

DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration**

[Application No. D-10622, et al.]

Proposed Exemptions; VECO Corporation (VECO)**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.

VECO Corporation (VECO), Located in Anchorage, Alaska

[Exemption Application Number D-10622]

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 32826, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of a certain parcel of unimproved real property (the Property) from the VECO Corporation Profit Sharing Plan and Trust (the Plan) to Norcon, Inc. (Norcon), a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) Norcon will pay the greater of \$2,940,000 or the fair market value of the Property on the date of the Sale as established by a qualified, independent appraiser;

(c) The Sale will be a one-time transaction for cash;

(d) The Plan will pay no fees or commissions with respect to the Sale; and

(e) An independent fiduciary acting on behalf of the Plan has reviewed the terms of the Sale and has represented that the transaction is in the best interest of the Plan and protective of the Plan's participants and beneficiaries.

Summary of Facts and Representations

1. VECO is an engineering, procurement, management, and construction company which is located in Anchorage, Alaska and incorporated in Delaware. Norcon is a wholly-owned subsidiary of VECO and is an electrical contracting company. Norcon is also located in Anchorage, Alaska.

2. VECO is the sponsor of the Plan. The Plan is a frozen profit sharing plan having 1,866 participants and approximately \$2,959,432 in total assets, as of June 15, 1998. The trustees of the Plan (the Trustees) are all employees of VECO or an affiliate thereof. On January 1, 1992, VECO discontinued contributions to the Plan and the Plan received a favorable termination letter from the Internal Revenue Service on February 25, 1997.

3. The Property, which accounts for approximately 99% of the Plan's total assets, is comprised of approximately 40 acres of unimproved real property located at the southwest corner of King Street and 100th Avenue in Anchorage, Alaska. The Property has not been used by, or generated income for, the Plan. The Property was acquired by the Plan for investment purposes on February 6, 1981 for \$1,917,363 from the Ninth Anchorage Limited Partnership (Ninth Anchorage), an unrelated party. Of this amount, the Plan paid Ninth Anchorage \$288,219 in cash and obtained a promissory note (the Note) from Ninth Anchorage for the balance of \$1,629,144.

4. The Plan has incurred certain holding costs as a result of its ownership of the Property. The applicant represents that the Plan has incurred certain interest expenses (the Interest Expenses) as a result of the Note. The applicant represents that, from 1981 until the Note was paid off in 1989, the Plan incurred a total of \$1,213,646 in Interest Expenses.

The applicant represents that VECO has paid all of the Interest Expenses (the Interest Expense Payments) on behalf of the Plan. The applicant represents that VECO made the Interest Expense Payments directly to Ninth Anchorage and treated the Interest Expense Payments as contributions by VECO to

the Plan.¹ The applicant additionally represents that VECO did not take any additional deductions with respect to the Interest Expenses Payments.

The Plan has additionally incurred certain real estate taxes (the Real Estate Taxes) with respect to its ownership of the Property. The applicant represents that the Plan has incurred a total of \$497,599 in Real Estate Taxes as a result of its ownership of the Property.

The applicant represents that from 1981 to present, VECO has paid, and continues to pay, all of the Real Estate Taxes on behalf of the Plan (the Real Estate Tax Payments). The applicant represents that the Real Estate Tax Payments were made directly by VECO to the taxing authority. The Applicant represents that, from 1981 to 1991, VECO treated the Real Estate Tax Payments as a contribution by VECO to the Plan with no further deductions taken by VECO with respect to the Real Estate Tax Payments.²

5. In 1995, the Trustees were informed by the Department of Labor's Seattle District Office (the District Office) that a sale of the Property by the Plan was necessary to diversify the Plan's assets in accordance with the requirements of the Act. As a result, the District Office and the Trustees reached a settlement agreement pursuant to PTE 94-71 (59 FR 51216, October 7, 1994) whereby VECO would purchase the Property from the Plan provided that VECO was able to meet certain conditions.

In a letter dated April 8, 1996, the District Office stated that it had decided not to authorize the proposed sale of the property to VECO. This decision was the result of the receipt by the District Office of negative comments from the Plan's participants in response to the proposed transaction. The District Office notified VECO that a sale of the Property was still necessary and any future sale of the Property would require the oversight of an independent fiduciary acting on behalf of the Plan. As a result of the District Office's decision, the proposed sale of the Property to VECO was abandoned.

6. The applicant now seeks an exemption for the sale of the Property by the Plan to VECO's subsidiary, Norcon. The Sale will involve the oversight of an independent fiduciary. Pursuant to this, Norcon and the Plan entered into a purchase and sale agreement for the Property (the Sale

Agreement) on March 13, 1998. The Sale Agreement involves Norcon's purchase of the Property for the greater of \$2,940,000 or the fair market value of the Property at the time of the Sale, as determined by a qualified, independent appraiser. The Sale Agreement is contingent on the grant of an exemption by the Department.

The applicant represents that in addition to the proposed sale of the Property by the Plan to VECO, the Plan is still trying to sell the Property on the open market. The applicant represents that in the event the Plan receives an offer for the Property in excess of the amount in the Sale Agreement, the Sale Agreement has reserved to Norcon the right to meet or exceed the amount that was offered. Thus, the applicant represents that, at a minimum, any sale of the Property by the Plan to Norcon will occur at the greater of \$2,940,000 or the fair market value of the Property as of the date of the Sale.

7. The Property was appraised on June 5, 1997 by Jerry Smith (Mr. Smith) for the ACCUVAL-RESCO Appraisal Company (ACCUVAL-RESCO), an appraisal company independent of both Norcon and VECO. Mr. Smith, an appraiser certified in the State of Alaska, used the sales comparison approach in his valuation of the Property and compared the Property to five parcels of land located near the Property and the subject of recent sales. Based on these comparisons, Mr. Smith concluded that the value of the Property, as of June 3, 1997, was \$2,940,000.³

8. The Plan hired an independent fiduciary, Al Tamagni (Mr. Tamagni) of Pension Services International, Inc. (PSI) to act on the Plan's behalf during any sale of the Property. Mr. Tamagni, who is the President of PSI, represents that he is independent of both Norcon and VECO. Mr. Tamagni additionally represents that he has several years of experience in matters involving qualified pension plans, including investment transactions similar to the Sale and the Sale Agreement. Mr. Tamagni represents further that he understands his duties and responsibilities as a fiduciary under ERISA and has accepted them.

Mr. Tamagni represents that he has reviewed the terms of both the Sale and the Sale Agreement. Mr. Tamagni represent that, based on his analysis of

the Sale Agreement, he believes that the terms of the Sale and the Sale Agreement are protective of the rights of the participants and beneficiaries of the Plan. Mr. Tamagni additionally represents that, based on his analysis of the terms of the Sale, he believes that the Sale is in the best interests of the Plan's participants and beneficiaries.

9. In summary, the applicant represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because:

(a) The terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) Norcon will pay the greater of \$2,940,000 or the fair market value of the Property on the date of Sale as established by a qualified, independent appraiser;

(c) The Sale will be a one-time transaction for cash;

(d) The Plan will pay no fees or commissions with respect to the Sale; and

(e) An independent fiduciary acting on behalf of the Plan, Mr. Tamagni, has reviewed the terms of the Sale and has represented that the transaction is in the best interest of the Plan and protective of the Plan's participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta of the Department, telephone (202) 219-8883 (this is not a toll free number).

Citibank, N.A. (Citibank), and Salomon Smith Barney Inc. (SSB) Located in New York, NY

[Application No. D-10674]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective October 8, 1998 to (1) the past and continued lending of securities to SSB and affiliated U.S. registered broker-dealers of SSB or Citibank (together, SSB/U.S.) and certain foreign affiliates (the Foreign Affiliates) of SSB and Citibank which are broker-dealers or banks based in the United Kingdom (SB/U.K.), Japan (SSB/Asia), Germany

¹ The Department expresses no opinion as to the appropriateness of VECO's treatment of these payments as contributions under Internal Revenue Code sections 162 and 404.

² See footnote 1.

³ Several unsuccessful attempts were made by the Trustees to sell the Property on the open market for \$3,223,440. The Trustees marketed the Property at this price in order for the Plan to receive a net amount, after real estate commissions were taken into consideration, which was approximate to the Property's appraised value.

(SSB/Germany), Canada (SSB/Canada) and Australia (SSB/Australia), including their affiliates or successors,⁴ by employee benefit plans (the Client Plans) or commingled investment funds holding Client Plan assets, for which Citibank or any U.S. affiliate of Citibank, acts as securities lending agent (or sub-agent), including those Client Plans for which Citibank also acts as directed trustee or custodian of the securities being lent; and (2) to the receipt of compensation by Citibank or any U.S. affiliate of Citibank in connection with these transactions, provided that the following conditions are met:

(a) For each Client Plan, neither Citibank, SSB nor any of their affiliates either has or exercises discretionary authority or control with respect to the investment of the Client Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets.

(b) Any arrangement for Citibank to lend Client Plan securities to SSB in either an agency or sub-agency capacity is approved in advance by a Client Plan fiduciary who is independent of SSB and Citibank.⁵ In this regard, the independent Client Plan fiduciary also approves the general terms of the securities loan agreement (the Loan Agreement) between the Client Plan and SSB, although the specific terms of the Loan Agreement are negotiated and entered into by Citibank and Citibank acts as a liaison between the lender and the borrower to facilitate the lending transaction.

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

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

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

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

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

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

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

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

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

(i) All procedures regarding the securities lending activities conform to the applicable provisions of Prohibited Transaction Exemptions PTE 81-6 and PTE 82-63 as such class exemptions may be amended or superseded as well as to applicable securities laws of the United States, the United Kingdom, Japan, Germany, Canada or Australia.

(j) Each SSB borrower indemnifies and holds harmless each lending Client Plan in the United States against any and all losses, damages, liabilities, costs and expenses (including attorney's fees) which the Client Plan may incur or suffer directly arising out of the use of securities of such Client Plan by such

SSB borrower or the failure of such borrower to return such securities to the Client Plan. In the event that the Foreign Affiliate defaults on a loan, Citibank, as agent for the lending Client Plan, will liquidate the loan collateral to purchase identical securities for the Client Plan. With respect to a default by a Foreign Affiliate, if the collateral is insufficient to accomplish such purchase, Citibank will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred. Alternatively, with respect to a default by the Foreign Affiliate, if such identical securities are not available on the market, Citibank will pay the Client Plan cash equal to (1) the market value of the borrowed securities as of the date they should have been returned to the Client Plan, plus (2) all the accrued financial benefits derived from the beneficial ownership of such loaned securities as of such date, plus (3) interest from such date to the date of payment. (The amounts paid shall include the cash collateral or other collateral that is liquidated and held by Citibank on behalf of the Client Plan.)

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

(l) Prior to the approval of the lending of its securities to SSB by a new Client Plan, copies of the notice of proposed exemption (the Notice) and the final exemption are provided to such Client Plan.

(m) Each Client Plan receives monthly reports with respect to its securities lending transactions, including, but not limited to the information described in Representation 28 of the Notice so that an independent fiduciary of the Client Plan may monitor such transactions with SSB.

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

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3-101 (the Plan Asset Regulation), which entity is engaged in securities lending

⁴Unless otherwise noted, SSB/U.S. and the Foreign Affiliates are collectively referred to as SSB.

⁵The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than Citibank and its affiliates, beyond that provided pursuant to Prohibited Transaction Exemption (PTE) 81-6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and PTE 82-63 (47 FR 14804, April 6, 1982).

arrangements with SSB, the foregoing \$50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

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

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

(ii) Has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

(In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(o) With respect to each successive two-week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers.

(p) In addition to the above, all loans involving the Foreign Affiliates have the following supplemental requirements:

(1) Such Foreign Affiliate is registered as a broker-dealer or bank with—

(i) The Securities and Futures Authority of the United Kingdom (the

Securities and Futures Authority) in the case of SB/U.K.;

(ii) The Ministry of Finance and the Tokyo Stock Exchange in the case of SSB/Asia;

(iii) The Deutsche Bundesbank and the Federal Banking Supervisory Authority (Bundesaufsichtsamt fuer das Kreditwesen, hereinafter referred to as the BAK) in the case of SSB/Germany;

(iv) The Ontario Securities Commission and the Investment Dealers Association in the case of SSB/Canada; and

(v) The Australian Securities & Investments Commission and the Australian Stock Exchange Limited in the case of SSB/Australia.

(2) Such broker-dealer or bank is in compliance with all applicable rules and regulations thereof as well as with all requirements of Rule 15a-6 (17 CFR 240.15a-6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides foreign broker-dealers and banks a limited exemption from United States registration requirements and interpretations and amendments thereof to Rule 15a-6 by the Securities and Exchange Commission (the SEC), to the extent applicable;

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

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

(5) The Foreign Affiliate provides SSB (i.e., Salomon Smith Barney Inc.) a written consent to service of process in the United States for any civil action or proceeding brought in respect of the securities lending transaction, which consent provides that process may be served on such borrower by service on SSB (i.e., Salomon Smith Barney Inc.).

(q) Citibank and its affiliates maintain, or cause to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (r)(1) to determine whether the conditions of the exemption have been met, except that—

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

(2) No party in interest other than Citibank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (r)(1).

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

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

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

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

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

(2) None of the persons described above in paragraphs (r)(1)(ii)-(r)(1)(iv) of this paragraph (r)(1) are authorized to examine the trade secrets of SSB or commercial or financial information which is privileged or confidential.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of October 8, 1998.

Preamble

In April 1998, the Travelers Group (Travelers) and Citicorp announced a proposed merger (the Merger) whereby Citicorp would be merged into a subsidiary of Travelers and Travelers would become a bank holding company and change its name to "Citigroup Inc." The Merger, which was subject to approval by shareholders of each company and various regulatory entities, occurred on October 8, 1998.

Following the Merger, some of the borrowers with which Citibank may have transacted business as securities lending agent included certain broker-dealers affiliated with Travelers and other entities which were not affiliated with Citibank prior to the Merger. Also included in this group were certain affiliates with which Citibank, as securities lending agent, had not previously engaged in securities loans on behalf of Client Plans. Although Citibank does not lend Client Plan securities to any of its current affiliates, upon consummation of the Merger, loans to SSB entity borrowers made on

behalf of employee benefit plans for which Citibank acts as securities lending agent would then constitute loans to affiliates of Citibank which would be in violation of the Act.

Rather than unwind the securities loans prior to the Merger, Citibank and SSB have requested an individual exemption to continue the pre-existing lending arrangement. If granted, the proposed exemption would be effective as of the date of the Merger. In addition, the exemption would apply to successors in interest to U.S.-based affiliates and Foreign Affiliates of SSB or Citibank, provided the successors remain affiliates of such entities.

Summary of Facts and Representations

1. The parties to the transactions are described as follows:

(a) *SSB*, a Delaware corporation, is a subsidiary of Salomon Smith Barney Holdings, Inc., a Delaware Corporation, which in turn, is a subsidiary of Travelers and an affiliate of Citibank since the Merger of October 8, 1998. SSB is one of the largest full-line investment service firms in the United States. It is registered with and regulated by the SEC as a broker-dealer and as a futures commission merchant with the Commodities Futures Trading Commission. It is a member of the New York Stock Exchange and other principal securities exchanges in the United States. It is also a member of the National Association of Securities Dealers, Inc. As of December 31, 1997, Travelers had approximately \$387 billion in assets and approximately \$21 billion in shareholders' equity.

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

(b) *Citibank* is a wholly owned subsidiary of the Citicorp, a bank holding company organized in 1967 under the laws of the State of Delaware and also an affiliate of Travelers since the Merger of October 8, 1998. Originally organized on June 16, 1812, Citibank is a national banking association organized under the National Bank Act of 1864. As a member

of the Federal Reserve System, Citibank is a "bank" as defined in both section 202(a)(2) of the Investment Advisers Act of 1940 (the Advisers Act) and section 581 of the Code.⁶ Citibank is the second largest commercial bank in the United States and it maintains its principal place of business at 399 Park Avenue, New York, New York.

Citibank, a major provider of trustee and related fiduciary services, is one of the largest providers of custodial services in the United States, with more than \$700 billion of assets under custody in the U.S. Such assets include those held by Citibank as a global custodian for U.S. pension plans, governmental plans and other tax-exempt investors.

In addition, Citibank provides securities lending services to many of its institutional clients. On behalf of such clients, Citibank negotiates the terms of loans with borrowers and otherwise acts as a liaison between the lender and the borrower to facilitate the lending transaction. Further, Citibank has responsibility for monitoring receipt of all required collateral and marking such collateral to market daily so that adequate levels of collateral are maintained and evaluating, on a continuous basis, the performance and creditworthiness of the borrowers of securities.

From time to time, Citibank may be retained by other securities lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such other lending agents. As securities lending agent, Citibank's role in the lending transactions parallels those under lending transactions for which it acts as primary lending agent on behalf of its clients.

(c) *SSB/U.S.* currently consists of SSB, Citicorp Investment Services Inc. (CISI) and Citicorp Securities Services, Inc. (CSSI). CISI is a wholly owned subsidiary of Citibank. CSSI is an indirect subsidiary of Citicorp. Both CISI and CSSI, which are located in New York, are U.S. registered broker-dealers. CSSI is also a member of the New York Stock Exchange as well as certain other principal exchanges in the United States.

(d) *The Foreign Affiliates* of SSB and Citibank include SB/U.K., SSB/Asia, SSB/Germany, SSB/Canada and SSB/Australia.

(i) *SB/U.K.* currently consists of Salomon Brothers U.K. Limited,

Salomon Brothers U.K. Equity Limited and Salomon Brothers International. These broker-dealers, which are indirect subsidiaries of Travelers, are located in the United Kingdom and are subject to regulation by the Securities and Futures Authority. In the future, SB/U.K. also will include any other SSB or Citibank affiliate that is based in the United Kingdom.

(ii) *SSB/Asia* currently consists of Salomon Smith Barney Asia Limited, an indirect subsidiary of Travelers and a broker-dealer. SSB/Asia is located in Japan and is subject to regulation by the Ministry of Finance and the Tokyo Stock Exchange. In the future, SSB/Asia also will include any other SSB or Citibank affiliate that is based in Japan.

(iii) *SSB/Germany*, which currently consists of Salomon Brothers AG, a bank, is subject to regulation in Germany by the Deutsche Bundesbank and the BAK. In the future, SSB/Germany also will include any other SSB or Citibank affiliate that is based in Germany.

(iv) *SSB/Canada*, which currently consists of Salomon Smith Barney Canada Inc., a broker-dealer, is subject to regulation in Canada by the Ontario Securities Commission and the Investment Dealers Association. In the future, SSB/Canada also will include any other SSB or Citibank affiliate that is based in Canada.

(v) *SSB/Australia*, which currently consists of Salomon Smith Barney Australia Securities Pty Limited, a broker-dealer, is subject to regulation in Australia by the Australian Securities & Investments Commission and the Australian Stock Exchange Limited. In the future, SSB/Australia also will include or any other SSB or Citibank affiliate that is based in Australia.

2. Although not registered with the United States SEC as broker-dealers, the Foreign Affiliates of SSB that are broker-dealers are subject to the rules, regulations and membership requirements of their respective regulatory entities (the Foreign Broker-Dealer Regulatory Entities). For example, SB/U.K. is subject to the rules and regulatory requirements of the Securities and Futures Authority. SSB/Asia subject to the rules and regulatory requirements of the Ministry of Finance and the Tokyo Stock Exchange. SSB/Canada is subject to regulation by the Ontario Securities Commission and the Investment Dealers Association, a self-regulatory organization. SSB/Australia is subject to regulation primarily by the Australian Stock Exchange Limited and, on a more limited basis, by the Australian Securities and Investment Commission. Each of the

⁶ In relevant part, section 202(a)(2) of the Advisers Act and section 581 of the Code state that a "bank" is a banking institution, bank or trust company incorporated and doing business under the laws of the United States.

aforementioned Foreign Affiliates is subject to rules relating to minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules and books and records requirements with respect to client accounts. These rules and regulations promulgated by the Foreign Broker-Dealer Regulatory Entities and the SEC share a common objective: The protection of the investor by the regulation of the securities industry. The rules of the Foreign Broker-Dealer Regulatory Entities (the Australian Stock Exchange Limited in the case of SSB/Australia) require each firm which employs registered representatives or registered traders to have a positive tangible net worth and be able to meet its obligations as they may fall due. In addition, the rules of the Foreign Broker-Dealer Regulatory Entities (the Australian Stock Exchange Limited in the case of SSB/Australia) set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. Further, to demonstrate capital adequacy, the rules of the Foreign Broker-Dealer Regulatory Entities (the Australian Stock Exchange Limited in the case of SSB/Australia) impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and recordkeeping requirements to the effect that required records must be produced at the request of the Foreign Broker-Dealer Regulatory Entities. Finally, the rules and regulations of the Foreign Broker-Dealer Regulatory Entities impose potential fines and penalties on broker-dealers which establish a comprehensive disciplinary system.

3. Similarly, SSB/Germany is subject to regulation in Germany by the Deutsche Bundesbank and the BAK. The Deutsche Bundesbank is the central bank of the German banking system and is responsible for the regulation of the money supply and credit supply to the economy, aimed at safeguarding the Deutsche Mark. The Bundesbank also provides for bank-based execution of domestic and foreign payments. The BAK is an independent federal institution with ultimate responsibility to the German Ministry of Finance. The BAK supervises the operations of banks, banking groups, financial holding groups and branches of foreign banks in Germany, and has the authority to (a) issue and withdraw banking licenses, (b) issue regulations on capital and liquidity requirements of banks, (c) request information and conduct investigations, (d) intervene in cases of inadequate capital or liquidity or in

cases of endangered deposits or risk of bankruptcy by means of temporarily prohibiting certain banking transactions.

The BAK ensures that SSB/Germany has procedures for monitoring and controlling its world-wide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, administration and financial resources. The BAK reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the year-end auditor and through special audits as ordered by the BAK and the respective State Central Bank auditors.

The BAK obtains information on the condition of SSB/Germany and its branches in Tokyo and Milan by requiring the submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the auditor. The BAK also receives information regarding capital adequacy, country risk exposure and foreign exchange exposures from SSB/Germany.

German banking law mandates penalties to ensure correct reporting to the BAK. The auditors face penalties for gross violation of their auditing duties.

4. Aside from the protections afforded by the Foreign Broker-Dealer Regulatory Entities and, in the case of SSB/Germany, the Deutsche Bundesbank and the BAK, SSB represents that the Foreign Affiliates will comply with all applicable provisions of Rule 15a-6 of the 1934 Act.⁷ Rule 15a-6 provides foreign broker-dealers with a limited exemption from SEC registration requirements and, as described below, offers additional protections. Specifically, Rule 15a-6 provides an

⁷ According to the applicants, section 3(a)(4) of the 1934 Act defines "broker" to mean "any person engaged in the business of effecting transactions in securities for the account of others, but it does not include a bank. Section 3(a)(5) of the 1934 Act provides a similar exclusion for "banks" in the definition of the term "dealer." However, section 3(a)(6) of the 1934 Act defines "bank" to mean a banking institution organized under the laws of the United States or a State of the United States. Further, Rule 15(a)(6)(b)(2) provides that the term "foreign broker or dealer" means "any non-U.S. resident person * * * whose securities activities, if conducted in the United States, would be described by the definition of "broker" or "dealer" in sections 3(a)(4) or 3(a)(5) of the [1934] Act." Therefore, the test of whether an entity is a "foreign broker" or "dealer" is based on the nature of such foreign entity's activities and, with certain exceptions, only banks that are regulated by either the United States or a State of the United States are excluded from the definition of the term "broker" or "dealer." Thus, for purposes of this exemption request, the applicants are willing to represent that they will comply with the applicable provisions and relevant SEC interpretations and amendments of Rule 15a-6.

exemption from U.S. broker-dealer registration for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "U.S. major institutional investor," provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term "U.S. institutional investor," as defined in Rule 15a-6(b)(7), includes an employee benefit plan within the meaning of the Act if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or (b) the employee benefit plan has total assets in excess of \$5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors" as defined in Rule 501(a)(1) of Regulation D of the Securities Exchange Act of 1933, as amended. The term "U.S. major institutional investor" is defined in Rule 15a-6(b)(4) as a person that is a U.S. institutional investor that has total assets in excess of \$100 million or an investment adviser registered under Section 203 of the Advisers Act that has total assets under management in excess of \$100 million.⁸

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

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

(b) Provide the SEC (upon request or pursuant to agreements reached between any foreign securities authority, including any foreign government, and the SEC or the U.S. Government) with any information or documents within the possession, custody or control of the foreign broker-dealer, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer⁹ through which the transactions with

⁸ See also SEC No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (hereinafter, the April 9, No-Action Letter), expanding the definition of the term "U.S. Major Institutional Investor."

⁹ The Foreign Affiliates, in lieu of relying on a U.S. broker-dealer and to the extent permitted by applicable U.S. securities law, may rely on a U.S. bank or trust company, including Citibank, to perform this role.

the U.S. institutional and major institutional investors are effected to (among other things):

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

(2) Issue all required confirmations and statements;

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

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

(5) Receive, deliver and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or U.S. major institutional investor in compliance with Rule 15c3-3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities);¹⁰

(6) Participate in certain oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor (not the U.S. major institutional investor), and accompany the foreign associated person on certain visits with both U.S. institutional and major institutional investors. By virtue of this participation, the U.S. registered broker-dealer would become responsible for the content of all these communications.¹¹

6. Citibank, as securities lending agent, pursuant to authorization from its client, will negotiate the terms of loans with borrowers pursuant to a client-approved form of Loan Agreement and will act as a liaison between the lender (and its custodian) and the borrower to facilitate the lending transaction. No loans of futures contracts will be involved. Citibank will have responsibility for monitoring receipt of all required collateral and marking such collateral to market daily so that adequate levels of collateral are maintained. Citibank also will monitor and evaluate on a continuing basis the performance and creditworthiness of the borrowers. Citibank may also act as a custodian or directed trustee with respect to the client's portfolio of securities being loaned.¹² Citibank may

¹⁰ Under certain circumstances described in the April 9, 1997 No-Action Letter (e.g., clearance and settlement transactions), there may be direct transfers of funds and securities between the Client Plan and a Foreign Affiliate. SSB notes that in such situations, the U.S. registered broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a-6.

¹¹ Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. Institutional Investor. See April 9 SEC No-Action Letter.

¹² Citibank wishes to clarify the fact that an independent fiduciary of a Client Plan may also appoint Citibank or an affiliate of Citibank to manage cash collateral and to receive a reasonable and customary investment management fee, provided that the Client Plan fiduciary, after receiving full disclosure, approves the compensation arrangement, the terms of which will be described in a written agreement.

be authorized from time to time by a client to receive and hold pledged collateral and invest cash collateral pursuant to guidelines established by the client. All of Citibank's procedures for lending securities will be designed to comply with the applicable conditions of PTE 81-6 and PTE 82-63 (as such PTEs may be amended or superseded).¹³

7. Citibank may be retained occasionally by other securities lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such other lending agents. As securities lending sub-agent, Citibank's role under the lending transactions (i.e., negotiating the terms of loans with borrowers pursuant to a client-approved form of Loan Agreement and monitoring receipt of, and marking to market, required collateral) parallels those under lending transactions for which Citibank acts as primary lending agent on behalf of its clients.¹⁴

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

9. Accordingly, SSB and Citibank request an exemption that would be effective on October 8, 1998, the date of the Merger, with respect to (a) the lending of securities owned by employee benefit plans for which Citibank serves or will serve as securities lending agent or sub-agent (referred to herein as the Client Plans)¹⁵ to SSB/U.S., SB/U.K., SSB/Asia, SSB/Canada, SSB/Germany and SSB/Australia, following disclosure of its affiliation with SSB, and (b) for the

¹³ PTE 81-6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest.

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

¹⁴ As noted previously, the Department is not providing exemptive relief herein for securities lending transactions that are engaged in by primary lending agents, other than Citibank and its affiliates, beyond that provided by PTEs 81-6 and 82-63.

¹⁵ For the sake of simplicity, future references to Citibank's performance of services as securities lending agent should be deemed to include its parallel performance as securities lending sub-agent and references to Client Plans should be deemed to refer to plans for which Citibank is acting as sub-agent with respect to securities lending activities, unless otherwise indicated specifically or by the context of the reference.

receipt of compensation by Citibank in connection with such transactions.¹⁶ For each Client Plan, neither Citibank, SSB nor any affiliate will have discretionary authority or control or render investment advice over Client Plans' decisions concerning the acquisition or disposition of securities available for loan. Citibank's discretion will be limited to activities such as negotiating the terms of the securities loans with SSB and (to the extent granted by the Client Plan fiduciary) investing any cash collateral received in respect of the loans. Because Citibank, under the proposed arrangement, would have discretion to lend Client Plan securities to SSB, and because SSB is an affiliate of Citibank, the lending of securities to SSB by Client Plans for which Citibank serves as securities lending agent (or sub-agent) may be outside the scope of relief provided by PTE 81-6 and PTE 82-63. Further, loans to the Foreign Affiliates would be outside of the relief granted in PTE 81-6. Therefore, several safeguards, described more fully below, are incorporated in the application in order to ensure the protection of the Client Plan assets involved in the transactions. In addition, the applicants represent that the proposed lending program incorporates the conditions contained in PTE 81-6 and PTE 82-63 and will be in compliance with all applicable securities laws of the United States.

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

11. The Agency Agreement will contain provisions to the effect that if SSB is designated by the Client Plan as an approved borrower (a) the Client

¹⁶ As noted above, the proposed exemption will also apply to successors in interest to U.S.-based affiliates and Foreign Affiliates of SSB or Citibank, provided the successors remain affiliates of such entities.

Plan will acknowledge that SSB is an affiliate of Citibank and (b) Citibank will represent to the Client Plan that each and every loan made to SSB on behalf of the Client Plan will be at market rates which are no less favorable to the Client Plan than a loan of such securities, made at the same time and under the same circumstances, to an unaffiliated borrower.

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

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (the Sub-Agency Agreement) with Citibank under which the primary lending agent will retain and authorize Citibank, as sub-agent, to lend securities of the primary lending agent's Client Plans, subject to the same terms and conditions as are specified in the Primary Lending Agreement. Thus, for example, the form of Loan Agreement will be the same as that approved by the Client Plan fiduciary in the Primary Lending Agreement and the list of permissible borrowers under the Sub-Agency Agreement (which will

include SSB) will be limited to those approved borrowers listed as such under the Primary Lending Agreement.

Citibank states that the Sub-Agency Agreement will contain provisions which are in substance comparable to those described in Representations 10 and 11 above, which would appear in an Agency Agreement in situations where Citibank is the primary lending agent. In this regard, Citibank will make the same representation in the Sub-Agency Agreement as described in Representation 10 above with respect to arm's length dealing with SSB. The Sub-Agency Agreement will also set forth the basis and rate for Citibank's compensation to be paid by the primary lending agent.

13. In all cases, Citibank will maintain transactional and market records sufficient to assure compliance with its representation that all loans to SSB are effectively at arm's length terms. Such records will be provided to the appropriate Client Plan fiduciary in the manner and format agreed to with the lending fiduciary, without charge to the Client Plan. A Client Plan may terminate the Agency Agreement (or the Primary Lending Agreement) at any time, without penalty to the Plan, on five business days notice.

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

15. Before entering into the Loan Agreement, SSB will furnish its most recently available audited and unaudited financial statements to Citibank, and in turn, such statements will be provided to a Client Plan before the Client Plan is asked to approve the terms of the Loan Agreement. The Loan Agreement will contain a requirement that SSB must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements.¹⁷ If any such

¹⁷With respect to capital adequacy rules for brokerage firms domiciled in the United States, including SSB, it is represented that such firms are

changes have taken place, Citibank will not make any further loans to SSB unless an independent fiduciary of the Client Plan has approved the loan in view of the changed financial condition. Conversely, if SSB fails to provide notice of such a change in its financial condition, such failure will trigger an event of default under the Loan Agreement.

16. As noted above, the agreement by Citibank to provide securities lending services, as agent, to a Client Plan will be embodied in the Agency Agreement. The Client Plan and Citibank will agree to the arrangement under which Citibank will be compensated for its services as lending agent, including services as custodian and manager of the cash collateral received, prior to the commencement of any lending activity. Such agreed upon fee arrangement will be set forth in the Agency Agreement and thereby will be subject to the prior written approval of a fiduciary of the Client Plan who is independent of SSB and Citibank. Similarly, with respect to arrangements under which Citibank is acting as securities lending sub-agent, the agreed upon fee arrangement of the primary lending agent will be set forth in the Primary Lending Agreement, and such agreement will specifically authorize the primary lending agent to pay a portion of such fee, as the primary lending agent determines in its sole discretion, to any sub-agent, including

subject to the capital adequacy rules of their respective regulatory agencies, i.e., the SEC, the New York Stock Exchange, the National Association of Securities Dealers and other self-regulatory authorities. If these brokerage firms fail to meet such requirements, they are subject to fines, penalties and possibly more stringent sanctions.

As for SB/U.K., SSB/Asia, SSB/Canada and SSB/Canada, which are subject to the capital adequacy provisions of their respective regulatory authorities, it is represented that such rules require the Foreign Affiliates to maintain, at all times, financial resources in excess of its financial resources requirement (the Financial Resources Requirement). For this purpose, financial resources include equity capital, approved subordinated debt and retained earnings, less deductions for illiquid assets. The Financial Resources Requirement includes capital requirements for market risk, credit risk, foreign exchange risk and large exposures. The rules of each applicable Foreign Broker-Dealer Regulatory Entity, require that if a firm's financial resources fall below a certain percentage (e.g., 120 percent with respect to the United Kingdom's Securities and Futures Authority and 150 percent with respect to the Ministry of Finance and the Tokyo Stock Exchange) of its Financial Resources Requirement, the such Foreign Broker-Dealer Regulatory Entity must be notified so that it can examine the terms of the firm's financial position and require an infusion of more capital, if needed. In addition, a breach of the requirement to maintain financial resources in excess of the Financial Resources Requirement may lead to sanctions by the applicable Foreign Broker-Dealer Regulatory Entity. If the breach is not promptly resolved, such Foreign Broker-Dealer Regulatory Entity may restrict the firm's activities.

Citibank, which is to provide securities lending services to the Client Plan.¹⁸ The Client Plan will be provided with any reasonably available information which is necessary for the Client Plan fiduciary to make a determination whether to enter into or continue to participate under the Agency Agreement (or the Primary Lending Agreement) and any other reasonably available information which the Client Plan fiduciary may reasonably request.

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

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

19. Citibank will establish each day a written schedule of lending fees¹⁹ and rebate rates²⁰ in order to assure

¹⁸ The foregoing provisions describe arrangements comparable to conditions (c) and (d) of PTE 82-63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary." In the event that a commingled investment fund will participate in the securities lending program, the special rule applicable to such funds concerning the authorization of the compensation arrangement set forth in condition (f) of PTE 82-63 will be satisfied.

¹⁹ Citibank will adopt minimum daily lending fees for non-cash collateral payable by SSB to Citibank on behalf of a Client Plan. Citibank will submit the method for determining such minimum daily lending fees to an independent fiduciary of the Client Plan for approval before initially lending any securities to SSB on behalf of such Client Plan.

²⁰ Citibank will adopt separate maximum daily rebate rates with respect to securities loans collateralized with cash collateral. Such rebate rates

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

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

21. Citibank will negotiate rebate rates for cash collateral payable to each borrower, including SSB, on behalf of a Client Plan. Where, for example, cash collateral derived from an overnight loan is intended to be invested in a generic repurchase agreement, any rebate fee determined with respect to an overnight repurchase agreement benchmark will be set below the applicable "ask" quotation therefor. Where cash collateral is derived from a loan with an expected maturity date (term loan) and is intended to be invested in instruments with similar maturities, the maximum rebate fee will be less than the expected investment return (assuming no investment

will be based upon an objective methodology which takes into account several factors, including potential demand for loaned securities, the applicable benchmark cost of fund indices, and anticipated investment return on overnight investments permitted by the Client Plan's independent fiduciary. Citibank will submit the method for determining such maximum daily rebate rates to such fiduciary before initially lending any securities to SSB on behalf of the Client Plan.

default). With respect to any loan to SSB, Citibank will never negotiate a rebate rate with respect to such loan which would be expected to produce a zero or negative return to the Client Plan (assuming no default on the investments related to the cash collateral from such loan where Citibank has investment discretion over the cash collateral). Citibank represents that the written rebate rate established daily for cash collateral under loans negotiated with SSB will not exceed the rebate rate which would be paid to a similarly situated unrelated borrower with respect to a comparable securities lending transaction. Citibank will disclose the method for determining the maximum daily rebate rate as described above to an independent fiduciary of a Client Plan for approval before lending any securities to SSB on behalf of the Client Plan.

22. For collateral other than cash, the applicable loan fee in respect of any outstanding loan is reviewed daily for competitiveness and adjusted, where necessary, to reflect market terms and conditions (see Representation 24). With respect to each successive two-week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers so the competitiveness of the loan fee will be tested in the marketplace. Accordingly, loans to SSB should result in competitive rate income to the lending Client Plan. At all times, Citibank will effect loans in a prudent and diversified manner. While Citibank will normally lend securities to requesting borrowers on a "first come, first served" basis, as a means of assuring uniformity of treatment among borrowers, it should be recognized that in some cases it may not be possible to adhere to a "first come, first served" allocation. This can occur, for instance where (a) the credit limit established for such borrower by Citibank and/or the Client Plan has already been satisfied; (b) the "first in line" borrower is not approved as a borrower by the particular Client Plan whose securities are sought to be borrowed; and (c) the "first in line" borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different Citibank representatives at or about the same time with respect to the same security.²¹ In situations (a) and (b), loans would

²¹ It is represented that the "first come, first served" allocation would not apply where Citibank is not acting as a securities lending agent, but rather is acting as, for example, a custodian to a Client Plan that has entered into an exclusive arrangement with the borrower. See PTE 96-56 (61 FR 37933, July 22, 1996) issued to Smith Barney, Inc.

normally be effected with the "second in line." In situation (c), securities would be allocated equitably among all eligible borrowers.

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

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

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

In the event the Foreign Affiliate defaults on a loan, Citibank will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase,²² Citibank will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred. Alternatively, if such identical securities are not available on the market, Citibank will pay the Client

Plan cash equal to the market value²³ of the borrowed securities as of the date they should have been returned to the Client Plan plus all interest and accrued financial benefits derived from the beneficial ownership of such loaned securities. Under such circumstances, Citibank will pay the Client Plan an amount equal to (a) the value of the securities as of the date such securities should have been returned to the Client Plan plus (b) all of the accrued financial benefits derived from the beneficial ownership of such loan securities as of such date, plus (c) interest from such date through the date of payment. (The amounts paid shall include the cash collateral or other collateral that is liquidated and held by Citibank on behalf of the Client Plan.)

26. The Client Plan will receive collateral from SSB by physical delivery, book entry in a U.S. securities depository, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to SSB. The collateral will consist of cash, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable U.S. bank letters of credit (issued by a person other than Citibank, SSB or their affiliates) or such other types of collateral which might be permitted by the Department under a class exemption. The market value of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The Loan Agreement will give the Client Plan a continuing security interest in and a lien on the collateral. Citibank will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent (or such greater percentage as agreed to by the parties) of that of the loaned securities, Citibank will require SSB to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent.

27. With respect to loans involving the Foreign Affiliates, the following additional conditions will be applicable: (a) all collateral will be maintained in United States dollars or dollar-denominated securities or letters of credit; (b) all collateral is held in the United States and Citibank maintains

the situs of the securities loan agreements in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)-1; and (c) the Foreign Affiliate provides SSB (i.e., Salomon Smith Barney Inc.) a written consent to service of process in the United States for any civil action or proceeding brought in respect of the securities lending transaction, which consent provides that process may be served on such borrower by service on SSB (i.e., Salomon Smith Barney Inc.).

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

29. In order to provide the means for monitoring lending activity, the monthly report will compare rates on loans by the Client Plans to SSB and rates on loans to other brokers as well as the level of collateral on the loans. In this regard, the monthly report will show, on a daily basis, the market value of all outstanding security loans to SSB and to other borrowers. In addition, the monthly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. The monthly report also will state, on a daily basis, the rates at which securities are loaned to SSB and the rates at which securities are loaned to other brokers. This statement will give an independent fiduciary information which can be compared to

²² Of course, Citibank will not be responsible for any loss with respect to cash collateral caused by the Client Plan's investment thereof directed by or pursuant to guidelines set by the Client Plan unless it expressly agrees to such liability with the Client Plan.

²³ For purposes of this proposed exemption, the "market value" of securities, as of any date, shall be determined on the basis of the closing prices therefor as of the trading date (for the principal market in which the securities are traded) immediately preceding the day of valuation, such determination to be made by the independent pricing source identified to SSB by the Client Plan upon the request of SSB. Market value shall include accrued interest in the case of debt securities.

that contained in the daily rate schedule.

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

In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (i.e., the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with SSB, the foregoing \$50 million requirement will be satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any including such fiduciary is the employer maintaining such Client Plan or an employee organization whose members are covered by such Client Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity (a) must have full investment responsibility with respect to plan assets invested therein²⁴; and (b) must have total assets under its management and control, exclusive of

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

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

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

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

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

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

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

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

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

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

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

Notice to Interested Persons

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

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

State Bankshares Inc. 401(k) Profit Sharing Plan (the Plan), Located in Fargo, North Dakota

[Application No. D-10703]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain limited partnership interests (the Interests) to Northern Capital Trust Company (Northern), the Plan's trustee and a party in interest with respect to the Plan, for \$93,552.93 in cash, provided the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) no commissions are charged in connection with the transaction; (c) the Plan receives not less than the fair market value of the Interests at the time of the transaction; and (d) the fair market value of the Interests is determined by a qualified entity independent of the Plan and of Northern.

Summary of Facts and Representations

1. The Plan is a 401(k) profit sharing plan which is sponsored by State Bankshares Inc. (the Employer) of Fargo, North Dakota. The Plan currently has

²⁴ For purposes of this proposed exemption, the term "full investment responsibility" means that the fiduciary responsible for making investment decisions on behalf of the group trust or other form of entity, has and exercises discretionary management authority over all of the assets of the group trust or other plan assets entity.

144 participants and had assets of \$5,637,308 as of September 30, 1998. The trustee of the Plan is Northern, a trust company located at 203 North 10th Street, Fargo, North Dakota. Northern has investment discretion for the Plan's assets.

2. In August 1993, the Plan purchased the Interests as an investment from an unrelated party (as discussed below). The Interests consist of a 4.2337% interest in the Courtyard Limited Partnership (the Partnership). The Partnership's sole asset is an apartment building known as "Courtyard Apartments" in St. Louis Park, Minnesota. The Plan paid \$54,233.70 for the Interests in the Partnership. The investment was presented to Northern, as Plan trustee, by Regan Wieland Investment Co., whose name was later changed to Goldmark Investment Company (Goldmark), on behalf of the Partnership. Goldmark and the Partnership are independent of, and unrelated to, the Employer and Northern.

3. The Employer would like to permit employee directed investments and the use of a 24-hour telephone service to accommodate daily transfers by Plan participants of assets held in their individual accounts in the Plan. In order to be able to participate in the new daily valuation and transfer system, the Plan needs to divest itself of the Interests to ensure proper liquidity for all of the Plan's assets. In this regard, the applicant represents that it is necessary to transfer the Interests out of the Plan because the Interests cannot be valued on a daily basis.

4. Northern as Plan trustee has contacted Goldmark, the Managing Partner of the Partnership, to inform them that the Plan wishes to sell its Interests. Mr. Kenneth P. Regan of Goldmark has represented that the fair market value of the Plan's Interests would be approximately \$93,000, if all of the partners were to sell their Partnership interests at the present time. However, in the event only one partner, such as the Plan, were to dispose its Interests, there would be discounts from the \$93,000 value to reflect the lack of marketability and minority ownership in addition to sales costs. Goldmark estimates that these expenses would be in excess of \$11,000. Thus, Goldmark states that the value of the Plan's Interests, if it were to sell such Interests alone, would be approximately \$81,795. Goldmark based its valuation of the Partnership on a January 12, 1998 appraisal of the Courtyard Apartments that was conducted by Robert L. Fransen (Fransen), an independent real estate broker in Minneapolis,

Minnesota. Fransen specializes in the brokerage of apartment properties.

5. The applicant has requested an exemption that would permit the Plan to sell the Interests to Northern for cash. No commissions or other fees would be charged in connection with the sale. Northern has represented that they are willing to pay the Plan \$93,552.93 for the Interests, an amount which reflects the book value of the Interests (based on the current net value of the Courtyard Apartments as the Partnership's only asset).²⁵ This amount is more than the current fair market value of the Interests (i.e., \$81,795) as determined by Goldmark.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 408(a) of the Act because: (a) The sale is a one-time transaction for cash; (b) no commissions or other fees will be charged in connection with the transaction; (c) the sales price for the Interests will be an amount, based on the book value of the Interests, which reflects more than the fair market value of the Interests as determined by Goldmark, the Managing Partner for the Partnership; and (d) Goldmark based its valuation of the Partnership on an appraisal of the Courtyard Apartments performed by Fransen, an independent real estate expert.

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

**VonRoll Isola Savings Plan (the Plan),
Located in Schenectady, New York**

[Application No. D-10729]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the making by State Street Bank and Trust Company (the Bank) of interest-free advances of cash (the Advances) to the Plan during

²⁵ The current net value of the Courtyard Apartments is \$2,209,722, based on Fransen's appraisal of the gross value less outstanding liabilities and other costs. Thus, since the Interests represent a 4.2337% interest in the Partnership, the Interests have a book value of approximately \$93,553 (i.e., \$2,209,722 × .042337 = \$93,553).

the period from July 8, 1997 through June 22, 1998, in the aggregate amount of \$824,812.60; and (2) the repayment of the Advances by the Plan, without interest, on June 22, 1998, provided the following conditions were satisfied:

(a) No interest or expense was incurred by the Plan in connection with the Advances;

(b) The proceeds of the Advances were used only to facilitate the payment of benefits (including participant loans and in-service withdrawals) to Plan participants, and to facilitate the making of investment transfers elected by Plan participants;

(c) The Advances were unsecured;

(d) The Plan participants who remained invested in the Plan's stable value fund, which consisted primarily of a Group Flexible Annuity Contract (the GIC) from the Travelers Insurance Company (Travelers), continued to receive the full contract rate on the full amount of the GIC;

(e) The Plan's sponsor was notified of the Advances;

(f) The repayment of the Advances was made at the direction of the Plan's sponsor and was restricted to amounts received from the proceeds of the installment payments made by Travelers under the GIC, and no other plan assets were used for that purpose;

(g) The Bank will maintain or cause to be maintained for a period of six years from the date of the granting of the exemption proposed herein the records necessary to enable the persons described in paragraph (h) to determine whether the conditions of this exemption have been met, except that:

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

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

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

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

(B) Any fiduciary of the Plan, or any duly authorized employee or representative of such fiduciary; and

(C) any participant or beneficiary of the Plan or duly authorized representative of such participant or beneficiary;

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

EFFECTIVE DATES: If the proposed exemption is granted, the exemption will be effective from July 8, 1997 through June 22, 1998.

Summary of Facts and Representations

1. The Bank is a Massachusetts trust company that provides trustee, custodial, investment management, participant recordkeeping and other related services to employee benefit plans. vonRoll isola USA, Inc. (VRI), f/k/a Insulating Materials Incorporated, is a New York corporation that sponsors the Plan. The Plan is a qualified profit sharing plan under section 401(a) of the Code which contains a qualified cash or deferred arrangement as described in Code section 401(k). The Plan was most recently amended and restated effective April 1, 1997. The Plan currently has 182 participants and beneficiaries and had assets with a total fair market value of approximately \$8,295,000 as of June 30, 1998.

In March, 1997, the Plan entered into a Benefit Plan Recordkeeping Services Contract and a Defined Contribution Plans Master Trust Agreement with the Bank, pursuant to which the Bank was appointed as trustee and recordkeeper for the Plan, effective July 1, 1997. As a result, the Plan's interests were transferred to the Bank for the Bank to hold as the Plan's new trustee, as of July 1, 1997. These agreements between the Plan and the Bank remain effective. The applicant represents that the Bank's role as Plan trustee and recordkeeper has made it a service provider and party in interest with respect to the Plan at all times since July 1, 1997.

2. Prior to July 1, 1997, the Plan offered six investment options into which Plan participants could direct their investments. One of these investment options was a so-called "stable value" fund which consisted of the GIC. The Plan had purchased the GIC from Travelers on June 22, 1993. On and after January 1, 1997, and in anticipation of the transfer of the Plan's assets to the Bank, no new Plan assets were allowed to be invested in the GIC. At the time of the transfer of the Plan's assets to the Bank on July 1, 1997, all

assets of the Plan, except for the assets invested in the GIC (which amounted to approximately 40% of the total Plan assets at the time), were transferred to and invested in five new investment options selected by VRI. These options consisted of five different mutual funds. In addition, VRI designated, as a sixth investment option, a "stable value" fund to be managed by the Bank (the Stable Value Fund). Despite the lack of benefit responsiveness of the GIC, it was included in the Stable Value Fund and, at the outset, represented substantially all of the assets of that Fund.²⁶ No amounts deposited in the Stable Value Fund after July 1, 1997 were invested in the GIC; rather, all such amounts were held in a cash buffer to provide liquidity for any additional transfers by Plan participants out of that fund.

3. The GIC was issued by Travelers on June 22, 1993. It was not a "benefit responsive contract" and by its terms severely restricted transfers out of the contract for benefit payments to, or investment transfers by, participants.²⁷ The GIC initially was subject to a surrender charge for a period of ten years. In an attempt to address the liquidity issues created by the lack of benefit responsiveness and given the anticipated transfer of the Plan's assets to the Bank in July, 1997, the GIC was renegotiated by VRI and Travelers in February, 1997. As a result, the parties agreed that the contract would be liquidated in a series of annual installment payments by Travelers to the Plan beginning in June, 1997 and continuing through June, 2001.

4. On July 8, 1997, eight days after the Plan's assets were transferred to the Bank, the liquidity available under the Stable Value Fund (including the June, 1997 installment payment made by Travelers to the Plan pursuant to the liquidation agreement) was depleted. This rapid and unanticipated depletion of liquidity resulted from the very high level of investment transfers elected by Plan participants in conjunction with the transfer of the Plan's assets to the Bank. The applicant states that these

²⁶ Although the GIC was included by the Bank in the Stable Value Fund, VRI retained responsibility for managing this asset.

²⁷ During the period prior to January 1, 1997, this lack of benefit responsiveness was generally offset by the availability of new cash flow to this option. The applicant represents that as long as the sum of the contributions and investment transfers flowing into this investment option exceeded the sum of the benefit distributions and investment transfers out of this option, there was no need for any benefit responsiveness under the GIC. The Department is providing no opinion herein as to whether the acquisition and holding of the GIC by the Plan was either consistent with, or in violation of, the fiduciary responsibility provisions contained in Part 4 of Title I of the Act.

investment transfers were the result of the new investment options available to Plan participants after the Plan's assets were transferred to the Bank. To meet the liquidity requirements created by the Plan participants' elections to make substantial transfers of their assets out of the Stable Value Fund, the Bank made the Advances to the Plan on an interest-free and unsecured basis. The Bank continued to make the Advances to the Plan as needed for these purposes until June 22, 1998. All of the Advances were made in cash. The total amount of the Advances was \$824,812.60. The existence and amount of all such Advances was communicated to, and discussed with, VRI periodically during the period they were made.

5. The Bank did not at any time charge the Plan any interest on the Advances it made to the Plan. By contrast, the GIC continued to earn interest at the contract rate, which interest earnings were allocated to the accounts of those Plan participants who continued to be invested in the Stable Value Fund. Thus, the Advances made by the Bank facilitated the ability of the Plan's participants who had an investment in the Stable Value Fund to receive timely benefit payments and make investment transfers without being limited by the illiquidity of the GIC. In addition, the Advances provided Plan participants who elected to stay in the Stable Value Fund with assurances that the Fund would remain a viable investment option during this period and that their Plan accounts would continue to receive all interest payments due under the GIC.

6. On June 22, 1998, pursuant to further negotiations between VRI and Travelers, Travelers advanced a payment of \$1,073,745.44 to the Plan. This amount represented 100% of the June 1998 and June 1999 installment payments due to the Plan under the renegotiated GIC. At the direction of VRI, this cash amount was used by the Plan to repay the entire amount of the Advances from the Bank, with the remainder creating a cash buffer for future benefit payments from the Stable Value Fund. The advance payment on the GIC by Travelers was subject to an early withdrawal charge equal to \$60,398.19. VRI and a Plan service provider²⁸ in the aggregate paid Travelers \$43,266 of this early withdrawal charge, with the result that the Plan actually paid only \$17,132.19

²⁸ The Plan's service provider was GE Investment Retirement Services, Inc. (GEIRS). GEIRS is a marketing affiliate of the Plan's mutual fund provider, GE Investment Management Incorporated, the sponsor of the mutual funds that have been offered to the Plan since July 1, 1997.

or approximately 28% of the early withdrawal charge.

7. In summary, the applicant represents that the subject transactions satisfied the criteria contained in section 408(a) of the Act for the following reasons: (a) no interest or expense was incurred by the Plan in connection with the Advances; (b) the proceeds of the Advances were used only to facilitate the payment of benefits (including participant loans and in-service withdrawals) to Plan participants, and to facilitate the making of investment transfers elected by Plan participants; (c) the Advances were unsecured; (d) the Plan participants who remained invested in the Stable Value Fund, which consisted primarily of the GIC from Travelers, continued to receive the full contract interest rate on the GIC; (e) VRI, the Plan's sponsor, was notified of the Advances; and (f) the repayment of the Advances by the Plan was made at the direction of VRI and was restricted to amounts received from the proceeds of the installment payments made by Travelers under the GIC, and no other Plan assets were used for that purpose.

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

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and

protective of the rights of participants and beneficiaries of the plan;

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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 3rd day of March, 1999.

Ivan Strasfeld,

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

[FR Doc. 99-5570 Filed 3-5-99; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99-041)]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NAC Task Force on International Space Station Operational Readiness (IOR).

DATES: Friday, March 12, 1999, 1:00 p.m.-2:00 p.m. Eastern Standard Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW, Room Mic 7, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration,

Washington, DC 20546-0001, 202/358-4461.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the results NASA/Russian Space Agency (RSA) assessment of the feasibility of transferring equipment from the Mir to the ISS.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: March 2, 1999.

Mathew M. Crouch,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 99-5669 Filed 3-5-99; 8:45 am]

BILLING CODE 7510-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

March 1, 1999.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, D.C. on March 22-23, 1999.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, N.W., Washington, D.C. A portion of the morning and afternoon sessions on March 22-23, 1999, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination