

*Type of Review:* Extension.  
*Agency:* Employment and Training Administration.

*Title:* Report on Internal Fraud Activities.

*OMB Number:* 1205-0187.

*Agency Number:* ETA 9000.

*Affected Public:* State and Local Governments.

*Total Respondents:* 53.

*Frequency:* Annually.

*Total Responses:* 53.

*Average Time per Response:* 3 hours.  
*Estimated Total Burden Hours:* 159 hours.

*Total Burden Cost (capital/startup):* 0.

*Total Burden Cost (operating/maintaining):* 0.

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

Dated: March 31, 1998.

**Grace A. Kilbane,**

*Director, Unemployment Insurance Service.*

[FR Doc. 98-9056 Filed 4-6-98; 8:45 am]

BILLING CODE 4510-30-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on May 8, 1998, in Room N3437 A-D of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, DC. The meeting is open to the public and will begin at 9:00 a.m. lasting until approximately 4:30 p.m.

Agenda items will include: a brief overview of current activities of the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH), a presentation on occupational injury and illness statistics, an update on OSHA's ergonomic activity, a report on the 11(c) task force, a discussion on the co-ordination of federal agencies to address

the problem of latex allergies, an update on the OSHA Performance Plan and possible reports from NACOSH's workgroups.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Frank Frodyma at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Because of the need to cover a wide variety of subjects in a short period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such request will be considered by the Chair who will determine whether or not time permits. Any request to make a presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation.

Individuals with disabilities who need special accommodations should contact Theresa Berry (phone: 202-219-8615, extension 106; fax: 202-219-5986) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202-219-7500). For additional information contact: Frank Frodyma, Acting Director of Policy, Occupational Safety and Health Administration (OSHA); Room N-3641, 200 Constitution Avenue NW, Washington, DC., 20210 (phone 202-219-8021, extension 102; fax: 202-219-4384; e-mail frank.frodyma@osha.no.osha.gov).

Signed at Washington, DC., this 31st day of March 1998.

**Charles N. Jeffress,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 98-9057 Filed 4-6-98; 8:45 am]

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

#### Prohibited Transaction Exemption 98-13; Exemption Application No. D-10304, et al.]

#### Grant of Individual Exemptions; MBNA America Bank, National Association

**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 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.

MBNA America Bank, National Association (MBNA)

Located in Wilmington, Delaware  
[Prohibited Transaction Exemption No. 98-13; Application No. D-10304]

*Exemption*

## Section I—Transactions

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

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and an employee benefit plan subject to the Act or section 4975 of the Code (a plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

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

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

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan, as defined in Section III.K. below, by any person who has discretionary authority or renders investment advice with respect to the assets of the Excluded Plan that are invested in certificates.<sup>1</sup>

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

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to receivables contained in the trust constituting 0.5 percent or less of the fair market value of the aggregate undivided interest in the trust allocated to the certificates of the relevant series, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group, as defined in Section III.L., and at least 50 percent of the aggregate undivided interest in the trust allocated to the certificates of a series is acquired by persons independent of the Restricted Group;

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

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice is invested in certificates representing the aggregate undivided interest in a trust allocated to the certificates of a series and containing receivables sold or serviced by the same entity;<sup>2</sup> and

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

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that conditions set forth in Section I.B.(1)(i) and (iii) through (v) are met; and

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

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, including reassigning

<sup>2</sup>For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

receivables to the sponsor, removing from the trust receivables in accounts previously designated to the trust, changing the underlying terms of accounts designated to the trust, adding new receivables to the trust, designating new accounts to the trust, the retention of a retained interest by the sponsor in the receivables, the exercise of the right to cause the commencement of amortization of the principal amount of the certificates, or the use of any eligible swap transactions, provided that:

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

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust;<sup>3</sup>

(3) The addition of new receivables or designation of new accounts, or the removal of receivables in previously-designated accounts, meets the terms and conditions for such additions, designations or removals as are described in the prospectus or private placement memorandum for such certificates, which terms and conditions have been approved by Standard & Poor's Ratings Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Agencies), and does not result in the certificates receiving a lower credit rating from the Rating Agencies than the then current rating of the certificates; and

(4) The series of which the certificates are a part will be subject to an "Economic Pay Out Event" (as defined in Section III.BB.), which is set forth in the pooling and servicing agreement and described in the prospectus or private placement memorandum associated with the series, the occurrence of which will cause any revolving period, scheduled amortization period or scheduled accumulation period applicable to the certificates to end, and principal collections to be applied to

<sup>3</sup>In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, all references to "prospectus" include any related supplement thereto, and any documents incorporated by reference therein, pursuant to which certificates are offered to investors.

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

monthly payments of principal to, or the accumulation of principal for the benefit of, the certificateholders of such series until the earlier of payment in full of the outstanding principal amount of the certificates of such series or the series termination date specified in the prospectus or private placement memorandum.

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed under section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) (E) or (F) of the Code, for the receipt of a fee by the servicer of the trust, in connection with the servicing of the receivables and the operation of the trust, from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in Section III.U. below.

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

#### Section II—General Conditions

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

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

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

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is either: (i) In one of the two highest generic rating categories from any one of the Rating Agencies; or (ii) for certificates with a duration of one year or less, the highest short-term generic rating category from any one of the Rating Agencies; provided that, notwithstanding such ratings, this exemption shall apply to a particular class of certificates only if

such class (an Exempt Class) is at the time of such acquisition part of a series in which credit support is provided to the Exempt Class through a senior-subordinated series structure or other form of third-party credit support which, at a minimum, represents five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss;

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

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the consideration received by the sponsor as a consequence of the assignment of receivables (or interests therein) to the trust, to the extent allocable to the class of certificates purchased by a plan, represents not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the servicer, to the extent allocable to the class of certificates purchased by a plan, represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

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

(7) The trustee of the trust is a substantial financial institution or trust company experienced in trust activities and is familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act (i.e. ERISA). The trustee, as the legal owner of, or holder of a perfected security interest in, the receivables in the trust, enforces all the rights created in favor of certificateholders of such trust, including plans;

(8) Prior to the issuance by the trust of any new series, confirmation is received from the Rating Agencies that such issuance will not result in the

reduction or withdrawal of the then current rating of the certificates held by any plan pursuant to this exemption;

(9) To protect against fraud, chargebacks or other dilution of the receivables in the trust, the pooling and servicing agreement and the Rating Agencies require the sponsor to maintain a seller interest of not less than 2 percent of the principal balance of the receivables contained in the trust;

(10) Each receivable added to a trust is an eligible receivable, based on criteria of the relevant Rating Agency(ies) and as specified in the pooling and servicing agreement. The pooling and servicing agreement requires that any change in the terms of the cardholder agreements must be made applicable to the comparable segment of accounts owned or serviced by the sponsor which are part of the same program or have the same or substantially similar characteristics;

(11) The pooling and servicing agreement limits the number of the sponsor's newly originated accounts to be designated to the trust, unless the Rating Agencies otherwise consent in writing, to the following: (i) With respect to any three-month period, 15 percent of the number of existing accounts designated to the trust as of the first day of such period, and (ii) with respect to any twelve-month period, 20 percent of the number of existing accounts designated to the trust as of the first day of such twelve-month period;

(12) The pooling and servicing agreement requires the sponsor to deliver an opinion of counsel semi-annually confirming the validity and perfection of each transfer of receivables in newly originated accounts to the trust if such opinion is not delivered with respect to each interim addition;

(13) The pooling and servicing agreement requires the sponsor and the trustee to receive confirmation from a Rating Agency that no Ratings Effect (i) will result from a proposed transfer of receivables in newly originated accounts to the trust, or (ii) will have resulted from the transfer of receivables in all newly originated accounts added to the trust during the preceding three-month period (beginning at quarterly intervals specified in the pooling and servicing agreement and ending in the calendar month prior to the date such confirmation is issued), provided that a Rating Agency confirmation shall not be required under clause (ii) for any three-month period in which any additions of newly originated accounts occurred only after receipt of prior Rating Agency confirmation pursuant to clause (i);

(14) If a particular class of certificates held by any plan involves a Ratings

Dependent or Non-Ratings Dependent Swap entered into by the trust, then each particular swap transaction relating to such certificates:

(a) shall be an Eligible Swap;

(b) shall be with an Eligible Swap Counterparty;

(c) in the case of a Ratings Dependent Swap, shall include as an early payout event, as specified in the pooling and servicing agreement, the withdrawal or reduction by any Rating Agency of the swap counterparty's credit rating below a level specified by the Rating Agency where the servicer (as agent for the trustee) has failed, for a specified period after such rating withdrawal or reduction, to meet its obligation under the pooling and servicing agreement to:

(i) obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of certificates will not be withdrawn or reduced;

(d) in the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the swap counterparty is withdrawn or reduced below the lowest level specified in Section III.II. hereof, the servicer, as agent for the trustee, shall within a specified period after such rating withdrawal or reduction:

(i) obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) terminate the swap agreement in accordance with its terms; and

(e) shall not require the trust to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from "Excess Finance Charge Collections" (as defined below in Section III.LL.) or other amounts that would otherwise be payable to the servicer or the seller; and

(15) Any class of certificates, to which one or more swap agreements entered into by the trust applies, may be

acquired or held in reliance upon this exemption only by Qualified Plan Investors.

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

(1) Such condition is disclosed in the prospectus or private placement memorandum; and

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

### Section III—Definitions

For purposes of this exemption:

A. Certificate means a certificate:

(1) That (i) represents a beneficial ownership interest in the assets of a trust and entitles the holder to payments denominated as principal, interest and/or other payments made as described in the applicable prospectus or private placement memorandum and in accordance with the pooling and servicing agreement in connection with the assets of such trust, to the extent allocable to the series of certificates purchased by a plan, either currently or after a revolving period during which principal payments on assets of the trust are reinvested in new assets, or (ii) is denominated as a debt instrument that represents a regular interest in a financial asset securitization investment trust (FASIT), within the meaning of section 860L(a) of the Code, and is issued by and is an obligation of the trust.

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

(2) With respect to which (a) MBNA or any of its affiliates is the sponsor, and (b) MBNA, any of its affiliates, or an "underwriter" (as defined in Section

III.C.) is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent.

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

(1) Either

(a) Receivables (as defined in Section III.V.); or

(b) Participations in a pool of receivables (as defined in Section III.V.) where such beneficial ownership interests are not subordinated to any other interest in the same pool of receivables;<sup>4</sup>

(2) Property which has secured any of the assets described in Section III.B.(1);<sup>5</sup>

(3) Undistributed cash or permitted investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders, except during a Revolving Period (as defined herein) when permitted investments are made until such cash can be reinvested in additional receivables described in paragraph (a) of this Section III.B.(1);

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any cash collateral accounts, insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements for any certificates, swap transactions, or under any yield supplement agreements,<sup>6</sup> yield maintenance agreements or similar arrangements; and

(5) Rights to receive interchange fees received by the sponsor as partial compensation for the sponsor's taking credit risk, absorbing fraud losses and funding receivables for a limited period prior to initial billing with respect to accounts designated to the trust.

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of receivables of the type which have been included in other investment pools; (ii) certificates evidencing interests in such other investment pools have been rated in one of the two highest generic rating

<sup>4</sup>The Department notes that no relief would be available under the exemption if the participation interests held by the trust were subordinated to the rights and interests evidenced by other participation interests in the same pool of receivables.

<sup>5</sup>MBNA states that it is possible for credit card receivables to be secured by bank account balances or security interests in merchandise purchased with credit cards. Thus, the exemption should permit foreclosed property to be an eligible trust asset.

<sup>6</sup>In a series involving an accumulation period (as defined in Section III.Z.), a yield supplement agreement may be used by the Trust to make up the difference between (i) the reinvestment yield on permitted investments, and (ii) the interest rate on the certificates of that series.

categories by at least one of the Rating Agencies for at least one year prior to the plan's acquisition of certificates pursuant to this exemption; and (iii) certificates evidencing an interest in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means an entity which has received from the Department an individual prohibited transaction exemption which provides relief for the operation of asset pool investment trusts that issue asset-backed pass-through securities to plans that is similar in format and substance to this exemption (each, an Underwriter Exemption);<sup>7</sup> any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or affiliated person described above is a manager or co-manager with respect to the certificates.

D. *Sponsor* means MBNA, or an affiliate of MBNA that organizes a trust by transferring credit card receivables or interests therein to the trust in exchange for certificates.

E. *Master Servicer* means MBNA or an affiliate that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the receivables in the trust pursuant to the pooling and servicing agreement.

F. *Subservicer* means MBNA or an affiliate of MBNA, or an entity unaffiliated with MBNA which, under the supervision of and on behalf of the master servicer, services receivables contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means MBNA or an affiliate which services receivables contained in the trust, including the master servicer and any subservicer or their successors pursuant to the pooling and servicing agreement.

H. *Trustee* means an entity which is independent of MBNA and its affiliates and is the trustee of the trust. In the case of certificates which are denominated as debt instruments, "trustee" also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, provider of other credit support for, or other contractual counterparty, of a trust. Notwithstanding the foregoing, a swap

counterparty is not an insurer, and a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any receivable included in the trust.

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

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

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

receivables contained in the trust constituting more than 0.5 percent of the fair market value of the aggregate undivided interest in the trust allocated to the certificates of a series, determined on the date of the initial issuance of such series of certificates by the trust; or

- (8) Any affiliate of a person described in Section III.L.(1)-(7).

M. *Affiliate* of another person includes:

- (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;
- (2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and
- (3) Any corporation or partnership of which such other person is an officer, director or partner.

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

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

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

P. *Sale* includes the entrance into a forward delivery commitment (as defined in Section III.Q. below), provided that:

- (1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an

arm's length transaction with an unrelated party;

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

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

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

R. *Reasonable Compensation* has the same meaning as that term is defined in 29 CFR section 2550.408c-2.

S. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust and any supplement thereto pertaining to a particular series of certificates. In the case of certificates which are denominated as debt instruments, "pooling and servicing agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

T. *Series* means an issuance of a class or various classes of certificates by the trust all on the same date pursuant to the same pooling and servicing agreement, and any supplement thereto and restrictions therein.

U. *Qualified Administrative Fee* means a fee which meets the following criteria:

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

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

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement or described in all material respects in the prospectus or private placement memorandum provided to the plan before it purchases certificates issued by the trust; and

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

V. *Receivables* means secured or unsecured obligations of credit card holders which have arisen or arise in

<sup>7</sup> For a listing of Underwriter Exemptions, see the description provided in the text of the operative language of Prohibited Transaction Exemption (PTE) 97-34 (62 FR 39021, July 21, 1997).

Accounts designated to a trust. Such obligations represent amounts charged by cardholders for merchandise and services and amounts advanced as cash advances, as well as periodic finance charges, annual membership fees, cash advance fees, late charges on amounts charged for merchandise and services and certain other fees (such as bad check fees, cash advance fees, and other fees specified in the cardholder agreements) designated by card issuers (other than a qualified administrative fee as defined in Section III.U.).

*W. Accounts* are revolving credit card accounts serviced by MBNA or an affiliate, which were originated or purchased by MBNA or an affiliate, and are designated to a trust such that receivables arising in such accounts become assets of the trust.

*X. Revolving Period* means a period of time, as specified in the pooling and servicing agreement, during which principal collections allocated to a series are reinvested in newly generated receivables arising in the accounts.

*Y. Amortization Period* means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will commence to be paid to the certificateholders of such series in installments.

*Z. Accumulation Period* means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will be deposited in an account to be distributed to certificateholders in a lump sum on the expected maturity date.

*AA. Pay Out Event* means any of the events specified in the pooling and servicing agreement or supplement thereto that results (in some instances without further affirmative action by any party) in the early commencement of either an amortization period or an accumulation period, including (1) the failure of the sponsor or the servicer, whichever is subject to the relevant obligation under the pooling and servicing agreement, (i) to make any payment or deposit required under the pooling and servicing agreement within five (5) business days after such payment or deposit was required to be made, or (ii) to observe or perform any of its other covenants or agreements set forth in the pooling and servicing agreement, which failure has a material adverse effect on holders of investor certificates of the relevant series and continues unremedied for 60 days; (2) a breach of any representation or warranty made by the sponsor or the servicer in the pooling and servicing agreement that continues to be incorrect in any

material respect for 60 days; (3) the occurrence of certain bankruptcy events relating to the sponsor or the servicer; (4) the failure by the sponsor to convey to the trust additional receivables to maintain the minimum seller interest that is required by the pooling and servicing agreement and the Rating Agencies; (5) the failure to pay in full amounts owing to investors on the expected maturity date; and (6) the Economic Pay Out Event.

*BB. An Economic Pay Out Event* occurs automatically when the portfolio yield for any series of certificates, averaged over three consecutive months (or such other period approved by one of the Rating Agencies) is less than the base rate of the series averaged over the same period. Portfolio yield for a series of certificates for any period is equal to the sum of the finance charge collections and other amounts treated as finance charge collections less total defaults for the series divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies. The base rate for a series of certificates for any period is the sum of (i) amounts payable to certificateholders of the series with respect to interest, (ii) servicing fees allocable to the series payable to the servicer, and (iii) any credit enhancement fee allocable to the series payable to a third party credit enhancer, divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies.

*CC. CCA or Cash Collateral Account* means that certain account established in the name of the trustee that serves as credit enhancement with respect to the investor certificates and holds cash and/or permitted investments (as defined below in Section III.KK.) which conform to applicable provisions of the pooling and servicing agreement.

*DD. Group* means a group of any number of series offered by the trust that share finance charge and/or principal collections in the manner described in the applicable prospectus or private placement memorandum.

*EE. Ratings Effect* means the reduction or withdrawal by a Rating Agency of its then current rating of the certificates held by any plan pursuant to this exemption.

*FF. Principal Receivables Discount* means, with respect to any account designated by the sponsor, the portion of the related principal receivables that represents a discount from the face value thereof and that is treated under the pooling and servicing agreement as finance charge receivables.

*GG. Ratings Dependent Swap* means an interest rate swap, or (if purchased by or on behalf of the trust) an interest rate cap contract, that is part of the structure of a series of certificates where the rating assigned by the Rating Agency to any senior class of certificates held by any plan is dependent on the terms and conditions of the swap and the rating of the swap counterparty, and if such certificate rating is not dependent on the existence of the swap and rating of the swap counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap". With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the certificates must confirm, as of the date of issuance of the certificates by the trust, that entering into an Eligible Swap with such counterparty will not affect the rating of the certificates.

*HH. Eligible Swap* means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) which is denominated in U.S. Dollars;

(2) pursuant to which the trust pays or receives, on or immediately prior to the respective payment or distribution date for the senior class of certificates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g. LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the trust receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the swap counterparty, with all simultaneous payments being netted;

(3) which has a notional amount that does not exceed either (i) the certificate balance of the class of certificates to which the swap relates, or (ii) the portion of the certificate balance of such class represented by receivables;

(4) which is not leveraged (i.e. payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subparagraph (2) above, and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) which has a final termination date that is the earlier of the date on which the trust terminates or the related class of certificates is fully repaid; and

(6) which does not incorporate any provision which could cause a unilateral alteration in any provision described in subparagraphs (1) through (4) above without the consent of the trustee.

*II. Eligible Swap Counterparty* means a bank or other financial institution which has a rating, at the date of

issuance of the certificates by the trust, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the certificates; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility hereunder, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the senior class of certificates with which the swap is associated has a final maturity date of more than one year from the date of issuance of the certificates, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

*JJ. Qualified Plan Investor* means a plan investor or group of plan investors on whose behalf the decision to purchase certificates is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the trust and the effect such swap would have upon the credit ratings of the certificates. For purposes of the exemption, such a fiduciary is either:

(1) *A qualified professional asset manager (QPAM)*,<sup>8</sup> as defined under Part V(a) of PTE 84-14 (49 FR 9494, 9506, March 13, 1984);

(2) *An in-house asset manager (INHAM)*,<sup>9</sup> as defined under Part IV(a) of PTE 96-23 (61 FR 15975, 15982, April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least \$100 million at the time of the acquisition of such certificates.

<sup>8</sup> PTE 84-14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g. banks, insurance companies, registered investment advisers with total client assets under management in excess of \$50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

<sup>9</sup> PTE 96-23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of \$50 million.

*KK. Permitted Investments* means investments that either (i) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligation is backed by the full faith and credit of the United States, or (ii) have been rated (or the obligor thereof has been rated) in one of the three highest generic rating categories by a Rating Agency; are described in the pooling and servicing agreement; and are permitted by the relevant Rating Agency(ies).

*LL. Excess Finance Charge Collections* means, as of any day funds are distributed from the trust, the amount by which the finance charge collections allocated to certificates of a series exceed the amount necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

The Department notes that this exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95-60, 60 FR 35925).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption (the Proposal) published on January 27, 1998, at 63 FR 4038.

*Written Comments and Modifications.* The applicant (i.e. MBNA) submitted certain comments on the text of the Proposal.

With respect to issues of a substantive nature, the applicant suggested two revisions which are discussed below.

First, MBNA requests that the phrase "at the time of such acquisition" should be inserted immediately following the word "is" in the 13th line of Section II.A.(3) of the Proposal (63 FR at 4039, column 3). In this regard, Section II.A.(3) concerns minimum ratings for the certificates issued by a trust and the proviso contained therein requires certain minimum credit support for each Exempt Class of certificates. MBNA suggests that the proviso with respect to minimum credit support be changed to clarify that the five (5) percent minimum only needs to be present at the time of an acquisition of a certificate.

The Department believes that this modification is consistent with the requirements of Section II.A.(3) that the

certificates acquired by a plan have received a rating at the time of acquisition that is in one of the high rating categories discussed therein. The Department notes that the conditions of this exemption are designed to ensure, among other things, that certain actions taken by the trust or the sponsor (i.e. MBNA) do not result in the certificates issued by the trust receiving a lower credit rating from the Rating Agencies than the then current rating of the certificates—i.e. a Ratings Effect. For example, Section II.A.(8) requires that confirmation must be received from the Rating Agencies that the issuance of any new series of certificates by the trust will not result in a Ratings Effect. Likewise, Sections I.C.(3) and II.A.(13) require that the addition of new receivables or designation of new accounts to the trust must meet terms and conditions which have been described in the prospectus or private placement memorandum for the certificates and have been approved by the Rating Agencies. The pooling and servicing agreements also require confirmations from the Rating Agencies that such actions will not result in a Ratings Effect. Therefore, the Department has made MBNA's suggested modification to the language of Section II.A.(3) with the understanding that any credit enhancements used by a trust to obtain a high rating for a particular class of certificates at the time such certificates are acquired by a plan should be sufficient to avoid any Ratings Effect on the certificates in the future, and that adverse changes to the level of minimum credit support required for an Exempt Class may have a Ratings Effect unless other arrangements satisfactory to the Rating Agencies are made.

Second, with respect to the definition of the term "Pay Out Event" contained in Section III.AA. of the Proposal, MBNA states that clause (5) of that definition does not describe a pay out event for MBNA's securitization transactions for credit card receivables. In this regard, Section III.AA. of the Proposal contains a nonexclusive list of seven events which may trigger an early payout to certificateholders. Clause (5) of the Proposal describes a Pay Out Event as follows:

"\* \* \* if a class of investor certificates is in an Accumulation Period, the amount on deposit in the accumulation account in any month is less than the amount required to be on deposit therein."

However, MBNA states that a Pay Out Event does not occur with regard to the amount of principal accumulated each month in the accumulation account.

MBNA states further that Clause (6) of Section III.AA. of the Proposal expresses the operative requirement, i.e., Class A certificateholders must be repaid the principal amount of their investment by the expected maturity date. Thus, MBNA represents that the inclusion of Clause (5) in the Proposal, as described above, should be deleted.

The Department acknowledges the applicant's clarification and has deleted Clause (5) as it appeared in the definition of the term "Pay Out Event" in the Proposal. Thus, Section III.AA. of the Proposal has been renumbered to reflect this deletion.

In addition, the applicant submitted a number of comments that relate to what are described as certain language "glitches" in the Proposal. These are discussed below.

First, MBNA requests that the heading used in the Proposal be changed to reflect the fact that its headquarters is now located in Wilmington, Delaware (rather than Newark, Delaware).

Second, with respect to Section I.B.(1) of the Proposal relating to an obligor for receivables contained in the trust constituting 0.5 percent or less of the fair market value of the obligations or receivables contained in the aggregate undivided interest in the trust allocated to the certificates of a series, MBNA states that the language "\* \* \* obligations or receivables contained in the \* \* \*" is unnecessary and should be deleted from that subsection in order to be consistent with the description of such an obligor used in the definition of "Restricted Group" in Section III.L.(7).

Third, in Section I.B.(1)(v) of the Proposal, MBNA requests that the word "not" be changed to "no" in order to be consistent with the description in Section I.B.(1)(iv).

Fourth, MBNA requests that the word "and" be substituted for the comma (",") used in Section I.B.(2) of the Proposal.

Fifth, MBNA requests that the word "for" be substituted for the word "of" in the 8th line of Section I.C.(3) of the Proposal (see 63 FR at 4039, column 2).

Sixth, MBNA states that Section I.C.(3) and footnote 10 of the Proposal should be revised to reflect the change in Fitch's formal name to "Fitch IBCA, Inc."

Seventh, MBNA states that in Section I.C.(4), the cross reference to the definition of an "Economic Pay Out Event" should be changed from Section III.X. to Section III.BB.

Eighth, MBNA requests that the word "class" should be substituted for the word "series" in the 11th and 17th lines of Section II.A.(5) of the Proposal (see 63 FR at 4040, column 1).

Ninth, MBNA requests that the words "receivables in" be inserted between the words "of" and "newly" in lines 5-6 of Section II.A.(12) of the Proposal, as well as in lines 5-6 and 8 of Section II.A.(13) of the Proposal (see 63 FR at 4040, column 2).

Tenth, MBNA requests that the word "class" be substituted for the word "series" in line 1 of Section II.A.(14) of the Proposal and in Section II.A.(14)(c)(ii) therein (63 FR at 4040, columns 2 and 3).

Eleventh, MBNA requests that the word "class" be substituted for the word "series" in Section II.A.(15).

Twelfth, MBNA requests that the word "assets" be substituted for the word "receivables" in the 4th (but not the 6th) line of the definition of "Master Servicer" in Section III.E. of the Proposal (63 FR at 4041, column 3).

Thirteenth, MBNA requests that the words "senior class" be substituted for the word "series" in the 7th line of the definition of "Ratings Dependent Swap" in Section III.GG. of the Proposal (63 FR at 4043, column 1).

Fourteenth, MBNA requests that the words "senior class" be substituted for the word "series" in the 4th line of the definition of "Eligible Swap" in Section III.HH.(2) of the Proposal (63 FR at 4043, column 2).

Fifteenth, MBNA requests that the words "senior class" be substituted for the word "series" in the 18th line of the definition of "Eligible Swap Counterparty" in Section III.II. of the Proposal (63 FR at 4043, column 3).

The Department acknowledges each of these requested revisions to the Proposal and has so modified the language of the exemption contained herein.

Finally, the applicant's comments on the Proposal contained certain minor clarifications concerning the information included in the Summary of Facts and Representations for the Proposal. The Department acknowledges all of the clarifications made by MBNA to this information.

For further information regarding MBNA's comments or other matters discussed herein, interested persons are encouraged to obtain a copy of the exemption application file (No. D-10304) which is available in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

No other written comments, and no requests for a hearing, were received by the Department.

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

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

**Citibank (South Dakota), N.A., Citibank (Nevada), N.A., and Affiliates Located in North Sioux Falls, South Dakota**

[Prohibited Transaction Exemption No. 98-14; Application No. D-10313]

*Exemption*

Section I—Transactions

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

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and an employee benefit plan subject to the Act or section 4975 of the Code (a plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

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

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

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan, as defined in Section III.K. below, by any person who has discretionary authority or renders investment advice with respect to the assets of the Excluded Plan that are invested in certificates.<sup>10</sup>

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

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between

<sup>10</sup> Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

the trust, the sponsor or an underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to receivables contained in the trust constituting 0.5 percent or less of the fair market value of the aggregate undivided interest in the trust allocated to the certificates of a series, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group, as defined in Section III.L., and at least 50 percent of the aggregate undivided interest in the trust allocated to the certificates of a series is acquired by persons independent of the Restricted Group;

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

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice is invested in certificates representing the aggregate undivided interest in a trust allocated to the certificates of a series and containing receivables sold or serviced by the same entity;<sup>11</sup> and

(v) Immediately after the acquisition of the certificates, not more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice is invested in certificates representing an interest in the trust, or trusts containing receivables sold or serviced by the same entity. For purposes of paragraphs B.(1)(iv) and B.(1)(v) only, an entity shall not be considered to service receivables contained in a trust if it is merely a subservicer of that trust;

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

forth in Section I.B.(1)(i), (iii) through (v) are met; and

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

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, including the reassignment to the sponsor of receivables, the removal from the trust of accounts previously designated to the trust, the changing of the underlying terms of accounts designated to the trust, the adding of new receivables to the trust, the designation of new accounts to the trust, the retention of a retained interest by the sponsor in the receivables, the exercise of the right to cause the commencement of amortization of the principal amount of the certificates, or the use of any eligible swap transactions, provided:

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

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust;<sup>12</sup>

(3) The addition of new receivables or designation of new accounts, or the removal of receivables or previously-designated accounts, meets the terms and conditions for such additions, designations or removals as are described in the prospectus or private placement memorandum for such certificates, which terms and conditions have been approved by Standard & Poor's Ratings Services, Moody's Investor Service, Inc., Duff & Phelps Credit Rating Co., or Fitch Investors Service, L.P., or their successors (collectively, the Rating Agencies), and does not result in the certificates receiving a lower credit rating from the Rating Agencies than the then current rating for the Certificates; and

(4) The series of which the certificates are a part will be subject to an Economic Early Amortization Event, which is set forth in the pooling and servicing agreement and described in the prospectus or private placement memorandum associated with the series, the occurrence of which will cause any Revolving Period, Controlled Amortization Period, or Accumulation Period applicable to the certificates to end, and principal collections to be applied to monthly payments of principal to, or accumulated for the account of, the certificateholders of such series until the earlier of: (i) Payment in full of the outstanding principal amount of such certificates of such series, or (ii) the series termination date specified in the prospectus or private placement memorandum.

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed under section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) or (F) of the Code, for the receipt of a fee by the servicer of the trust, in connection with the servicing of the receivables and the operation of the trust, from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in Section III.S. below.

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

#### Section II—General Conditions

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

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

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

<sup>11</sup> For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

<sup>12</sup> In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, all references to "prospectus" include any related supplement thereto, and any documents incorporated by reference therein, pursuant to which certificates are offered to investors.

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is either: (i) in one of the two highest generic rating categories from any one of the Rating Agencies; or (ii) for certificates with a duration of one year or less, the highest short-term generic rating category from any one of the Rating Agencies; provided that, notwithstanding such ratings, this exemption shall apply to a particular class of certificates only if such class (an Exempt Class) is at the time of such acquisition part of a series in which credit support is provided to the Exempt Class through a senior-subordinated series structure or other form of third-party credit support which, at a minimum, represents five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss;

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

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the consideration received by the sponsor as a consequence of the assignment of receivables (or interests therein) to the trust represents not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the servicer, that are allocable to the series of certificates purchased by a plan, represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

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

(7) The trustee of the trust is a substantial financial institution or trust company experienced in trust activities and is familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act (i.e. ERISA).

The trustee, as the legal owner of the receivables in the trust, enforces all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act;

(8) Prior to the issuance of any new series in the trust, confirmation must be received from the Rating Agencies that such issuance will not result in the reduction or withdrawal of the then current rating or ratings of the certificates held by any plan pursuant to this exemption;

(9) To protect against fraud, chargebacks or other dilution of receivables in the trust, the pooling and servicing agreement and the Rating Agencies require the sponsor to maintain a seller interest of not less than the greater of (i) 2 percent of the initial aggregate principal balance of investor certificates issued by the trust, or (ii) 7 percent of the outstanding aggregate principal balance of investor certificates issued by the trust;

(10) Each receivable added to the trust will be an eligible receivable, based on criteria of the Rating Agency and as specified in the pooling and servicing agreement. The pooling and servicing agreement requires that any change in the terms of any cardholder agreements also be made applicable to the comparable segment of Accounts owned or serviced by the sponsor which are part of the same program or have the same or substantially similar characteristics;

(11) The pooling and servicing agreement limits the number of the sponsor's newly originated accounts to be added to the trust, unless the Rating Agency otherwise affirmatively consents, to the following: (i) With respect to any three month period, 15 percent of the number of existing accounts designated to the trust as of the first day of such period, and (ii) with respect to any calendar year, 20 percent of the number of existing accounts designated to the trust as of the first day of such calendar year;

(12) The pooling and servicing agreement requires the sponsor to deliver an opinion of counsel semi-annually confirming the validity and perfection of each transfer of newly originated accounts to the trust;

(13) The pooling and servicing agreement requires the sponsor and the trustee to receive at specified quarterly intervals during the year, confirmation from a Rating Agency that the addition of all newly originated accounts added to the trust (during the three month period ending in the calendar month prior to such confirmation) will not have resulted in a Ratings Effect;

(14) If a particular series of certificates held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the trust, then each particular swap transaction relating to such certificates:

(a) shall be an Eligible Swap;  
(b) shall be with an Eligible Swap Counterparty;

(c) in the case of a Ratings Dependent Swap, shall include as an early amortization event, as specified in the pooling and servicing agreement, the withdrawal or reduction by any Rating Agency of the swap counterparty's credit rating below a level specified by the Rating Agency where the servicer (as agent for the trustee) has failed, for a specified period after such rating withdrawal or reduction, to meet its obligation under the pooling and servicing agreement to:

(i) obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of certificates will not be withdrawn or reduced;

(d) in the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the swap counterparty is withdrawn or reduced below the lowest level specified in Section III.II. hereof, the servicer (as agent for the trustee) shall within a specified period after such rating withdrawal or reduction:

(i) obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) terminate the swap agreement in accordance with its terms; and

(e) shall not require the trust to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from "Excess Finance Charge Collections" (as defined below in Section III.LL.) or other amounts that would otherwise be payable to the servicer or the seller; and

(15) Any class of certificates which entails one or more swap agreements entered into by the trust shall be sold only to Qualified Plan Investors.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision in Section II.A.(6) above is not satisfied for the acquisition or holding by a plan of such certificates, provided that:

(1) Such condition is disclosed in the prospectus or private placement memorandum; and

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

### Section III—Definitions

For purposes of this exemption:

A. *Certificate* means

(1) A certificate:

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

(b) That entitles the holder to payments denominated as principal and interest, and/or other payments made in connection with the assets of such trust, either currently, or after a Revolving Period during which principal payments on assets in the trust are reinvested in new assets; or (2) A certificate denominated as a debt instrument that represents an interest in a financial asset securitization investment trust (FASIT) within the meaning of section 860L of the Code, and that is issued by and is an obligation of a trust;

which is sold upon initial issuance by an underwriter (as defined in Section III.C.) in an underwriting or private placement.

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

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

(1) Either

(a) Receivables (as defined in Section III.T.); or

(b) Participations in a pool of receivables (as defined in Section III.T.) where such beneficial ownership interests are not subordinated to any other interest in the same pool of receivables;<sup>13</sup>

(2) Property which has secured any of the assets described in Section III.B.(1);<sup>14</sup>

(3) Undistributed cash or permitted investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders, except during a Revolving Period (as defined herein) when permitted investments are made until such cash can be reinvested in additional receivables described in paragraph (a) of this Section III.B.(1);

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any cash collateral accounts, insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements for any certificates, swap transactions, or under any yield supplement agreements,<sup>15</sup> yield maintenance agreements or similar arrangements; and

(5) Rights to receive interchange fees received by the sponsor as partial compensation for the sponsor's taking credit risk, absorbing fraud losses and funding receivables for a limited period prior to initial billing with respect to accounts designated to the trust.

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of receivables of the type which have been included in other investment pools; (ii) certificates evidencing interests in such other investment pools have been rated in one of the two highest generic rating categories by at least one of the Rating Agencies for at least one year prior to the plan's acquisition of certificates

<sup>13</sup> The Department notes that no relief would be available under the exemption if the participation interests held by the trust were subordinated to the rights and interests evidenced by other participation interests in the same pool of receivables.

<sup>14</sup> Citibank states that it is possible for credit card receivables to be secured by bank account balances or security interests in merchandise purchased with credit cards. Thus, the exemption should permit foreclosed property to be an eligible trust asset.

<sup>15</sup> In a series involving an accumulation period (as defined in Section III.AA), a yield supplement agreement may be used by the Trust to make up the difference between (i) the reinvestment yield on permitted investments, and (ii) the interest rate on the certificates of that series.

pursuant to this exemption; and (iii) certificates evidencing an interest in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means an entity which has received an individual prohibited transaction exemption from the Department that provides relief for the operation of asset pool investment trusts that issue "asset-backed" pass-through securities to plans, that is similar in format and structure to this exemption (the Underwriter Exemptions);<sup>16</sup> any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or affiliated person described above is a manager or co-manager with respect to the certificates.

D. *Sponsor* means Citibank or an affiliate of Citibank that organizes a trust by transferring credit card receivables or interests therein to the trust in exchange for certificates.

E. *Master Servicer* means Citibank or an entity affiliated with Citibank that is a party to the pooling and servicing agreement relating to trust receivables and is fully responsible for servicing, directly or through subservicers, the receivables in the trust pursuant to the pooling and servicing agreement.

F. *Subservicer* means Citibank or an affiliate, or an entity unaffiliated with Citibank, which, under the supervision of and on behalf of the master servicer, services receivables contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means Citibank or an affiliate which services receivables contained in the trust, including the master servicer and any subservicer or their successors pursuant to the pooling and servicing agreement.

H. *Trustee* means an entity which is independent of Citibank and its affiliates and is the trustee of the trust. In the case of certificates which are denominated as debt instruments, "trustee" also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, provider of other credit support for, or other contractual counterparty of, a trust. Notwithstanding the foregoing, a swap counterparty is not an insurer, and a person is not an insurer solely because

<sup>16</sup> For a listing of the Underwriter Exemptions, see the description provided in the text of the operative language of Prohibited Transaction Exemption (PTE) 97-34 (62 FR 39021, July 21, 1997).

it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any receivable included in the trust.

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

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

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Each swap counterparty;

(7) Any obligor with respect to receivables contained in the trust constituting more than 0.5 percent of the fair market value of the aggregate undivided interest in the trust allocated to the certificates of a series, determined on the date of the initial issuance of such series of certificates by the trust; or  
(8) Any affiliate of a person described in Section III.L. (1)–(7).

M. *Affiliate* of another person includes:

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

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

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

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

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

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

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

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

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

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

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

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

R. *Reasonable Compensation* has the same meaning as that term is defined in 29 CFR section 2550.408c-2.

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

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

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

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement or described in all material respects in the prospectus or private placement memorandum provided to the plan before it purchases certificates issued by the trust; and

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

T. *Receivables* means secured or unsecured obligations of credit card holders which have arisen or arise in Accounts designated to a trust. Such obligations represent amounts charged by cardholders for merchandise and services and amounts advanced as cash advances, as well as periodic finance charges, annual membership fees, cash advance fees, late charges on amounts charged for merchandise and services and over-limit fees and fees of a similar nature designated by card issuers (other than a qualified administrative fee as defined in Section III.S. above).

U. *Accounts* are revolving credit card accounts serviced by Citibank or an affiliate, which were originated or purchased by Citibank or an affiliate, and are designated to a trust such that receivables arising in such accounts become assets of the trust.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust and any supplement thereto pertaining to a particular series of certificates. In the case of certificates which are denominated as debt instruments, "pooling and servicing agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. *Early Amortization Event* means the events specified in the pooling and servicing agreement that result (in some instances without further affirmative action by any party) in an early amortization of the certificates, including: (1) The failure of the sponsor or the servicer (i) to make any payment or deposit required under the pooling and servicing agreement or supplement thereto within five (5) business days after such payment or deposit was required to be made, or (ii) to observe or perform any of its other covenants or agreements set forth in the pooling and servicing agreement or supplement thereto, which failure has a material adverse effect on investors and continues unremedied for 60 days; (2) a breach of any representation or warranty made by the sponsor or the servicer in the pooling and servicing agreement or supplement thereto that continues to be incorrect in any material respect for 60 days; (3) the occurrence of certain bankruptcy events relating to the sponsor or the servicer; (4) the failure by the sponsor to convey to the trust additional receivables to maintain the minimum seller interest that is required by the pooling and servicing agreement and the Rating Agencies; (5) the failure to pay in full amounts owing to investors on the expected maturity date; and (6) the Economic Early Amortization Event.

X. *Series* means an issuance of a class or various classes of certificates by the trust all on the same date pursuant to the same pooling and servicing agreement and any supplement thereto and restrictions therein.

Y. *Revolving Period* means a period of time, as specified in the pooling and servicing agreement, during which principal collections allocated to a series are reinvested in newly generated receivables.

Z. *Controlled Amortization Period* means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will commence to be paid to the certificateholders of such series in installments.

AA. *Accumulation Period* means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will be deposited in an account to be distributed to certificateholders in a lump sum on the expected maturity date.

BB. *CCA or Cash Collateral Account* means that certain account, established by the trustee, that serves as credit enhancement with respect to the investor certificates and consists of cash deposits and the proceeds of investments thereon, which investments are permitted investments, as defined below.

CC. *Permitted Investments* means investments which: (1) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligation is backed by the full faith and credit of the United States, or (2) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; are described in the pooling and servicing agreement; and are permitted by the Rating Agency.

DD. *Group* means a group of any number of series offered by the trust that share finance charge and/or principal collections in the manner described in the prospectus.

EE. *An Economic Early Amortization Event* occurs automatically when finance charge collections averaged over three consecutive months are less than the total amount payable on the investor certificates, including (i) amounts payable to, or on behalf of, certificateholders, with respect to interest, defaults, and chargeoffs, (ii) servicing fees payable to the servicer, and (iii) any credit enhancement fee payable to the third-party credit enhancer and allocable to the certificateholders. With respect to a series to which an Accumulation Period (as defined above in Section III.AA.) applies, an additional Economic Early Amortization Event occurs when, for any time during the Accumulation Period, the yield on the receivables in the Trust is less than the weighted average of the certificate rates of all series included in a particular Group within the Trust.

FF. *Ratings Effect* means the reduction or withdrawal by a Rating Agency of its then current rating of the investor certificates of any outstanding series.

GG. *Principal Receivables Discount* means, with respect to any account designated by the sponsor, the portion of the related principal receivables that

represents a discount from the face value thereof and that is treated under the pooling and servicing agreement as finance charge receivables.

HH. *Eligible Swap* means an interest rate swap, or (if purchased by or on behalf of the trust) an interest rate cap, that is part of the structure of a class of certificates:

(1) which is denominated in U.S. Dollars;

(2) pursuant to which the trust pays or receives on or immediately prior to the respective payment or distribution date for the class of certificates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g. LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the trust receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the swap counterparty, with all simultaneous payments being netted;

(3) which has a notional amount that does not exceed either (i) the certificate balance of the class of certificates to which the swap relates, or (ii) the portion of the certificate balance of such class represented by receivables;

(4) which is not leveraged, (i.e. payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in (2) above, and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) which has a termination date that is the earlier of the date on which the trust terminates or the related class of certificates is fully repaid; and

(6) which does not incorporate any provision which could cause a unilateral alteration in a provision described in clauses (1) through (4) hereof without the consent of the trustee.

II. *Eligible Swap Counterparty* means a bank or other financial institution with a rating at the date of issuance of the certificates by the trust which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the certificates; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility hereunder, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of certificates with which the swap is associated has a final maturity date of more than one year

from the date of issuance of the certificates, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap to establish any collateralization or other arrangement satisfactory to the Rating Agency in the event of a ratings downgrade of the swap counterparty.

JJ. *Qualified Plan Investor* means a plan investor or group of plan investors on whose behalf the decision to purchase certificates is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the trust and the effect such swap would have upon the credit ratings of the certificates. For purposes of this exemption, such a fiduciary is either:

(1) a *qualified professional asset manager* (QPAM), as defined under Part V(a) of PTE 84-14 (49 FR 9494, 9506, March 13, 1984);<sup>17</sup>

(2) an *in-house asset manager* (INHAM), as defined under Part IV(a) of PTE 96-23 (61 FR 15975, 15982, April 10, 1996);<sup>18</sup> or

(3) a plan fiduciary with total assets under management of at least \$100 million at the time of the acquisition of such certificates.

KK. *Ratings Dependent Swap* means an interest rate swap, or (if purchased by or on behalf of the trust) an interest rate cap contract, that is part of the structure of a series of certificates where the rating assigned by the Rating Agency to any senior class of certificates held by any plan is dependent on the terms and conditions of the swap and the rating of the swap counterparty, and if such certificate rating is not dependent on the existence of such swap and rating of the swap counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap". With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the certificates must confirm, as of the date of issuance of the certificates by the trust, that

<sup>17</sup> PTE 84-14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g. banks, insurance companies, registered investment advisers with total client assets under management in excess of \$50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

<sup>18</sup> PTE 96-23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of \$50 million.

entering into an Eligible Swap with such counterparty will not affect the rating of the certificates.

*LL. Excess Finance Charge Collections* means, as of any day funds are distributed from the trust, the amount by which the finance charge collections allocated to certificates of a series exceed the amount necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

The Department notes that this exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95-60, 60 FR 35925).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption (the Proposal) published on January 27, 1998 at 63 FR 4052.

*Written Comments and Modifications:* The applicant (i.e. Citibank) submitted certain comments on the text of the Proposal.

First, Section II.A.(3) concerns minimum ratings for the certificates issued by a trust and the proviso contained therein requires certain minimum credit support for each Exempt Class of certificates. Citibank suggests that the proviso with respect to minimum credit support be changed to clarify that the five (5) percent minimum only needs to be present at the time of an acquisition of a certificate.

The Department believes that this modification is consistent with the requirements of Section II.A.(3) that the certificates acquired by a plan have received a rating at the time of acquisition that is in one of the high rating categories discussed therein. In this regard, the Department notes that the conditions of this exemption are designed to ensure, among other things, that certain actions taken by the trust or the trust sponsor (i.e. Citibank) do not result in the certificates issued by the trust receiving a lower credit rating from the Rating Agencies than the then current rating of the certificates—i.e. a Ratings Effect. For example, Section II.A.(8) requires that confirmation must be received from the Rating Agencies that the issuance of any new series of certificates by the trust will not result in a Ratings Effect. Likewise, Sections I.C.(3) and II.A.(13) require that the

addition of new receivables or designation of new accounts to the trust must meet terms and conditions which have been described in the prospectus or private placement memorandum for the certificates and have been approved by the Rating Agencies. The pooling and servicing agreements also require confirmations from the Rating Agencies that such actions will not result in a Ratings Effect.<sup>19</sup> Therefore, the Department has made Citibank's suggested modification to the language of Section II.A.(3) with the understanding that any credit enhancements used by a trust to obtain a high rating for a particular class of certificates at the time such certificates are acquired by a plan should be sufficient to avoid any Ratings Effect on the certificates in the future, and that adverse changes to the level of minimum credit support required for an Exempt Class may have a Ratings Effect unless other arrangements satisfactory to the Rating Agencies are made.

Second, with respect to Section II.A.(14)(c) relating to Ratings Dependent Swaps, Section II.A.(14)(c)(ii) of the Proposal states that one of the options in the event of a credit ratings downgrade of the Eligible Swap Counterparty for such swap transactions is to "\* \* \* cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular *series* of certificates will not be withdrawn or reduced." [emphasis added] Citibank suggests that since a swap transaction by a trust might relate to only one class of certificates in a series issued by the trust, it would be more precise to substitute the word "class" for "series" in Section II.A.(14)(c)(ii).

Similarly, Section II.A.(15) of the Proposal requires that "\* \* \* [a]ny Series of certificates which entails one or more swap agreements entered into by the trust shall be sold only to Qualified Plan Investors." Citibank believes that it would be more precise to substitute the word "class" for "series" in Section II.A.(15).

Likewise, in Section III.HH. of the Proposal, the definition of "Eligible Swap" contains numerous references to

<sup>19</sup> See the discussion of a "Lump Sum Addition" of receivables to the trust in Paragraph 7 in the Summary of Facts and Representations included in the Proposal (63 FR at 4060). See also Footnote 30 (63 FR at 4061) regarding the satisfaction of certain conditions required by the Rating Agencies to avoid a Ratings Effect and judgments that must be made by Citibank that such additions, or any removals, of accounts will not adversely affect the timing or amount of payments to certificateholders (referred to in the Series prospectus as an "Adverse Effect").

a "series" of certificates to which the swap transaction relates. Citibank believes that it would be more precise for these references to be changed to a "class" of certificates.

The Department agrees with these suggestions and, accordingly, has modified the language of the final exemption.

Finally, with respect to the definition of the term "Early Amortization Event" contained in Section III.W. of the Proposal, Citibank notes that there is a nonexclusive list of seven events which may trigger an early amortization to certificateholders. The fifth event listed as an early amortization event is as follows:

"\* \* \* if a class of investor certificates is in an Accumulation Period, the amount on deposit in the accumulation account in any month is less than the amount required to be on deposit therein."

Although such an event was previously described by Citibank as a possible early amortization "trigger", Citibank is now concerned that the inclusion of this "event" in the definition of the term "early amortization event" may be misleading to investors. In this regard, Citibank states that there is no amount required to be on deposit in the accumulation account in any particular month, other than that amount which is required to be in the account in the last month of the Accumulation Period. Any shortfall in the amount required to be in the accumulation account in the last month of an Accumulation Period would be an "early amortization event". Such an event was already included in the list contained in the definition of that term in the Proposal (see Section III.W.(6) of the Proposal). Thus, Citibank represents that the inclusion of the fifth event, as described above, is unnecessary and should be deleted.

The Department acknowledges the applicant's clarification and has deleted the fifth event described in the definition of the term "early amortization event" as used in the Proposal. Section III.W. of the final exemption has been renumbered to reflect this deletion.

No other written comments, and no requests for a hearing, were received by the Department.

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

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

**Massachusetts Mutual Life Insurance Company (MassMutual), Located in Springfield, Massachusetts**

[Prohibited Transaction Exemption 98-15; Exemption Application No. D-10436]

*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 mergers of the following Connecticut Mutual Life Insurance Company (CML) separate investment accounts (SIAs), the assets of which include assets of employee benefit plans (the Plans), into the following Massachusetts Mutual Life Insurance Company (MassMutual) SIAs: CML Select into MassMutual SIA-A, CML Fixed Income into MassMutual SIA-E, CML Basis into MassMutual SIA-F, CML Money Market into MassMutual SIA-G, and CML Overseas into MassMutual SIA-I (the Merger Transactions); (2) the transfer of Plan assets from CML Dimensions and CML Converts, after termination of those SIAs, into MassMutual SIA-E and MassMutual SIA-A, respectively (the Termination Transfers); and (3) the transfer of Plan assets from CML Life Style Funds designated as CML Asset Allocation A, CML Asset Allocation B, and CML Asset Allocation C, after termination of those funds, into MassMutual SIA-BC, MassMutual SIA-BP, and MassMutual SIA-BA, respectively (the Life Style Transfers; the Termination Transfers and the Life Style Transfers are referred to collectively as the Transfer Transactions); provided the following conditions are met:

(A) At least 30 days prior to the effective date of each Merger and Transfer Transaction, MassMutual provides to a fiduciary of each Plan participating in the CML SIAs (the Plan Fiduciary) affected by the Transaction full written disclosure of information concerning the proposed Transaction and the affected MassMutual SIAs', including a current prospectus and a full and detailed written description of the fees charged by the affected MassMutual SIAs and the funds in which they invest, the differential between that fee level and the fee level applicable to the affected CML SIAs and the reasons why MassMutual believes that the investment is appropriate for the Plans. The notice will also inform the Plan Fiduciary of the proposed effective date of the Transaction;

(B) As part of the disclosure required under paragraph (A) of this exemption,

MassMutual notifies the Plan Fiduciary in writing that instead of participating in the particular Merger or Transfer Transaction proposed by MassMutual, the Plan Fiduciary may direct that the assets of the Plan in the affected CML SIA may be transferred, without penalty, charge or adjustment, to any other available MassMutual SIA or liquidated, without penalty, charge or adjustment, for a cash payment to the Plan equal to the fair market value of the Plan's interest in the affected SIA in lieu of the Plan's participation in the proposed transaction;

(C) Upon completion of the Merger Transactions, the fair market value of the interests of each Plan participating in the MassMutual SIAs immediately following such Merger Transactions equals the fair market value of such Plan's interest in the affected CML SIAs immediately before the transactions;

(D) Upon completion of the Transfer Transactions, the fair market value of the interests of each Plan participating in the MassMutual SIAs immediately following such Transfer Transactions equals the fair market value of such Plan's interest in the affected CML SIAs immediately before the transaction;

(E) The assets of each of the Plans are invested in the same or similar investment type or asset class before and after the Merger and Transfer Transactions;

(F) The assets of the CML SIAs will be valued for purposes of the Merger and Transfer Transactions at the "independent current market price" within the meaning of Rule 17a-7 of the Securities and Exchange Commission under the Investment Company Act of 1940. The assets of the CML SIAs being merged or transferred and the assets of the MassMutual SIAs affected by the merger or transfer will be valued in a single valuation using the same methodology by the same custodian at the close of the same business day that the Merger and Transfer Transactions are effected;

(G) No later than forty five (45) days after the Merger and Transfer Transactions, each Plan Fiduciary will be provided a written confirmation of the Transactions which will include a statement of the number of units held by each Plan in each affected CML SIA, the unit value of each such CML SIA unit and the aggregate dollar value of such Plan's CML SIA units, determined immediately prior to the Transactions, as well as the number of units held by each Plan in each affected MassMutual SIA, the unit value of each such MassMutual SIA unit, and the aggregate dollar value of such Plan's MassMutual

SIA units, determined immediately after the Transactions.

(H) Neither MassMutual nor any of its affiliates receives any fees or commissions in connection with the Merger and Transfer Transactions;

(I) The Plans pay no sales commissions or fees in connection with the Merger and Transfer Transactions;

(J) The Plans participating in the CML SIAs are not employee benefit plans sponsored or maintained by MassMutual or CML; and

(K) All assets involved in the transactions are securities for which market quotations are readily available, or cash.

For a more complete statement of the summary of facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on January 27, 1998 at 63 FR 4068.

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

**Overland, Ordal, Thorson & Fennell Pulmonary Consultants, P.C. Profit Sharing Plan & Trust (the Plan) Located in Medford, Oregon**

[Prohibited Transaction Exemption 98-15; Exemption Application No. D-10523]

*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 the cash sale (the Sale) of a certain parcel of real property (the Property) by the individually directed account (the Account) in the Plan of Eric S. Overland, M.D. (Dr. Overland) to Dr. Overland, provided that the following conditions are met:

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

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

(c) The Account receives an amount equal to the average of the two updated appraisals of the Property as of the date of Sale; and

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

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of the proposed exemption published on February 6, 1998, at 63 FR 6216.

*Written Comments* The Department received one written comment from the representative of the applicant. The comment pertains to the applicant's original submission of two appraisals of the Property, one for \$90,000 and the other for \$120,000. Because of the significant disparity between the appraisals, the Department determined that the average of the two, \$105,000, most appropriately represented the fair market value of the Property. The commentator proposes that the applicant update both appraisals as of the transfer date and suggests that the fair market value of the Property should be the average of the two appraisals. The Department is of the view that in this instance, this method of valuation is appropriate and is hereby adopted for purposes of this exemption. Accordingly, the language of condition (c) of the exemption is hereby changed from "The Account receives the greater of the fair market value of the Property as of the date of sale or \$105,000," to "The Account receives an amount equal to the average of the two updated appraisals of the Property as of the date of Sale."

**FOR FURTHER INFORMATION CONTACT:** Mr. James Scott Frazier 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 or disqualified person from certain other 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the

transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 2nd day of April, 1998.

#### **Ivan Strasfeld,**

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

[FR Doc. 98-9048 Filed 4-6-98; 8:45 am]

BILLING CODE 4510-29-P

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## **NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

### **Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency proposes to request extension of a currently approved information collection using an application that is submitted to a Presidential library to request the use of space in the library for a privately sponsored activity. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be received on or before June 8, 1998 to be assured of consideration.

**ADDRESSES:** Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740-6001; or faxed to 301-713-6913; or electronically mailed to [tamee.fechhelm@arch2.nara.gov](mailto:tamee.fechhelm@arch2.nara.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301-713-6730, or fax number 301-713-6913.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information

collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Application and Permit for Use of Space in Presidential Library and Grounds.

*OMB number:* 3095-0024.

*Agency form number:* NA Form 16011.

*Type of review:* Regular.

*Affected public:* Private organizations.

*Estimated number of respondents:* 1,000.

*Estimated time per response:* 20 minutes.

*Frequency of response:* On occasion.

*Estimated total annual burden hours:* 334 hours.

*Abstract:* The information collection is prescribed by 36 CFR 1280.42. The application is submitted to a Presidential library to request the use of space in the library for a privately sponsored activity. NARA uses the information to determine whether use will meet the criteria in 36 CFR 1280.42 and to schedule the date.

Dated: March 30, 1998.

#### **L. Reynolds Cahoon,**

*Assistant Archivist for Human Resources and Information Services.*

[FR Doc. 98-9085 Filed 4-6-98; 8:45 am]

BILLING CODE 7515-01-P

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## **DEPARTMENT OF TRANSPORTATION**

### **National Transportation Safety Board**

#### **Sunshine Act Meeting**

**TIME AND DATE:** 9:30 a.m., Tuesday, April 14, 1998.

**PLACE:** NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

**STATUS:** Open.

#### **MATTERS TO BE CONSIDERED:**

6743D Marine Accident Report—Fire on Board the Panamanian Passenger Ship Universe Explorer in the