

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Kairn G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212. Ms. Kurz can be reached on 202-606-7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The ES-202 program, a Federal/State cooperative effort, produces monthly employment and quarterly wage information. It is a by-product of quarterly reports submitted to State Employment Security Agencies (SESAs) by employers subject to State Unemployment Insurance (UI) laws. The collection of these data is authorized by 29 U.S.C. 1, 2. The ES-202 data, which are compiled for each calendar quarter, provide a comprehensive business name and address file with employment and wage information for employers subject to State UI laws. Similar data for Federal Government employees covered by the Unemployment Compensation for Federal Employees program are also included. These data are submitted to the Bureau of Labor Statistics (BLS) by all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. BLS summarizes these data to produce totals for all counties, Metropolitan Statistical Areas, the States, and the nation. The ES-202 program provides a virtual census of nonagricultural employees and their wages, with about 47 percent of the workers in agriculture covered as well.

The ES-202 program is a comprehensive and accurate source of data on the number of establishments, monthly employment, and quarterly wages, by industry, at the four-digit Standard Industrial Classification (SIC) level, and the national, State, Metropolitan Statistical Area, and county levels. The North American Industry Classification System (NAICS), which will replace the SIC coding system, is scheduled to be implemented in the ES-202 program with data for the first quarter of 2000. The ES-202 series has broad economic significance in measuring labor trends and major industry developments, in time series analyses and industry comparisons, and in special studies such as analyses of establishments, employment, and wages by size of establishment.

II. Current Actions

BLS is requesting a revision of the current Office of Management and Budget (OMB) approval of the Employment, Wages, and Contributions Report (ES-202 Program).

Type of Review: Revision.

Agency: Bureau of Labor Statistics.

Title: Employment, Wages, and Contributions Report (ES-202 Program).

OMB Number: 1220-0012.

Affected Public: State, Local, or Tribal Government.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 212.

Average Time Per Response: 4,464 hours.

Estimated Total Burden Hours: 846,400 hours.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 12th day of February, 1998.

W. Stuart Rust, Jr.,

*Chief, Division of Management Systems,
Bureau of Labor Statistics.*

[FR Doc. 98-4194 Filed 2-18-98; 8:45 am]

BILLING CODE 4510-24-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10213, et al.]

Proposed Exemptions; Bankers Trust Company

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

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days

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

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, 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.

Bankers Trust Company (Bankers Trust) Located in New York, New York

[Application No. D-10213]

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, effective February 16, 1996, to the: (1) lending of certain securities to BT Securities Corporation, Bankers Trust International PLC, and Bankers Trust (Australia) Limited, which are affiliates of Bankers Trust, (collectively; the Affiliated Borrowers), by certain employee benefit plans (including commingled investment funds holding plan assets) (the Client Plans), for which Bankers Trust and certain other affiliates (the BT Group) act as the directed trustee or custodian and securities lending agent or sub-agent;¹ and (2) receipt of compensation by the BT Group in connection with these transactions; provided that the following conditions are satisfied:

1. Neither the Affiliated Borrowers nor the BT Group has or exercises discretionary authority or control with respect to the investment of the assets of the Client Plans involved in the transaction (other than with respect to the investment of cash collateral after securities have been loaned and collateral received), or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets, including decisions concerning a Client Plan's acquisition and disposition of securities available for loan.

2. Before a Client Plan participates in a securities lending program and before any loan of securities to the Affiliated Borrowers is affected, a Client Plan fiduciary who is independent of the BT Group and the Affiliated Borrowers must have:

¹ The applicant represents that because Bankers Trust may add new affiliates, the entities comprising the BT Group may change. However, the Affiliated Borrowers will always be BT Securities Corporation, Bankers Trust International PLC and Bankers Trust (Australia) Limited for purposes of this exemption, if granted.

(a) Authorized and approved a securities lending authorization agreement with the BT Group (the Lending Authorization), where the BT Group is acting as the securities lending agent;

(b) Authorized and approved the primary securities lending authorization agreement (the Primary Lending Agreement) with the primary lending agent, where BT Group is lending securities under a sub-agency arrangement with the primary lending agent²;

(c) Approved the general terms of the securities loan agreement (the Loan Agreement) between such Client Plan and the Affiliated Borrowers, the specific terms of which are negotiated and entered into by BT Group.

3. The Client Plan may terminate the agency or sub-agency agreement at any time without penalty to such plan on five (5) business days notice, whereupon the Affiliated Borrowers shall deliver certificates for securities identical to the borrowed securities (or the equivalent in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Client Plan and the Affiliated Borrowers, whichever is less.

4. The Client Plan will receive from the Affiliated Borrowers (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day on which the loaned securities are delivered to the Affiliated Borrowers, collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or an irrevocable bank letter of credit issued by a U.S. bank, which is a person other than the Affiliated Borrowers or an affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption (PTE) 81-6 (as amended from time to time or, alternatively, any additional or superceding class exemption that may be issued to cover securities lending by employee benefit plans), having, as of the close of

² When the BT Group acts as sub-agent, rather than the primary lending agent, the primary lending agent is receiving no section 406(b) of the Act relief herein. In such situations, the primary lending agent may be provided relief by Prohibited Transaction Class Exemption (PTE) 81-6 and PTE 82-63. PTE 81-6 was published at 46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987, and PTE 82-63 was published at 47 FR 14804, April 6, 1982.

business on the preceding business day, a market value (or, in the case of a letter of credit, a stated amount) initially equal to at least 102 percent of the market value of the loaned securities.

If the market value of the collateral on the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of business on that day, the Affiliated Borrowers will deliver additional collateral on the following day such that the market value of the collateral in the aggregate will again equal 102 percent. The Loan Agreement will give the Client Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral. The BT Group will monitor the level of the collateral daily.

5. When the BT Group lends securities to the Affiliated Borrowers, the following conditions must be met:

(a) The collateral will be maintained in U.S. dollars, U.S. dollar-denominated securities or letters of credit of U.S. Banks;

(b) all collateral will be held in the United States;

(c) the situs of the loan agreement will be maintained in the United States; (d) the lending Client Plans will be indemnified by Bankers Trust in the United States for any transactions covered by this exemption with the foreign Affiliated Borrowers so that the Client Plans will not have to litigate in a foreign jurisdiction nor sue the foreign Affiliated Borrowers to realize on the indemnification; (e) prior to the transaction, the foreign Affiliated Borrowers will enter into a written agreement with the Client Plan whereby the Affiliated Borrowers consent to the service of process in the United States and to the jurisdiction of the courts of the United States with respect to the transactions described herein; and (f)(1) Bankers Trust International PLC is a deposit taking institution supervised by the Bank of England; and (2) Bankers Trust (Australia) Limited is a merchant bank which is under the jurisdiction of the Federal Reserve Bank of Australia.

6. Before entering into the Loan Agreement and before a Client Plan lends any securities to the Affiliated Borrowers, the Affiliated Borrowers shall have furnished the following items to the Client Plan fiduciary: (a) the most recent available audited and unaudited statement of the Affiliated Borrowers' financial condition, (b) at the time of the loan, the Affiliated Borrowers must give prompt notice to the Client Plan fiduciary of any material adverse changes in the Affiliated Borrowers' financial condition since the date of the

most recently financial statement furnished to the Client Plan, and (c) in the event of any such changes, the BT Group will request approval of the Client Plan to continue lending to the Affiliated Borrowers before making any such additional loans. No such new loans will be made until approval is received. Each loan shall constitute a representation by the Affiliated Borrower that there has been no such material adverse change.

7. The Client Plan: (a) Receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the case of cash collateral, the Client Plan may pay a loan rebate or similar fee to the Affiliated Borrower, if such fee is not greater than the fee Client Plan would pay an unrelated party in an arm's length transaction.

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

9. In the event Bankers Trust International PLC and/or Bankers Trust (Australia) Limited default on a loan, Bankers Trust will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, Bankers Trust will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to properly indemnify under this provision). Alternatively, if such identical securities are not available on the market, Bankers Trust will pay the Client Plan cash equal to the market value of the borrowed securities as of the date they should have been returned to the Client Plan plus all the accrued financial benefits derived from the beneficial ownership of such loaned securities. The lending Client Plans will be indemnified by Bankers Trust in the United States for any loans to the foreign Affiliated Borrowers.

10. In the event BT Securities Corporation, a U.S. registered broker-dealer, defaults on a loan, Bankers Trust will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, BT Securities Corporation will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees

of the Client Plan for legal actions arising out of the default on the loans or failure to properly indemnify under this provision).

11. If the Affiliated Borrowers' default on the securities loan or enter bankruptcy, the collateral will not be available to the Affiliated Borrowers or their creditors, but is used to make the Client Plan whole.

12. The Client Plans will be entitled to the equivalent of all distributions made to holders of the borrowed securities, including all interest, dividends and distributions on the loaned securities during the loan period.

13. Only Client Plans with total assets having an aggregate market value of at least \$50 million will be permitted to lend securities to the Affiliated Borrowers.

14. For purposes of this proposed exemption, the Affiliated Borrowers will consist only of BT Securities Corporation, Bankers Trust International PLC and Bankers Trust (Australia) Limited.

15. In any calendar quarter, on average 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of the Client Plans by the BT Group in the aggregate will be to borrowers who are not affiliated with the BT Group.

16. The terms of each loan of securities by the Client Plans to any of the Affiliated Borrowers will be at market rates and at terms as favorable to such plans as if made at the same time and under the same circumstances to an unaffiliated party.

17. Each Client Plan will receive a monthly transaction report, including but not limited to the information described in paragraph 24 of the summary of facts and representations below, so that the independent fiduciary of such plan may monitor the securities lending transactions with the Affiliated Borrowers.

18. During the notification of interested persons period, all current Client Plans will receive a copy of the notice of pendency. If the Department grants the final exemption, current Client Plans will receive a copy of the final exemption. Also, Bankers Trust is prepared to provide a copy of the final exemption to any new Client Plans.

19. Bankers Trust or the Affiliated Borrowers maintain or cause to be maintained within the United States for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (20) below to determine whether the conditions of this exemption have been met; except that a party in interest with respect to

an employee benefit plan, other than Bankers Trust or the Affiliated Borrowers, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975 (a) or (b) of the Code, if such records are not maintained, or are not available for examination as required by this section, and a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of Bankers Trust or the Affiliated Borrowers, such records are lost or destroyed prior to the end of such six year period.

(20)(i) Except as provided in subparagraph (ii) of this paragraph (20) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (19) 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,

(b) Any fiduciary of a Client Plan or any duly authorized representative of such fiduciary,

(c) Any contributing employer to any Client Plan, or any duly authorized employee or representative of such employer, and

(d) Any participant or beneficiary of any Client Plan, or any duly authorized representative of such participant or beneficiary.

(ii) None of the persons described in subparagraphs (b)-(d) of this paragraph (20) shall be authorized to examine trade secrets of Bankers Trust or the Affiliated Borrowers, or commercial or financial information which is privileged or confidential.

EFFECTIVE DATE: If granted this exemption will be effective as of February 16, 1996.

Summary of Facts and Representations

1. Bankers Trust is a New York banking corporation and a leading commercial bank. Bankers Trust is wholly owned by Bankers Trust New York Corporation (BTNY), a bank holding company established in 1965 under the laws of the State of New York. As of December 31, 1995, BTNY and its affiliates had consolidated assets of \$104,002,000,000 and total stockholders equity of \$4,984,000,000.

The BT Group consists of Bankers Trust and certain of its affiliates who act as a directed trustee, custodian and securities lending agent or sub-agent for clients. The BT Group engages in securities lending activities for its own accounts and as an agent for Bankers

Trust Company of California and for Bankers Trust Company of the Southwest. The BT Group also provides a wide range of banking, fiduciary, recordkeeping, custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors.

2. The Affiliated Borrowers consist of BT Securities Corporation, Bankers Trust International PLC and Bankers Trust (Australia) Limited. The exemption, if granted, will be limited to these three entities as the Affiliated Borrowers. BT Securities Corporation is a U.S. broker-dealer affiliated with Bankers Trust with \$834 million in capital as of December 31, 1995. BT Securities Corporation is registered under the 1934 Act and its activities are under the jurisdiction of the Federal Reserve Board, the Securities and Exchange Commission and the National Association of Securities Dealers.

Bankers Trust International PLC is a wholly owned subsidiary of Bankers Trust established under English law and located in England. Bankers Trust International PLC is a deposit taking institution supervised by the Bank of England.

Bankers Trust (Australia) Limited is a merchant bank which conducts commercial banking business in Australia and is under the jurisdiction of the Federal Reserve Bank of Australia. Bankers Trust (Australia) Limited is an indirect subsidiary of Bankers Trust.

3. The Affiliated Borrowers will borrow securities from institutions to satisfy their own needs, or they may re-lend these securities to brokerage firms and other entities which need a particular security for a certain period of time. Bankers Trust requests an exemption for the lending of securities owned by the Client Plans, for which the BT Group serves as the directed trustee or custodian and securities lending agent or sub-agent,³ to the Affiliated Borrowers, following disclosure of its affiliation with the Affiliated Borrowers to the Independent Fiduciaries of the Client Plans, and for the receipt of compensation by the BT Group in connection with such transactions.

Because the BT Group, under the securities lending program, would have

³ For the sake of simplicity, future references to the BT Group's performance of services as securities lending agent should be deemed to include its parallel performance as securities lending sub-agent and references to the Client Plans should be deemed to refer to plans for which the BT Group is acting as sub-agent with respect to securities lending activities, unless otherwise indicated specifically or by the context of the reference.

discretion to lend plan securities to the Affiliated Borrowers, and because the Affiliated Borrowers are affiliates of the BT Group, the lending of securities to the Affiliated Borrowers by the Client Plans for which the BT Group serves as directed trustee or custodian and securities lending agent (or sub-agent) may be outside the scope of relief provided by Prohibited Transaction Exemption (PTE) 81-6 and PTE 82-63.⁴

Several safeguards, described more fully below, are incorporated into the application to ensure the protection of the Client Plans' assets involved in the transactions. In addition, the applicants represent that the lending program described herein incorporates the relevant conditions contained in PTE 81-6 and PTE 82-63.

4. BT Securities Corporation, a U.S. registered broker-dealer, will comply with Federal Reserve Board's Regulation T in its securities lending activities. Pursuant to Regulation T, permitted borrowing purposes include making delivery of securities in the case of short sales, failures of a broker to receive securities it is required to deliver or similar situations.

The Client Plans will also lend securities to the foreign Affiliated Borrowers (Foreign Lending) which are Bankers Trust International PLC and Bankers Trust (Australia) Limited. The applicant represents that Foreign Lending will not expose the Client Plans to greater risk. In Foreign Lending, Bankers Trust will comply with the following safeguards: (a) The collateral will be maintained in U.S. dollars, U.S. dollar-denominated securities or letters of credit of U.S. Banks; (b) all collateral will be held in the United States;⁵ (c)

⁴ PTE 81-6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest.

Condition 1 of PTE 81-6 requires, in part, that neither the borrower nor an affiliate of the borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction.

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

⁵ Under U.K. law, the securities lending agreement between Bankers Trust and Bankers Trust International PLC provides, among other things, that all rights, title and interest in the loaned securities passes to the borrower, and all rights, title

and interest in the collateral passes to the lending Client Plan. The Australian securities lending agreement contains, among other things, the following provisions. Specifically, clause 3.4 of such agreement states: "Property in and title to the securities delivered under clause 3.1, passes absolutely to the borrower free from all liens and encumbrances, and the borrower is not obligated to re-deliver the same securities to the lender." Clause 3.5 of this agreement states: "Property in and title to all the collateral delivered under clause 3.2, passes absolutely to the lender free from all liens and encumbrances, and the lender is not obligated under the loan to re-deliver the same cash, bonds or securities to the borrower (all or part) of the collateral." However, as a condition of this exemption if granted, and by agreement of the parties, the Client Plans will be entitled to the equivalent of all interest, dividends and distributions on the loaned securities during the loan period.

the situs of the loan agreement will be maintained in the United States; (d) Bankers Trust will indemnify the lending Client Plans in the United States for any loans to the foreign Affiliated Borrowers so that the Client Plans will not have to litigate in a foreign jurisdiction nor sue the foreign Affiliated Borrowers to realize on the indemnification; (e) prior to the transaction, the foreign Affiliated Borrowers enter into a written agreement with the Client Plan whereby the Affiliated Borrowers consent to the jurisdiction of the courts of the United States with respect to the transactions described herein; and (f)(1) Bankers Trust International PLC is a deposit taking institution supervised by the Bank of England; and (2) Bankers Trust (Australia) Limited is a merchant bank which is under the jurisdiction of the Federal Reserve Bank of Australia.

5. Where the BT Group acts as a securities lending agent for the Client Plans its essential functions are identifying appropriate borrowers of securities and negotiating the terms of the loans to these borrowers. As a securities lending agent for the Client Plans, the BT Group also provides ancillary services such as monitoring the level of collateral and the value of the loaned securities and, when directed by a Client Plan, investing the cash collateral received with respect to such loans. To protect the Client Plans' assets in these transactions, the BT Group's procedures for lending securities comply with the applicable conditions of PTE 81-6 and PTE 82-63 (including with respect to any commingled funds that may participate in the securities lending program).

6. Under the BT Group's lending program, when a loan is collateralized with cash, the BT Group will transfer such cash to a trust or other investment vehicle selected by the Client Plan in

and interest in the collateral passes to the lending Client Plan.

The Australian securities lending agreement contains, among other things, the following provisions. Specifically, clause 3.4 of such agreement states: "Property in and title to the securities delivered under clause 3.1, passes absolutely to the borrower free from all liens and encumbrances, and the borrower is not obligated to re-deliver the same securities to the lender." Clause 3.5 of this agreement states: "Property in and title to all the collateral delivered under clause 3.2, passes absolutely to the lender free from all liens and encumbrances, and the lender is not obligated under the loan to re-deliver the same cash, bonds or securities to the borrower (all or part) of the collateral." However, as a condition of this exemption if granted, and by agreement of the parties, the Client Plans will be entitled to the equivalent of all interest, dividends and distributions on the loaned securities during the loan period.

advance.⁶ The BT Group will rebate a portion of the earnings on the cash collateral to the Affiliated Borrowers as agreed to in the loan agreement between the BT Group and the Affiliated Borrowers (the Loan Agreement). The applicant represents that through its authorization of the lending program, the independent fiduciary of the Client Plan will approve the terms of the Loan Agreement. The Affiliated Borrowers will pay a fee to the Client Plans based on the value of the loaned securities where the collateral consists of obligations other than cash.

The fee arrangements between the Client Plan and the BT Group with respect to the securities lending program are approved in advance by the independent fiduciary of the Client Plan. This fee is calculated as a percentage of the income earned on the investment of the cash collateral, and will compensate the BT Group for providing lending services to the Client Plans. This fee will reduce the income earned by the Client Plans from the lending of the securities.

7. Where BT Group is the securities lending agent, an independent fiduciary of the Client Plan who is independent of the BT Group and the Affiliated Borrowers, will authorize securities lending (the Lending Authorization) before the Client Plan participates in the BT Group's securities lending program. The Lending Authorization will include the authorization to lend securities, including lending to the Affiliated Borrowers, investment direction by the Client Plans of cash collateral, and fee arrangements. The Lending Authorization and the enclosed additional explanatory materials will describe, among other things, the operation of the securities lending program and allow the BT Group to lend securities held by the Client Plan to borrowers, including the Affiliated Borrowers, as selected by the BT Group, subject to any specific restrictions imposed by the Client Plan. The

⁶When the Client Plan approves securities lending, it is required to designate a short-term investment fund for the investment of cash collateral it receives in connection with the loaned securities. For example, when the Client Plan selects BT Pyramid Funds, which are bank collective funds under IRS Revenue Ruling 81-100, as a vehicle for investment of cash collateral, the fees for investment management are embedded in that fund. However, the applicant represents that selecting a vehicle managed by Bankers Trust is strictly optional and within the total discretion of the Client Plan. Alternatively, the independent fiduciary of the Client Plan may select his own manager, an unrelated mutual or collective fund, or another vehicle of his choice. The selected investment vehicle must be acceptable to Bankers Trust. Bankers Trust neither selects the collateral investment vehicle, nor has any authority or responsibility to do so.

Lending Authorization and the explanatory materials also describe the securities available for lending, minimum required margin, daily marking to market procedures, a list of the affiliates who are permissible borrowers under the securities lending program, and the basis of the BT Group's compensation for performing the securities lending services.

8. The Lending Authorization and the explanatory materials will provide that if one of the Affiliated Borrower's is an approved borrower, the BT Group, as agent of the Client Plan, will represent to the Client Plan that each loan made to its affiliate on behalf of the Client Plan will be at market rates and at terms as favorable to the Client Plan as if made at the same time and under the same circumstances, to an unaffiliated borrower.

9. The Lending Authorization will set forth a fee arrangement agreed upon by the Client Plan and the BT Group, whereby the BT Group will be compensated for its services as the lending agent prior to the commencement of any lending activity. The Client Plan will be provided with any reasonably available information necessary for the independent fiduciary of the Client Plan to determine whether to enter into, or continue to participate under the Lending Authorization (or the Primary Lending Agreement) and other reasonably available information which the independent fiduciary may reasonably request. A Client Plan may terminate either the Lending Authorization or the Primary Lending Agreement at any time, without penalty, on five business days notice.

10. Where the BT Group is the securities lending agent, the BT Group will enter into the Loan Agreement with the Affiliated Borrower on behalf of the Client Plans. The form of the Loan Agreement will be substantially similar to loan agreements negotiated with other similarly situated borrowers.⁷ The form of the Loan Agreement will also be the industry or the market standard for loans to the borrowers in the country (U.S., U.K. and Australia) where the borrower is domiciled. It will describe the lenders' rights against the borrower in the country of the borrower's domicile (U.S., U.K., and Australia), and

⁷The form of the Loan Agreement between a securities lending agent and a foreign Affiliated Borrower differs from the standard U.S. loan agreement. Under the U.K. and Australian Loan Agreements, the Client Plan receives title to (rather than a pledge of, or a security interest in) the collateral.

Furthermore, the Loan Agreement with the Client plans will include specific indemnification provisions as described herein.

represent that these rights will be equivalent to those under U.S. law. The independent fiduciary for each Client Plan will approve the terms of the Loan Agreement through its authorization of the lending program, and such fiduciary will be provided a copy of the applicable Loan Agreement from the BT Group upon request. The Loan Agreement will specify, among other things, the right of the BT Group as the lending agent on behalf of the Client Plan to terminate a loan at any time on not more than five business days notice, and the lending agent's rights in the event of any default by the borrower. The Loan Agreement will also require that the Affiliated Borrowers pay all transfer fees and transfer taxes related to the security loans. The Loan Agreement will describe the basis for compensation to the Client Plan for lending securities to the Affiliated Borrowers under each category of collateral.

11. The BT group may also be retained by independent primary securities lending agents to render securities lending services in a sub-agent capacity. Under these circumstances, the primary lending agent, an entity independent of the BT Group and the Affiliated Borrower, will enter into a securities lending agency agreement (the Primary Lending Agreement) with an independent fiduciary of the Client Plan who is independent of the primary lending agent, the BT Group and the Affiliated Borrowers, before the Client Plan participates in the securities lending program. The BT Group will not enter into a sub-agent arrangement unless the Primary Lending Agreement contains provisions which correspond to those in the Loan Agreement where the BT Group is the primary securities lending agent, including a description of the lending program's operation, the use of an approved form of the loan agreement, the specification of securities which are available to be lent, the required margin and daily marking to market, and a list of the approved borrowers (including, the Affiliated Borrowers). The Primary Lending Agreement will authorize the primary lending agent to appoint sub-agents in order to facilitate its performance of securities lending agency functions.

The Primary Lending Agreement will expressly disclose where the BT Group will be acting as the securities lending sub-agent. The Primary Lending Agreement will also set forth the basis and rate for the primary lending agent's compensation from the Client Plan for performing securities lending services, and will authorize the primary lending agent to pay a portion of its fee, as

determined by the primary lending agent in its sole discretion, to any sub-agent(s) it retains pursuant to the authority granted under such Primary Lending Agreement.⁸

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (the Sub-Agency Agreement) with the BT Group, under which the primary lending agent will retain and authorize the BT Group, as the sub-agent, to lend securities of the primary lending agent's Client Plans, subject to the same terms and conditions of the Primary Lending Agreement. Thus, the form of the Loan Agreement will be the same as that approved by the independent fiduciary in the Primary Lending Agreement, and the list of permissible borrowers under the Sub-Agency Agreement (including the Affiliated Borrowers), will be limited to those approved borrowers listed as such under the Primary Lending Agreement. The Sub-Agency Agreement will also contain provisions comparable to those in a Loan Agreement where the BT Group is the primary lending agent. The Sub-Agency Agreement will provide that the BT Group comply with the same standard regarding arms-length dealing with the Affiliated Borrowers, as when the BT Group is the primary lending agent. The Sub-Agency Agreement will also set forth the basis and the rate for the BT Group's compensation to be paid by the primary lending agent.

12. In all cases, the BT Group will maintain transactional and market records sufficient to assure compliance with its representations that all loans to the Affiliated Borrowers are at arm's-length terms. Information will be provided to the independent fiduciary of the Client Plan in the manner and format agreed to with the lending agent, without charge to the Client Plan.

13. Before entering into the Loan Agreement, the Affiliated Borrowers will furnish its most recent available audited and unaudited financial statements to the Client Plan Fiduciary, and each Client Plan will be advised in the Lending Authorization that it will be provided copies of such statements upon request, and before the Client Plan

is asked to authorize such lending. The Loan Agreement will contain a requirement that the Affiliated Borrowers must give prompt notice at the time of the loan, of any material adverse changes in their financial condition since the date of the most recently furnished financial statements. In the event of any such changes, the BT Group will request approval of the Client Plan to continue lending to the Affiliated Borrowers before making any such additional loans. No such new loans will be made until approval is received. Each loan shall constitute a representation by the Affiliated Borrower that there has been no such material adverse change.

14. Each time that a Client Plan loans securities to the Affiliated Borrower pursuant to the Loan Agreement, the BT Group will reflect in its records the material terms of the loan, including the securities loaned, the required level of the collateral, and the fee or rebate payable. The terms of each loan will be at least as favorable to the Client Plan as those of a comparable arm's-length transaction between unrelated parties.

15. The Loan Agreement will provide that the lending agent may terminate any loan at any time. Upon a termination, the Affiliated Borrowers will be contractually obligated to return the loaned securities to the lending agent within the lesser of: (a) The customary delivery period for such securities; (b) five business days of notification (or such longer period of time permitted pursuant to a class exemption); or (c) the time negotiated for such delivery by the lending agent and the borrower. If the Affiliated Borrowers fail to return the securities within the designated time, the lending agent will have the right under the Loan Agreement to purchase securities identical to the borrowed securities, and apply the collateral to the payment of the purchase price and any other costs and expenses reasonably incurred as a result of such sale and/or purchase.

16. Further, the Client Plans will be indemnified by Bankers Trust or BT Securities Corporation in the event the Affiliated Borrowers fail to return the borrowed securities. In the event Bankers Trust International PLC and/or Bankers Trust (Australia) Limited default on a loan Bankers Trust will liquidate the loan collateral to purchase identical securities for the Client Plan. In the event the collateral is insufficient to accomplish such purchase, Bankers Trust will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for

legal actions arising out of the default on the loans or failure to properly indemnify under this provision). Alternatively, if such identical securities are not available on the market, Bankers Trust will pay the Client Plan cash equal to the market value of the borrowed securities as of the date they should have been returned to the Client Plan plus all the accrued financial benefits derived from the beneficial ownership of such loaned securities. The lending Client Plans will be indemnified by Bankers Trust in the United States for any loans to the foreign Affiliated Borrowers.

When the Affiliated Borrower is BT Securities Corporation, a U.S. registered broker-dealer, BT Securities Corporation will indemnify the Client Plan against losses.⁹ Bankers Trust will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, BT Securities Corporation will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to properly indemnify under this provision).

17. The BT Group will establish each day a written schedule of lending fees and rebate rates in order to assure uniformity of treatment among borrowing brokers and to limit the discretion the BT Group would have in negotiating securities loans to the Affiliated Borrowers. Loans to the Affiliated Borrowers on any day will be made at rates on the daily schedule or at rates which may be more advantageous to the Client Plans. In no case will loans be made to the Affiliated Borrowers at rates below those on the schedule. The rebate rates which are established with respect to cash-collateralized loans, will take into account the potential demand for loaned securities, the applicable bench-mark cost of funds indices (typically, Federal Funds, overnight repo rate or the like) and anticipated investment return on investments of cash collateral. The lending fees (in respect of loans made by Client Plans collateralized by other than cash) which are established will be set daily to reflect conditions as influenced by potential market demand.

18. BT Group will adopt maximum daily rebate rates for cash collateral payable to the Affiliated Borrowers on behalf of a lending Client Plan. Separate

⁸The foregoing provisions describe arrangements comparable to conditions (c) and (d) of PTE 82-63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary." In the event that a commingled investment fund will participate in the securities lending program, the special rule applicable to such funds concerning the authorization of the compensation arrangement set forth in paragraph (f) of PTE 82-63 will be satisfied.

⁹It is represented that under applicable banking laws BT Securities Corporation may not be indemnified by Bankers Trust.

maximum daily rebate rates will be established with respect to loans of designated classes of securities such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities, and international equities. The BT Group will submit the terms for determining the maximum daily rebate rates to an independent fiduciary of the Client Plan for approval before lending any securities to the Affiliated Borrowers on behalf of such plan. With respect to each designated class of securities, the maximum daily rebate rate will generally be the lower of: (i) The overnight repo rate or Federal Funds rate, minus a stated percentage, and (ii) the actual investment rate for the relevant cash collateral, minus a stated percentage. Thus, when cash is used as collateral, the daily rebate rate should always be lower than the rate of return to the Client Plans from authorized investments of cash collateral.

19. BT Group will also adopt minimum daily lending fees for non-cash collateral payable by the Affiliated Borrowers to the BT Group on behalf of the Client Plan. Separate minimum daily lending fees will be established with respect to loans of designated classes of securities, such as U.S. government securities, U.S. equities and corporate bonds, international fixed income securities, and international equities. The BT Group will submit the terms for determining such fees to an independent fiduciary of the Client Plan for approval before lending securities to the Affiliated Borrowers on behalf of such plan. With respect to each designated class of securities, the minimum lending fee will be a percentage of the principal value of the loaned securities.

20. For collateral other than cash, the lending fees charged the previous day will be reviewed by the BT Group for competitiveness. Because 50 percent (50%) or more of securities loans by Client Plans will be to unrelated parties, regardless of the type of collateral used to secure the loans, the competitiveness of the BT Group's fee schedule will be continuously tested in the marketplace. Accordingly, loans to the Affiliated Borrowers should result in a competitive rate of income to the lending Client Plans. At all times, the BT Group will effect loans in a prudent and diversified manner.

21. Should the BT Group recognize prior to the end of a business day that, with respect to new and/or existing loans, it must change the rebate rate or lending fee formula in the best interest

of Client Plans, it may do so with respect to the Affiliated Borrowers.

If the BT Group reduces the lending fee or increases the rebate rate on any outstanding loan to the Affiliated Borrower (except for any change resulting from a change in the value of any third party independent index with respect to which the fee or rebate is calculated), the BT Group, by the close of business on the date of such adjustment, shall provide to the independent fiduciary of the Client Plan with notice that it has reduced such fee or increased the rebate rate to such Affiliated Borrower and that the Client Plan may terminate such loan at any time. The BT Group shall provide the independent fiduciary with such information as the independent fiduciary may reasonably request regarding the adjustment.

22. BT Group will usually lend securities to requesting borrowers on a "first come, first served" basis, as a means of assuring uniformity of treatment among borrowers. However, in some instances, the borrower's credit limit may be reached, and the first in line borrower will not be approved as a borrower by the Client Plan. In other instances, there may be more than one prospective borrower that seeks to borrow a particular security at approximately the same time. In these situations, the BT Group will either lend to the next in line approved borrower, or allocate the loan equitably among competing borrowers, as applicable.

23. The Client Plan will receive collateral from the Affiliated Borrowers by physical delivery, book entry in a securities depository, wire transfer or similar means, by the close of business on or before the day the loaned securities are delivered to the Affiliated Borrowers. The collateral will consist of cash, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable bank letters of credit issued by a U.S. bank, which is a person other than the Affiliated Borrowers or an affiliate thereof. The market value of the collateral on the close of business on the day of, or the business day preceding the day of the loan, will be at least 102 percent of the market value of the loaned securities. The Loan Agreement involving BT Securities Corporation will give the Client Plan a continuing security interest in and a lien on the collateral or the equivalent under local law. However, under the U.K. and Australian Loan Agreements, the Client Plan receives title to (rather than a pledge of, or security interest in) the collateral from Bankers Trust International PLC and Bankers Trust (Australia) Limited. The BT Group will

monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent (or such greater percentage as agreed to by the parties) of the loaned securities, the BT Group will require the Affiliated Borrowers to deliver by the close of business the next business day sufficient additional collateral to bring the level back to at least 102 percent.

Bankers Trust represents that in the event of the Affiliated Borrowers' default or bankruptcy, the collateral is used to make the Client Plan whole, and is not available to the Affiliated Borrowers or their creditors. The collateral is held for the benefit of the Client Plan and is not available to the Affiliated Borrowers until the securities loan is terminated, and the loaned securities plus any income thereon are returned to the Client Plan. When the Client Plans lend securities to foreign Affiliated Borrowers, collateral will be maintained pursuant to the relevant conditions contained in paragraph 4 above.

24. Each Client Plan participating in the lending program will be sent a monthly¹⁰ transaction report. This monthly report will provide a list of all securities loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the securities for collateralization purposes, the current value of the collateral, the rebate or the loan fee at which the securities are loaned, and the number of days the securities have been on loan.

In order to provide the means for monitoring lending activity, rates on loans to the Affiliated Borrowers compared with loans to other borrowers, and the level of collateral on the loans, it is represented that the monthly report will show, on a daily basis, the market value of all outstanding security loans to the Affiliated Borrowers and to other borrowers. Further, the BT Group will advise the Client Plans that upon request, the monthly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The monthly report also will state, on a daily basis, the rates at which securities are loaned to the Affiliated Borrowers and those at which securities are loaned to other borrowers.

25. Only Client Plans with total assets having an aggregate market value of at least \$50 million will be permitted to lend securities to the Affiliated Borrowers. This restriction is intended

¹⁰ More frequent reports will be made available at the Client Plan's request.

to assure that any lending to the Affiliated Borrowers will be monitored by an independent fiduciary who is experienced and sophisticated in matters of this kind.

26. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

A. Neither the Affiliated Borrowers nor the BT Group has or exercises discretionary authority or control with respect to the investment of the assets of the Client Plans involved in the transaction (other than with respect to the investment of cash collateral after securities have been loaned and collateral received), or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets, including decisions concerning a Client Plan's acquisition and disposition of securities available for loan.

B. Before a Client Plan participates in a securities lending program and before any loan of securities to the Affiliated Borrowers is affected, a Client Plan fiduciary who is independent of the BT Group and the Affiliated Borrowers must have:

(1) Authorized and approved the Lending Authorization with the BT Group, where the BT Group is acting as the securities lending agent;

(2) Authorized and approved the Primary Lending Agreement with the primary lending agent, where BT Group is lending securities under a sub-agency arrangement with the primary lending agent;¹¹

(3) Approved the general terms of the Loan Agreement between such Client Plan and the Affiliated Borrowers, the specific terms of which are negotiated and entered into by BT Group.

C. The Client Plan may terminate the agency or sub-agency agreement at any time without penalty to such plan on five (5) business days notice, whereupon the Affiliated Borrowers shall deliver certificates for securities identical to the borrowed securities (or the equivalent in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the plan within (1) the customary delivery period for such securities, (2) five business days, or (3) the time negotiated for such delivery by the Client Plan and the Affiliated Borrowers, whichever is less.

D. The Client Plan will receive from the Affiliated Borrowers (either by physical delivery or by book entry in a securities depository located in the

United States, wire transfer or similar means) by the close of business on or before the day on which the loaned securities are delivered to the Affiliated Borrowers, collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or an irrevocable bank letter of credit issued by a U.S. bank, which is a person other than the Affiliated Borrowers or an affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption (PTE) 81-6 (as amended from time to time or, alternatively, any additional or superceding class exemption that may be issued to cover securities lending by employee benefit plans), having, as of the close of business on the preceding business day, a market value (or, in the case of a letter of credit, a stated amount) initially equal to at least 102 percent of the market value of the loaned securities.

If the market value of the collateral on the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of business on that day, the Affiliated Borrowers will deliver additional collateral on the following day such that the market value of the collateral in the aggregate will again equal 102 percent. The Loan Agreement will give the Client Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral. The BT Group will monitor the level of the collateral daily.

E. When the BT Group lends securities to the Affiliated Borrowers, the following conditions must be met: (1) The collateral will be maintained in U.S. dollars, U.S. dollar-denominated securities or letters of credit of U.S. Banks; (2) all collateral will be held in the United States; (3) the situs of the loan agreement will be maintained in the United States; (4) the lending Client Plans will be indemnified by Bankers Trust in the United States for any transactions covered by this exemption with the foreign Affiliated Borrowers so that the Client Plans will not have to litigate in a foreign jurisdiction nor sue the foreign Affiliated Borrowers to realize on the indemnification; (5) prior to the transaction, the foreign Affiliated Borrowers will enter into a written agreement with the Client Plan whereby the Affiliated Borrowers consent to the service of process in the United States and to the jurisdiction of the courts of the United States with respect to the transactions described herein; and (6)(a) Bankers Trust International PLC is a deposit taking institution supervised by

the Bank of England; and (b) Bankers Trust (Australia) Limited is a merchant bank which is under the jurisdiction of the Federal Reserve Bank of Australia.

F. Before entering into the Loan Agreement and before a Client Plan lends any securities to an Affiliated Borrower, the Affiliated Borrower shall have furnished the following items to the Client Plan fiduciary: (1) The most recent available audited and unaudited statement of the Affiliated Borrowers' financial condition, (2) at the time of the loan, the Affiliated Borrowers must give prompt notice to the Client Plan fiduciary of any material adverse changes in the Affiliated Borrowers' financial condition since the date of the most recently financial statement furnished to the Client Plan, and (3) in the event of any such changes, the BT Group will request approval of the Client Plan to continue lending to the Affiliated Borrowers before making any such additional loans. No such new loans will be made until approval is received. Each loan shall constitute a representation by the Affiliated Borrower that there has been no such material adverse change.

G. The Client Plan: (1) Receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (2) has the opportunity to derive compensation through the investment of cash collateral. In the case of cash collateral, the Client Plan may pay a loan rebate or similar fee to the Affiliated Borrower, if such fee is not greater than the fee Client Plan would pay an unrelated party in an arm's length transaction.

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

I. In the event Bankers Trust International PLC and/or Bankers Trust (Australia) Limited default on a loan, Bankers Trust will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, Bankers Trust will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to properly indemnify under this provision). Alternatively, if such identical securities are not available on the market, Bankers Trust will pay the Client Plan cash equal to the market value of the borrowed securities as of the date they should have been returned to the Client Plan plus all the accrued

¹¹ See Footnote 2, *supra*.

financial benefits derived from the beneficial ownership of such loaned securities. The lending Client Plans will be indemnified by Bankers Trust in the United States for any loans to the foreign Affiliated Borrowers.

J. In the event BT Securities Corporation, a U.S. registered broker-dealer, defaults on a loan, Bankers Trust will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, BT Securities Corporation will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to properly indemnify under this provision).

K. If the Affiliated Borrowers' default on the securities loan or enter bankruptcy, the collateral will not be available to the Affiliated Borrowers or their creditors, but is used to make the Client Plan whole.

L. The Client Plans will be entitled to the equivalent of all distributions made to the holders of the borrowed securities, including all interest, dividends and distributions on the loaned securities during the loan period.

M. Only Client Plans with total assets having an aggregate market value of at least \$50 million will be permitted to lend securities to the Affiliated Borrowers.

N. For purposes of this proposed exemption, the Affiliated Borrowers will consist only of BT Securities Corporation, Bankers Trust International PLC and Bankers Trust (Australia) Limited.

O. In any calendar quarter, on average 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of the Client Plans by the BT Group in the aggregate will be to borrowers who are not affiliated with the BT Group.

P. The terms of each loan of securities by the Client Plans to any of the Affiliated Borrowers will be at market rates and at terms as favorable to such plans as if made at the same time and under the same circumstances to an unaffiliated party.

Q. Each Client Plan will receive monthly transaction report, including but not limited to the information described in paragraph 24 of the summary of facts and representations above, so that the independent fiduciary of such plan may monitor the securities lending transactions with the Affiliated Borrowers.

R. During the notification of interested persons period, all current Client Plans will receive a copy of the notice of pendency. If the Department grants the final exemption, current Client Plans will receive a copy of the final exemption. Also, Bankers Trust is prepared to provide a copy of the final exemption to any new Client Plans.

Notice to Interested Persons

Those persons who may be interested in the pendency of this exemption include the named fiduciaries of any affected Client Plan for which the BT Group serves as the lending agent. The applicant represents that it proposes to notify the interested persons within fifteen (15) days of the publication of the notice of the proposed exemption in the **Federal Register**. Such notice will contain a copy of the notice of the proposed exemption published in the **Federal Register** and a supplemental statement described at 29 CFR 2570.43 (b)(2) advising interested persons of their right to comment and to request a hearing on the proposed exemption. Accordingly, comments and hearing requests on the proposed exemption are due forty five (45) days after the date of publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan, U.S. Department of Labor, telephone (202) 219-8883. (This is not a toll-free number.)

Goldman Sachs & Co. (Goldman Sachs) and The Goldman Sachs Trust Company (GSTC) Located in New York, NY

[Application No. D-10306]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective July 31, 1996, to the past and continued lending of securities to Goldman Sachs International or any other Goldman Sachs affiliate based in the United Kingdom (together, GSI), Goldman Sachs, affiliated U.S. registered broker-dealers of Goldman Sachs, or Goldman Sachs (Japan), Ltd., including any of its affiliates (together,

Goldman Sachs (Japan)),¹² by employee benefit plans (the Client Plans), including commingled investment funds holding Plan assets, for which Goldman Sachs Trust Company (GSTC), an affiliate of Goldman Sachs, acts as securities lending agent (or sub-agent) and to the receipt of compensation by GSTC in connection with these transactions, provided that the following conditions are met:

(a) For each Client Plan, neither GSTC, Goldman Sachs nor an affiliate of either has or exercises discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets.

(b) Any arrangement for GSTC to lend Plan securities to Goldman Sachs in either an agency or sub-agency capacity is approved in advance by a Plan fiduciary who is independent of Goldman Sachs and GSTC.¹³ In this regard, the independent Plan fiduciary also approves the general terms of the securities loan agreement (the Loan Agreement) between the Client Plan and Goldman Sachs, although the specific terms of the Loan Agreement are negotiated and entered into by GSTC and GSTC acts as a liaison between the lender and the borrower to facilitate the lending transaction.

(c) The terms of each loan of securities by a Client Plan to Goldman Sachs is at least as favorable to such Plans as those of a comparable arm's length transaction between unrelated parties.

(d) A Client Plan may terminate the agency or sub-agency arrangement at any time without penalty to such Plan on five business days notice.

(e) The Client Plan receives from Goldman Sachs (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to Goldman Sachs, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or

¹² Unless otherwise noted, for purposes of this proposed exemption, Goldman Sachs, the affiliated U.S. registered broker-dealers of Goldman Sachs, GSI and Goldman Sachs (Japan) are collectively referred to herein as Goldman Sachs.

¹³ The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than GSTC, beyond that provided pursuant to Prohibited Transaction Exemption (PTE) 81-6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and PTE 82-63 (47 FR 14804, April 6, 1982).

irrevocable United States bank letters of credit issued by a person other than Goldman Sachs or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81-6, as it may be amended or superseded.

(f) As of the close of business on the preceding business day, the fair market value of the collateral initially equals at least 102 percent of the market value of the loaned securities and, if the market value of the collateral falls below 100 percent, Goldman Sachs delivers additional collateral on the following day such that the market value of the collateral again equals 102 percent.

(g) Prior to entering into the Loan Agreement, Goldman Sachs furnishes GSTC its most recently available audited and unaudited statements, which is, in turn, provided to a Client Plan, as well as a representation by Goldman Sachs, that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently-furnished statement that has not been disclosed to such Client Plan; provided, however, that in the event of a material adverse change, GSTC does not make any further loans to Goldman Sachs unless an independent fiduciary of the Client Plan is provided notice of any material adverse change and approves the loan in view of the changed financial condition.

(h) In return for lending securities, the Client Plan either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (Under such circumstances, the Client Plan may pay a loan rebate or similar fee to Goldman Sachs, if such fee is not greater than the fee the Client Plan would pay in a comparable arm's length transaction with an unrelated party.)

(i) All procedures regarding the securities lending activities conform to the applicable provisions of Prohibited Transaction Exemptions PTE 81-6 and PTE 82-63 as well as to applicable securities laws of the United States, the United Kingdom or Japan.

(j) Each Goldman Sachs entity indemnifies and holds harmless each lending Client Plan in the United States against any and all losses, damages, liabilities, costs and expenses (including attorney's fees) which the Client Plan may incur or suffer directly arising out of the lending of securities of such Client Plan to such Goldman Sachs entity. In the event that GSI or Goldman Sachs (Japan) defaults on a loan, GSTC

will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, GSTC will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred. Alternatively, if such identical securities are not available on the market, GSTC will pay the Client Plan cash equal to (1) The market value of the borrowed securities as of the date they should have been returned to the Client Plan, plus (2) all the accrued financial benefits derived from the beneficial ownership of such loaned securities as of such date, plus (3) interest from such date to the date of payment.

(k) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions.

(l) Prior to any Client Plan's approval of the lending of its securities to Goldman Sachs, a copy of this exemption, if granted, (and the notice of pendency) are provided to the Client Plan.

(m) Each Client Plan receives monthly reports with respect to its securities lending transactions, including, but not limited to the information described in Representation 31, so that an independent fiduciary of the Client Plan may monitor such transactions with Goldman Sachs.

(n) Only Client Plans with total assets having an aggregate market value of at least \$50 million are permitted to lend securities to Goldman Sachs; provided, however, that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3-101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with Goldman Sachs, the foregoing \$50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and

control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with Goldman Sachs, the foregoing \$50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million; provided that the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Is neither the sponsoring employer, a member of the controlled group of corporations, the employee organization nor an affiliate;

(ii) Has full investment responsibility with respect to plan assets invested therein; and

(iii) Has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million. (In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(o) With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers.

(p) In addition to the above, all loans involving GSI and Goldman Sachs (Japan), have the following supplemental requirements:

(1) Such broker-dealer is registered as a broker-dealer with the Securities and Futures Authority of the United Kingdom (the SFA) or with the Ministry of Finance (the MOF) and the Tokyo Stock Exchange;

(2) Such broker-dealer is in compliance with all applicable provisions of Rule 15a-6 (17 CFR 240.15a-6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or dollar-denominated securities or letters of credit;

(4) All collateral is held in the United States and GSTC maintains the situs of

the securities Loan Agreements in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)-1; and

(5) GSI or Goldman Sachs (Japan) provides Goldman Sachs a written consent to service of process in the United States for any civil action or proceeding brought in respect of the securities lending transaction, which consent provides that process may be served on such borrower by service on Goldman Sachs.

(q) Goldman Sachs and its affiliates maintain, or cause to maintain within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (r)(1) to determine whether the conditions of the 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 Goldman Sachs and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than Goldman Sachs 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 below by paragraph (r)(1).

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

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

(ii) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

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

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

(r)(2) None of the persons described above in paragraphs (r)(1)(ii)-(r)(1)(iv) of this paragraph (r)(1) are authorized to examine the trade secrets of Goldman

Sachs or commercial or financial information which is privileged or confidential.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of July 31, 1996.

Summary of Facts and Representations

1. *Goldman Sachs*, a New York limited partnership, is the principal operating subsidiary of The Goldman Sachs Group, L.P. (the Goldman Sachs Group), a Delaware limited partnership. Goldman Sachs is currently owned by the Goldman Sachs Group, the individual general partners of the Goldman Sachs Group and two institutional limited partners. Goldman Sachs is one of the largest full-line investment service firms in the United States. It is registered with and regulated by the SEC as a broker-dealer, is registered with and regulated by the Commodities Futures Trading Commission as a futures commission merchant, is a member of the New York Stock Exchange and other principal securities exchanges in the United States and is also a member of the National Association of Securities Dealers, Inc. As of May 30, 1997, Goldman Sachs had approximately \$125.2 billion in assets and approximately \$5.9 billion in consolidated capital (partners' capital and subordinated liabilities).

2. Acting as principal, Goldman Sachs actively engages in the borrowing and lending of securities, with daily outstanding loan volume averaging several billion dollars. Goldman Sachs utilizes borrowed securities to satisfy its trading requirements or to re-lend to other broker-dealers and others who need a particular security for various periods of time. All borrowings by Goldman Sachs conform to the Federal Reserve Board's Regulation T. Pursuant to Regulation T, permitted borrowing purposes include making delivery of securities in the case of short sales, failures of a broker to receive securities it is required to deliver or other similar situations.

3. *GSTC* is a wholly owned subsidiary of the Goldman Sachs Group and an affiliate of Goldman Sachs. *GSTC* is organized as a limited purpose trust company licensed by the New York State Banking Department in New York. *GSTC* provides a variety of services to its clients, including serving as a custodian, clearing agent, corporate trustee and (following the acquisition of substantially all of the assets of Boston Global Advisors, Inc. on July 31, 1996) a securities lending agent to Plans and other entities. As of December 31, 1996,

GSTC had total assets of approximately \$21 million.

4. *GSI*, an indirect subsidiary of the Goldman Sachs Group, is an English company registered with the Registrar of Companies for England and Wales. *GSI* is also an international investment banking organization. As of November 30, 1996, *GSI* had approximately \$44 billion in total assets.

5. *Goldman Sachs (Japan)*, another indirect subsidiary of the Goldman Sachs Group, is a Japanese company that is subject to regulation by the MOF and the Tokyo Stock Exchange. As of May 31, 1997, *Goldman Sachs (Japan)* had total assets of approximately \$7.5 billion.

6. *GSI* is authorized to conduct an investment business in and from the United Kingdom as a broker-dealer regulated by the SFA. Similarly, *Goldman Sachs (Japan)* is authorized to conduct an investment business in Japan as a broker-dealer regulated by the MOF and the Tokyo Stock Exchange. Although not registered with the United States SEC, *GSI* is governed by the rules, regulations and membership requirements of the SFA whereas *Goldman Sachs (Japan)* is governed by the rules, regulations and membership requirements of the MOF and the Tokyo Stock Exchange. In this regard, *GSI* and *Goldman Sachs (Japan)* are subject to rules relating to minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules and books and records requirements with respect to client accounts. These rules and regulations set forth by the SFA, the MOF, the Tokyo Stock Exchange and the SEC share a common objective: the protection of the investor by the regulation of the securities industry. The SFA, MOF and the Tokyo Stock Exchange rules require each firm which employs registered representatives or registered traders to have a positive tangible net worth and be able to meet its obligations as they may fall due. In addition, the SFA, MOF and the Tokyo Stock Exchange rules set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. Further, to demonstrate capital adequacy, the SFA rules impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and recordkeeping requirements to the effect that required records must be produced at the request of the SFA, the MOF and the Tokyo Stock Exchange at any time. Finally, the rules and regulations of the SFA, the MOF and the Tokyo Stock Exchange for broker-dealers impose

potential fines and penalties which establish a comprehensive disciplinary system.

7. Aside from the protections afforded by SFA, MOF and Tokyo Stock Exchange regulations, Goldman Sachs represents that GSI and Goldman Sachs (Japan) will comply with all applicable provisions of Rule 15a-6 of the 1934 Act. Rule 15a-6 provides foreign broker-dealers with a limited exemption from SEC registration requirements and, as described below, offers additional protections. Specifically, Rule 15a-6 provides an exemption from U.S. broker-dealer registration for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "U.S. major institutional investor," provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term "U.S. institutional investor," as defined in Rule 15a-6(b)(7), includes an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 (the Act) if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or (b) the employee benefit plan has total assets in excess of \$5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors" as defined in Rule 501(a)(1) of Regulation D of the Securities Exchange Act of 1933, as amended. The term "U.S. major institutional investor" is defined in Rule 15a-6(b)(4) as a person that is a U.S. institutional investor that has total assets in excess of \$100 million or an investment adviser registered under Section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of \$100 million.

8. Goldman Sachs represents that under Rule 15a-6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major institutional investor must, among other things—

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC (upon request or pursuant to agreements reached between any foreign securities authority, including any foreign government, and the SEC or the U.S. Government) with any information or documents within the possession, custody or

control of the foreign broker-dealer, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer¹⁴ through which the transactions with the U.S. institutional and major institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating their terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by Rules 17a-3 (Records to be Made by Certain Exchange Members) and 17a-4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or U.S. major institutional investor in compliance with Rule 15c3-3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities); and

(6) Participate in all oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor (not the U.S. major institutional investor), and accompany the foreign associated person on all visits with both U.S. institutional and major institutional investors. By virtue of this participation, the U.S. registered broker-dealer would become responsible for the content of all these communications.

9. Since July 31, 1996, GSTC has been providing securities lending services, as agent, to institutional clients. GSTC, pursuant to authorization from its client, will negotiate the terms of loans with borrowers pursuant to a client-approved form of Loan Agreement and will act as a liaison between the lender (and its custodian) and the borrower to facilitate the lending transaction. No loans of futures contracts will be involved. GSTC will have responsibility for monitoring receipt of all required collateral and marking such collateral to market daily so that adequate levels of collateral are maintained. GSTC also will monitor and evaluate on a continuing basis the performance and creditworthiness of the borrowers. GSTC may act as a custodian with respect to the client's portfolio of securities being loaned.¹⁵ GSTC may be

¹⁴ GSI and Goldman Sachs (Japan), in lieu of relying on a U.S. broker-dealer and to the extent permitted by applicable U.S. securities law, may rely on a U.S. bank or trust company, including GSTC, to perform this role.

¹⁵ Goldman Sachs wishes to clarify the fact that an independent fiduciary of a Client Plan may

authorized from time to time by a client to receive and hold pledged collateral and invest cash collateral pursuant to guidelines established by the client. All of GSTC's procedures for lending securities will be designed to comply with the applicable conditions of PTEs 81-6 and PTE 82-63.¹⁶

10. GSTC may be retained occasionally by primary securities lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such primary lending agents. As securities lending sub-agent, GSTC's role under the lending transactions (i.e., negotiating the terms of loans with borrowers pursuant to a client-approved form of Loan Agreement and monitoring receipt of, and marking to market, required collateral) parallels those under lending transactions for which GSTC acts as primary lending agent on behalf of its clients.¹⁷

11. When a loan is collateralized with cash, the cash will be invested for the benefit and at the risk of the client, and resulting earnings (net of a rebate to the borrower) comprise the compensation to the Plan in respect of such loan. Where collateral consists of obligations other than cash, the borrower pays a fee (loan premium) directly to the lending Plan.

12. Accordingly, Goldman Sachs and GSTC request an exemption that would be effective July 31, 1996 (a) for the lending of securities owned by certain pension plans for which GSTC will serve as securities lending agent or sub-agent (referred to hereinafter as the Client Plans)¹⁸ to Goldman Sachs,

appoint GSTC or an affiliate of GSTC to manage cash collateral and to receive a reasonable and customary investment management fee, provided that the Client Plan fiduciary, after receiving full disclosure, approves the compensation arrangement, the terms of which will be described in a written agreement.

¹⁶ PTE 81-6 provides an exemption under certain conditions from section 406(a)(1) (A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest.

PTE 82-63 provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities.

¹⁷ As noted previously, the Department is not providing exemptive relief herein for securities lending transactions that are engaged in by primary lending agents, other than GSTC, beyond that provided by PTEs 81-6 and 82-63.

¹⁸ For the sake of simplicity, future references to GSTC's performance of services as securities lending agent should be deemed to include its parallel performance as securities lending sub-agent and references to Client Plans should be deemed to refer to plans for which GSTC is acting as sub-agent with respect to securities lending activities, unless

affiliated U.S. registered broker-dealers of Goldman Sachs, GSI and Goldman Sachs (Japan), following disclosure of its affiliation with Goldman Sachs, and (b) for the receipt of compensation by GSTC in connection with such transactions. For each Plan, neither GSTC, Goldman Sachs nor any affiliate will have no discretionary authority or control or render investment advice over Client Plans' decisions concerning the acquisition or disposition of securities available for loan. GSTC's discretion will be limited to activities such as negotiating the terms of the securities loans with Goldman Sachs and (to the extent granted by the Client Plan fiduciary) investing any cash collateral received in respect of the loans. Because GSTC, under the proposed arrangement, would have discretion to lend Client Plan securities to Goldman Sachs, and because Goldman Sachs is an affiliate of GSTC, the lending of securities to Goldman Sachs by Client Plans for which GSTC serves as securities lending agent (or sub-agent) may be outside the scope of relief provided by PTE 81-6 and PTE 82-63. Further, loans to GSI and Goldman Sachs (Japan), affiliated foreign broker-dealers of Goldman Sachs, would be outside of the relief granted in PTE 81-6. Therefore, several safeguards, described more fully below, are incorporated in the application in order to ensure the protection of the Plan assets involved in the transactions. In addition, the applicants represent that the proposed lending program incorporates the conditions contained in PTE 81-6 and PTE 82-63 and will be in compliance with all applicable securities laws of the United States.

13. Where GSTC is the direct securities lending agent, a fiduciary of a Client Plan who is independent of GSTC and Goldman Sachs will sign a securities lending agency agreement with GSTC (the Agency Agreement) before the Client Plan participates in a securities lending program. The Agency Agreement will, among other things, describe the operation of the lending program, prescribe the form of securities Loan Agreement to be entered into on behalf of the Client Plan with borrowers, specify the securities which are available to be lent, required margin and daily marking-to-market, and provide a list of permissible borrowers, including Goldman Sachs. The Agency Agreement will also set forth the basis and rate for GSTC's compensation from the Client Plan for the performance of securities lending services.

14. The Agency Agreement will contain provisions to the effect that if Goldman Sachs is designated by the Client Plan as an approved borrower (a) the Client Plan will acknowledge that Goldman Sachs is an affiliate of GSTC and (b) GSTC will represent to the Client Plan that each and every loan made to Goldman Sachs on behalf of the Client Plan will be at market rates which are no less favorable to the Client Plan than a loan of such securities, made at the same time and under the same circumstances, to an unaffiliated borrower.

15. When GSTC is lending securities under a sub-agency arrangement, the primary lending agent will enter into a securities lending agency agreement (the Primary Lending Agreement) with a fiduciary of a Client Plan who is independent of such primary lending agent, GSTC or Goldman Sachs, before the Plan participates in the securities lending program. The primary lending agent will be unaffiliated with GSTC or Goldman Sachs. GSTC will not enter into a sub-agent arrangement unless the Primary Lending Agreement contains substantive provisions akin to those in the Agency Agreement relating to the description of the operation of the lending program, use of an approved form of Loan Agreement, specification of securities which are available to be lent, required margin and daily marking-to-market, and provision of a list of approved borrowers (which will include Goldman Sachs). The Primary Lending Agreement will specifically authorize the primary lending agent to appoint sub-agents, to facilitate its performance of securities lending agency functions. Where GSTC is to act as such a sub-agent, the Primary Lending Agreement will expressly disclose that GSTC is to so act. The Primary Lending Agreement will also set forth the basis and rate for the primary lending agent's compensation from the Client Plan for the performance of securities lending services and will authorize the primary lending agent to pay a portion of its fee, as the primary lending agent determines in its sole discretion, to any sub-agent(s) it retains pursuant to the authority granted under such agreement.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (the Sub-Agency Agreement) with GSTC under which the primary lending agent will retain and authorize GSTC, as sub-agent, to lend securities of the primary lending agent's Client Plans, subject to the same terms and conditions as are specified in the Primary Lending Agreement. Thus, for

example, the form of Loan Agreement will be the same as that approved by the Client Plan fiduciary in the Primary Lending Agreement and the list of permissible borrowers under the Sub-Agency Agreement (which will include Goldman Sachs) will be limited to those approved borrowers listed as such under the Primary Lending Agreement.

GSTC states that the Sub-Agency Agreement will contain provisions which are in substance comparable to those described in Representations 13 and 14 above, which would appear in an Agency Agreement in situations where GSTC is the primary lending agent. In this regard, GSTC will make the same representation in the Sub-Agency Agreement as described in Representation 9 above with respect to arm's length dealing with Goldman Sachs. The Sub-Agency Agreement will also set forth the basis and rate for GSTC's compensation to be paid by the primary lending agent.

16. In all cases, GSTC will maintain transactional and market records sufficient to assure compliance with its representation that all loans to Goldman Sachs are effectively at arm's length terms. Such records will be provided to the appropriate Client Plan fiduciary in the manner and format agreed to with the lending fiduciary, without charge to the Client Plan. A Client Plan may terminate the Agency Agreement (or the Primary Lending Agreement) at any time, without penalty to the Plan, on five business days notice. In addition, GSTC shall make and retain for six months, tape recordings evidencing all securities loan transactions with Goldman Sachs.

17. GSTC will negotiate the Loan Agreement with Goldman Sachs on behalf of Client Plans as it does with all other borrowers. An independent fiduciary of the Client Plan will approve the terms of the Loan Agreement. The Loan Agreement will specify, among other things, the right of the Client Plan to terminate a loan at any time and the Plan's rights in the event of any default by Goldman Sachs. The Loan Agreement will explain the basis for compensation to the Client Plan for lending securities to Goldman Sachs under each category of collateral. The Loan Agreement also will contain a requirement that Goldman Sachs must pay all transfer fees and transfer taxes related to the security loans.

18. Before entering into the Loan Agreement, Goldman Sachs will furnish its most recently available audited and unaudited financial statements to GSTC, and in turn, such statements will be provided to a Client Plan before the Plan is asked to approve the terms of the

otherwise indicated specifically or by the context of the reference.

Loan Agreement. The Loan Agreement will contain a requirement that Goldman Sachs must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements.¹⁹ If any such changes have taken place, GSTC will not make any further loans to Goldman Sachs unless an independent fiduciary of the Plan has approved the loan in view of the changed financial condition. Conversely, if Goldman Sachs fails to provide notice of such a change in its financial condition, such failure will trigger an event of default under the Loan Agreement.

19. As noted above, the agreement by GSTC to provide securities lending services, as agent, to a Client Plan will be embodied in the Agency Agreement. The Client Plan and GSTC will agree to the arrangement under which GSTC will be compensated for its services as lending agent, including services as custodian and manager of the cash collateral received, prior to the commencement of any lending activity. Such agreed upon fee arrangement will be set forth in the Agency Agreement and thereby will be subject to the prior written approval of a fiduciary of the Client Plan who is independent of Goldman Sachs and GSTC. Similarly, with respect to arrangements under which GSTC is acting as securities

¹⁹ With respect to capital adequacy rules for brokerage firms domiciled in the United States, including Goldman Sachs, it is represented that such firms are subject to the capital adequacy rules of their respective regulatory agencies, i.e., the SEC, the New York Stock Exchange, the National Association of Securities Dealers and other self-regulatory authorities. If these brokerage firms fail to meet such requirements, they are subject to fines, penalties and possibly more stringent sanctions.

As for GSI and Goldman Sachs (Japan), which are subject to the capital adequacy provisions of their respective regulatory authorities, it is represented that such rules require GSI and Goldman Sachs (Japan) to maintain, at all times, financial resources in excess of its financial resources requirement (the Financial Resources Requirement). For this purpose, financial resources include equity capital, approved subordinated debt and retained earnings, less deductions for illiquid assets. The Financial Resources Requirement includes capital requirements for market risk, credit risk, foreign exchange risk and large exposures. SFA, MOF and Tokyo Stock Exchange rules require that if a firm's financial resources fall below 120 percent with respect to the SFA and 150 percent with respect to the MOF and the Tokyo Stock Exchange, of its Financial Resources Requirement, the SFA, the MOF or the Tokyo Stock Exchange must be notified so that it can examine the terms of the firm's financial position and require an infusion of more capital, if needed. In addition, a breach of the requirement to maintain financial resources in excess of the Financial Resources Requirement may lead to sanctions by the SFA, the MOF or the Tokyo Stock Exchange. If the breach is not promptly resolved, the SFA, the MOF or the Tokyo Stock Exchange may restrict the firm's activities.

lending sub-agent, the agreed upon fee arrangement of the primary lending agent will be set forth in the Primary Lending Agreement, and such agreement will specifically authorize the primary lending agent to pay a portion of such fee, as the primary lending agent determines in its sole discretion, to any sub-agent, including GSTC, which is to provide securities lending services to the Plan.²⁰ The Client Plan will be provided with any reasonably available information which is necessary for the Plan fiduciary to make a determination whether to enter into or continue to participate under the Agency Agreement (or the Primary Lending Agreement) and any other reasonably available information which the Plan fiduciary may reasonably request.

20. Each time a Plan lends securities to Goldman Sachs pursuant to the Loan Agreement, GSTC will reflect in its records the material terms of the loan, including the securities to be loaned, the required level of collateral, and the fee or rebate payable. The terms of the fee or rebate payable for each loan will be at least as favorable to the Client Plan as those of a comparable arm's length transaction between unrelated parties.

21. The Client Plan will be entitled to the equivalent of all interest, dividends and distributions on the loaned securities during the loan period. The Loan Agreement will provide that the Client Plan may terminate any loan at any time. Upon a termination, Goldman Sachs will be contractually obligated to return the loaned securities to the Client Plan within five business days of notification (or such longer period of time permitted pursuant to a class exemption). If Goldman Sachs fails to return the securities within the designated time, the Client Plan will have the right under the Loan Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Plan associated with the sale and/or purchase.

22. GSTC will establish each day a written schedule of lending fees²¹ and

²⁰ The foregoing provisions describe arrangements comparable to conditions (c) and (d) of PTE 82-63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary." In the event that a commingled investment fund will participate in the securities lending program, the special rule applicable to such funds concerning the authorization of the compensation arrangement set forth in condition (f) of PTE 82-63 will be satisfied.

²¹ GSTC will adopt minimum daily lending fees for non-cash collateral payable by Goldman Sachs

rebate rates²² in order to assure uniformity of treatment among borrowing brokers and to limit the discretion GSTC would have in negotiating securities loans to Goldman Sachs. Loans to all borrowers of a given security on that day will be made at rates or lending fees on the relevant daily schedules or at rates or lending fees which may be more advantageous to the Client Plans. It is represented that in no case will loans be made to Goldman Sachs at rates or lending fees that are less advantageous to the Client Plans than those on the schedule. The daily schedule of rebate rates will be based on the current value of the clients' reinvestment vehicles and on market conditions, as reflected by demand for securities by borrowers other than Goldman Sachs. As with rebate rates, the daily schedule of lending fees will also be based on market conditions, as reflected by demand for securities by borrowers other than Goldman Sachs, and will generally track the rebate rates with respect to the same security or class of security.

23. The rebate rates (in respect of cash-collateralized loans made by Client Plans) which are established will also take into account the potential demand for loaned securities, the applicable benchmark cost of funds indices (typically, Federal Funds, overnight repo rate or the like) and anticipated investment return on overnight investments which are permitted by the relevant Client Plan fiduciary. Further, the lending fees (in respect of loans made by Client Plans collateralized by other than cash) which are established will be set daily to reflect conditions as influenced by potential market demand.

24. GSTC will negotiate rebate rates for cash collateral payable to each borrower, including Goldman Sachs, on behalf of a Client Plan. Where, for example, cash collateral derived from an overnight loan is intended to be invested in a generic repurchase

to GSTC on behalf of a Client Plan. GSTC will submit the method for determining such minimum daily lending fees to an independent fiduciary of the Client Plan for approval before initially lending any securities to Goldman Sachs on behalf of such Client Plan.

²² GSTC will adopt separate maximum daily rebate rates with respect to securities loans collateralized with cash collateral. Such rebate rates will be based upon an objective methodology which takes into account several factors, including potential demand for loaned securities, the applicable benchmark cost of fund indices, and anticipated investment return on overnight investments permitted by the Client Plan's independent fiduciary. GSTC will submit the method for determining such maximum daily rebate rates to such fiduciary before initially lending any securities to Goldman Sachs on behalf of the Client Plan.

agreement, any rebate fee determined with respect to an overnight repurchase agreement benchmark will be set below the applicable "ask" quotation therefor. Where cash collateral is derived from a loan with an expected maturity date (term loan) and is intended to be invested in instruments with similar maturities, the maximum rebate fee will be less than the expected investment return (assuming no investment default). With respect to any loan to Goldman Sachs, GSTC will never negotiate a rebate rate with respect to such loan which would be expected to produce a zero or negative return to the Client Plan (assuming no default on the investments related to the cash collateral from such loan where GSTC has investment discretion over the cash collateral). GSTC represents that the written rebate rate established daily for cash collateral under loans negotiated with Goldman Sachs will not exceed the rebate rate which would be paid to a similarly situated unrelated borrower with respect to a comparable securities lending transaction. GSTC will disclose the method for determining the maximum daily rebate rate as described above to an independent fiduciary of a Client Plan for approval before lending any securities to Goldman Sachs on behalf of the Plan.

25. For collateral other than cash, the applicable loan fee in respect of any outstanding loan is reviewed daily for competitiveness and adjusted, where necessary, to reflect market terms and conditions (see Representation 27). With respect to any calendar quarter, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers so the competitiveness of the loan fee will be tested in the marketplace. Accordingly, loans to Goldman Sachs should result in competitive rate income to the lending Client Plan. At all times, GSTC will effect loans in a prudent and diversified manner. While GSTC will normally lend securities to requesting borrowers on a "first come, first served" basis, as a means of assuring uniformity of treatment among borrowers, it should be recognized that in some cases it may not be possible to adhere to a "first come, first served" allocation. This can occur, for instance where (a) the credit limit established for such borrower by GSTC and/or the Client Plan has already been satisfied; (b) the "first in line" borrower is not approved as a borrower by the particular Client Plan whose securities are sought to be borrowed; and (c) the "first in line" borrower cannot be ascertained, as an operational matter,

because several borrowers spoke to different GSTC representatives at or about the same time with respect to the same security.²³ In situations (a) and (b), loans would normally be effected with the "second in line." In situation (c), securities would be allocated equitably among all eligible borrowers.

26. The method of determining the daily securities lending rates (fees and rebates), the minimum lending fees payable by Goldman Sachs and the maximum rebate payable to Goldman Sachs will be specified in an exhibit attached to the Agency Agreement to be executed between the independent fiduciary of the Client Plan and GSTC in cases where GSTC is the direct securities lending agent.

27. If GSTC reduces the lending fee or increases the rebate rate on any outstanding loan to an affiliated borrower (except for any change resulting from a change in the value of any third party independent index with respect to which the fee or rebate is calculated), GSTC, by the close of business on the date of such adjustment, will provide the independent fiduciary of the Client Plan with notice that it has reduced such fee or increased the rebate rate to such affiliated borrower and that the Client Plan may terminate such loan at any time. In addition, GSTC will provide the independent fiduciary of the Client Plan with such information as the fiduciary may reasonably request regarding such adjustment.

28. Under the Loan Agreement, Goldman Sachs, as borrower, will agree to indemnify and hold harmless the applicable Client Plan (including the sponsor and fiduciaries of such Client Plan) from any and all reasonably foreseeable damages, losses, liabilities, costs and expenses (including attorney's fees) which the Client Plan may incur or suffer arising in any way from the use by Goldman Sachs of the loaned securities or any failure of Goldman Sachs to deliver loaned securities in accordance with the provisions of the Loan Agreement or to otherwise comply with the terms of the Loan Agreement except to the extent that such losses or damages are caused by the Client Plan's negligence. Under certain

²³ It is represented that the "first come, first served" allocation would not apply where GSTC is not acting as a securities lending agent, but rather is acting as, for example, a custodian to a Client Plan that has entered into an exclusive arrangement with the borrower. See PTE 92-78 (57 FR 45837, October 5, 1992) issued to Goldman Sachs and GSTC. In that circumstance, Goldman Sachs as borrower is choosing from whom to borrow and GSTC has no right or obligation to lend Goldman Sachs the securities from other clients or lend the securities subject to such exclusive arrangement to other borrowers.

circumstances, GSTC, as lending agent, also may provide customary indemnities to lending Plans respecting loans made by it as the securities lending agent or, alternatively, procure such an indemnity from another Goldman Sachs affiliate. Further, under certain circumstances, a Goldman Sachs affiliate may guarantee the obligations of GSTC.

In the event GSI or Goldman Sachs (Japan) defaults on a loan, GSTC will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, GSTC will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred. Alternatively, if such identical securities are not available on the market, GSTC will pay the Client Plan cash equal to the market value²⁴ of the borrowed securities as of the date they should have been returned to the Client Plan plus all interest and accrued financial benefits derived from the beneficial ownership of such loaned securities. Under such circumstances, GSTC will pay the Client Plan an amount equal to (a) the value of the securities as of the date such securities should have been returned to the Client Plan plus (b) all of the accrued financial benefits derived from the beneficial ownership of such loan securities as of such date, plus (c) interest from such date through the date of payment.

29. The Client Plan will receive collateral from Goldman Sachs by physical delivery, book entry in a U.S. securities depository, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to Goldman Sachs. The collateral will consist of cash, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable U.S. bank letters of credit (issued by a person other than Goldman Sachs or its affiliates) or such other types of collateral which might be permitted by the Department under a class exemption. The market value of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The Loan Agreement will give the Client Plan a

²⁴ For purposes of this proposed exemption, the "market value" of securities, as of any date, shall be determined on the basis of the closing prices therefor as of the trading date (for the principal market in which the securities are traded) immediately preceding the day of valuation, such determination to be made by the independent pricing source identified to Goldman Sachs by the Client Plan upon the request of Goldman Sachs. Market value shall include accrued interest in the case of debt securities.

continuing security interest in and a lien on the collateral. GSTC will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent (or such greater percentage as agreed to by the parties) of that of the loaned securities, GSTC will require Goldman Sachs to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent.

30. With respect to loans involving GSI and Goldman Sachs (Japan), the following additional conditions will be applicable: (a) all collateral will be maintained in United States dollars or dollar-denominated securities or letters of credit; (b) all collateral is held in the United States and GSTC maintains the situs of the securities loan agreements in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)-1; and (c) GSI or Goldman Sachs (Japan) provides Goldman Sachs a written consent to service of process in the United States for any civil action or proceeding brought in respect of the securities lending transaction, which consent provides that process may be served on such borrower by service on Goldman Sachs.

31. Each Client Plan participating in the lending program will be sent a monthly transaction report. The monthly report will provide a list of all security loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or loan premium (as the case may be) at which the security is loaned, and the number of days the security has been on loan. In addition, if requested by the lending customer, GSTC will provide daily confirmations of securities lending transactions, and, with respect to monthly reports, if requested by the customer, GSTC will provide weekly or daily reports, setting forth for each transaction made or outstanding during the relevant reporting period, the loaned securities, the related collateral, rebates and loan premiums and such other information in such format as shall be agreed to by the parties. Further, prior to a Client Plan's approval of a securities lending program, Goldman Sachs will provide a Plan fiduciary with copies of the proposed exemption and notice granting the exemption.

32. In order to provide the means for monitoring lending activity, the monthly report will compare rates on loans by the Client Plans to Goldman

Sachs with loans to other brokers as well as the level of collateral on the loans. In this regard, the monthly report will show, on a daily basis, the market value of all outstanding security loans to Goldman Sachs and to other borrowers. In addition, the monthly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The monthly report also will state, on a daily basis, the rates at which securities are loaned to Goldman Sachs compared with those at which securities are loaned to other brokers. This statement will give an independent fiduciary information which can be compared to that contained in the daily rate schedule.

33. Only Client Plans with total assets having an aggregate market value of at least \$50 million are permitted to lend securities to Goldman Sachs. In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (i.e., the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with Goldman Sachs, the foregoing \$50 million requirement will be satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million. However, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary must have total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (i.e., the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with Goldman Sachs, the foregoing \$50 million requirement will be satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million. However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity (a) Must not be the sponsoring employer, a member of the

controlled group of corporations, the employee organization or an affiliate; (b) must have full investment responsibility with respect to plan assets invested therein;²⁵ and (c) must have total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.

34. In summary, the applicants represent that the described transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The form of the Loan Agreement pursuant to which any loan is effected has been or will be approved by a fiduciary of the Client Plan who is independent of Goldman Sachs and GSTC before a Client Plan lends any securities to Goldman Sachs.

(b) The lending arrangements (1) have permitted or will permit the Client Plans to lend to Goldman Sachs, (2) have enabled or will enable the Plans to diversify the list of eligible borrowers and earn additional income from the loaned securities on a secured basis, while continuing to receive any dividends, interest payments and other distributions due on those securities.

(c) The Client Plan have received or will receive sufficient information concerning Goldman Sachs's financial condition before the Plan lends any securities to Goldman Sachs.

(d) The collateral on each loan to Goldman Sachs initially has been and will be at least 102 percent of the market value of the loaned securities, which is in excess of the 100 percent collateral required under PTE 81-6, and has been and will be monitored daily by GSTC.

(e) The Client Plans have received and will receive a monthly report which provides an independent fiduciary of the Client Plans with information on loan activity, fees, loan return/yield and the rates on loans to Goldman Sachs as compared with loans to other brokers and the level of collateral on the loans.

(f) GSTC, Goldman Sachs nor any affiliate has or will have discretionary authority or control over the Plan's acquisition or disposition of securities available for loan.

²⁵ For purposes of this proposed exemption, the term "full investment responsibility" means that the fiduciary responsible for making investment decisions on behalf of the group trust or other form of entity, has and exercises discretionary management authority over all of the assets of the group trust or other plan assets entity.

(g) The terms of the fee or rebate payable for each loan has been and will be at least as favorable to the Plans as those of a comparable arm's length transaction between unrelated parties.

(h) All of the procedures under the transactions have conformed or will conform to the applicable provisions of PTE 81-6 and PTE 82-63 and also have been and will be in compliance with the applicable securities laws of the United States, the United Kingdom and Japan.

Notice To Interested Persons

Notice of the proposed exemption will be provided to interested persons within 5 days of the publication of the notice of proposed exemption in the **Federal Register**. Such notice will be given to Plans that have outstanding securities loans with Goldman Sachs. The notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Written comments and hearing requests are due within 35 days of the publication of the 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 that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of February, 1998.

Ivan Strasfeld,

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

[FR Doc. 98-3987 Filed 2-18-98; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Prohibited Transaction Exemption 98-07; Exemption Application No. D-10236, et al.; Grant of Individual Exemptions; Equitable Life Assurance Society

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.

The Equitable Life Assurance Society of the United States (Equitable), Located in New York, New York

[Prohibited Transaction Exemption 98-07; Exemption Application No. D-10236]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) The leasing of 13,086 square feet of office space and 6,650 square feet of parking space by Equitable Real Estate Investment Management, Inc. (ERE) until June 30, 2002 (the Tower 1 Lease); and (2) the leasing of 5,821 square feet of office space and 3584 square feet of parking space by ERE's subsidiary, Compass Management and Leasing, Inc. (Compass) until August 31, 1999 (the Tower 2 Leases), in office buildings located in Orange County, California, that will be held by the Equitable Separate Account No. 8, also known as