the Second Fiduciary would be deemed to have withheld consent to an in-kind transfer with respect to an In-House Plan or a Client Plan. Any approval by a Second Fiduciary was terminable at will by the Second Fiduciary, without penalty to an In-House Plan or a Client Plan invested in shares of any of the Funds.

Following the in-kind transfers, Chicago Trust sent the Second Fiduciary of the In-House Plans as well as Second Fiduciaries of the Client Plans, written confirmations of the transactions. In this regard, not later than 30 days after each in-kind transfer, Chicago Trust sent a Second Fiduciary written confirmation of the identity of assets that were valued for purposes of the in-kind transfer in accordance with Rule 17a–7(b)(4), the price determined for such assets and the identity of each pricing services or market maker consulted in determining their value.[23] In addition, no later than

[22] At the Plan account level, the conversion was reported in this manner—Assume a Client Plan held 1,000 units of the Core Equity Fund. On April 1, the Client Plan account showed a disposition of the 1,000 units valued at $6.50 with proceeds of $6,500. On the same date, the account showed a purchase of 684.211 shares at $9.50 per share of the Chicago Trust Growth & Income Mutual Fund for a total cost of $6,500 the same amount as the disposition of the Core Equity Fund.

[23] The securities subject to valuation under Rule 17(a)–7(b)(4) include all securities other than ''reported securities,'' as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934, or those quoted on the NASDAQ system or for which the principal market is an exchange.

90 days after an in-kind transfer, Chicago Trust sent each Second Fiduciary written confirmation of (a) the number of CIF units held by an In-House Plan or a Client Plan before the in-kind transfer (and the related per unit value and the aggregate dollar value of the units transferred); and (b) the number of Fund shares received by the Plan as a result of the in-kind transfer (and the related per share net asset value and the aggregate dollar value of the shares received).

In accordance with the conditions under Section I of this proposed exemption, similar procedures will occur upon any future in-kind exchanges between CIFs maintained by Chicago Trust and the Funds.[24]

Representations of the Second Fiduciary for the In-House Plans Regarding the In-Kind Transfers

5. As stated above, Chicago Trust retained Cole Taylor as the Second Fiduciary to oversee the initial in-kind transfers of CIF assets to the Funds as such transactions would affect the In-House Plans. In such capacity, Cole Taylor represented that it had considerable experience serving in a fiduciary capacity under the provisions of the Act and otherwise.

Cole Taylor stated that it received the following documents and information from Chicago Trust: (a) A copy of the exemption application; (b) written disclosure of information concerning the Funds; (c) a current prospectus for each portfolio of the Funds; (d) a statement describing the fees to be charged to or paid by the In-House Plans and by the Funds to Chicago Trust or to unrelated parties; (e) a disclosure statement explaining why Chicago Trust believed the investment in the Funds by the In-House Plans would be appropriate; (f) a description of any limitations regarding which In-House Plan assets could be invested in shares of the Funds and, if so, the nature of such limitations; and (g) copies of plan and trust documents for the In-House Plans, written investment guidelines applicable thereto and written descriptions of total investment portfolios for the In-House Plans.

Based on the foregoing documents and information, Cole Taylor represented that it understood and accepted the duties, responsibilities and liabilities in acting as a fiduciary for the In-House Plans, including those duties, responsibilities and liabilities that would be imposed on fiduciaries under the Act. In addition, Cole Taylor represented that the terms of the in-kind transfer transactions would be fair to the participants of the In-House Plans and would be comparable to and no less favorable than the terms that would have been reached among unrelated parties.

Cole Taylor represented that the in-kind transfer transactions were in the best interest of the In-House Plans and their participants and beneficiaries for the following reasons: (a) The impact of the in-kind transfers on the In-House Plans should be *de minimus* because the Funds substantially replicate the CIFs in terms of the investment policies and objectives; (b) the Funds would probably continue to experience relative performance similar in nature to the CIFs given the continuity of investment objectives and policies, management oversight and portfolio management personnel; (c) the in-kind transfers would not adversely affect the cash flows, liquidity or investment diversification of the In-House Plans; and (d) the benefits to be derived by the In-House Plans and their participants by investing in the Funds (e.g., broader distribution permitted of the Funds to different types of plans impacting positively on asset size of the Funds and resulting in cost savings to shareholders) would more than offset the impact of minimum additional expenses (e.g., transfer agency fees and fees for shareholder services) that might be borne at the Fund-level by the In-House Plans.

In forming an opinion on the appropriateness of the in-kind transfers, Cole Taylor represented that it conducted an overall review of the In-House Plans, including the In-House Plan documents. Cole Taylor stated that it also examined the total investment portfolios of the In-House Plans to ascertain whether or not the In-House Plans were in compliance with their investment objectives and policies. Further, Cole Taylor asserted that it examined the liquidity requirements of the In-House Plans and reviewed the concentration of the assets of the In-House Plans that were invested in the CIFs as well the portion of the CIFs comprising the assets of the In-House Plans. Finally, Cole Taylor explained that it reviewed the diversification provided by the investment portfolios of the In-House Plans. Based on its review and analysis of the foregoing, Cole Taylor represented that the in-kind transfer transactions would not adversely affect the total investment portfolios of the In-House Plans, compliance by such Plans with their stated investment objectives and policies, or such Plans' cash flows, liquidity or diversification requirements.

As Second Fiduciary, Cole Taylor represented that Chicago Trust would provide it with any documents it considered necessary to perform its duties as Second Fiduciary. In this regard, Chicago Trust provided Cole Taylor with advance written notice of the in-kind transfers and written confirmation statements as described in Representation 4. Upon receipt of such statements, Cole Taylor confirmed whether or not the in-kind transfer transactions had resulted in the receipt by the In-House Plans of shares in the Funds that were equal in value to such Plans' *pro rata* share of assets of the CIFs on the conversion date.

Receipt of Fees by Chicago Trust

6. Prior to the initial in-kind transfer transactions, any investment in the Funds by Chicago Trust for an In-House Plan or a Client Plan was made in accordance with PTE 77–3 or PTE 77–4, respectively. In pertinent part, PTE 77–3 would permit the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter provided certain conditions were met. Under certain conditions, PTE 77–4 would permit Chicago Trust to receive fees from the Funds under either of two circumstances: (a) Where a Client Plan did not pay any investment management, investment advisory, or similar fees with respect to the assets of such Plan invested in shares of a Fund for the entire period of such investment; or (b) where a Client Plan paid investment management, investment advisory, or similar fees to Chicago Trust based on the total assets of such Client Plan from which a credit had been subtracted representing such Plan's *pro rata* share of such investment advisory fees paid to Chicago Trust by the Fund. As such, there were two levels of fees involved under PTE 77–4—those fees which Chicago Trust charged to the Client Plans for serving as trustee with investment discretion or as investment manager (i.e., the Plan-level fees); and those fees Chicago Trust charged to the Funds (i.e., the Fund-level fees) for serving as investment advisor, custodian, or service provider. Plan-level fees for similar services

[24] It should be noted that with respect to future in-kind transfers, Chicago Trust will provide the Second Fiduciary with copies of the subject proposed exemption and grant notice upon such fiduciary's request.

provided by Chicago Trust ranged from 0.40 percent to 0.95 percent.

With respect to PTE 77–4, Chicago Trust subtracted a credit from the Plan-level investment management fee representing the Client Plan's pro rata share of the investment advisory fee paid by the Funds to Chicago Trust and, if applicable, Montag and Caldwell (including that portion of the investment advisory fee that Chicago Trust paid to Talon.)[25]

Since September 21, 1995, Chicago Trust has no longer charged a Plan-level investment management fee with respect to the assets of a Client Plan that have been invested in shares of the Funds. Rather, Chicago Trust or Montag & Caldwell, as applicable, are receiving the investment advisory fee payable under the respective investment advisory agreements with the Funds, instead of the Plan-level investment management fee. Talon is receiving an investment advisory fee from Chicago Trust pursuant to the terms of its sub-advisory agreement. For In-House Plans, Chicago Trust represents that it intends to continue relying upon PTE 77–3 with respect to the receipt of Fund-level investment advisory fees by it for assets of In-House Plans that are invested in shares of the Funds.[26]

Chicago Trust is charging In-House Plans and Client Plans for Plan-level recordkeeping, administrative, accounting and custodial services which do not involve investment management, such as custody of plan assets, maintaining plan records, preparing periodic reports of plan assets and participant accounts, effecting participant investment directions, processing participant loans and accounting for contributions, payments of benefits and other receipts and distributions. Chicago Trust's fees for such Plan-level services will continue to be negotiated with each Client Plan and its fees for such services for In-House Plans will continue to be limited to the reimbursement of direct expenses properly and actually incurred in the performance of the services.[27]

At present, all services other than investment advisory services are provided to the Funds or their distributor by unrelated parties. However, Chicago Trust represents that the Funds may, in the future, wish to contract with it or an affiliate to provide administrative, custodial, transfer, accounting or similar services (i.e., Secondary Services) to the Funds or their distributor.[28]

At the same time that it gives advance written notice and seeks approval of an in-kind transfer from a Second Fiduciary, Chicago Trust will also give the Second Fiduciary notice that it is seeking approval to provide Secondary Services to the Funds, either directly or by subcontracting with third parties. Such notice will describe the fees for Secondary Services (whether provided by Chicago Trust directly or through third parties) for which it is seeking approval from the Second Fiduciary and disclose that, while Chicago Trust is not presently providing Secondary Services to the Funds, it may do so in the future and intends to rely on the approval of the Second Fiduciary for its provision of Secondary Services.[29]

Chicago Trust will receive investment advisory fees or fees for Secondary Services from the Funds under the following conditions: (a) no sales commissions will be paid by the Client Plans in connection with purchases or sales of shares of the Funds and no redemption fees will be paid in connection with the sale of such shares by the Client Plans to the Funds; (b) the price paid or received by the Client Plans for shares in the Funds will be the net asset value per share at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time; (c) Chicago Trust and its officers or directors will not purchase from or sell to any of the Client Plans shares of any of the Funds; (d) for each Client Plan, the combined total of all fees received by Chicago Trust for the provision of Plan-level services to the Client Plans, and in connection with the provision of investment advisory services or Secondary Services to any of the Funds in which the Client Plans may invest, will not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act; (e) Chicago Trust will not receive any fees or commissions in connection with the purchase, holding or sale of shares of the Funds by a Client Plan; and (f) the receipt of investment advisory fees and fees for Secondary Services, and any changes in such fees is, with respect to any Client Plan, approved by the Second Fiduciary of the Client Plan pursuant to the procedures described herein.

Authorization Requirements for Client Plans

7. As described in Representation 6, Chicago Trust intends to seek the approval of the Second Fiduciary of each Client Plan to receive fees for providing Secondary Services, directly or by subcontracting with a third party. Chicago Trust will then rely on that approval for its receipt of fees for Secondary Services from the Funds.[30]

To the extent that the fees for investment advisory services or Secondary Services exceed the rates approved by the Second Fiduciary of a Client Plan or an additional Secondary Service for which a fee is charged causes an increase in the fees paid to Chicago Trust over the rates approved by the Second Fiduciary of a Client

[25] The rates paid by each of the portfolios of the Funds for services rendered differed depending on the fee schedule for each portfolio and on the daily net assets in each portfolio. For example, for investment advisory services provided to the Chicago Trust Money Market Fund, Chicago Trust would be entitled to receive an annual fee of 0.40 percent based on that Fund's average daily net assets. For investment advisory services provided to the Chicago Trust Intermediate Municipal Bond Fund, Chicago Trust would be entitled to receive an annual fee of 0.60 percent based upon such Fund's average daily net assets.

[26] The Department expresses no opinion herein on the applicability of PTE 77–3 with respect to ongoing investments by the In-House Plans in shares of the Funds or to the receipt of fees from the Funds by Chicago Trust.

[27] Chicago Trust represents that it is relying upon section 408(b)(2) with respect to its receipt of fees for such administrative services. The Department expresses no opinion herein on whether the provision of such services will satisfy section 408(b)(2) of the Act.

[28] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the fiduciaries of the Client Plans from the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions Second Fiduciaries of the Client Plans investing in the Funds that they have an ongoing duty under section 404 of the Act to monitor the services provided to such Plans to assure that the fees paid by the Client Plans for such services are reasonable in relation to the value of the services provided. These responsibilities would include determinations that the services provided are not duplicative and that the fees are reasonable in light of the level of services provided.

[29] With respect to In-House Plans, Chicago Trust represents that it intends to rely on PTE 77–3. However, the Department expresses no opinion herein as to the applicability of PTE 77–3 to Chicago Trust's receipt of fees for Secondary Services.

[30] The Department notes that an increase in the amount of a fee for an existing Secondary Service (other than through an increase in the value of the underlying assets in the Funds) or the imposition of a fee for a newly-established Secondary Service shall be considered an increase in the rate of such Secondary Fee. However, in the event a Secondary Fee has already been described in writing to the Second Fiduciary and the Second Fiduciary has provided authorization for the amount of such Secondary Fee, and such fee was waived, no further action by Chicago Trust would be required in order for Chicago Trust to receive such fee at a later time. Thus, for example, no further disclosure would be necessary if Chicago Trust had received authorization for a fee for custodial services from Client Plan investors and subsequently determined to waive the fee for a period of time in order to attract new investors but later charged the fee. However, reinstituting the fee at an amount greater than previously disclosed would necessitate Chicago Trust providing notice of the fee increase and a Termination Form.

Plan, Chicago Trust will use the ''Termination Form'' approach. In this regard, in the event of an increase in the rate of any fees paid by the Funds to Chicago Trust for investment advisory services that Chicago Trust provides to the Funds over an existing rate for such services that had been authorized by a Second Fiduciary of a Client Plan, Chicago Trust will, at least 30 days in advance of the implementation of such increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Funds and which explains the nature and amount of the increase in fees) to the Second Fiduciary of each Client Plan invested in a Fund which is increasing such fees. Such notice will be accompanied by the Termination Form.

In addition, in the event of an (a) addition of a Secondary Service provided by Chicago Trust to the Funds for which a fee is charged or (b) an increase in the rate of any fee paid by the Funds to Chicago Trust for any Secondary Service that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by Chicago Trust for such fee over an existing rate for such Secondary Service, which had been authorized by the Secondary Fiduciary, Chicago Trust will, at least 30 days in advance of the implementation of such Secondary Service or fee increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Funds and which explains the nature and amount of the additional Secondary Service for which a fee is charged or the nature and amount of the increase in fees) to the Second Fiduciary of each of the Client Plans invested in a Fund which is adding a service or increasing fees. Such notice will also be accompanied by the Termination Form.

The instructions to the Termination Form will expressly provide an election to the Second Fiduciary to terminate, at will, any prior authorizations without penalty to the Client Plan and stipulate that failure to return the form will result in the continuation of all authorizations previously given by the Second Fiduciary and be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees for Secondary Services or investment advisory services. Termination of the authorization by a Client Plan to invest in the Funds will be effected by Chicago Trust selling the shares of the Funds held by the affected Client Plan within the period of time specified by the Client Plan, but not later than one business day following receipt by Chicago Trust of the Termination Form or any other written notice of termination. If, due to circumstances beyond the control of Chicago Trust the sale cannot be executed within one business day, Chicago Trust will have one additional day to complete such sale.

The Second Fiduciary will be supplied with a Termination Form at least once each year, beginning with the calendar year that begins after the date of the notice granting this proposed exemption is published in the Federal Register and continuing for each calendar year thereafter, regardless of whether there have been any changes in the fees payable to Chicago Trust or changes in other matters in connection with the services rendered to the Funds. However, if the Termination Form has been provided to the Second Fiduciary in connection with an increase in fees for investment advisory services, the addition of a Secondary Service for which a fee is charged or an increase in any fees paid by the Funds to Chicago Trust, the Termination Form need not be provided again to the Second Fiduciary until at least six months have elapsed, unless such Termination Form is required to be sent sooner as a result of an addition of a Secondary Service for which a fee is charged or an increase in the fees for Secondary Services or investment advisory services that are paid to Chicago Trust, which would cause Chicago Trust's aggregate fees to exceed the rates approved by the Second Fiduciary.

Ongoing Disclosures to Client Plans

8. In addition to the disclosures provided to the Second Fiduciary of a Client Plan prior to investment in the Funds, Chicago Trust represents that it will provide the Second Fiduciary, at least annually, with a copy of an updated prospectus for the Funds. In addition, Chicago Trust will provide the Second Fiduciary with a report or statement (which may take the form of the most recent financial report, the current statement of additional information or some other written statement) which contains a description of all fees paid by the Funds to Chicago Trust within 15 days of such document's availabillity.

Although Chicago Trust does not presently execute securities brokerage transactions for the investment portfolios of the Funds, in the event that it or an adviser or a sub-adviser to the Funds (including their affiliates) does perform brokerage services, it will provide, at least annually, to the Second Fiduciary in which a Client Plan invests, a written disclosure indicating: (a) The total, expressed in dollars, brokerage commissions attributable to each Fund's investment portfolio which represent Related Party Brokerage; (b) the total, expressed in dollars, of brokerage commissions attributable to each Fund's investment portfolio other than Related Party Brokerage; (c) the average brokerage commissions per share, expressed as cents per share, paid by each Fund for Related Party Brokerage; and (d) the average brokerage commissions per share, expressed as cents per share, paid by each Fund for brokerage other than Related Party Brokerage.

9. In summary, it is represented that the proposed transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) With respect to the in-kind transfer of the assets of an In-House Plan or a Client Plan invested in a CIF in exchange for shares of a Fund, a Second Fiduciary has authorized or will authorize in writing, such in-kind transfer prior to the transaction only after receiving full written disclosure of information concerning the Fund.

(b) Each In-House Plan or Client Plan has received or will receive shares of the Funds in connection with the transfer of assets of a terminating CIF which have a total net asset value that is equal to the value of such Plan's *pro rata* share of the CIF assets on the date of the transfer as determined in a single valuation performed in the same manner and at the close of the business day, using independent sources in accordance with procedures established by the Funds which comply with Rule 17a–7 of the '40 Act, as amended, and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets.

(c) Chicago Trust has sent or will send by regular mail to each affected In-House Plan and Client Plan a written confirmation, not later than 30 days after the completion of the transaction, containing the following information: (1) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) of the '40 Act; (2) the price of each such security involved in the transaction; and (3) the identity of each pricing service or market maker consulted in determining the value of such securities.

(d) Chicago Trust has sent or will send by regular mail, no later than 90 days after completion of each transfer, a

written confirmation that contains the following information: (1) the number of CIF units held by an In-House Plan or a Client Plan immediately before the transfer, the related per unit value and the total dollar amount of such CIF units; and (2) the number of shares in the Funds that are held by the Plan following the conversion, the related per share net asset value and the total dollar amount of such shares.

(e) The price that has been or will be paid or received by an In-House Plan or a Client Plan for shares of the Funds is the net asset value per share at the time of the transaction and is the same price for the shares which will be paid or received by any other investor at that time.

(f) No sales commissions or redemption fees have been or will be paid by an In-House Plan or a Client Plan in connection with the purchase of shares of the Funds.

(g) For each Client Plan, the combined total of all fees received by Chicago Trust for the provision of Plan-level services, and in connection with the provision of investment advisory services or Secondary Services to any of the Funds in which Client Plans may invest, will not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(h) Chicago Trust has not received and will not receive any 12b–1 Fees in connection with the transactions.

(i) Any authorizations made by a Client Plan regarding investments in the Funds and the fees paid to Chicago Trust (including increases in the contractual rates of fees for Secondary Services that are retained by the Chicago Trust) have been and will be terminable at will by the Client Plan, without penalty to the Client Plan and have been and will be effected within one business day following receipt by Chicago Trust, from the Second Fiduciary, of the Termination Form or any other written notice of termination, unless circumstances beyond the control of Chicago Trust delay execution for no more than one additional business day.

(j) The Second Fiduciary has received and will receive written notice accompanied by the Termination Form with instructions on the use of the form at least 30 days in advance of the implementation of any increase in the rate of any fees paid by the Funds to Chicago Trust regarding investment advisory services, fees for Secondary Services or an additional Secondary Service for which a fee is charged which exceed the rates authorized for Chicago Trust by the Second Fiduciary.

(k) All dealings by or between the Client Plans, the Funds and Chicago Trust have been and will be on a basis which is at least as favorable to the Client Plans as such dealings are with other shareholders holding the same class of shares of the Funds.

Notice to Interested Persons

Notice of the proposed exemption will be given to interested persons who had investments in the terminated CIFs and from whom approval is being sought for the in-kind transfers of Plan assets from such CIFs in exchange for shares of the Funds. In this regard, interested persons will include Cole Taylor, the Second Fiduciary of the In-House Plans; active participants in the In-House Plans; and Second Fiduciaries of the Client Plans. Notice will be provided to each Second Fiduciary by first class mail and to active particpants in the In-House Plans by posting at major job sites. Such notice will be given to interested persons within 14 days following the publication of the notice of pendency in the Federal Register. The notice will include a copy of the notice of proposed exemption as published in the Federal Register as well as a supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing. Comments and requests for a public hearing are due within 44 days of the publication of the 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 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 19th day of April, 1996.

Ivan Strasfeld,

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

[FR Doc. 96–10071 Filed 4–24–96; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL INSTITUTE FOR LITERACY

Agency Information Collection Activities

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces an Information Collection Request (ICR) by the NIFL. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 24, 1996.

FOR FURTHER INFORMATION: Sondra Stein at (202) 632–1508 or e-mail: sstein@nifl.gov