

technical. Applicants are not expected to be experts in problem solving and crime analysis. Any organization concerned with school safety or crime issues is encouraged to participate in this program. Applicants that would like assistance in problem-solving techniques are encouraged to plan for such technical assistance in their project budgets.

This grant program is expected to be extremely competitive. A total of up to \$15,000,000 in funding will be available under the School-Based Partnerships program. A local match will not be required, although applicants are encouraged to contribute cash or in-kind resources to their proposed projects.

Grant funds must be used to supplement, and not supplant, state or local funds that otherwise would be devoted to public safety activities.

All local, Indian tribal, school police departments (consisting of officers with sworn authority) and other public law enforcement agencies committed to community policing are eligible to apply. Law enforcement agencies must partner with either a specific school, school district, or a nonprofit organization. A partnership between a policing agency and a specific school is encouraged, but if such a partnership is not practical, a policing agency may partner with a nonprofit community group. A collaboration agreement outlining the conditions and benefits each participant will contribute to the project must be included in the application.

Law enforcement agencies (primary applicants) may submit only one application. Schools or community-based entities (secondary applicants) that apply as partners are expected to include student representatives in the project.

An award under the School-Based Partnerships '99 grant program will not affect the eligibility of an agency to receive awards under any other COPS program.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: February 5, 1999.

**Joseph E. Brann,**

*Director.*

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99-07; Exemption Application No. D-10372, et al.]

#### Grant of Individual Exemptions; Keystone Financial, Inc. and Certain of Its Affiliates (Keystone), et al.

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

**ACTION:** Grant of individual exemptions.

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

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

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

#### Statutory Findings

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

(a) The exemptions are administratively feasible;

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

(c) They are protective of the rights of the Keystone Financial, Inc. and Certain of Its Affiliates (Keystone) Located in Harrisburg, Pennsylvania.

[Prohibited Transaction Exemption 99-07; Exemption Application No. D-10372]

#### Exemption

##### Section I—Exemption for In-Kind Transfers of CIF Assets

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply to the in-kind transfers of assets of various employee benefit plans for which Keystone served as a fiduciary (the Client Plans), that were held in certain collective investment funds (CIFs) maintained by Keystone, in exchange for shares of the KeyPremier Funds (the Funds), an open-ended investment company registered under the Investment Company Act of 1940 (the ICA), for which Keystone is an investment adviser and may provide other services (i.e., Secondary Services, as defined below in Section II(h)), which occurred on December 2, 1996, February 3, 1997 and July 1, 1997,<sup>1</sup> provided that the following conditions were met:

(a) A fiduciary (the Second Fiduciary) who was acting on behalf of each affected Client Plan and who was independent of and unrelated to Keystone, as defined in Section II(g) below, received advance written notice of the in-kind transfer of assets of the CIFs in exchange for shares of the Fund and the disclosures described in paragraph (c) below.

(b) On the basis of the information described in paragraph (c) below, the Second Fiduciary provided prior

<sup>1</sup> In this regard, Keystone represents that any further in-kind transfers of CIF assets to the Funds will comply with the conditions of Prohibited Transaction Exemption (PTE) 97-41 (62 FR 42830, August 8, 1997). PTE 97-41 permits the purchase by an employee benefit plan (i.e. a Client Plan) of shares of one or more open-end management investment companies (i.e. mutual funds) registered under the ICA, in exchange for assets of the Client Plan transferred in-kind to the mutual fund from a collective investment fund (i.e. a CIF) maintained by a bank or a plan adviser, where the bank or plan adviser is the investment adviser to the mutual fund and also a fiduciary to the Client Plan, if the conditions of the exemption are met. However, as noted further below, Keystone distributed written confirmation to the Client Plans regarding the in-kind transfer of CIF assets made to the Funds within 120 days, rather than within the 105-day period required by Section I(g) of PTE 97-41. Thus, an individual exemption to cover these specific CIF conversions is necessary to provide the appropriate retroactive relief.

written authorization for the in-kind transfer of the Client Plan's CIF assets in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, and the fees to be received by Keystone in connection with its services to the Fund. Such authorization by the Second Fiduciary must have been consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(c) The Second Fiduciary who was acting on behalf of a Client Plan received in advance of the investment by the Plan in any of the Funds, a full and detailed written disclosure of information concerning the Funds which included, but was not limited to:

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

(2) A statement describing the fees for investment management, investment advisory, or other similar services, and any fees for Secondary Services, as defined in Section II(h) below, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why Keystone considered such investments to be appropriate for the Client Plan; and

(4) A statement describing whether there were any limitations applicable to Keystone with respect to which assets of the Client Plan may be invested in the Funds, and, if so, the nature of such limitations.

(d) For each Client Plan, the combined total of all fees received by Keystone for the provision of services to the Client Plan, and in connection with the provision of services to any of the Funds in which the Client Plans invested, was not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(e) Neither Keystone nor an Affiliate received any fees payable pursuant to Rule 12b-1 under the ICA (the 12b-1 Fees) in connection with the transactions.

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

(g) No sales commissions were paid by the Client Plans in connection with the in-kind transfers of CIF assets in exchange for shares of the Funds.

(h) The transferred assets constituted the Client Plan's pro rata portion of all assets that were held by the CIF immediately prior to the transfer.

(i) Following the termination of each CIF, each Client Plan received shares of the Funds that had a total net asset value equal to the Client Plan's pro rata share of the assets of the CIFs that were exchanged for such Fund shares on the date of transfer.

(j) With respect to each in-kind transfer of CIF assets to a Fund, each Client Plan received shares of the Fund which had a total net asset value that was equal to the value of the Plan's pro rata share of the assets of the corresponding CIF on the date of the transfer, based on the current market value of the CIF's assets, as determined in a single valuation performed in the same manner as of the close of the same business day with respect to all such Plans participating in the transaction on such day, using independent sources in accordance with the procedures set forth by the Securities and Exchange Commission (SEC) Rule 17a-7(b) under the ICA (Rule 17a-7) for the valuation of such assets. Such procedures must have required that all securities for which a current market price was not obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ<sup>2</sup> were to be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day prior to the in-kind transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of Keystone.

(k) Not later than thirty (30) days after completion of each in-kind transfer of CIF assets in exchange for shares of the Funds which occurred on December 2, 1996, February 3, 1997, and July 1, 1997, Keystone sent by regular mail to the Second Fiduciary, a written confirmation which contained:

(i) The identity of each of the assets that was valued for purposes of the transaction in accordance with SEC Rule 17a-7(b)(4) under the ICA;

(ii) The price of each of the assets involved in the transaction; and

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

(l) For each in-kind transfer of CIF assets, Keystone sent by regular mail to the Second Fiduciary, no later than one-hundred and twenty (120) days after completion of the asset transfer made in exchange for shares of the Funds,<sup>3</sup> a written confirmation which contained:

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

(2) The number of shares in the Funds that were held by each affected Client Plan immediately following the in-kind transfer, the related per share net asset value, and the aggregate dollar value of the shares received.

(m) Keystone maintains for a period of six (6) years the records necessary to enable the persons, as described in paragraph (n) below, to determine whether the conditions of the exemption have been, except that:

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

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

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

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

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

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

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

#### Section II—Definitions

For purposes of this exemption,

(a) The term "Keystone" means Keystone Financial, Inc., and affiliates, as defined in Section II(b)(1).

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

(1) Any person directly or indirectly through one or more intermediaries,

<sup>2</sup>The National Association of Securities Dealers Automated Quotation National Market System.

<sup>3</sup>See Footnote 1 above.

controlling, controlled by, or under common control with the person;

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

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

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

(d) The term "Fund" or "Funds" means the KeyPremier Funds for which Keystone served as investment adviser, and provided certain "Secondary Services" (as defined paragraph (h) below), for the Funds that were involved in the in-kind transfers of CIF assets which occurred on December 2, 1996, February 3, 1997, and July 1, 1997.

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

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

(g) The term "Second Fiduciary" means a fiduciary of a Client Plan who was independent of and unrelated to Keystone at the time of the subject transaction. For purposes of this exemption, the Second Fiduciary will not be deemed to have been independent of and unrelated to Keystone if:

(1) Such Second Fiduciary was directly or indirectly controlled, was controlled by, or was under common control with Keystone;

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

(3) Such Second Fiduciary directly or indirectly received any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

With respect to the Client Plans, if an officer, director, partner, or employee of Keystone (or a relative of such persons),

was a director of such Second Fiduciary, and if he or she abstained from participation in (i) the choice of the Plan's investment manager/advisor, (ii) the approval of any purchase or sale by the Plan of shares of the Funds, and (iii) the approval of any fees charged to or paid by the Plan, in connection with any of the transactions described in Sections I above, then Section II(g)(2) above shall not apply.

(h) The term "Secondary Service" means a service, other than an investment management, investment advisory, or similar service, which was provided by Keystone to the Funds involved in the subject transaction, including but not limited to custodial, accounting, administrative, brokerage or any other service.

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 published on November 25, 1998 at 63 FR 65249.

**EFFECTIVE DATE:** This exemption is effective as of December 2, 1996, February 3, 1997 and July 1, 1997, for transactions described in Section I.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janet L. Schmidt of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

#### **Bankers Trust Company (BTC) Located in New York, New York**

[Prohibited Transaction Exemption 99-08; Exemption Application Nos. D-10592 through D-10594]

#### *Exemption*

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the proposed granting to BTC by certain employee benefit plans (the Plans) investing in Hometown America L.L.C. (the LLC) of security interests in the capital commitments of the Plans to the LLC, where BTC is the representative of certain lenders (the Lenders) that will fund a so-called "credit facility" providing loans to the LLC, and the Lenders are parties in interest with respect to the Plans; and (2) the proposed agreements by the Plans to honor capital calls made to the Plans by BTC, in lieu of the LLC's sole managing member, in connection with the Plan's capital commitments to the LLC where such capital calls relate to the security interests in the capital commitments previously granted to BTC; provided that (a) the proposed grants and agreements are on terms no less favorable to the Plans than those

which the Plans could obtain in arm's-length transactions with unrelated parties; (b) the decisions on behalf of each Plan to invest in the LLC and to execute such grants and agreements in favor of BTC are made by a fiduciary which is not included among, and is independent of and unaffiliated with, the Lenders and BTC; and (c) with respect to Plans that may invest in the LLC in the future, such Plans will have assets of not less than \$100 million, and not more than 5% of the assets of such Plan will be invested in the LLC.

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 published on November 25, 1998 at 63 FR 65254.

**Notice to Interested Persons:** The applicant represents that it was unable to comply with the notice to interested persons requirement within the time frame stated in its application. However, the applicant represents that it notified all interested persons, in the manner agreed upon between the applicant and the Department, by December 18, 1998. Interested persons were notified that they had until January 17, 1999 to comment on the proposed exemption.

**Written Comments:** The only comment letter received by the Department was filed by the applicant to clarify three items contained in the Summary of Facts and Representations in the notice of proposed exemption (the Summary).

First, the applicant notes that Representation 9 of the Summary correctly states that some of the Lenders may be parties in interest with respect to some of the Plans that invest in the LLC by virtue of providing fiduciary services to such Plans. However, the applicant wishes to also note that the Lenders may provide services other than fiduciary services to such Plans.

Second, the applicant notes that Representation 9 of the Summary also contains a reference to William M. Stephens (Mr. Stephens), who was the Chief Investment Officer of Ameritech Corporation (Ameritech) at the time of the application. However, the applicant states that Mr. Stephens is no longer the Chief Investment Officer of Ameritech. Thus, the applicant wishes to clarify that the use of the word "currently" in referring to Mr. Stephens acting in that capacity is no longer correct.

Finally, in Representation 12 of the Summary, BTC represents that the only direct relationship between any of the Members of the LLC and any of the Lenders to the LLC is the execution of the Estoppel. The Estoppel, as discussed earlier in the Summary, is an

acknowledgment by each Member that the LLC and the Manager have pledged and assigned to BTC, for the benefit of each Lender, all of their rights under the LLC Agreement relating to capital commitments and capital calls of such Members. In this regard, the applicant wishes to clarify that this absence of any direct relationship between the Members and the Lenders is also true at the time of any investment by a Plan in the LLC.

Accordingly, after consideration of the entire record, including the applicant's comments, the Department has determined to grant the exemption as proposed.

*For Further Information Contact:* Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

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

[Prohibited Transaction Exemption 99-09; Application Number D-10644]

*Exemption*

Section I

The restrictions of section 406(a)(1)(A) through (D) and section 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 sale (the Sale) of fractional amounts of certain fixed-income instruments (Fractional Amounts) to Bankers Trust and its affiliates by plans for which Bankers Trust or its affiliates provide fiduciary or other services (Client Plans), as well as employee benefit plans established and maintained by Bankers Trust or its affiliates (BT Plans) (collectively, the Plans); or (2) as an alternative to the Sale of the Fractional Amounts (the Alternative), the receipt by the Plans from Bankers Trust of cash equal to the amount that Bankers Trust or its affiliates receive from the issuer of the fixed-income instrument in lieu of the Fractional Amount, exclusive of transaction costs, plus accrued interest, provided that the following conditions are met:

(a) Each Sale or Alternative involves a one time transaction for cash;

(b) The terms of each Sale or Alternative are at least as favorable to the Plan as those terms which would be available in an arm's-length transaction with an unrelated party;

(c)(1) Under a Sale, the Plans receive an amount in cash which is not less than the par value for each of the Fractional Amounts; or (2) under the Alternative, the Plans receive cash equal

to the amount received by Bankers Trust from the issuer of the fixed-income security in lieu of the Fractional Amount, exclusive of transaction costs, plus accrued interest;

(d) In the case of the single Client Plans,

(1) Each Sale or Alternative is subject to the prior approval of an independent plan fiduciary;

(2) The independent fiduciary of each Plan is furnished written notice at least 60 days prior to the proposed Sale or Alternative transaction, containing information relevant to the independent fiduciary's determination whether to approve the Sale or Alternative transaction. The notice will inform the independent fiduciary that failure to respond within 45 days of receipt of the notice will constitute authorization of Bankers Trust to engage in the transaction. If the fixed-income instruments are not redenominated within a year of provision of this notice, additional notice will be delivered to the independent fiduciaries each year notifying them of their right to not participate in this program;

(e) In the case of the Client Plans participating in collective funds to which Bankers Trust serves as trustee or investment manager,

(1) Each Sale or Alternative transaction engaged in by the collective fund is subject to the prior approval of each independent plan fiduciary of participating Plans in the fund;

(2) The independent fiduciary of each Plan is furnished written notice at least 60 days prior to the proposed Sale or Alternative transaction, containing information relevant to the independent fiduciary's determination whether to approve the Sale or Alternative transaction or withdraw from the collective fund prior to the Sale or Alternative. The notice will inform the independent fiduciary that failure to respond within 45 days of receipt of the notice will constitute authorization of the collective fund for which Bankers Trust serves as trustee or investment manager to engage in the transaction. If the fixed-income instruments are not redenominated within a year of provision of this notice, additional notice will be delivered to the independent fiduciaries each year notifying them of their right to withdraw from the collective fund;

(f) In the case of the Plans, Bankers Trust must engage in the Sale or Alternative within 30 days of the date that the Fractional Amounts or the cash received by Bankers Trust from the issuers of the fixed-income security in lieu of the Fractional Amounts are received from the issuer;

(g) The Plans do not incur any commissions or other expenses relating to the Sales or Alternatives; and

(h) (1) Bankers Trust or an affiliate maintains or causes to be maintained within the United States, for a period of six years from the date of such transaction, the records necessary to enable the persons described in this section to determine whether the conditions of this exemption have been met; except that a party in interest with respect to an employee benefit plan, other than Bankers Trust or its affiliates, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) or (b) of the Code, if such records are not maintained, or are not available for examination, as required by this section, and a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of Bankers Trust or its affiliates, such records are lost or destroyed prior to the end of such six year period;

(2) The records referred to in subsection (1) above are unconditionally available for examination during normal business hours by duly authorized employees of (a) the Department, (b) the Internal Revenue Service, (c) plan participants and beneficiaries, (d) any employer of plan participants and beneficiaries, and (e) any employee organization whose members are covered by such plan; except that none of the persons described in (c) through (e) of this subsection shall be authorized to examine trade secrets of Bankers Trust or its affiliates or any commercial or financial information which is privileged or confidential.

Section II. Definitions

(a) The term "affiliate" of Bankers Trust means any other bank or similar financial institution directly or indirectly controlling, controlled by, or under common control with Bankers Trust.

(b) The term "Euro" means the single European currency to be introduced on January 1, 1999 in eleven Member States of the European Union.<sup>4</sup>

(c) The term "Fractional Amount" means, with respect to any fixed-income instrument, an amount less than one Euro.

(d) The term "independent plan fiduciary" means a plan fiduciary

<sup>4</sup>For purposes of reference, the Euro is slated to have a conversion rate of 1 Euro equals 1 European Currency Unit (ECU). The ECU is a basket of 12 European currencies that is frequently used for inter-governmental and market transactions. Currently, the ECU is worth less than one U.S. dollar.

independent of Bankers Trust and any of its affiliates.

(e) The term "par value" means the face value of the fixed-income instrument.

(f) The term "Plan" includes all employee benefit plans to which Bankers Trust or an affiliate acts as a service provider, including a fiduciary, and all plans established and maintained by Bankers Trust and its affiliates, which have net assets of at least \$25,000,000.

**Effective Date:** This exemption is effective for the period beginning on January 1, 1999 and ending three years from the date on which each country joining the European Economic and Monetary Union converts to the Euro.

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 published on October 21, 1998, at 63 FR 56224.

**Written Comments and Hearing Requests:** The Department received one written comment from the applicant with respect to the proposed exemption. In the letter, the applicant raised several concerns regarding the proposed exemption.

Bankers Trust represents that it has concerns regarding paragraph (f) of Section I of the proposed exemption, which would not permit Bankers Trust or its affiliates to serve as investment manager or trustee with investment discretion with respect to assets involved in the transaction. Bankers Trust believes that such a condition provides no additional safeguards for Plans both advised and trustee by Bankers Trust. In fact, Bankers Trust states that it harms these Plans because they will be forced to sell their fractional shares in the market, thereby subjecting them to potential market discounts and transaction costs. The applicant represents that the condition will lead to the anomalous result that Plans trustee by Bankers Trust but advised by others will be "made whole" for fractional shares, while Plans both advised and trustee by Bankers Trust, to whom arguably an even greater duty is owed, will be the only Plans suffering adverse consequences in the market associated with the fractional shares resulting from conversion to the Euro. The Department agrees with the foregoing and has decided to delete this condition from the grant of the exemption.

In addition, Bankers Trust clarified the procedures for opting out of the transaction by Plans participating in collective funds sponsored by Bankers

Trust. Bankers Trust states that if there is such an objection by a Plan participating in a collective fund, the Plan will be given the opportunity to withdraw from the collective fund prior to the Sale or Alternative. Following notice of the prospective Sale or Alternative by the fund, Plan fiduciaries which do not object within 45 days of such notice will be deemed to have approved the transaction. Bankers Trust states that it has already provided notice of the transaction to all of its trust, collective trust, and managed accounts with notice of the Sale or Alternative and a copy of the proposed exemption. In this regard, the Department has modified the language of paragraph (d) of the proposal and added a new paragraph (e) to provide for transactional approval by independent fiduciaries of single Client Plans and Client Plans invested in collective funds. Further, paragraph (e) as it appeared in the proposed exemption has been redesignated as paragraph (f) in the grant.

Finally, Bankers Trust alerted the Department to two developments that have occurred in the markets participating in Euro since the proposed exemption appeared in the **Federal Register**. First, the applicant originally believed that all of the markets participating in Euro would move to a Euro-only environment beginning on January 1, 1999. While that continues to be true of nine of the eleven countries converting to Euro, Ireland will permit legacy currency or Euro currency instructions until January 8, 1999, and the Netherlands will permit legacy currency or Euro currency instructions throughout the entire three-year transition period. Second, France and the Netherlands have decided to use a variation on the redenomination process described in the proposal. Instead of issuing fractional shares, France and the Netherlands have directed that financial instruments will be redenominated to whole Euros, with the value of the fractional share compensated with cash. Because it appears that the cost of transferring the cash value of the fractional share from a subcustodian to a Plan's account will exceed the value of that amount, Bankers Trust states that it will credit client accounts with the conversion price of the Fractional Amount, plus accrued interest exclusive of transaction costs, as a service to its clients. In addition, Bankers Trust states that it will credit the value paid by the issuer, regardless of whether it actually receives that amount because of transaction costs, to the extent that any issuers in the future specify a different

method for dealing with fractional shares. In this regard, the Department is modifying Section I of the proposed exemption, which proposed relief for the Sale of the Fractional Amounts by Client Plans and BT Plans to Bankers Trust or its affiliates to include an alternative transaction (the Alternative). The Alternative transaction will be the receipt by the Plans from Bankers Trust of cash amounts that Bankers Trust receives from the issuer of the fixed-income instrument from which the fractional amount is derived, exclusive of transaction costs, plus accrued interest. Further, the Department is modifying paragraph (c) of Section I as it appeared in the proposed exemption to state as follows:

(c) (1) Under a Sale, the Plans receive an amount in cash which is not less than the par value for each of the Fractional Amounts; or (2) under the Alternative, the Plans receive cash equal to the amount received by Bankers Trust from the issuer of the fixed-income security in lieu of the Fractional Amount, exclusive of transaction costs, plus accrued interest.

The Department received no other written comments, nor any requests for a hearing. Accordingly, the Department has determined to grant the exemption as modified.

**For Further Information Contact:** Contact James Scott Frazier of the Department, phone number (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 exemptions 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 are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 9th day of February, 1999.

**Ivan Strasfeld,**

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

[FR Doc. 99-3563 Filed 2-12-99; 8:45 am]

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application No. D-10693, et al.]

### Proposed Exemptions; Standard Bank Employees Profit Sharing Plan (the Plan)

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

**ACTION:** Notice of proposed exemptions.

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

### Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request,

and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

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

### Notice to Interested Persons

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

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

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

### Standard Bank Employees Profit Sharing Plan (the Plan), Located in Hickory Hills, Illinois

[Application No. D-10693]

#### Proposed Exemption

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

#### Part I. Purchases of Residential Mortgage Notes

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, as of October 1, 1998, to the purchases by the Plan of certain residential mortgage notes (the Notes) from Standard Bank and Trust Company (the Employer), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

- (1) An independent qualified fiduciary will decide which Notes will be purchased for the Plan;
- (2) Only first mortgage Notes will be purchased by the Plan;
- (3) The Notes which will be purchased by the Plan will have: (a) a borrower payment history with the Employer of at least three months; (b) a maximum 15 year maturity; and (c) the loan to value ratio of the collateral will be at least 150% of the principal amount of the Note;
- (4) If the mortgage loan is an original acquisition mortgage loan, the Note will not exceed two-thirds of the lower of the purchase price or of the appraised value of the collateral mortgaged by the borrower to the Employer to secure the Note;

(5) If the mortgage loan is a refinancing of the original acquisition mortgage loan, the Note will not exceed two-thirds of the appraised value of the collateral mortgaged by the borrower to the Employer to secure the Note;

(6) No more than twenty-five percent (25%) of the value of the Plan's total assets will be invested in the Notes;

(7) No more than ten percent (10%) of the value of the Plan's total assets will be invested in any one Note or Notes to any one borrower;

(8) The fees received by the independent fiduciary for serving in that capacity with respect to the Plan for the transactions described herein, combined with any other fees derived from the Employer or related parties,