

exemption application under 29 CFR 2570 subpart B.

- [ ] A statement demonstrating that the transaction poses little, if any, risk of abuse or loss to the plan participants and beneficiaries.
  - [ ] A comparison of the proposed transaction to at least two substantially similar transactions which were the subject of individual exemptions granted within the 60 month period ending on the date of the filing and an explanation why any differences should not be considered material.
  - [ ] A complete and accurate draft of the notice to interested persons (as defined in section IV(b)).
  - [ ] A description of the proposed method of distribution of for such notice.
- If either of the previously granted exemptions identified in the written submission required the involvement of an independent fiduciary, the written submission must contain the following additional information:
- [ ] The identity of the independent fiduciary responsible for reviewing the proposed transaction, and representing the interests of the plan in the execution of the transaction. (If the transaction is continuing in nature, the independent fiduciary represents the interests of the plans for the duration of the transaction and takes all necessary action on behalf of the plan.)
  - [ ] A description of such fiduciary's independence from the parties involved in the transaction.
  - [ ] A statement from the independent fiduciary explaining why the transaction is in the interests and protective of the plan participants and beneficiaries.
  - [ ] An agreement by the independent fiduciary to represent the interests of the plan.
  - [ ] A description of the procedures for the replacement of the independent fiduciary, if necessary, during the term of the transaction.
- The notice to interested persons filed with the Department includes the following information:
- [ ] An objective description of the transaction, including all material terms and conditions.
  - [ ] The approximate date on which the transaction will occur.
  - [ ] A statement that the transaction has met the requirements for tentative authorization under the exemption.
  - [ ] A statement apprising interested persons of their right to comment on the proposed transaction at the address contained in the exemption.

[ ] The expiration date of the comment period.

[ ] The Federal Register citations for the two prior exemptions identified as substantially similar to the contemplated transaction.

Signed at Washington, D.C., this 26th day of July 1996.

Olena Berg,

*Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.*

[FR Doc. 96-19483 Filed 7-30-96; 8:45 am]

**BILLING CODE 4510-29-P**

#### [Exemption Application D-09707]

#### **Proposed Class Exemption for the Receipt of Certain Investment Services by Individuals for Whose Benefit Individual Retirement Accounts or Retirement Plans for Self-Employed Individuals Have Been Established or Maintained**

**AGENCY:** Pension and Welfare Benefits Administration, U. S. Department of Labor

**ACTION:** Notice of Proposed Class Exemption.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Code). The proposed class exemption would permit the receipt of services at reduced or no cost by an individual for whose benefit an individual retirement account (IRA) or, if self-employed, a Keogh Plan is established or maintained, or by members of his or her family, from a broker-dealer, provided that the conditions of the exemption are met. If granted, the exemption would affect individuals with beneficial interests in such plans who receive such services as well as the broker-dealers who provide such services.

**DATES:** Written comments and requests for a public hearing must be received by the Department on or before September 16, 1996.

**ADDRESSES:** All written comments (at least three copies) and requests for a public hearing should be sent to: Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N-5649, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210, (Attn: D-09707). The application for exemption and comments received from interested persons will be available for public inspection in the Public Documents

Room, Pension and Welfare Benefits Administration, U. S. Department of Labor, room N-5638, 200 Constitution Avenue, N.W., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Allison Padams, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U. S. Department of Labor, (202) 219-8971, (This is not a toll-free number); or Paul D. Mannina, Plan Benefits Security Division, Office of Solicitor, U. S. Department of Labor (202) 219-9141, (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of sections 4975(a) and (b), 4975(c)(3) and 408(e)(2) of the Code by reason of section 4975(c)(1)(D), (E) and (F) of the Code. This exemption was requested in an exemption application filed on behalf of the Securities Industry Association (the SIA or the Applicant). The Applicant is a securities industry trade association representing the business interests of more than 700 securities firms in North America which collectively account for ninety percent of the securities firm revenue in the United States. The members of the SIA are, among other things, engaged in the business of providing brokerage and investment advisory services to the public. The Applicant represents that IRAs and Keogh Plans constitute approximately less than one-third of assets of the accounts managed by broker-dealers.

The application was filed pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B, (55 FR 32836, August 10, 1990.)<sup>1</sup>

#### Background

Section 4975(c)(1) (D), (E) and (F) of the Code prohibits the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan; an act by a disqualified person who is a fiduciary whereby he deals with the income or assets of the plan in his own interest or for his own account; and the receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in

<sup>1</sup> Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

connection with a transaction involving the income or assets of the plan.<sup>2</sup>

The term "disqualified person" as defined in section 4975(e)(2) of the Code includes a fiduciary and a person providing services to the plan. Persons who exercise discretionary authority or control over the assets of the plan are subject to the prohibitions contained in section 4975 of the Code.<sup>3</sup> The receipt of reduced or no cost services by an individual under an arrangement in which plan assets are taken into account for purposes of pricing the services is a prohibited transaction.<sup>4</sup> Such prohibited transactions are generally subject to taxation under section 4975 of the Code or the loss of exemption from tax by reason of section 408(e)(2)(A) of the Code. In the absence of an exemption, the individual who receives reduced or no cost services as a result of establishing or maintaining his or her IRA or Keogh Plan would benefit from the use of his or her plan's assets in violation of section 4975 of the Code.

In recognition of the business practice of banks offering services at reduced or no cost to encourage individuals to establish IRAs and Keogh Plans, the Department granted PTE 93-33 (58 FR 31053, May 28, 1993, as amended, 59 FR 22686, May 2, 1994).<sup>5</sup> PTE 93-33 permits the receipt of reduced or no cost banking services by individuals for whose benefit individual retirement accounts or Keogh Plans are established or maintained pursuant to an arrangement in which the account balance of the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services provided the conditions of the exemption are met. The conditions of PTE 93-33 require that: (a) the IRA or Keogh Plan, the account balance of which is taken into account for purposes of determining eligibility to receive services at reduced or no cost, is established and maintained for the exclusive benefit of the participant covered under the IRA or Keogh Plan, his or her spouse or their beneficiaries; (b) the services must be of the type that the bank itself could offer consistent with applicable federal and state banking law; (c) the services are provided by the bank (or affiliate of the bank) in the ordinary course of the bank's business to customers who

qualify for reduced or no cost banking services but do not maintain an IRA or Keogh Plan with the bank; (d) for purposes of determining eligibility to receive services at reduced or no cost, the account balance required by the bank for the IRA or Keogh Plan is equal to the lowest balance required for any other type of account which the bank includes to determine eligibility to receive reduced or no cost services; and (e) the rate of return on the IRA or Keogh Plan investment is no less favorable than the rate of return on an identical investment that could have been made at the same time at the same branch of the bank by a customer of the bank who is not eligible for (or who does not receive) reduced or no cost services.

#### Summary of the Application

According to the Applicant, broker-dealers have also developed the capacity to view accounts on an aggregate basis as a result of enhanced computer capabilities, and in response to customer demands. The Applicant represents that broker-dealers have offered premium brokerage service arrangements to customers who maintain total accounts equaling a minimum value or generating a minimum amount of commissions or fees. Under a typical "relationship" brokerage arrangement, all of an individual's accounts including those established by members of the individual's family are viewed on an aggregate basis, rather than individually.

The Applicant represents that broker-dealers are limited in the types of services they may offer to customers. Both the New York Stock Exchange (NYSE) and the National Association of Securities Dealers (NASD) (and corresponding requirements of other exchanges) require that broker-dealers "know their customer"<sup>6</sup> such that any investments recommended by a broker-dealer to a customer must be suitable for the customer in light of, among other things, his investment experience, financial condition and age. In addition, broker-dealers have an obligation to act in the customer's best interests with respect to the customer's investment in securities effected through the broker-dealer. In this regard, the Applicant states that by causing a customer to make a particular securities investment by offering incentives, the broker-dealer could be deemed to have violated the NYSE or NASD suitability rules unless

the investment was in all respects suitable for the customer.

The Applicant further represents that, although each broker-dealer firm establishes its own programs, services provided under a relationship brokerage program typically have investment oriented components. Services often include financial planning services, direct deposit/debit and automatic fund transfer privileges, enhanced account statements, toll-free access to a client service center, check writing privileges, debit/credit cards, special newsletters and reduced brokerage and asset management fees.

The Applicant believes that including IRAs and Keogh Plans in relationship brokerage programs would be beneficial to IRAs and Keoghs. For example, a broker-dealer may choose to offer customers reduced brokerage fees as part of its relationship brokerage program. Under such an arrangement, IRAs and Keogh Plans may be able to realize the benefits derived from economies of scale. Fees such as commissions and professional asset management fees often decline in relative terms as the size of the assets under management increases. Thus, including the assets of an IRA or Keogh Plan would lower the cost to the IRA or Keogh Plan compared to the cost it would pay for the same service on an independent basis.

Additionally, IRA and Keogh Plans also may benefit if a broker-dealer provides a customer with a combined account statement or other account management tools (automatic transfers and telephone access) because the individual can easily view the assets of all of his or her various accounts at the same time. This in turn could enable the individual to formulate a total investment strategy taking into account the retirement needs of the individual. Further, because many of the additional services provided under relationship brokerage arrangements are investment oriented, an individual may be able to more effectively and efficiently invest his or her assets. Thus, the Applicant states that such services provide a benefit which is equally important and useful to the individual in his or her capacity as the manager of the investments of the IRA or Keogh Plan.

#### Discussion of the Proposed Exemption

##### 1. Scope

The exemption proposed herein by the Department would provide relief from the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of sections 4975 (a) and (b)

<sup>2</sup>With respect to those IRAs that are part of a Simplified Employee Pension described in section 408(k) of the Code, references to section 4975(c)(1)(D), (E) and (F) should be read to refer as well to the parallel provisions of ERISA.

<sup>3</sup>See section 4975(e)(3) of the Code.

<sup>4</sup>See Advisory Opinion 89-12A (July 14, 1989.)

<sup>5</sup>PTE 93-33 amended and redesignated PTE 93-2 (58 FR 3561, January 11, 1993).

<sup>6</sup>See NYSE Rule 406 and NASD Article III, Section 2 of the Rules of Fair Practice.

of the Code, including the loss of exemption of an individual retirement account (IRA) pursuant to section 408(e)(2)(A) of the Code, by reason of section 4975(c)(1) (D), (E) and (F) of the Code for the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained, or by members of his or her family, from a broker-dealer registered under the Securities Exchange Act of 1934 pursuant to an arrangement in which the IRA or Keogh Plan account value or the service fees generated by the IRA or Keogh Plan are taken into account for purposes of determining eligibility to receive such services.<sup>7</sup>

## 2. Proposed Conditions

The proposed exemption contains conditions (described below) which are viewed by the Department as necessary to ensure that the retirement income of IRA and Keogh Plan participants is not jeopardized by relationship brokerage programs.

Under the proposal, the IRA or Keogh Plan whose account value or service fees generated by the IRA or Keogh Plan is taken into consideration for purposes of determining eligibility to receive services at reduced or no cost, must be established and maintained for the exclusive benefit of the participant covered under the IRA or Keogh Plan, his or her spouse or their beneficiaries. The term "account value" is defined in section III(d) as investments in cash or securities held in the account for which market quotations are readily available. The term "account value" does not include investments offered by the broker-dealer (or affiliate) exclusively to IRAs and Keogh Plans.

The proposed exemption limits the services that may be offered by broker-dealers under a relationship brokerage program to those services that the broker-dealer itself may offer consistent with all applicable federal and state laws regulating broker-dealers. This condition would exclude the provision of services that are not investment oriented. For example, broker-dealers could not offer restaurant or travel discounts under this class exemption. However, the term "service" is defined in section III(g) to include incidental products of a de minimis value. The

<sup>7</sup>The exemption if granted, would apply only to IRAs and Keogh Plans that are not "employee benefit plans" covered by title I of ERISA except for Simplified Employee Pensions (SEPs) described in section 408(k) of the Code which provide the participants with the unrestricted authority to transfer their SEP balances to IRAs sponsored by different financial institutions. See 29 CFR 2510.3-2(d) and 29 CFR 2510.3-3(b).

Department notes that this definition would permit broker-dealers to provide such products as free debit/credit cards.

The Investment Company Institute (ICI) requested that the Department clarify that the proposed exemption would provide relief for a relationship brokerage program whereby a broker-dealer offers reduced sales charges with respect to the purchase of investment company shares as the size of the purchase increases. In this regard, a broker-dealer would aggregate total purchases of all of a customer's accounts, including IRAs and Keogh Plans. Thus, a broker-dealer would set a schedule of commission rates that vary according to the size of the transaction. For example, for transactions totaling an amount of less than \$10,000, the sales charge would be 6.5%; for a transaction of \$10,000 but less than \$25,000, the sales charge would be 6.0%, and for a transaction of \$25,000 but less than \$50,000, the sales charge would be 5.00%. The Department notes that such programs would be covered by the proposed exemption provided that all of the conditions of the proposal are met.<sup>8</sup>

Under the proposal, the services must be provided by the broker-dealer (or an affiliate of the broker-dealer) in the ordinary course of the broker-dealer's business to customers who are eligible for reduced or no cost services, but do not maintain IRAs or Keogh Plans with the broker-dealer. Thus, no relief would be provided for a service that was offered solely to customers who maintain IRAs or Keogh Plans with the broker-dealer.

Under the proposal, the determination of eligibility to receive services at reduced or no cost must be based on the value of the customer's accounts or on the amount of fees generated by the customer's accounts. For eligibility requirements based on account values, the eligibility requirement based on the account value of the IRA or Keogh Plan must be as favorable as any requirement imposed by the broker-dealer on any account whose value the broker-dealer includes to determine eligibility. For example, if a broker-dealer establishes a \$10,000 threshold for the receipt of certain reduced or no cost services, any combination of accounts (such as personal accounts, IRAs or Keogh Plans) that equal \$10,000 would be sufficient to satisfy the threshold requirement. In

<sup>8</sup>In this regard, the Department notes that the programs described by the ICI as "letter of intent programs," in which broker-dealers reduce sales commissions based on the aggregate of a customer's actual purchases and anticipated purchases, as agreed to by the customer, raise additional issues that are outside the scope of this proposed exemption.

this regard, a broker-dealer could not set a threshold amount of \$10,000 for a customer with a personal account and a \$20,000 threshold for customers maintaining IRAs and Keogh Plans with the broker-dealer.

For eligibility requirements based on the amount of fees generated, the proposal requires that the minimum amount of fees which must be generated by an IRA or Keogh plan be equal to the lowest amount of fees generated by any other type of account which the broker-dealer includes to determine eligibility for such programs.<sup>9</sup>

The proposal also requires that the combined total of all service fees or commissions received by the broker-dealer from the IRA or Keogh Plan must be reasonable within the meaning of sections 4975(d)(2) of the Code.<sup>10</sup> The Department wishes to note that the scope of relief provided by the proposal is limited to the arrangement under which the account value of the IRA or Keogh Plan, or the fees generated by the IRA or Keogh Plan, is taken into account for purposes of determining eligibility to receive services at reduced or no cost. Thus, no relief would be provided under the proposed exemption for the provision of services to the IRA or Keogh Plan or for any self-dealing arising in connection with the provision of such services. In this regard, see section 4975(d)(2) of the Code and applicable regulations.

Under the proposed exemption, the IRA or Keogh Plan customer who becomes eligible for relationship brokerage services must be eligible to receive the same services that are provided to non-IRA or non-Keogh Plan customers with either account values of the same amount or the same amount of fees generated. The proposal also requires that the investment performance of the IRA and Keogh Plan be no less favorable than the investment performance of identical investments which could have been made at the same time by a customer of the broker-dealer who is not eligible for (or who does not receive) reduced or no cost investment services. This condition

<sup>9</sup>The Applicant describes the following fees as applicable to relationship brokerage programs: administrative fees (charges for maintaining an account with the broker-dealer), brokerage fees (fees for execution of an order to buy or sell securities), wrap fees (bundled fees under which customers receive more than one service), service fees (fees for research concerning investment opportunities, postage and handling charges or ancillary charges such as ATM fees), custodial fees (fees for serving as IRA or Keogh Plan custodian), and investment management fees (fees for managing assets).

<sup>10</sup>Also, the Applicant represents that a broker-dealer is subject to the NASD Rule set forth in Article III, Section 3 which provides that charges for services performed must be reasonable.

ensures that the investment performance of an IRA or Keogh Plan will not be affected due to the inclusion of the IRA or Keogh Plan in the relationship brokerage program. Thus, under the proposal, a broker-dealer could not offer an investment to an IRA or Keogh Plan of a customer who receives reduced or no cost services unless the IRA or Keogh Plan earns no less than that which could be earned on an identical investment available to customers of such broker-dealer who are not eligible for receiving such services.

#### Notice to Interested Persons

Because many participants in IRAs or Keogh Plans and broker-dealers sponsoring IRAs or Keogh Plans could be considered interested persons, the only practical form of notice is publication in the Federal Register.

#### General Information

The attention of interested person is directed to the following:

(1) Before an exemption may be granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the IRAs and Keogh Plans and their participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans.

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

(3) If granted, the proposed exemption will be applicable to a transaction only if the conditions specified in the class exemption are met.

#### Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the referenced application at the above address.

#### Proposed Exemption

On the basis of the facts and representations set forth in the application and this document, the Department is considering granting the following exemption under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B [55 FR 32836, August 10, 1990].

#### Section I: Covered Transactions

Effective (date of publication of final exemption in the Federal Register), the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an IRA pursuant to section 408(e)(2)(A) of the Code, by reason of section 4975(c)(1) (D), (E), and (F) of the Code, shall not apply to the receipt of services at reduced or no cost by an individual for whose benefit an IRA or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from a broker-dealer registered under the Securities Exchange Act of 1934 pursuant to an arrangement in which the account value of, or the fees incurred for services provided to, the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided that each condition of Section II of this exemption is satisfied.

#### Section II: Conditions

(a) The IRA or Keogh Plan whose account value or whose fees are taken into account for purposes of determining eligibility to receive services under the arrangement is established and maintained for the exclusive benefit of the participant covered under the IRA or Keogh Plan, his or her spouse or their beneficiaries.

(b) The services offered under the relationship brokerage arrangement must be of the type that the broker-dealer itself could offer consistent with all applicable federal and state laws regulating broker-dealers.

(c) The services offered under the arrangement are provided by the broker-dealer (or an affiliate of the broker-dealer) in the ordinary course of the broker-dealer's business to customers who qualify for reduced or no cost services, but do not maintain IRAs or Keogh Plans with the broker-dealer.

(d) For purposes of determining eligibility to receive services, the arrangement satisfies one of the following:

(i) Eligibility requirements based on the account value of the IRA or Keogh

Plan are as favorable as any such requirements based on the value of any other type of account which the broker-dealer includes to determine eligibility; and

(ii) Eligibility requirements based on the amount of fees incurred by the IRA or Keogh Plan are as favorable as any requirements based on the amount of fees incurred by any other type of account which the broker-dealer includes to determine eligibility.

(e) The combined total of all fees for the provision of services to the IRA or Keogh Plan is not in excess of reasonable compensation within the meaning of section 4975(d)(2).

(f) The investment performance of the IRA or Keogh Plan investment is no less favorable than the investment performance on an identical investment(s) that could have been made at the same time by a customer of the broker-dealer who is not eligible for (or who does not receive) reduced or no cost services.

(g) The services offered under the arrangement to the IRA or Keogh Plan customer must be the same as are offered to non-IRA or non-Keogh Plan customers with account values of the same amount or the same amount of fees generated.

#### Section III: Definitions

The following definitions apply to this exemption:

(a) The term *broker-dealer* means a broker-dealer registered under the Securities Exchange Act of 1934.

(b) The term *IRA* means an individual retirement account described in Code section 408(a). For purposes of this exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code which provides participants with the unrestricted authority to transfer their SEP balances to IRAs sponsored by different financial institutions.

(c) The term *Keogh Plan* means a pension, profit-sharing, or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in section 401(c) of the Code. For purposes of this exemption, the term Keogh Plan shall not include a Keogh Plan which is an employee benefit plan covered by title I of ERISA.

(d) The term *account value* means investments in cash or securities held in the account for which market quotations are readily available. For purposes this exemption, the term account value shall

not include investments in securities that are offered by the broker-dealer [or its affiliate] exclusively to IRAs and Keogh Plans.

(e) An affiliate of a broker-dealer includes any person directly or indirectly controlling, controlled by, or under common control with the broker-dealer. The term control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term *members of his or her family* refers to beneficiaries of the individual for whose benefit the IRA or Keogh Plan is established or maintained, who would be members of the family as that term is defined in Code section 4975(e)(6), or a brother, a sister, or spouse of a brother or sister.

(g) The term *service* includes incidental products of a de minimis value which are directly related to the provision of services covered by the exemption.

(h) The term *fees* means commissions and other fees received by the broker-dealer from the IRA or Keogh Plan for the provision of services, including, but not limited to, brokerage commissions, investment management fees, custodial fees, and administrative fees.

Signed at Washington, D.C., this 25th day of July 1996.

Olena Berg,

*Assistant Secretary, Pension and Welfare Benefits Administration U.S. Department of Labor.*

[FR Doc. 96-19484 Filed 7-30-96; 8:45 am]

BILLING CODE 4510-29-P

**[Prohibited Transaction Exemption 96-59; Exemption Application No. D-09818, et al.]**

**Grant of Individual Exemptions; PaineWebber Incorporated**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

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

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications

for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

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

**Statutory Findings**

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

(a) The exemptions are administratively feasible;

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

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

PaineWebber Incorporated (PaineWebber), Located in New York, NY

[Prohibited Transaction Exemption 96-59; Exemption Application No. D-09818]

**EXEMPTION**

**Section I. Covered Transactions**

The restrictions of section 406(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 (D) of the Code, shall not apply, effective August 18, 1995, to the purchase or redemption of shares by an employee benefit plan, a plan described in section 403(b) of the Code (the Section 403(b) Plan), an individual retirement account (the IRA) or a retirement plan for a self-employed individual (the Keogh Plan) (collectively referred to herein as the Plans) in the PaineWebber Managed Accounts Services Portfolio Trust (the Trust)

established in connection with such Plans' participation in the PaineWebber PACE Program (the PACE Program).

In addition, the restrictions of 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)(E) and (F) of the Code, shall not apply, effective August 18, 1995, to (a) the provision, by PaineWebber Managed Accounts Services (PMAS), a division of PaineWebber, of asset allocation and related services to an independent fiduciary of a Plan (the Independent Fiduciary) or to a directing participant (the Directing Participant) in a Plan that is covered under and permits participant selection as contemplated by the provisions of section 404(c) of the Act (the Section 404(c) Plan), which may result in the selection by the Independent Fiduciary or the Directing Participant of portfolios of the Trust (the Portfolios) in the PACE Program for the investment of Plan assets; and (b) the provision of investment management services by Mitchell Hutchins Asset Management, Inc. (Mitchell Hutchins) to the PACE Money Market Investments Portfolio of the Trust.

This exemption is subject to the conditions set forth below in Section II.

**Section II. General Conditions**

(a) The participation of each Plan in the PACE Program is approved by an Independent Fiduciary or, if applicable, Directing Participant.

(b) As to each Plan, the total fees paid to PMAS and its affiliates constitute no more than reasonable compensation and do not include the receipt of fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 (the '40 Act) by PMAS and its affiliates in connection with the transactions.

(c) No Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(d) The terms of each purchase or redemption of Trust shares remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) PMAS provides written documentation to an Independent Fiduciary or a Directing Participant of its recommendations or evaluations based upon objective criteria.

(f) Any recommendation or evaluation made by PMAS to an Independent Fiduciary or Directing Participant is implemented only at the express direction of such fiduciary or participant.

(g) PMAS provides investment advice in writing to an Independent Fiduciary or Directing Participant with respect to