

*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 24th day of June 2002.

**Jesús Salinas,**

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

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BILLING CODE 4510-24-P

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application No: D-10936]

#### Adoption of Amendment to Prohibited Transaction Exemption 96-62 (PTE 96-62) To Permit Certain Authorized Transactions Between Plans and Parties in Interest

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

**ACTION:** Adoption of amendment to PTE 96-62.

**SUMMARY:** This document amends PTE 96-62 (61 FR 39988, July 31, 1996). PTE 96-62 permits certain prospective transactions between employee benefit plans and parties in interest where such transactions are specifically authorized by the Department and are subject to terms, conditions and representations which are substantially similar to two individual exemptions granted by the Department within the 60 month period ending on the date of filing of a written submission seeking authorization for the transaction. The amendment affects plans, participants and beneficiaries of such plans and certain persons engaging in such transactions.

**EFFECTIVE DATE:** This amendment is effective July 3, 2002.

**FOR FURTHER INFORMATION CONTACT:** Allison Padams Lavigne, Office of Exemption Determinations, Pension and Welfare Benefits Administration at (202) 693-8540 (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On March 20, 2002, notice was published in the **Federal Register** (67 FR 13019) of the pendency before the Department of a proposed amendment to PTE 96-62. PTE 96-62 provides relief from a restriction described in sections 406(a)

and 406(b) of the Employee Retirement Income Security Act (ERISA or the Act) or a parallel restriction described in section 8477(c)(2) of the Federal Employees' Retirement Systems Act (FERSA), and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of a parallel provision described in section 4975(c)(1)(A) through (F) of the Code. The amendment adopted by this notice was proposed by the Department on its own motion pursuant to section 408(a) of ERISA 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, August 10, 1990).<sup>1</sup>

The notice gave interested persons an opportunity to comment or to request a hearing on the proposed amendment. No public comments or requests for a hearing were received.

For the sake of convenience, the entire text of PTE 96-62, as amended, has been reprinted with this notice.

#### Description of the Exemption

Section I of PTE 96-62 provides relief from certain of the restrictions described in section 406(a) of ERISA and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(A) through (D) of the Code, for a transaction between a plan and a party in interest with respect to such plan, provided the conditions of the exemption are met. Under section II, additional relief is provided from certain of the restrictions described in section 406(b) of ERISA and the parallel restrictions described in section 8477(c)(2) of FERSA, as well as from the taxes imposed by section 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(E) and (F). Sections I(a) and II(a) require that the transaction be substantially similar (as defined in section IV(a) of PTE 96-62) to transactions described in at least two individual exemptions that were granted by the Department, and which provided relief from the same restrictions as requested by the party, within the 60-month period ending on the date of filing of the written submission.<sup>2</sup>

The amendment granted by this notice expands sections I(a) and II(a) to

<sup>1</sup> Section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 (1996)) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

<sup>2</sup> Section IV(a) defines the term "substantially similar" to mean alike in all respects as determined by the Department, in its sole discretion.

permit parties to either base their submission on substantially similar transactions described in two individual exemptions granted within the past 60 months; or on one individual exemption granted within the past 120 months and one transaction which received final authorization by the Department under PTE 96-62 within the past 60 months (the Authorized Transaction). The Department believes that the alternate method for satisfying the requirements of sections I(a) and II(a) will continue to ensure that the transactions that the party compares to its proposed transaction reflect the current policies of the Department.<sup>3</sup> The amendment also adds a definition for the term "Authorized Transaction" in section IV(g).

The Department notes that all other conditions contained in PTE 96-62 must continue to be satisfied with respect to those parties seeking to base their submissions on an Authorized Transaction rather than on two substantially similar individual exemptions. Accordingly, these parties should submit, among other things, a comparison of the proposed transaction with the Authorized Transaction and the transaction which was the subject of the individual exemption, including an explanation as to why any differences should not be considered material.

#### 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 section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code to which the exemption does not expressly apply and the general fiduciary provisions of section 404 of ERISA. Section 404 requires, in part, that a fiduciary discharge his or her duties respecting the plan solely in the interest of participants and beneficiaries of the plan and in a prudent fashion in

<sup>3</sup> The Department maintains, on its website ([www.dol.gov/pwba](http://www.dol.gov/pwba)) a list of Authorized Transactions. This list includes the following information: The final authorization numbers, the name of the applicants, a description of the transactions, and the grant numbers and **Federal Register** citations of the exemptions on which the submissions were based. Parties wishing to base their submissions on an Authorized Transaction will be able to refer to the submissions previously filed by parties under PTE 96-62 and to the two granted individual exemptions identified as substantially similar for additional information regarding the subject transactions.

accordance with section 404(a)(1)(B) of ERISA. This exemption, if granted, does not affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The Department finds that the exemption is administratively feasible, in the interests of the plan(s) and of participants and beneficiaries, and protective of the rights of the participants and beneficiaries of the plan(s);

(3) This amendment is supplemental to and not in derogation of any other provisions of ERISA 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 amendment is applicable to a transaction only if the transaction satisfies the conditions specified in the class exemption.

#### Exemption

Accordingly, PTE 96-62 is amended under the authority of section 408(a) of ERISA, section 4975(c)(2) of the Code and section 8477(c)(3) of FERSA, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990).

*Section I—General Exemption.* Effective July 31, 1996, a restriction described in section 406(a) of ERISA, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(A) through (D) of the Code, shall not apply to a transaction between a plan and a party in interest with respect to such plan, provided the following conditions are met:

(a) The transaction is substantially similar (as defined in section IV(a)) to transactions described in: (a) At least two individual exemptions that were granted by the Department, and provided relief from the same restriction, within the 60-month period ending on the date of filing of the written submission referred to in section III(a); or (b) effective July 3, 2002, one individual exemption that was granted by the Department, and provided relief from the same restriction, within the 120-month period ending on the date of filing of the written submission referred to in section III(a), and at least one Authorized Transaction (as defined in section IV(g));

(b) There is little, if any, risk of abuse or loss to the plan participants and

beneficiaries as a result of the transaction; and

(c) Prior to its execution, the transaction has met the requirements described in section III.

*Section II—Specific Exemption.* Effective July 31, 1996, a restriction described in section 406(b) of ERISA, or a parallel restriction described in section 8477(c)(2) of FERSA, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(E) and (F) of the Code, shall not apply to a transaction between a plan and a party in interest with respect to such plan, provided the following conditions are met:

(a) The transaction is substantially similar (as defined in section IV(a)) to transactions described in: (a) At least two individual exemptions that were granted by the Department, and provided relief from the same restriction, or if FERSA relief is requested, the ERISA relief provided parallels the restrictions of section 8477(c)(1) of FERSA, within the 60-month period ending on the date of filing of the written submission referred to in section III(a); or (b) effective July 3, 2002, one individual exemption that was granted by the Department, and provided relief from the same restriction, within the 120-month period ending on the date of filing of the written submission referred to in section III(a), and at least one Authorized Transaction (as defined in section IV(g));

(b) There is little, if any, risk of abuse or loss to the plan participants and beneficiaries as a result of the transaction;

(c) Prior to its execution, the transaction has met the requirements described in section III;

(d) Where either of the previously granted exemptions identified in the written submission described in section III, required the involvement of an independent fiduciary, an independent fiduciary has reviewed the proposed transaction and determined that the transaction would be in the interests and protective of the plan and its participants and beneficiaries;

(e) The independent fiduciary described in section II(d) represents the interests of the plan in the execution of the transaction; and

(f) If the transaction is continuing in nature, the independent fiduciary described in section II(d)—

(1) Represents the interests of the plan for the duration of the transaction and monitors the transaction on behalf of the plan;

(2) Enforces compliance with all conditions and obligations imposed on

any party dealing with the plan with respect to the transaction; and

(3) Ensures that the transaction remains in the interests of the plan.

*Section III—Authorization Requirements.* The requirements for this section are met if:

(a) A written submission is filed with the Department with respect to the transaction which contains the following information:

(1) A separate written declaration by the party who is to engage in the transaction that the written submission is made with the intention of demonstrating compliance with the conditions of this class exemption,

(2) All information required to be submitted with an individual exemption application in accordance with the procedures set forth in 29 CFR 2570 subpart B,

(3) A specific statement demonstrating that the proposed transaction poses little, if any, risk of abuse or loss to the plan participants and beneficiaries,

(4) A comparison of the proposed transaction to at least two substantially similar transactions which were the subject of individual exemptions granted by the Department, or the subject of an individual exemption granted by the Department within the 120-month period and an Authorized Transaction, and an explanation as to why any differences should not be considered material for purposes of this exemption, and

(5) A complete and accurate draft of the notice (as defined in section IV(b)) prepared for distribution to interested persons and a description of the proposed method of distribution for such notice.

(b) With respect to a transaction described in section II of this exemption, the written submission referred to in section (a) above contains the following additional information:

(1) The identity of the independent fiduciary,

(2) A description of such fiduciary's independence from the parties in interest involved in the subject transaction,

(3) A statement by the independent fiduciary containing an explanation as to why the subject transaction is in the interest and protective of the participants and beneficiaries of the plan(s) involved,

(4) An agreement by the independent fiduciary to represent the interests of the plan(s) involved in the transaction, and

(5) A description of the procedures for replacement of the independent fiduciary, if necessary, during the term of the transaction.

(c) The transaction meets the requirements for tentative authorization (as defined in section IV(c)) from the Department.

(d) Following tentative authorization, the party who is to engage in the transaction provides written notice (as defined in section IV(b)) to interested persons in a manner that is reasonably calculated to result in the receipt of such notice by interested persons, informs interested persons of the date of the expiration of the comment period, and resolves all substantive adverse comments (as defined in section IV(f)) to the satisfaction of the Department.

(e) The transaction meets the requirements for final authorization (as defined in section IV(d)).

*Section IV—Definitions.* (a) The term “substantially similar” means alike in all material respects as determined by the Department, in its sole discretion.

(b) The term “notice” means written notification to interested persons which includes—

(1) An objective description of the transaction, including all material terms and conditions,

(2) The approximate date on which the transaction will occur,

(3) A statement that the proposed transaction has met the requirements for tentative authorization under this exemption,

(4) A statement apprising interested persons of their right to comment to the Department on the proposed transaction at the following address: Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Ave, NW, Room N-5649, Washington, DC 20210,

(5) The expiration date of the comment period, and

(6) The **Federal Register** citations for the prior exemption(s) and/or the final authorization number of the Authorized Transaction (including the related **Federal Register** citations for the prior exemptions cited therein) identified by the party as substantially similar to the contemplated transaction.

(c) For purposes of this exemption, “tentative authorization” occurs upon the earlier of:

(1) The expiration of the 45-day period following an acknowledgment by the Department of receipt of the written submission with respect to the transaction under this exemption unless the Department has notified the party who is to engage in the transaction during that period that the transaction is not eligible for authorization under the terms of this exemption, or

(2) The issuance of a written determination by the Department during the 45-day period that the proposed

transaction meets the requirements for tentative authorization.

(d) For purposes of this exemption, “final authorization” occurs upon the expiration of:

(1) The five (5) day period immediately following the comment period (as defined in section IV(e)), unless the Department notifies the party that the transaction is not eligible for authorization under the terms of this exemption, and

(2) If necessary in order to resolve any substantive adverse comments received by the Department from interested persons within the comment period, a period of time extending beyond the five-day period immediately following the comment period as mutually agreed between the Department and the party.

(e) The term “comment period” means the 25-day period following the completion of distribution of the notice to interested persons by the party who is to engage in the transaction. For this purpose, distribution of notice by first class mail will be deemed complete three business days following the date of mailing to interested persons.

(f) The term “substantive adverse comments” means those comments submitted by interested persons to the Department within the prescribed comment period which raise significant factual, legal or policy issues regarding the transaction as determined by the Department.

(g) The term “Authorized Transaction” means a transaction that has received final authorization pursuant to PTE 96-62 within a 60-month period ending on the date of the filing of the written submission referred to in section III(a).

*Section V—Optional Checklist.* Completion and submission of the following optional checklist to accompany the written submission described in section III(a) will assist the Department in the consideration of the transaction under the class exemption.

The written submission filed with the Department contains the following information:

[ ] A separate written declaration of the intent to comply with the conditions of the class exemption.

[ ] All information required to be submitted with an individual exemption application under 29 CFR 2570 subpart B.

[ ] A statement demonstrating that the transaction poses little, if any, risk of abuse or loss to the plan participants and beneficiaries.

[ ] A comparison of the proposed transaction to at least two substantially similar transactions which were the subject of individual exemptions

granted within the 60-month period ending on the date of the filing, or the subject of one individual exemption that was granted by the Department within the 120-month period ending on the date of filing, and at least one Authorized Transaction and an explanation why any differences should not be considered material.

[ ] A complete and accurate draft of the notice to interested persons (as described in section IV(b)).

[ ] A description of the proposed method of distribution for such notice.

If either of the previously granted exemptions or the Authorized Transactions identified in the written submission required the involvement of an independent fiduciary, the written submission must contain the following additional information:

[ ] The identity of the independent fiduciary responsible for reviewing the proposed transaction, and representing the interests of the plan in the execution of the transaction. (If the transaction is continuing in nature, the independent fiduciary represents the interests of the plans for the duration of the transaction and takes all necessary action on behalf of the plan.)

[ ] A description of such fiduciary’s independence from the parties involved in the transaction.

[ ] A statement from the independent fiduciary explaining why the transaction is in the interests and protective of the plan participants and beneficiaries.

[ ] An agreement by the independent fiduciary to represent the interests of the plan.

[ ] A description of the procedures for the replacement of the independent fiduciary, if necessary, during the term of the transaction.

The notice to interested persons filed with the Department includes the following information:

[ ] An objective description of the transaction, including all material terms and conditions.

[ ] The approximate date on which the transaction will occur.

[ ] A statement that the transaction has met the requirements for tentative authorization under the exemption.

[ ] A statement apprising interested persons of their right to comment on the proposed transaction at the address contained in the exemption.

[ ] The expiration date of the comment period.

[ ] The **Federal Register** citations for the prior exemption(s) and/or the final authorization number of the Authorized Transaction (including the related **Federal Register** citations for the prior exemptions cited therein) identified by

the party as substantially similar to the contemplated transaction.

Signed at Washington, DC this 28th day of June, 2002.

**Ivan L. Strasfeld,**

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

[FR Doc. 02-16737 Filed 7-2-02; 8:45 am]

BILLING CODE 4510-29-P

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application No. D-10991, et al.]

#### Proposed Exemptions; Deutsche Bank AG and Its Affiliates

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

**ACTION:** Notice of proposed exemptions.

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

#### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. \_\_\_\_\_, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to:

“[moffittb@pwba.dol.gov](mailto:moffittb@pwba.dol.gov)”, or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 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, 5 U.S.C. App. 1 (1996), 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.

#### Deutsche Bank AG and Its Affiliates, Located in Frankfurt am Main, Germany

[Application No. D-10991]

##### 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 as set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).<sup>1</sup>

<sup>1</sup>For purposes of the proposed exemption, all references to specific provisions of Title I of the Act, unless otherwise indicated, shall refer also to the corresponding provisions of the Code.

#### Section I—Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) through (D) of the Code, shall not apply, as of April 24, 2001, to

(a) the lending of securities, under certain “exclusive borrowing” arrangements, to

(1) Deutsche Bank AG (Deutsche Bank); or

(2) Its affiliates Deutsche Bank Securities Inc. (DBS), Deutsche Bank AG, New York Branch (DBNY), and the “Foreign Borrowers,” as defined in Section III (collectively, with Deutsche Bank, referred to as the “Borrowers,” as defined in Section III)

by employee benefit plans (Plans), including commingled investment funds holding assets of such Plans, with respect to which the Borrowers are a party in interest; and

(b) The receipt of compensation by Deutsche Bank or its affiliates in connection with the securities lending transactions, provided that the conditions, set forth in Section II, are satisfied.

#### Section II—Conditions

(a) For each Plan, neither the Borrower nor any affiliate has or exercises discretionary authority or control over the 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 the Plan (including a fiduciary) solely by reason of providing services to the 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 a Plan fiduciary that is independent of the Borrower and its affiliates.

(d) The terms of each loan of securities by a Plan to a 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 the exclusive right to borrow certain securities, the Plan receives from the 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