

whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

### III. Current Action

Office of Management and Budget clearance is being sought for the Telephone Point of Purchase Survey (TPOPS).

Since 1997, the survey has been administered quarterly and entirely via a computer-assisted-telephone-interview. This survey is flexible and creates the possibility of introducing new products into the Consumer Price Index in a timely manner. The data collected in this survey is necessary for the continuing construction of a current outlet universe from which locations are selected for the price collection needed for calculating the CPI. Furthermore, the TPOPS survey provides the weights used in selecting the items that are priced at these establishments. This sample design produces an overall CPI market basket that is more reflective of the prices faced and the establishments visited by urban consumers.

*Type of Review:* Revision of a currently approved collection.

*Agency:* Bureau of Labor Statistics.

*Title:* Point of Purchase Survey.

*OMB Number:* 1220-0044.

*Affected Public:* Individuals or households.

*Total Respondents:* 25,060.

*Frequency:* Quarterly.

*Total Responses:* 57,280.

*Average Time Per Response:* 11 minutes.

*Estimated Total Burden Hours:* 10,501 hours.

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

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

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

Signed at Washington, DC, this 6th day of June, 2002.

**Jesús Salinas,**

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

[FR Doc. 02-15555 Filed 6-19-02; 8:45 am]

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 2002-31; (Exemption Application No. D-11002) et al.]**

#### Grant of Individual Exemptions; Deutsche Bank AG

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

**ACTION:** Grant of individual exemption.

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

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

## Statutory Findings

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

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

#### Deutsche Bank AG, Located in Frankfurt/Main, Germany

[Prohibited Transaction No. 2002-31; Exemption Application No: D-11002]

#### Exemption

##### I. General Exemption

Effective for the period from June 12, 2001, through July 27, 2009, the restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to a transaction between a party in interest with respect to an employee benefit plan and an investment fund (as defined in section V(b)), in which the plan has an interest, and which is managed by Deutsche Bank AG (Deutsche Bank or the Applicant) (as defined in section V(a)), if the following conditions are satisfied:

(a) At the time of the transaction (as defined in section V(i)), the part in interest, or its affiliate (as defined in section V(c)), does not have, and during the immediately preceding one (1) year has not exercised, the authority to—

(1) Appoint or terminate Deutsche Bank as a manager of any of the plan's assets, or

(2) Negotiate the terms for the management agreement with Deutsche Bank (including renewals or modifications thereof) on behalf of such plan;

(b) The transaction is not described in—

Prohibited Transaction Class Exemption 81-6 (PTCE 81-6)<sup>1</sup> (relating to securities lending arrangements);

(2) Prohibited Transaction Class Exemption 83-1 (PTCE 83-1)<sup>2</sup> (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Class Exemption 82-87 (PTCE 82-87)<sup>3</sup>

<sup>1</sup> 46 FR 7527, January 23, 1981.

<sup>2</sup> 48 FR 895, January 7, 1983.

<sup>3</sup> 47 FR 21331, May 18, 1982.

(relating to certain mortgage financing arrangements);

(c) The terms of the transaction are negotiated on behalf of the investment fund by, or under the authority and general direction of Deutsche Bank, and either Deutsche Bank, or (so long as Deutsche Bank retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by Deutsche Bank, makes the decision on behalf of the investment fund to enter into the transaction, provided that the transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(d) The party in interest dealing with the investment fund is neither Deutsche Bank nor a person related to Deutsche Bank (within the meaning of section V(h));

(e) The transaction is not entered into with a party in interest with respect to any plan whose assets managed by Deutsche Bank, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof described in section V(c)(1) of this exemption) or by the same employee organization, and managed by Deutsche Bank, represent more than 20 percent (20%) of the total client assets managed by Deutsche Bank at the time of the transaction;

(f) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of Deutsche Bank, the terms of the transaction are at least as favorable to the investment fund as the terms generally available in arm's length transactions between unrelated parties;

(g)(1) Neither Deutsche Bank nor any affiliate thereof (as defined in section V(d)), nor any owner, direct or indirect, of a 5 percent (5%) or more interest in Deutsche Bank is a person who, within the ten (10) years immediately preceding the transaction, has been either convicted or released from imprisonment, whichever is later, as a result of any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any

such crimes or a crime in which any of the foregoing crimes is an element; or any other crime described in section 411 of the Act.

(2) The relief provided by this exemption is available to Deutsche Bank (as defined in section V(a)), notwithstanding the guilty plea on March 11, 1999, of Deutsche Bank's affiliate, Bankers Trust Company (Bankers Trust), to three counts of violations of 18 U.S.C. § 1005, provided that neither Deutsche Bank nor any affiliate, nor any owner, direct or indirect of a 5 percent (5%) or more interest in Deutsche Bank is convicted of any of the crimes (described in section I(g)(1)), and provided that Bankers Trust is not subsequently convicted of any crimes (described in section I(g)(1)).

(3) For purposes of this section I(g), a person shall be deemed to have been "convicted" from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

(h) Prior to entering into a transaction covered by this exemption Deutsche Bank must agree in writing with a plan:

(1) That the transaction is governed by the laws of the United States and that Deutsche Bank is a fiduciary of the plan pursuant to the provisions of the Act;

(2) To submit to the jurisdiction of the United States district courts;

(3) To appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(4) To consent to service of process on the Process Agent; and

(5) To indemnify and hold harmless each plan affected by this exemption in the United States against any harm, damage, or injury (including interest and attorney's fees) arising from any fiduciary breach or other wrongdoing of Deutsche Bank in its capacity as an asset manager for such plan.

(i) Upon request, Deutsche Bank provides to each plan affected by this exemption copies of the Notice of Proposed Exemption (the Notice) and the final exemption;

(j) Deutsche Bank provides each plan affected by this exemption with a written consent to service of process in the United States and to the jurisdiction of the courts of the United States for any civil action or proceeding brought against Deutsche Bank with respect to the subject transactions, which consent provides that process may be served on Deutsche Bank through service on Deutsche Bank's New York branch (or any other branch or affiliate of Deutsche Bank that is domiciled in the United States);

(k) Deutsche Bank and/or its affiliates (as defined in section V(c)(1)), maintains or causes to be maintained within the United States for a period of six (6) years from the date of each transaction covered by this exemption, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable persons (as described in section I(l)) 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 Deutsche Bank and/or its affiliates (as defined in section V(c)(1)), records are lost or destroyed prior to the end of the six (6) year period; and

(2) No party in interest other than Deutsche Bank and/or its affiliates 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 section I(l)(1));

(l)(1) Except as provided in section I(l)(2) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in section I(k) are unconditionally available at their customary location during normal business hours to: (i) any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission; (ii) any fiduciary of a plan affected by this exemption or any duly authorized representative of such fiduciary; (iii) any contributing employer to any plan affected by this exemption or any duly authorized employee representative of such employer; and (iv) any participant or beneficiary of any plan affected by this exemption, or any duly authorized representative of such participant or beneficiary;

(2) None of the persons described above in section I(l)(1)(ii)–(iv) are authorized to examine the trade secrets of Deutsche Bank or commercial or financial information which is privileged or confidential;

(m) Upon request, Deutsche Bank discloses to the plan sponsor and/or the named fiduciary of each plan affected by this exemption information concerning the nature and extent of Deutsche Bank's regulation by German governmental authorities.

## II. Specific Exemptions for Employers

Effective for the period from June 12, 2001, through July 27, 2009, the restrictions of sections 406(a), 406(b)(1)

and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of Code section 4975(c)(1)(A) through (E), shall not apply to:

(a) The sale, leasing, or servicing of goods (as defined in section V(j)), or to the furnishing of services, to an investment fund managed by Deutsche Bank, by a party in interest with respect to a plan having an interest in the investment fund, if—

(1) The party in interest is an employer any of whose employees are covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section V(c).

(2) The transaction is necessary for the administration or management of the investment fund,

(3) The transaction takes place in the ordinary course of a business engaged in by the party in interest with the general public,

(4) Effective for taxable years of the party in interest furnishing goods and services after the date this exemption is granted, the amount attributable in any taxable year of the party in interest to transaction engaged in with an investment fund pursuant to section II(a) of this exemption does not exceed one percent (1%) of the gross receipts derived from all sources for the prior taxable year of such party in interest, and

(5) The requirements of sections I(c) through (n) are satisfied with respect to the transaction;

(b) The leasing of office or commercial space by an investment fund managed by Deutsche Bank to a party in interest with respect to a plan having an interest in the investment fund, if—

(1) The party in interest is an employer any of whose employees are covered by such plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section V(c).

(2) No commission or other fee is paid by the investment fund to Deutsche Bank or to the employer (as defined in section V(c)), in connection with the transaction,

(3) Any unit of space leased to the party in interest by the investment fund is suitable (or adaptable without excessive cost) for use by different tenants;

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building, integrated office park, or of the commercial center (if the lease does not pertain to office space),

(5) In the case of a plan that is not an eligible individual account plan (as

defined in section 407(d)(3) of the Act), immediately after the transaction is entered into, the aggregate fair market value of employer real property and employer securities held by investment funds of Deutsche Bank in which such plan has an interest does not exceed 10 percent (10%) of the fair market value of the assets of such plan held in those investment funds. In determining the aggregate fair market value of employer real property and employee securities as described herein, a plan shall be considered to own the same proportionate undivided interest in each asset of the investment fund or funds as its proportionate interest of the investment fund of funds as its proportionate interest in the total assets of the investment fund(s). For purposes of this requirement the term, “employer real property,” means real property leased to, the term, “employer securities,” means securities issued by, an employer any of whose employees are covered by such plan or a party in interest of the plan by reason of a relationship to the employer described in subparagraphs (E) or (G) of section 3(14) of the Act, and

(6) The requirements of sections I(c) through (n) are satisfied with respect to the transaction.

### III. Specific Lease exemption for Deutsche Bank

Effective for the period from June 12, 2001, through July 27, 2009, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the leasing of office or commercial space by an investment fund managed by Deutsche Bank to Deutsche Bank, a person who is a party in interest of a plan by virtue of a relationship to Deutsche Bank described in subparagraphs (G), (H) or (I) of section 3(14) of the Act, or a person not eligible for the General Exception of Part I of this exemption by reason of section I(a), if—

(a) The amount of space covered by the lease does not exceed the greater of 7500 square feet or one percent (1%) of the rentable space of the office building, integrated office park or of the commercial center in which the investment fund has the investment,

(b) The unit of space subject to the lease is suitable (or adaptable without excessive cost) for use by different tenants,

(c) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of

Deutsche Bank, the terms of the transaction are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, and

(d) No commission or other fee is paid by the investment fund to Deutsche Bank, any person possessing the disqualifying powers described in section I(a), or any affiliate of such persons (as defined in section V(c)), in connection with transaction.

### IV. Transactions Involving Places of Public Accommodation

Effective for the period from June 12, 2001, through July 27, 2009, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by an investment fund managed by Deutsche Bank to a party in interest with respect to a plan having an interest in the investment fund, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

### V. Definitions

For purposes of this exemption:

(a) The term, “Deutsche Bank” means Deutsche Bank AG, provided that Deutsche Bank AG: (i) has the power to manage, acquire or dispose of assets of a plan affected by this exemption; (ii) has, as of the last day of its most recent fiscal year, equity capital (as defined in section V(k)) in excess of \$10,000,000; (iii) has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained Deutsche Bank AG to manage the assets of the plan; and (iv) is subject to regulation by the German federal banking supervisory authority, known as the Bundesaufsichtsamt fuer das Kreditwesen (the BAK).

(b) An “investment fund” includes individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of Deutsche Bank) is subject to the discretionary authority of Deutsche Bank.

(c) For purposes of section I(a) section I(k), and Part II, an “affiliate” of a person means—

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

(2) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, 5 percent (5%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets. A named fiduciary (within the meaning of section 402(a)(2) of the Act) of a plan, and an employer any of whose employees are covered by such plan will also be considered affiliates with respect to each other for purposes of section I(a), if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(d) For purposes of section I(g), an "affiliate" of a person means—

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

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or 5 percent (5%) or more partner, or owner, and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as described in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person), or

(B) Has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets.

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

(f) The term, "party in interest," means a person described in section 3(14) of the Act and includes a "disqualified person," as defined in section 4975(e)(2) of the Code.

(g) The term, "relative," means a relative as that term is defined in section 3(15) of the Act, or a brother, a sister, or a spouse of a brother or sister.

(h) Deutsche Bank is "related" to a party in interest for purposes of section I(d) of this exemption, if the party in interest (or a person controlling, or

controlled by, the party in interest) owns a 5 percent (5%) or more interest in Deutsche Bank or if Deutsche Bank (or a person controlling, or controlled by, Deutsche Bank) owns a 5 percent (5%) or more interest in the party in interest. For purposes of this definition:

(1) The term, "interest," means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(c) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights, or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(i) The "time" as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the effective date of this exemption, or a renewal that requires the consent of Deutsche Bank occurs on or after such effective date, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction exempt by virtue of Part I or Part II at such time as the percentage requirement contained in section I(e) is exceeded, unless no portion of such excess results from an increase in the assets transferred for discretionary management to Deutsche Bank. For this purpose, assets transferred do not include the reinvestment of earnings attributable to those plan assets already under the discretionary management of Deutsche Bank. Nothing in this paragraph shall be construed as exempting a transaction entered into by an investment fund which becomes a transaction described in section 406 of the Act or section 4975 of the code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have

become prohibited but for this exemption.

(j) The term, "goods" includes all things which are movable or which are fixtures used by an investment fund but does not include securities, commodities, commodities futures, money, documents, instruments, accounts, chattel paper, contract rights, and any other property, tangible or intangible, which, under the relevant facts and circumstances, is held primarily for investment.

(k) For purposes of section V(a) of this exemption, the term "equity capital" means stock (common and preferred), surplus, undivided profits, contingency reserves and other capital reserves.

#### *Temporary Nature of Exemption*

The Department has determined that the relief provided by this exemption will be effective retroactively but will be temporary in nature. In this regard, Deutsche Bank, AG, among others, on July 27, 1999, obtained Prohibited Transaction Exemption 99-29 (PTE 99-29)<sup>4</sup> which provided that it would not be precluded from functioning as a "qualified professional asset manager" (a QPAM), pursuant to Prohibited Transaction Class Exemption 84-14 (PTCE 84-14)<sup>5</sup>, solely because of a failure to satisfy section I(g) of PTCE 84-14, as a result of a guilty plea filed by an affiliate on March 11, 1999, to three counts of a felony. The relief provided by PTE 99-29 was limited to a period of ten (10) years from July 27, 1999, the date of the publication of the final exemption for PTE 99-29 in the **Federal Register**. The Department in proposing the subject exemption does not intend that, if granted, the relief, as described herein, be available beyond the time remaining in the ten (10) year period established by PTE 99-29. Accordingly, the relief provided by this exemption, if granted, will be retroactive, effective as of June 12, 2001, the date when the application for exemption was filed with the Department, and will continue to be available through July 27, 2009, the date that is ten (10) years from the publication in the **Federal Register** of the final exemption for PTE 99-29.

In the case of a transaction that continues beyond July 27, 2009, the transaction shall be deemed to occur until it is terminated. Although the relief provided by this exemption will not be available after July 27, 2009, for any new, or other transactions that require the consent of Deutsche Bank, as described herein, such relief will

<sup>4</sup> 64 FR 40623, July 27, 1999

<sup>5</sup> 49 FR 9494 (March 13, 1984), as corrected, 50 FR 41430 (October 10, 1985).

continue to apply beyond July 27, 2009, for continuing transactions entered into prior to that date, provided such transactions satisfied the conditions of this exemption. In this regard, see section V(i) regarding continuing transactions.

Should the Applicant wish to extend, beyond July 27, 2009, the relief provided by this exemption to new or additional transactions, or should the Applicant wish for any reason to amend the conditions of this exemption, the Applicant may submit another application for exemption. In this regard, the Department expects that prior to filing another exemption application seeking relief for new or additional transactions or to amend this exemption, the Applicant should be prepared to demonstrate compliance with the conditions of this exemption.

#### *Written Comments*

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on March 29, 2002. All comments and requests for a hearing were due by May 13, 2002.

During the comment period, the Department received comment letters from three (3) commentators. At the close of the comment period, the Department forwarded copies of these comment letters to the applicant and requested that the applicant respond in writing to the issues raised by the commentators. The concerns expressed by these commentators and the applicant's response thereto are summarized below.

Two commentators provided information on felony charges to which Bankers Trust Company (BT) plead guilty in March 1999. One of these commentators also provided background information on the applicant's acquisition of BT and its subsidiaries in June 1999. This commentator indicated that the applicant was aware of BT's actions before the acquisition. Further, this commentator objected to "substitution of fiduciary" proceedings in the New York State Supreme Court which permitted Bankers Trust Company of New York to assume the fiduciary responsibilities of BT. Further, this commentator objected to BT's name being legally changed to Deutsche Bank Trust Company Americas without a hearing.

Two commentators questioned the ability of the applicant, a foreign bank, to do business in the United States. In this regard, one of these commentators objected to funds being invested abroad or co-mingled with Deutsche Bank managed international funds.

An advocacy group for beneficiaries and prospective creators of irrevocable trusts, opposed the requested exemption in light of past actions by BT. In this regard, the commentator sought new and better standards to protect the interests of BT's clients, especially those beneficiaries of personal trusts who lack the power to change corporate trustees, or who for other reasons are denied the freedom to choose a different trustee to manage the assets of such trusts.

One commentator, a member of a family trust, complained of the applicant's refusal to settle alleged violations of New York State banking laws regarding trusts and estates filed by his family's attorneys against BT and affiliates of the applicant. This commentator sought to delay a final determination on the exemption and an opportunity to include the facts of his case in the public record at a hearing.

In response to the comments received by the Department in connection with the requested exemption, the applicant points out that none of the three comments appears to have been written by a participant in a plan covered by the Act for which Deutsche Bank has sought relief. In addition, the substance of each of the letters appears to relate, in substantial part, to actions by Bankers Trust Company or to Bankers Trust Company's personal trust business, neither of which is the subject of the exemption request. Further, the applicant points out that in 1999, Bankers Trust Company was granted relief similar to that requested by Deutsche Bank, the applicant in this case. In response to the allegation raised by several commentators that Deutsche Bank is not a U.S. Bank, the applicant maintains that while this allegation is true, the application for exemption set forth in significant detail the rigorous regulatory structure under which Deutsche Bank operates, which in the applicant's view, justifies granting the exemption.

With regard to those commentators who requested a hearing, the Department, after reviewing the concerns of such commentators, does not believe that there are material issues relating to the subject exemption that were raised by commentators during the comment period which would require the convening of a hearing. Accordingly, the Department has determined not to delay consideration of the final

exemption by holding a hearing on application D—11002.

However, the Department has determined to clarify section I(h) of the exemption. In this regard, Section I(h) contains safeguards designed to ensure that plans engaging in the subject transactions are protected. Specifically, section I(h) provides:

(h) Prior to entering into a transaction covered by this exemption Deutsche Bank must agree in writing with a plan:

(1) That the transaction is governed by the laws of the United States and that Deutsche Bank is a fiduciary of the plan pursuant to the provisions of the Act;

(2) To submit to the jurisdiction of the United States district courts;

(3) To appoint an agent for service of process in the United States; which may be an affiliate (the Process Agent); and

(4) To consent to service of process on the Process Agent.

In addition, in the application for exemption, Deutsche Bank represented that it would provide to any plan affected by the exemption an indemnity against any harm, damage, or injury arising from any fiduciary breach or other wrongdoing by Deutsche Bank Acting as asset manager for such plan. Further, Deutsche Bank agreed that enforcement by a plan of such indemnity would occur in the United States district courts. These representations were summarized in paragraph 10 of the Summary of Facts and Representations in the Notice, 67 FR 15236, column 2, lines 47–59. The Department has determined to incorporate the content of Deutsche Bank's representations into the language of section I(h). Accordingly, the Department has modified section I(h), as set forth in this exemption, to add a new sub-paragraph (5) as follows:

To indemnify and hold harmless each plan affected by this exemption in the United States against any harm, damage, or injury (including interest and attorney's fees) arising from any fiduciary breach or other wrongdoing of Deutsche Bank in its capacity as an asset manager for such plan.

After giving full consideration to the entire record, including the written comments from the commentators and the applicant's response to such comments, the Department has decided to grant the exemption, as described and amended, above. In this regard, the comment letters and the applicant's response thereto submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents

Room of the Pension Welfare Benefits Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on March 29, 2002, at 61 FR 15230.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena C. Le Blanc of the Department, telephone (202) 693-8551 (this is not a toll-free number).

**Northwoods Bank of Minnesota Employee Stock Ownership Plan (the Plan) Located in Park Rapids, Minnesota**

[Prohibited Transaction Exemption 2002-32; Exemption Application No. D-11031]

*Exemption*

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by individual accounts (the Stock Accounts) within the Plan of Certain shares of common stock (the Shares) of Dorset Bancshares, Incorporated (the Holding Company) to the Holding Company, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The proposed sale is a one-time cash transaction;

(b) The Stock Accounts receive the greater of: (i) \$32,000 per Share, as currently appraised by an independent, qualified appraiser; or (ii) the current fair market value for the Shares established at the time of the sale by an independent qualified appraiser; and

(c) The Stock Accounts pay no commission or other expenses associated with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 26, 2002 at 67 FR 20838.

**For Further Information Contact:** Ekaterian A. Uzlyan of the Department at (202) 693-8540. (This is not a toll-free number.)

**Morgan Stanley Dean Witter & Co. Located in New York, New York**

[Prohibited Transaction Exemption No. 2002-33; Exemption Application No. D-11048]

*Exemption*

*Section I—Transactions*

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective November 11, 2001, to:

(a) The lending of securities by an employee benefit plan, including a commingled investment fund holding assets of such plan (the Plan(s)) with respect to which Morgan Stanley Dean Witter & Co. (Morgan Stanley) or any of its affiliates is a party in interest, under certain exclusive borrowing arrangements with:

(1) Morgan Stanley;

(2) Morgan Stanley & Co. Incorporated (MS&Co); MS Securities Services Inc. (MSSSI); and any other affiliate of Morgan Stanley that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer (collectively, the MS US Broker-Dealers);

(3) Morgan Stanley & Co. International Limited (MSIL), which is subject to regulation by the Financial Services Authority (FSA) in the United Kingdom;<sup>6</sup>

(4) Morgan Stanley Japan Limited (MSJL), which is subject to regulation by the Ministry of Finance, Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange in Japan; and

(5) Any broker-dealer that, now or in the future, is an affiliate of Morgan Stanley which is subject to regulation by the FSA in the United Kingdom or which is subject to regulation by the Ministry of Finance, the Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange in Japan;<sup>7</sup> and

(b) The receipt of compensation by Morgan Stanley or any of its affiliates in connection with securities lending transactions; provided that for the transactions, set forth in section I(a) and (b), above, the conditions set forth in section II, below, are satisfied.

<sup>6</sup> As of December 1, 2001, the FSA replaced the United Kingdom Securities and Futures Authority.

<sup>7</sup> Each affiliated foreign broker-dealer is referred to herein, individually, as a Foreign Borrower or collectively, as Foreign Borrowers. The Foreign Borrowers together with Morgan Stanley and the MS US Broker-Dealers are referred to, herein, collectively as Borrowers or Applicants, and individually, as the Borrower.

*Section II—Conditions*

(a) For each Plan, neither the Borrower nor any affiliate has or exercises discretionary authority or control over such Plan's investment in the securities available for loan, nor do they render investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets.

(b) The party in interest dealing with the Plan is a party in interest with respect to such Plan (including a fiduciary) solely by reason of providing services to such Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of the Act.

(c) The Borrower directly negotiates an exclusive borrowing agreement (the Borrowing Agreement) with the Plan fiduciary which is independent of the Borrower and its affiliates.

(d) The terms of each loan of securities by the Plan to the Borrower are at least as favorable to such Plan as those of a comparable arm's-length transaction between unrelated parties, taking into account the exclusive arrangement.

(e) In exchange for granting the Borrower an exclusive right to borrow certain securities, the Plan receives from such Borrower either (i) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement from time to time), (ii) a periodic payment that is equal to a percentage of the value of the total balance of outstanding borrowed securities, or (iii) any combination of (i) and (ii) (collectively, the Exclusive Fee). If the Borrower pledges cash collateral, all the earnings generated by such cash collateral shall be returned to such Borrower; provided that such Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings on the collateral be retained by such Plan, and/or the Plan may agree to pay the Borrower a rebate fee and retain any earnings on the collateral (the Shared Earnings Compensation). If the Borrower pledges non-cash collateral, all earnings on the non-cash collateral shall be returned to such Borrower; provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee (the Lending Fee, and together with the Shared Earnings Compensation, is referred to as the Transaction Lending Fee). The Transaction Lending Fee, if any, shall be either in addition to the Exclusive Fee or an offset against the Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective

formula and may be different for different securities or different groups of securities subject to the Borrowing Agreement. Any change in the Exclusive Fee or the Transaction Lending Fee that the Borrower pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of such Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

(f) The Borrower may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to the Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage or other percentage determined pursuant to an objective formula.

(g) By the close of business on or before the day on which the loaned securities are delivered to the Borrower, the Plan receives from such Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a U.S. bank, other than the Borrower or any affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction exemption 81-6 (as amended or superseded) (PTE 81-6).<sup>8</sup> Such collateral will be deposited and maintained in an account which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held on behalf of the Plan by an affiliate of

the Borrower that is the trustee or custodian of the Plan.

(h) The market value (or in the case of a letter of credit, the stated amount) of the collateral initially equals at least 102 percent (102%) of the market value of the loaned securities on the close of business on the day preceding the day of the loan and, if the market value of the collateral at any time falls below 100 percent (100%) (or such higher percentage as the Borrower and the independent fiduciary of the Plan may agree upon) of the market value of the loaned securities, the Borrower delivers additional collateral on the following day to bring the level of the collateral back to at least 102 percent (102%). The level of the collateral is monitored daily by the Plan or its designee, which may be Morgan Stanley or any of its affiliates which provides custodial or trustee services in respect of the securities covered by the Borrowing Agreement for the Plan. The applicable Borrowing Agreement shall give the Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral.

(i) Before entering into a Borrowing agreement, the Borrower furnishes to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether such Plan should enter into to renew the Borrowing Agreement.

(j) The Borrowing Agreement contains a representation by the Borrower 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 statements of financial condition.

(k) The Plan receives the equivalent of all distributions made during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that such Plan would have received (net of tax withholdings)<sup>9</sup> had it remained the record owner of the securities.

(l) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty (except for, if the Plan

has terminated its Borrowing Agreement, the return to the Borrower of a *pro-rata* portion of the Exclusive Fee paid by the Borrower to the Plan) whereupon the Borrower delivers securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five (5) business days of written notice of termination or the customary settlement period for such securities.

(m) In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement, the Plan will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the U.S. with respect to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys' fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly indemnify the Plan.

(n) Except as otherwise provided herein, all procedures regarding the securities lending activities, at a minimum, conform to the applicable provisions of PTE 81-6 (as amended or superseded), as well as to applicable securities laws of the United States, the United Kingdom and/or Japan, as appropriate.

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

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

<sup>8</sup> 46 FR 7527, Jan. 23, 1981, as amended at 52 FR 18754, May 19, 1987). 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 a U.S. broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

<sup>9</sup> The Department notes the Applicants' representation that dividends and other distributions on foreign securities payable to a lending Plan are subject to foreign tax withholdings and that the Borrower will always put the Plan back in at least as good a position as it would have been had it not loaned securities.



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 Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated 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 the Borrowers, 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 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 Plan or an employee organization whose members are covered by such 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.)

(p) Prior to any Plan's approval of the lending of its securities to the Borrowers, a copy of the notice of proposed exemption, and a copy of the final exemption are provided to the Plan, and the Borrower informs the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.<sup>10</sup>

<sup>10</sup> The Department notes the Applicants' representation that, under the proposed exclusive borrowing arrangements, neither the Borrower nor any of its affiliates will perform the essential functions of a securities lending agent, *i.e.*, the Applicants will not be the fiduciary who negotiates the terms of the Borrowing Agreement on behalf of the Plan, the fiduciary who identifies the appropriate borrowers of the securities or the fiduciary who decides to lend securities pursuant to an exclusive arrangement. However, the Applicants or their affiliates may monitor the level of collateral and the value of the loaned securities.

(q) The independent fiduciary of the Plan receives monthly reports with respect to the securities lending transactions, including but not limited to the information set forth in this paragraph, so that an independent Plan fiduciary may monitor such transactions with the Borrowers. The monthly report will list for a specified period all outstanding or closed securities lending transactions. 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 premium (if applicable) at which the security is loaned, and the number of days the security has been on loan. At the request of the Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of the Plan, the Borrower will provide the Plan with daily confirmations of securities lending transactions.

(r) In addition to the above conditions, all loans involving Foreign Borrowers must satisfy the following supplemental requirements:

(1) Such Foreign Borrower is a registered broker-dealer subject to regulation by the FSA in the United Kingdom or is subject to regulation in Japan by the Ministry of Finance, the Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange;

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

(3) All collateral is maintained in United States dollars or in U.S. dollar-dominated securities or letters of credit or such other collateral as may be permitted under PTE 81-6 (as amended or superseded) from time to time;

(4) All collateral is held in the United States and the situs of the Borrowing Agreement is maintained 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 C.F.R. 2550.404(b)-1; and

(5) Prior to entering into a transaction involving a Foreign Borrower, the Foreign Borrower must:

(i) Agree to submit to the jurisdiction of the United States;

(ii) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(iii) Consent to the service of process on the Process Agent; and

(iv) Agree that enforcement by a Plan of the indemnity provided by the Foreign Borrower will occur in the United States courts.

(s) The Borrower maintains, or causes to be maintained, within the United States for a period of six (6) years from the date of each 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 (t)(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 the circumstances beyond the control of Morgan Stanley and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period; and

(2) No party in interest other than the Borrower 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 (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provision of subsections (a)(2) and (b) of section 504 of the Act, the records referred to the paragraph (s) are unconditionally available at their customary location for examination during normal business hours by—

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

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

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

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

(2) None of the persons described above in subparagraphs (t)(1)(ii)–(t)(1)(iv) are authorized to examine or trade secrets of Morgan Stanley or its affiliates or commercial or financial information which is privileged or confidential.

### Section III—Definitions

(a) An "affiliate" of a person means:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. (For purposes of this paragraph, the term



“control” means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(ii) Any officer, director, employee or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

(iii) Any corporation or partnership of which any person is an officer, director of employee, or in which such person is a partner.

(b) The terms, “Foreign Borrower” or “Foreign Borrowers,” includes MSIL and any broker-dealer that, now or in the future, is an affiliate of Morgan Stanley which is subject to regulation by the FSA in the United Kingdom, and MSJL, and any broker-dealer that, now or in the future, is an affiliate of Morgan Stanley which is subject to regulation by the Ministry of Finance, Financial Services Agency, the Tokyo Stock Exchange, and the Osaka Stock Exchange in Japan.

(c) The term “Borrower,” includes Morgan Stanley, MS&Co, MSSSI, the Foreign Borrowers, and any other affiliate of Morgan Stanley that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer.

**Effective Date:** This exemption is effective as of November 11, 2001, the date of the application was received by the Department.

#### *Written Comments*

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on March 29, 2002. All comments and requests for a hearing were due by May 13, 2002.

During the comment period, the Department received no requests for a hearing. However, the Department did receive a comment letter from the Applicants. In this regard, in a letter dated May 13, 2002, the Applicants requested certain amendments to the operant language of the exemption and the representations which were set forth in the Summary of Facts and Representations (the SFR) published in the Notice.

A discussion of the Applicants' comments and the Department's responses, thereto, are set forth in the numbered paragraphs below. In the language below, words that have been stricken from the text of Notice appear in the closed brackets, and additions to the text of the Notice appear in bold.

1. The Applicants request that the effective date of the exemption, referred to in the first paragraph of section I of the Notice be changed to November 11, 2001, in order to conform to the date set forth at the end of section III of the Notice. In this regard, the Applicants request the language of section I should read as follows:

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective November 11 [13], 2001, to:

The Department concurs and has amended the language, as set forth in the Notice at 67 FR at 15241, column 1, line 20.

2. The Applicants request that the second sentence of section II(e) be clarified such that the independent fiduciary can agree that the Plan retain a percentage of the earnings and/or pay a rebate fee and retain any earnings. In this regard the Applicants propose that the second sentence in section II(e) should read as follows:

If the Borrower pledges cash collateral, all the earnings generated by such cash collateral shall be returned to such Borrower; provided that such Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings on the collateral [may] be retained by such Plan, and/or the Plan may agree to pay the Borrower a rebate fee and retain [the] any earnings on the collateral (the Shared Earnings Compensation).

The Department concurs and has amended the language, as set forth in the Notice at 67 FR at 15241, column 3, lines 23–34.

3. The Applicants requests that the second paragraph of Representation 2 of the SFR as published in the Notice be modified to conform to the comparable language contained in the second paragraph of Representation 2 of the SFR of the proposed exemption for Barclays Bank PLC, which was published in the **Federal Register** on June 28, 2001<sup>11</sup> and later published in final form on October 22, 2001 as Prohibited Transaction Exemption 2001–41.<sup>12</sup> In this regard, the Applicants propose that the second paragraph of Representation 2, as set forth in the Notice at 67 FR at 15244, column 2, lines 13 through 25, should have read as follows:

The Applicants wish to enter into exclusive borrowing arrangements with Plans for which Morgan Stanley or any affiliate of

Morgan Stanley may be [an investment manager] a party in interest [for the assets of such Plans that are unrelated to the assets involved in the transaction]. For example, Morgan Stanley or an affiliate may be investment manager for assets of a Plan that are unrelated to the assets involved in the transaction. Morgan Stanley or any of its affiliates may provide securities custodial services, trustee services, clearing and/or reporting functions in connection with securities lending transactions, or other services to such Plans.

The Department concurs.

After giving full consideration to the entire record, including the written comments from the Applicants, the Department has decided to grant the exemption, as described, amended, clarified, and concurred in above. In this regard, the comment letter submitted by the Applicants to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on March 29, 2002, at 67 FR 15241.

#### *For Further Information Contact:*

Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

#### **Louisville Electrical Joint Apprentice and Training Committee Trust Fund (the Fund) Located in Louisville, Kentucky**

[Prohibited Transaction Exemption No. 2002–34; Exemption Application No: L–10981]

#### *Exemption*

The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act shall not apply to the purchase of the Fund of an interest in a condominium regime (the Condo) from the International Brotherhood of Electrical Workers (IBEW), Local 369 Building Corporation (the Building Corporation), a party in interest with respect to the Fund; provided that, at the time the transaction is entered into, the following conditions are satisfied:

- (1) The purchase of the Fund of the interest in the Condo is a one-time transaction for cash;
- (2) The Board of Trustees (the Trustees), acting as named fiduciary on behalf of the Fund, prior to entering the

<sup>11</sup> 66 FR 34475.

<sup>12</sup> 66 FR 53449.

transaction, determine that the transaction is feasible, in the interest of the Fund, and protective of the participants and beneficiaries of the Fund;

(3) An independent qualified fiduciary (the I/F) after analyzing the relevant terms of the transaction advises the Trustees that proceeding with the transaction would be in the interest in the Fund;

(4) The purchase price paid by the Fund for the interest in the Condo is the lesser of: (a) the total amount actually expended by the Building Corporation in the construction of the north wing unit (the Unit) of the condominium building (the Condo Building), as documented in writing and approved by the I/F, plus the value of that portion of the land underlying such Unit, which is equivalent to the percentage of the square footage of such Unit to the total square footage in the Condo Building, plus the value of the same portion of any other common elements of the Condo; or (b) the fair market value of the Fund's interest in the Condo, as determined by an independent, qualified appraiser, as of the date of the transaction, provided that such value does not exceed \$2,655,000, the fair market value of the Fund's interest in the Condo, as determined by such independent, qualified appraiser, as of December 11, 2001;

(5) The terms of the transaction are no less favorable to the Fund than terms negotiated under similar circumstances at arm's length with unrelated third parties;

(6) The Fund does not purchase the interest in the Condo or take possession of the Unit in the Condo Building until such Unit is substantially completed;

(7) The Fund has not been, is not, and will not be a party to the construction financing loan or the permanent financing loan between the IBEW, Local Union 369 (the Local) and the Bank of Louisville (the Bank);

(8) The Fund does not pay any commissions, sales fees, or other similar payments to any party as a result of the subject transaction, and the costs incurred in connection with the purchase by the Fund at closing does not include, directly or indirectly, interest incurred by the Building Corporation on the construction financing loan or the permanent financing loan from the Bank;

(9) Under the terms of the loan agreement between the Bank and the Fund, the Bank in the event of a default by the Fund has recourse only against the interest in the Condo and not against the general assets of the Fund; and

(10) Under the terms of the loan agreement between the Bank and the Building Corporation, in the event of default by the Building Corporation, the Bank has no recourse against any assets of the Fund.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on April 26, 2002, at 67 FR 20839.

**Further Information Contact:**  
Angelena C. Le Blanc of the Department, telephone (202) 693-8540 (This is not a toll-free number.)

#### *General Information*

The attention of interested persons is directed to the following:

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

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

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

Signed at Washington, DC, this 17th day of June, 2002.

**Ivan Strasfeld,**

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

[FR Doc. 02-15625 Filed 6-19-02; 8:45 am]

**BILLING CODE 4510-29-M**

## **NATIONAL SCIENCE FOUNDATION**

### **Advisory Panel for Integrative Activities; Notice of Meeting**

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting.

**Name:** Advisory Panel for Integrative Activities (#1373).

**Date and Time:** Thursday, July 11, 2002, 8 a.m.-4 p.m.; Friday, July 12, 2002, 8 a.m.-3 p.m.

**Place:**

July 11, 8 a.m.-9 a.m. and July 12, 8 a.m.-3 p.m., National Science Foundation, RM 330, 4201 Wilson Blvd., Arlington, VA 22230;

July 11, 9:30 a.m.-2 p.m., RAND Corporation, 1200 South Hayes St., Arlington, VA;

July 11, 2:30 p.m.-4 p.m., Office of Science and Technology Policy, Washington, DC.

**Contact:** Paul J. Herer, Senior Staff

Associate, Office of Integrative Activities, National Science Foundation, Room 1270, Arlington, Virginia. Phone: 703/292-8040.

**Type of Meeting:** Part-Open.

**Purpose of Meeting:** Review and evaluation of the RAND Science and Technology Policy Institute (STPI).

**Agenda:**

**Open Sessions**

July 11, 8 a.m.-2 p.m.—Introductions, Discussions with NSF Deputy Director, Visit to RAND, Corp.

July 12, 8 a.m.-9—Public Comment, Discussions of S&E Policy

**Closed Session**

July 11, 2:30 p.m.-4 p.m. and July 12, 9 a.m.-3 p.m.—Review and evaluate progress and plans of STPI.

**Reason for Closing:** The information being reviewed includes information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the institute. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in Sunshine Act.

Dated: June 14, 2002.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 02-15494 Filed 6-19-02; 8:45 am]

**BILLING CODE 7555-01-M**

## **NUCLEAR REGULATORY COMMISSION**

### **Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Advanced Reactor Designs; Notice of Meeting**

The ACRS Subcommittee on Advanced Reactor Designs will hold a meeting on July 8, 2002, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.