Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 3, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–25614 Filed 10–7–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP)—1363]

Office of Juvenile Justice and Delinquency Prevention: Meeting of the Coalition of Juvenile Justice

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is announcing the meeting of the Coalition for Juvenile Justice. The purpose of this meeting is to discuss and adopt recommendations from members regarding the committee's responsibility to advise the OJJDP Administrator, the President, and the Congress, about state perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention.

DATES: The meeting dates are:

1. Thursday, November 7, 2002, 9 a.m. to 4:30 p.m. (ET).
2. Friday, November 8, 2002, 9 a.m. to 4:15 p.m. (ET).
3. Saturday, November 9, 2002, 9 a.m. to 5 p.m. (ET)
4. Sunday, November 10, 2002, 8 a.m. to 1 p.m. (ET).

ADDRESSES: All meetings will be held at the Eden Roc Renaissance Resort, 4525 Collins Avenue, Miami Beach, Florida 33140; Telephone: 305–531–0000; Fax: 305–674–5537.

FOR FURTHER INFORMATION CONTACT: For information about how to attend this meeting (or to submit written questions (optional)), contact Freida Thomas, 810 7th Street, NW., Washington, DC 20531; Telephone: 202–307–5924 (This is not a toll-free number); Fax: 202–307–2819; e-mail: *Freida@ojp.usdoj.gov.*

SUPPLEMENTARY INFORMATION: The Coalition of Juvenile Justice, established pursuant to section 9 of the Federal Advisory Committee Act, (5 U.S.C. App. II), is meeting to carry out its advisory functions under section 5601 of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C., as amended.

This meeting will be open to the public.

Dated: September 26, 2002.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02–25597 Filed 10–7–02; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10958, et al.]

Proposed Exemptions; Fidelity Management Trust Company and Its Affiliates (Collectively Fidelity)

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'',* 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.

Fidelity Management Trust Company and Its Affiliates (Collectively Fidelity), Located in Boston, Massachusetts

[Application No. D–10958]

Proposed Exemption

I. Covered Transactions

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of ERISA and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code,

shall not apply, to certain lines of credit (the Line of Credit or Lines of Credit), and the Loan and repayment of funds, including accrued interest, thereunder (the Loan or Loans), involving certain employee benefit plans (the Plan or Plans) with respect to which Fidelity acts as directed trustee, investment manager or other administrative service provider.

II. General Conditions

(a) Each Loan is made to the Plan in connection with the administration of a unitized fund (Unitized Fund) as defined in section III (e) in order to facilitate redemptions from the Unitized Fund.

(b) Each Line of Credit will be negotiated by Fidelity on behalf of the Plan with a bank, as defined under the Investment Advisers Act of 1940, as amended, having total assets of at least $5 billion (the Lender or Lenders);

(c) Each Loan is initiated, accounted for and administered by Fidelity, which will monitor the transactions on behalf of the Plans to ensure that the terms and conditions of the exemption are met at all times;

(d) The Line of Credit provides that each Loan thereunder, including accrued interest thereon, will be repaid by the Unitized Fund promptly in the ordinary course of business upon settlement of the transaction that triggered the need for the Loan;

(e) The maximum amount loaned with respect to a Unitized Fund on any business day that a Loan is initiated does not, after the Loan is made, exceed 25% of the total fair market value of the Unitized Fund (such value determined as of the most recent close of the New York Stock Exchange or as otherwise provided in the applicable Line of Credit, provided such determination is substantially contemporaneous with the Loan);

(f) The fair market value of the assets in the Unitized Fund is determined by an objective method specified in the Line of Credit;

(g) The Lender's recourse with respect to any Loan from a Unitized Fund is limited to the assets of such Unitized Fund. No commitment fees, or commissions are paid by the Plan and no compensating balance is required by the Lenders in connection with these loans. Any set-off will be limited to the assets of the Unitized Fund borrowing the funds;

(h) Interest payable by the Plan on each Loan is based on rates quoted to Fidelity by the Lenders under the Lines of Credit and accepted by Fidelity on behalf of the Plan in accordance with the Lines of Credit;

(i) The Plan enters into a written agreement with Fidelity pursuant to which Fidelity is authorized to borrow on behalf of the Plan. Prior to borrowing on behalf of a Plan pursuant to this exemption, Fidelity provides the Plan with written notice explaining the Line of Credit program. The notice shall state that Fidelity agrees to act as a fiduciary on behalf of the Plan in connection with the following activities involving the Line of Credit agreements with the Lenders: the negotiation of the Plan's participation in the Line of Credit agreements; the negotiation of interest rates; the terms of the Loans, and the terms of repayment under the Lines of Credit agreements. The notice shall set forth Fidelity's objective methodology for allocating favorable interest rates or credit availability equitably among those Unitized Funds seeking to borrow under the Line of Credit agreements on any given day, *i.e.*, ''the applicable ordering rules and limitations.'' Each notice shall also address under what circumstances Fidelity may exclude the Plan from participation in the program, either temporarily or permanently;

(j) Fidelity, on behalf of the Plan, enters into a written agreement with each of the Lenders offering these Line of Credit Agreements to the Plan. The agreement shall address, among other things, the maximum Line of Credit available, the terms for the Loan and repayment, the formula or method for determining the interest rate payable with respect to each Loan, and the conditions for terminating the agreement;

(k) The Plan may elect to terminate participation in the Lines of Credit at any time, without penalty and subject to the Plan's repayment of any outstanding Loan;

(l) No later than 15 business days after month end, Fidelity shall provide the Plan Sponsor of each Plan that has any outstanding Loan during a calendar month with a written report showing the Plan's outstanding Loans on each day during such month, the amount repaid on each such day, the interest rate and the amount of interest paid on each such day, the aggregate balance of all Loans outstanding on the last business day of such month and the aggregate amount of interest paid during such month;

(m) The Loans are made on terms at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party;

(n) Each Lender is not related to Fidelity and is a party in interest (including a fiduciary), solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider to the Plan described in section 3(14)(F), (G), (H) or (I) of the Act;

(o) The agreements and the any loans contemplated thereunder are not a part of an agreement, arrangement, or understanding designed to benefit any party in interest with respect to any plan;

(p) No fees, or other compensation are paid to Fidelity in connection with the Loans by either the Plan or the Lenders;

(q) Where a Unitized Fund covered by this exemption invests in employer securities, such securities constitute ''qualifying employer securities'' as defined in section 407(d)(5) of the Act (QES) for which market quotations are readily available from independent sources within the meaning of Rule 17a–7, of the Investment Advisers Act of 1940, 17 CFR 270.17a–7. The exemption shall also apply to convertible preferred stock that qualifies as QES and is convertible, under an objective formulation, into securities for which market quotations are readily available as described above.

(r) Where a Unitized Fund, other than an employer securities fund or a stable value fund, invests directly or indirectly in securities, no less than 75 percent of such securities are securities for which market quotations are readily available from independent sources, within the meaning of Rule 17a–7, of the Investment Advisers Act of 1940, 17 CFR 270.17a–7;

(s) Fidelity maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons described in paragraph (t) to determine whether the conditions of this exemption have been met, except that—

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

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

(t)(1) Except as provided in paragraph (t)(2) and notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (s) are unconditionally available for examination during normal business hours by—

(A) Any duly authorized employees or representatives of the Department or the Internal Revenue Service;

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

(C) Any employer of participants and beneficiaries in the Plan and any employee organization whose members are covered by the Plan, or any authorized employee or representative of these entities; and

(D) Any participant or beneficiary of the Plan or any duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described above in paragraph (t)(1)(B), (C) or (D) shall be authorized to examine the trade secrets of Fidelity or commercial or financial information that is privileged or confidential;

(3) Should Fidelity refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (t)(2) above, Fidelity shall, by the close of the thirtieth (30th) day following the request, provide a written or electronic notice advising that person (i) of the reasons for the refusal and (ii) that the Department may request such information.

III. Definitions

(a) ''Fidelity'' refers to Fidelity Management Trust Company and its affiliates.

(b) ''Affiliate'' means (i) any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (ii) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (iii) any corporation or partnership of which such other person is an officer, director or partner.

(c) ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) Fidelity is ''related'' to a Lender if the Lender (or a person controlling, or controlled by, the Lender) owns a five percent or more interest in Fidelity or if Fidelity (or a person controlling, or controlled by, Fidelity) owns a five percent or more interest in the Lender. 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 the 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.

(e) A ''Unitized Fund'' is a fund that, to facilitate trading and/or accounting, has established ''units'' representing undivided interests in all of the assets of such fund.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption shall be effective as of the date the final exemption is published in the **Federal Register**.

Summary of Facts and Representations

1. Fidelity Management Trust Company, a Massachusetts trust company, is a subsidiary of FMR Corp., the parent of a group of companies known as Fidelity Investments®. Fidelity Investments is one of the nation's largest mutual fund companies and a leading provider of financial services. It provides a wide range of investment management, brokerage, administrative and other financial services and products to both retail and institutional customers. Fidelity Investments manages in the United States and Canada approximately 322 mutual funds with aggregate assets, as of December 31, 2001, in excess of $815 billion. In addition, it manages more than $68 billion of assets other than mutual funds, including separate accounts and collective investment funds. Fidelity provides trustee, custodial, investment management, participant recordkeeping and/or other related services to employee benefit plans, including the Plans.

2. The Plans are qualified plans under section 401(a) of the Code and are employee benefit plans within the meaning of section 3(3) of ERISA. Substantially all of the Plans are defined contribution plans that permit each Plan participant to allocate his or her account balance among a number of investment options available under the Plan. These options may include mutual funds, separately-managed accounts, bank-maintained collective investment funds (including so-called stable value funds) and/or company stock funds. Moreover, many of the Plans operate in a so-called ''daily environment''; *i.e.*, each Plan participant can elect to make investment transfers on any business day and the transfer will generally be effected at the close of business on that day.

3. The Applicant represents that from time to time, the Plans find themselves in the position where, incidental to their ordinary operation, there is a cash shortfall that creates a short-term liquidity problem. Most frequently this occurs when amounts are to be withdrawn from a unitized investment option (*e.g.*, to facilitate benefit distributions, participant loans and/or participant-directed transfers to other investment options) at a time when such investment option does not hold sufficient cash to meet the withdrawal need (each such investment option, a ''Unitized Fund'' and collectively, the ''Unitized Funds''). In such circumstances, the Plan must either borrow the requisite cash on a short-term basis until securities can be liquidated and cash proceeds obtained (this will typically take three business days) or delay the withdrawal from the particular Unitized Fund until the needed cash is available. The Applicant represents that, since this latter alternative is at odds with the participants' expectation that the Plan will operate in a ''daily environment,'' the former alternative (*i.e.*, short-term Loan) is the preferred choice for dealing with this type of situation.

4. It would be possible for a Unitized Fund to hold a larger percentage of its assets in ''cash'' in order to minimize the likelihood that there will be such a cash shortfall; however, such an approach will undermine the achievement of the investment objective of the investment option, especially those that are equity based. Moreover, according to the Applicant, it is simply not feasible, as a practical matter, to maintain enough ''cash'' in a Unitized Fund at all times to be certain that the Unitized Fund will always be in a position to meet the maximum potential need, especially during volatile market situations. Hence, it is inevitable that at least some liquidity shortfalls will occur from time to time.

5. Fidelity has negotiated the Lines of Credit with several banks that are not related to Fidelity, and anticipates that it may from time to time negotiate additional Lines of Credit. These Lines of Credit allow Fidelity to borrow, on the Plans' behalf, cash in order to meet the Unitized Funds' short-term cash shortfalls. Fidelity anticipates that there will be approximately three or four Lenders at any given time. It is also anticipated that the Lenders will be very large financial institutions with many affiliated companies and worldwide operations. In view of the size of such institutions and the number of Plans involved, Fidelity represents that it is very difficult for such institutions to determine whether they are parties in interest with respect to any of the Plans. Moreover, even if it were to be

established that the Lenders are not parties in interest with respect to the Plans, that could change over time while a Loan is outstanding or as new Loans are affected.

6. Since Fidelity may not be able to determine in the ordinary course of business, whether a Lender is a party in interest with respect to each Plan, the Lines of Credit raise potential concerns under section 406(a) of the Act, absent an exemption. In this regard, given the size of the Lenders, the large number of Plans involved and the various conditions of the potentially available class exemptions (*e.g.*, the qualified professional asset manager exemption, (QPAM), PTE 84–14, 49 FR 9494(3/13/84), as corrected, 50 FR 41430 (10/10/85), it may be difficult to determine if any of such class exemptions are available. Consequently, the implementation of the Lines of Credit, and the Loans thereunder, even where such Line of Credit is in the best interests of the Plan, may result in a prohibited transaction.

7. The Applicant represents that each Line of Credit provides that (i) each Loan thereunder will be unsecured, (ii) recourse with respect to each Loan thereunder will be limited to the assets of the Unitized Fund that borrowed the funds, (iii) each Loan thereunder, including accrued interest thereon, will be repaid promptly in the ordinary course of business, generally in less than ten days and (iv) with respect to any Unitized Fund, the aggregate amount of Loans outstanding on any business day that a Loan is initiated will not, after such Loan is made, exceed 25% of the total fair market value of the Unitized Fund.[1] The total fair market value of a Unitized Fund (including Employer Stock, cash or cash equivalents and accrued dividends and earnings) will be determined as of the most recent close of the New York Stock Exchange or as otherwise provided in the applicable Line of Credit, provided such determination is substantially contemporaneous with the Loan.

8. Interest rates will be quoted to Fidelity each business day by each Lender in accordance with the terms of the Line of Credit. The quoted interest rate will be based on a Federal funds rate (or other market rate) plus a spread, and will apply to any Loans from the Lender that are outstanding on such day. Because the quoted interest rate may fluctuate daily, the rate of interest being charged on any outstanding loan may also fluctuate daily.

9. In regard to these Lines of Credit, Fidelity will act as a fiduciary pursuant to a written agreement with the Plan. The agreement will provide that Fidelity will act as a fiduciary on behalf of the Plan in connection with the negotiation of the Plan's participation in the Line of Credit agreements, the negotiation of interest rates under the Line of Credit agreements, the Loans under the Line of Credit agreements, the ordering rules and limitations described below, and the terms of repayment of the Line of Credit agreements.

10. Fidelity will establish generally applicable ordering rules and limitations with respect to the use of the Lines of Credit. The need for such rules arises from several factors. For example, although not anticipated to be very likely, it is possible that the aggregate liquidity needs of all eligible Unitized Funds on any given day may exceed the total credit available under all of the credit lines then in place. In addition, and more relevant, the three or four Lenders that will be making advances available under the lines may, and likely will, quote different rates on a given day. If the aggregate demand for liquidity on a particular day exceeds the amount of credit available at the most favorable rate on that day, then it is necessary to allocate the opportunity to borrow at the most favorable rate(s) among the various Unitized Funds requiring liquidity on that day. Accordingly, on those days when the aggregate liquidity demand of the eligible Unitized Funds exceeds the amount available at the most favorable rate, Fidelity will implement a policy pursuant to which it will allocate the available credit among the Unitized Funds pursuant to a pre-established objective allocation methodology.

11. Fidelity will initiate, account for and administer each Loan and will monitor such transactions on behalf of the Plans to ensure that the terms and conditions of the exemption are met at all times.

12. Fidelity will provide the Plan Sponsor of each Plan that has any outstanding Loans during a calendar month with a written report showing the Plan's outstanding Loans on each day during such month, the amount repaid on each such day, the amount of interest paid on each such day, the interest rate and the aggregate balance of all Loans outstanding on the last business day of such month and the aggregate amount of interest paid during such month.

13. The Plan Sponsor of each Plan will be notified of the Lines of Credit that may be available to such Plan in advance of any Loan made pursuant to the exemption. Such notice will include a general description of the Lines of Credit and how they operate. Each Plan Sponsor may elect to ''opt-out'' of the program, in which event the Plan of such Plan Sponsor will not effect any Loans under the Lines of Credit. Moreover, a Plan Sponsor who has initially determined not to opt-out of the program may at any time thereafter elect to opt-out of the program without penalty, by written notice to Fidelity. Subsequent to its receipt of such a notice, Fidelity will not effect any further Loans on behalf of such Plan under the Lines of Credit. Any Loans outstanding at the time such notice is received will be repaid in accordance with the Lines of Credit.

14. Fidelity will not receive any fees or other compensation from the Plans in connection with the Lines of Credit. In addition, Fidelity will not receive any payment or other consideration from the Lenders in connection with the Loans. Fidelity represents that it will pay the Lender's cost of establishing the Lines of Credit. The Applicant represents that such up-front expenses are required to be paid by the borrower (the Plans on behalf of their Unitized Funds) under virtually all credit agreements. In this case, in order to induce the Lenders to enter into the proposed arrangements, and given the practical difficulty of allocating the up-front cost of establishing the arrangements among the many Unitized Funds that may ultimately participate in the credit arrangement, Fidelity has determined that it will pay these expenses on behalf of the Unitized Funds. Any out-of-pocket expenses incurred by a Lender in enforcing the agreement, however, will generally be paid by the applicable Unitized Fund, unless otherwise paid by the Plan Sponsor or Fidelity. The Applicant represents that lender expenses relating to enforcing the terms of the loan are required to be paid by the borrower (here the Plans on behalf of the Unitized Funds) under virtually all credit agreements.

15. As a general matter, Fidelity explains that its intent is that the credit program will be administered such that advances under the program will be used primarily in the context of settlement risk (*i.e.*, the risk of broker default prior to settlement) as opposed to being used in the context of market risk. ''Settlement risk'' is present when a Unitized Fund has entered into the

[1] The Applicant originally requested a limit of 33⅓ percent, explaining that registered investment companies (mutual funds) can potentially face the same types of liquidity concerns as the Unitized Funds. According to the Applicant, pursuant to section 18(f)(1) of the Investment Company Act of 1940, such mutual funds would be limited to borrowing no more than 33⅓ percent of fund assets. The Department believed that a 25 percent limit was more appropriate and the Applicant agreed.

sale transaction whose settlement (*i.e.*, receipt of cash proceeds) is pending (thereby triggering the liquidity shortfall to be satisfied by a Loan) prior to the close of business on the day on which the withdrawal that is being funded by such advance occurs. In this situation, the price of the ''related'' sale transaction is known and will be factored into the Unitized Fund unit value that is utilized for purposes of the withdrawal. By contrast, according to Fidelity, market risk will be present (in addition to settlement risk) in situations where the ''related'' sale transaction is not able to be effected prior to the determination of the relevant Unitized Fund unit value, with the result that the Unitized Fund (and the remaining participants in the Unitized Fund) bear the risk that the actual sale transaction price will turn out to be lower than the value on which the unit value was based.[2]

16. In addition, in order to maintain the integrity of the overall credit arrangement, Fidelity reserves the ability, in its sole discretion, to exclude a particular Plan or Plans from access to the Lines of Credit on a given day or days. Fidelity represents that it does not anticipate that it will exercise its exclusion power very often. The Applicant explains that, if there were circumstances giving rise to a material concern regarding the potential for default by a particular Plan, (such as, for example, an unanticipated bankruptcy of the Plan sponsor that triggers a suspension of trading in the Plan sponsor's stock or some other cause of extreme volatility in the Plan sponsor's stock value) Fidelity believes it is important that it have the power to avoid the risk of such default by excluding the Plan from borrowing under the Line of Credit program during the period of concern.

17. In summary, the applicant represents that the proposed Lines of Credit satisfy the criteria contained in section 408(a) of the Act for the following reasons:

(a) the Loan terms must be at least as favorable to the Plan as a similar third-party arm's-length transaction;

(b) each Loan will be initiated, accounted for and administered by Fidelity which will maintain written records of each Loan and monitor the terms and conditions of the exemption, on behalf of the affected Plan, at all times.

(c) the same Lines of Credit will generally be available pursuant to their terms for use by all of the Unitized Funds;

(d) the Lenders will not be ''related'' to Fidelity or ''parties in interest'' to the Plans other than by reason of being a service provider to the Plans or related to a service provider;

(e) the Plans will benefit from not having to maintain a larger cash buffer that undermines the achievement of the investment objective of the Unitized Funds;

(f) the Plans will further benefit from not having to delay withdrawals from the Unitized Funds in most situations until such time as there is sufficient cash to satisfy the cash shortfall and therefore will be able to better achieve the participants' expectation of a ''daily environment;'' and

(g) the sponsor of each Plan will be notified of the existence of the Lines of Credit that may be available to such Plan in advance of any Loan made pursuant to the exemption and will make an independent decision whether the Plan should participate in the program. In addition, the Plan Sponsor of a Plan that is participating in the program may elect to opt out at any time, without penalty.

Notice to Interested Persons

Notice of the proposed exemption will be provided by first-class mail to each known Plan Sponsor within 25 days after the publication of the notice of proposed exemption in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing. Comments and hearing requests with respect to the proposed exemption are due 45 days after the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea W. Selvaggio of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Brightpoint, Inc. (Brightpoint) Located in Indianapolis, Indiana

[Exemption Application No. D–10999]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of 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: (1) The June 5, 2001 payment (the Payment) by Brightpoint of $108,738.85 (the Assessment Amount) to the Millennium Trust Company LLC (Millennium) on behalf of the Brightpoint, Inc. 401(k) Plan (the Plan) for the purpose of satisfying a court-ordered assessment against the assets of the Plan (the Assessment) that arose in connection with the $68,100,000.00 deficiency (the Deficiency) incurred by the Independent Trust Corporation (Intrust); and (2) the transfer by the Plan to Brightpoint (the Repayment) of certain assets recovered by PricewaterhouseCoopers LLP (the Receiver) in connection with the Deficiency, if the following conditions are met:

(A) In the event the Plan receives an amount of assets from the Receiver (a Recovery Amount) that is greater than the Assessment Amount, the Plan will not be required to pay Brightpoint that portion of the Recovery Amount that is in excess of the Assessment Amount;

(B) In the event the Plan receives a Recovery Amount that is less than the Assessment Amount, the Plan will not be required to pay Brightpoint the difference between the Assessment Amount and the Recovery Amount;

(C) The Plan will not pay any of the costs and/or fees associated with the Payment and the Repayment;

(D) The Deficiency did not arise in connection with any improper act undertaken by a Plan fiduciary (other than Intrust or its principals); and

(E) Upon notification of the Intrust losses, the Brightpoint Plan fiduciaries undertook, and will continue to undertake, any actions necessary to ensure that the assets of the Plan were, and are, adequately protected.

EFFECTIVE DATE: June 5, 2001.

Summary of Facts and Representations

1. Brightpoint is a Delaware corporation with its principal offices located in Indianapolis, Indiana. Brightpoint supports the global wireless telecommunications industry through the provision of, among other things, distribution, management, and business solution services.

2. Brightpoint is the sponsor of the Plan. The Plan is a defined contribution 401(k) plan having 480 participants and $2,648,775.39 in total assets as of March 31, 2001. The applicant represents that

[2] According to Fidelity, the Unitized Fund (and the remaining participants) will also benefit on the upside in the event that the actual sale transaction price turns out to be higher than the value on which the unit value was based.

the assets of the Plan are comprised solely of shares of certain mutual funds and shares of Brightpoint stock (collectively, the Plan Shares).

The applicant states that from April 1, 1997 until April 13, 2001, Intrust acted as the trustee of the Plan.[3] As such, Intrust forwarded Plan contributions to either American Funds, the custodian for the mutual funds, or McDonald & Company, the custodian for the Brightpoint stock. In addition, Intrust processed Plan distributions by forwarding to Plan participants the cash proceeds it received from various sales of the Plan Shares.

3. On April 14, 2000, the Illinois Office of Banks and Real Estate (the State Regulator) discovered the Deficiency. In this regard, on that date, the State Regulator determined that a substantial cash shortage existed with respect to the amount of assets held in trust by Intrust. According to the applicant, it is presently believed that the Deficiency, the resolution of which is currently under litigation, resulted from the misappropriation by certain Intrust principals of assets held by Intrust. Specifically, the Deficiency involved cash taken from certain Intrust accounts. The applicant states, however, that cash was not misappropriated from the Plan's trust account with Intrust (the Intrust Plan Account). As a result, the applicant states that the amount of assets held in the Intrust Plan Account, being comprised primarily of the Plan Shares, was not affected or reduced by the misappropriation of Intrust assets (the Misappropriation).

The State Regulator initiated receivership proceedings under the jurisdiction of the Circuit Court of Cook County, Illinois (the Court). The Court appointed PricewaterhouseCoopers LLP as the receiver of Intrust and, with limited exceptions, the Court froze all of the trust assets held by Intrust, including those of the Plan.[4] On November 29, 2000, the Court approved the purchase of Intrust's assets by Millennium and, thereafter, Millennium became the trustee of the Plan. The applicant represents that currently the Plan Shares are held in trust in a certain Millennium trust account (the Millennium Plan Account).

4. On March 1, 2001, upon determining that the Deficiency totaled $68,100,000.00, the Court issued an order (the First Court Order) that apportioned the Deficiency among certain Intrust accounts (the Allocation). In this regard, after taking judicial notice of, among other things, various hearings, proceedings, testimony, arguments, and pleadings, the Court determined that it was not feasible to trace the Deficiency Amount to specific Intrust accounts. Rather, with certain exceptions not applicable to the Plan, the Court allocated the Deficiency among essentially all of the frozen former Intrust accounts on mostly a pro rata basis.

In this way, the Court allocated the Assessment Amount to the Millennium Plan Account. The applicant represents that such assessment had the effect of a $108,738.85 charge against the assets held in the Millennium Plan Account.[5]

5. Each trust account affected by the Allocation, or a party on behalf of such account, was required to pay its allocated portion to Millennium by June 5, 2001.[6] Pursuant to the terms of the First Court Order, upon Millennium's receipt of this payment, the Receiver was required to issue the respective payor a certificate. Such certificate entitled its holder to receive a pro rata portion of the total net amount recovered from certain Intrust principals, insurers, and/or elsewhere. A certificate, however, did not guarantee its holder would receive a recovery amount equal to the amount such holder paid pursuant to the Court's allocation of the Deficiency.

6. Upon monitoring the legal actions associated with the Deficiency, the applicant states, Brightpoint determined that the Recovery Amount would likely be less than the Assessment Amount.[7] To protect the Plan from a potential shortfall, on June 5, 2001, Brightpoint paid the Assessment Amount on behalf of the Plan. The applicant represents that, consistent with the terms of the First Court Order, Brightpoint thereafter anticipated that it would receive a certificate from the Receiver.

7. On September 8, 2001, the Receiver petitioned the court to amend the First Court Order. In this regard, the applicant states that for reasons unrelated to the Plan and the transactions described herein, the Receiver sought a procedural change with respect to the issuance of the certificates. As applied to the payment by Brightpoint of the Assessment Amount on behalf of the Plan, and contrary to the terms of the First Court Order, the requested amendment had the effect of requiring the Receiver to issue a certificate to the Plan, and not Brightpoint. The Court granted the motion on October 12, 2001 and, accordingly, the First Court Order was amended (the Amended Court Order).

Accordingly, the Plan received, and currently continues to hold, a certificate that was issued by the Receiver (the Certificate). The applicant states that, to date, the Plan has not received any amounts pursuant to its holding of the Certificate.

8. The applicant seeks relief for the Payment and the Repayment. In this regard, the applicant represents that as stated above, Brightpoint undertook the Payment in the belief that the Recovery Amount will likely be less than the Assessment Amount. The applicant notes that, in the event that the Recovery Amount does in fact turn out to be less than the Assessment Amount, the Plan will not be required to pay Brightpoint the amount representing the difference between the Assessment Amount and the Recovery Amount. In this way, the Plan will not incur a loss due to the court-ordered allocation of the Deficiency.

The applicant states further that the terms of the Repayment are also protective of the Plan. In this regard, the entitlement of Brightpoint to any recovery of the Deficiency pursuant to the holding of the Certificate by the Plan is limited to an amount not in excess of the Assessment Amount. Pursuant to the terms of the Repayment, in the event that the Recovery Amount turns out to be greater than the Assessment Amount, the portion of the Recovery Amount that exceeds the Assessment Amount will be retained by the Plan. In this way, Brightpoint may only receive up to $108,738.85, the amount Brightpoint paid to Millennium on behalf of the Plan, as a result of the Plan's holding of the Certificate.

[3] The Department is expressing no opinion herein as to whether the requirements of section 404 of the Act have been met with respect to the hiring and retention of Intrust by Brightpoint.

[4] By order of the Court, the assets held in the Plan Millennium Account, and almost all other former Intrust accounts, were to remain frozen until Millennium had completed its efforts to collect the allocated shortage amounts from each affected account. The applicant represents that for the period in time in which the assets remained frozen, Plan distributions were made using assets that came into the Plan after the starting date of the freeze. Subsequently, the assets in the Plan Millennium Account were unfrozen and, thereafter, Plan distributions were made from the unfrozen assets.

[5] To determine this amount, the Court first determined the types of Intrust account assets that would be subject to the Allocation. Next, the Court determined that an amount equal to 8.69% of the total amount of such assets would need to be paid to Millennium to offset the shortage. Since the Account held $1,251,310.16 in assets subject to the Allocation, the Plan, or a party on behalf of the Plan, was required to pay $108,738.85 (0.0869 × $1,251,310.16) to Millennium.

[6] The applicant states that if Millennium did not receive the assessed amount with respect to a particular account by June 5, 2001, Millennium was authorized by the Court to reduce the amount of assets held in that account by such assessed amount.

[7] According to the applicant, Brightpoint retains the belief that the Recovery Amount will be less than the Allocation Amount.

9. The applicant states that Brightpoint acted in good faith in paying the Assessment Amount on behalf of the Plan. In this regard, the applicant represents that the fiduciaries of the Plan had no reason or opportunity to know in advance of the Deficiency since the Intrust shortage consisted solely of non-Plan assets. In addition, the applicant represents that Plan distributions processed through Intrust were done so properly and in a timely manner. According to the applicant, Brightpoint paid the Assessment Amount solely as a means of responding to an event that was potentially harmful to the Plan and its participants and beneficiaries.

10. In summary, the applicant represents that the Payment and Repayment satisfy the statutory criteria for an exemption under section 408(a) of the Act since:

(A) In the event the Plan receives a Recovery Amount that is greater than the Assessment Amount, the Plan will not be required to pay Brightpoint that portion of the Recovery Amount that is in excess of the Assessment Amount;

(B) In the event the Plan receives a Recovery Amount that is less than the Assessment Amount, the Plan will not be required to pay Brightpoint the difference between the Assessment Amount and the Recovery Amount;

(C) The Plan will not pay any of the costs and/or fees associated with the Payment and the Repayment;

(D) The Deficiency did not arise in connection with any improper act undertaken by a Plan fiduciary (other than Intrust or its principals); and

(E) Upon notification of the Intrust losses, the Brightpoint Plan fiduciaries undertook, and will continue to undertake, the actions necessary to ensure that the assets of the Plan were, and are, adequately protected.

Notice to Interested Persons: The applicant represents that notice to interested persons will be made within thirty (30) business days following publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than sixty (60) days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Christopher Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

J. Penner Corporation Profit Sharing Plan (the Plan), Located in Doylestown, PA

[Application No. D–11099]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[8] If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the sale (the Sale) of certain improved real property (the Property) by Thomas G. Frazier and Carol G. Frazier (the Fraziers) to their respective participant directed individual investment accounts in the Plan (the Thomas Frazier Account and the Carol Frazier Account; together, the Frazier Accounts or the Accounts); and (2) the simultaneous lease (the Lease) of the Property by the Frazier Accounts to J. Penner Corporation (the Corporation), the Plan sponsor and a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The terms and conditions of the transactions are not less favorable to the Frazier Accounts than those which the Frazier Accounts would receive in an arm's length transaction with an unrelated party.

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

(c) The acquisition price that is paid by the Frazier Accounts for proportionate interests in the Property is not more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale.

(d) The value of the proportionate interests in the Property that are acquired by each of the Frazier Accounts does not exceed 25% of each of the Frazier Accounts' assets at the time of the Sale nor throughout the duration of the Lease.

(e) The Frazier Accounts do not pay any real estate fees, commissions or other expenses with respect to the transactions.

(f) The rental amount under the Lease is no less than the fair market rental value of the Property, as determined by a qualified, independent appraiser on the date the Lease is entered into by the parties.

(g) The Lease is a triple net lease under which the Corporation, as lessee, pays, in addition to the base rent, all normal operating expenses of the Property, including taxes, insurance, maintenance, repairs and utilities.

(h) The Fraziers indemnify and hold the Plan and the Frazier Accounts harmless from any liability arising from the Sale, including, but not limited to, hazardous material found on the Property, violation of zoning, land use regulations or restrictions, and violations of federal, state or local environmental regulations or laws.

(i) The Sale is effected and the Lease commences only upon completion of the following transactions, which shall occur no later than sixty days after the granting of the final exemption: (1) The Fraziers and the Bucks County Industrial Development Corporation (BCIDC) fulfill all of their obligations to the Pennsylvania Industrial Development Authority (PIDA); (2) the Fraziers pay off their debt obligation to BCIDC in accordance with the terms of an installment sale agreement (the Installment Sale Agreement) and reacquire legal title to the Property; and (3) the lease agreement (the Original Lease) between the Fraziers and the Corporation is terminated.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan, as described in section 401(a) of the Code, and is exempt from taxation under section 501 of the Code. The Plan was established by the Corporation on July 1, 1986. As of December 31, 2001, the Plan had 18 participants, including the Fraziers. The Plan provides for individually-directed accounts and each of the Fraziers maintains a directed investment account in such Plan. The Fraziers are trustees and fiduciaries of the Plan.

As of December 31, 2001, the Plan had total assets of approximately $1,945,224. As of the same date, the Thomas Frazier Account in the Plan had a fair market value of $919,472 and the Carol Frazier Account in the Plan had a fair market value of $537,520, for a combined total fair market value of $1,456,992.

2. The Corporation is an S corporation that is incorporated in the Commonwealth of Pennsylvania and maintains its principal place of business in Doylestown, Pennsylvania. The Corporation manufactures products for the automotive replacement glass market and sells its products to the

[8] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

original equipment manufacturers. The Fraziers own 100 percent of the outstanding capital stock of the Corporation and they are directors and officers of the Corporation.

3. At present, BCIDC, a Pennsylvania non-profit corporation, holds legal title to certain improved, real property that is located at 17 Weldon Drive, Doylestown Township, Doylestown, Pennsylvania, of which the Fraziers are the equitable owners, as set forth in the Installment Sale Agreement. The Property consists of a 3.47 acre parcel of light industrially zoned land with an existing one story industrial building totaling approximately 10,000 square feet of space and adjoining parking facilities. The Fraziers originally acquired the Property, which was vacant land at the time, in 1988 for $212,000 in cash from Horsham Valley Development Corporation, an unrelated party. The Property is currently subject to an original lease (the Original Lease) between the Fraziers as the lessors, and the Corporation as the lessee. The Original Lease is a 15 year, triple net lease which commenced on April 5, 1990 and expires on April 1, 2005. The annual rental under the Original Lease is $80,000, payable in monthly installments of approximately $6,666.67. The Corporation does not own any other real estate contiguous to the Property, which is used solely by the Corporation in its business.

4. On April 5, 1990, legal title to the Property was transferred by the Fraziers to BCIDC by deed for consideration in the amount of $1.00. This enabled BCIDC to obtain a first mortgage loan (the Mortgage Loan) from PIDA, a Pennsylvania non-profit entity created under the Pennsylvania Industrial Development Authority Act (the PIDAA) [9] to provide financing in the form of low interest loans for industrial development projects throughout Pennsylvania. The Mortgage Loan is in the principal amount of $314,822. It has a term that commenced on June 1, 1990 and ends on May 1, 2005, and it carries an interest rate of three percent per annum. The parties intended that the interest rate would be passed through to the Fraziers under the terms of the Installment Sale Agreement. The applicants represent that this interest rate could only be obtained by having BCIDC acquire legal title to the Property so that the Property could qualify as an ''industrial development project.''[10] In addition, the applicants represent that BCIDC agreed to enter into this financing arrangement with the Fraziers in order to establish an industrial development project and to create jobs in the area.

The Fraziers received the Mortgage Loan proceeds and simultaneously entered into the Installment Sale Agreement on April 5, 1990 with BCIDC to repurchase the Property for $314,822 and pay for it over a period of 15 years, which coincides with the term of the Mortgage Loan. Pursuant to the amortization schedule, such payments would be in monthly installments of $2,174.11, with interest at three percent per annum included in each payment.

The Fraziers used the Mortgage Loan proceeds exclusively for the industrial development project. Of the $314,822 received, $5,626.96 were used for settlement costs including counsel fees, title insurance, recording fees and real estate taxes. The balance of the Mortgage Loan proceeds was used to construct the industrial building. As of August 31, 2002, the Mortgage Loan and the Installment Sale Agreement had an outstanding principal balance of approximately $66,779.79.

As collateral for the Mortgage Loan, the Fraziers assigned the Original Lease to PIDA and BCIDC and the Installment Sale Agreement to PIDA. As additional security for the Mortgage Loan, the Fraziers gave their personal guarantee.

5. The Property has been appraised by Stuart S. Kingsbury, Jr., CCRA, CREA, CRB, GRI of Kingsbury Real Estate Appraisers, located in Doylestown, Pennsylvania. Mr. Kingsbury is an independent, certified general appraiser in the State of Pennsylvania. In an independent appraisal report dated April 6, 2002 (the 2002 Appraisal), Mr. Kingsbury updated a June 27, 2001 independent appraisal (the 2001 Appraisal) that was prepared by his firm, in which the Property's fair market value and annual fair market rental value were placed at $330,000 and $80,000, respectively, as of June 1, 2001. Utilizing the Market Data Approach to valuation in the 2002 Appraisal, Mr. Kingsbury determined that the fair market value of the Property as of March 19, 2002 was $350,000. As of the same date, Mr. Kingsbury also determined that the annual fair market rental value of the Property was $85,000 or $7,0883.33 per month on a triple net basis. Mr. Kingsbury will again update the appraisal on the date of the Sale and Lease transactions.

6. To enable the Frazier Accounts to diversify their assets by obtaining income-producing real estate, the applicants propose that the Frazier Accounts purchase the Property from the Fraziers for $350,000 or an amount that is not more than the fair market value of the Property on the date of the Sale. The Property will be allocated between the Frazier Accounts so that the Thomas Frazier Account acquires a 64 percent interest in the Property, representing approximately 24 percent of the fair market value of such Account's assets, and the Carol Frazier Account acquires a 36 percent interest in the Property, representing approximately 23 percent of the fair market value of that Account's assets.

Contemporaneously with their purchase of the Property, the Frazier Accounts will enter into the Lease with the Corporation. The Frazier Accounts will not be required to pay any real estate fees, commissions or other expenses in connection with their acquisition of the Property or with the administration of the Lease. Further, the Fraziers, who had a combined net worth of approximately $3 million as of September 21, 2002, will indemnify and hold the Plan and the Frazier Accounts harmless from any liability arising from the Sale, including, but not limited to, hazardous material found on the Property, violation of zoning, land use regulations or restrictions, and violations of federal, state or local environmental regulations or laws.[11] Finally, the Sale and the Lease will commence only upon the completion of the following transactions, which will occur no later than sixty days after the granting of the final exemption: (a) The Fraziers and BCIDC have fulfilled all of their obligations to PIDA; (b) the Fraziers have paid off their debt obligation to BCIDC in accordance with the Installment Sale Agreement and have reacquired legal title to the

[9] The purpose of the PIDAA is to promote the welfare of the people of Pennsylvania by reducing unemployment in certain critical economic areas and to provide for the establishment of industrial development projects in such areas.

[10] Under Section 303(i) of the PIDAA, as amended, an ''industrial development project'' is described as any land, site, structure, facility or undertaking comprising or being connected with or being a part of (i) an industrial enterprise, (ii) a manufacturing enterprise, (iii) a research and development enterprise, or (iv) an agricultural enterprise, established or to be established by an industrial development agency in a critical economic area.

[11] It should be noted that in his 2001 Appraisal of the Property, Mr. Kingsbury states that his routine inspection of, and inquiries about, the Property did not reveal any information to indicate any apparent environmental conditions which would affect the Property's value negatively. However, he explains that it is possible that tests and inspections made by a qualified hazardous substance and environmental expert would reveal the existence of hazardous materials and environmental conditions on or around the Property that would negatively affect its value. Mr. Kingsbury did not comment on the Property's environmental conditions in his 2002 Appraisal.

Property; and (c) the Original Lease between the Fraziers and the Corporation has been terminated.

Accordingly, the applicants request an administrative exemption from the Department under the terms and conditions described herein.

7. The proposed Lease will be for a term of ten years and it will have no renewal options. The Lease provides that the Corporation will pay the Frazier Accounts an initial monthly rent of $7,083.33 per month, based upon Mr. Kingsbury's 2002 Appraisal of the fair market rental value of the Property, which will be updated at the time the Lease is entered into by the parties. Said rent will be allocated in proportion to each Account's ownership interest in the Property. The Lease will be a triple net lease under which the Corporation will pay all normal operating expenses of the Property, including taxes, insurance, maintenance, repairs and utilities. The applicant represents that on the third, sixth and ninth anniversaries of the date of commencement of the Lease (the Tri-Annual Adjustment Dates), the fair market rental value of the Property will be determined as of the Tri-Annual Adjustment Date, by a qualified, independent appraiser selected by the Fraziers in their capacity as trustees of their respective Accounts in the Plan. However, in no event will the rent be adjusted below the rental amount paid for the preceding year. In addition, during each year of the term of the Lease, the rental rate will be increased by an amount equal to the most recent percentage increase in the Consumer Price Index or three percent, whichever is greater.

8. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The terms and conditions of the transactions will not be less favorable to the Frazier Accounts than those which the Frazier Accounts would receive in an arm's length transaction with an unrelated party.

(b) The Sale will be a one-time transaction for cash.

(c) The acquisition price that is paid by the Frazier Accounts for proportionate interests in the Property will be no more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale.

(d) The value of the proportionate interests in the Property that are acquired by each of the Frazier Accounts will not exceed 25 percent of each of the Frazier Accounts' assets at the time of the transaction and throughout the duration of the Lease.

(e) The Frazier Accounts will not pay any real estate commissions, fees or other expenses with respect to the transactions.

(f) The rental amount of the Lease will be no less than the fair market rental value of the Property, as determined by a qualified, independent appraiser on the date the Lease is entered into by the parties.

(g) The Lease will be a triple net lease under which the Corporation, as lessee, will pay, in addition to the base rent, all normal operating expenses of the Property, including taxes, insurance, maintenance, repairs and utilities.

(h) The Fraziers will indemnify and hold the Plan and the Frazier Accounts harmless from any liability arising from the Sale, including, but not limited to, hazardous material found on the Property, violation of zoning, land use regulations or restrictions, and violations of federal, state or local environmental regulations or laws.

(i) The Sale will be effected and the Lease will commence only upon completion of the following transactions, which shall occur no later than sixty days following the granting of the exemption: (1) The Fraziers and BCIDC have fulfilled all of their obligations to PIDA; (2) the Fraziers have paid off their debt obligation to BCIDC in accordance with the Installment Sale Agreement and have reacquired legal title to the Property; and (3) the Original Lease between the Fraziers and the Corporation has been terminated.

Notice to Interested Persons

The Fraziers will provide notice of the proposed exemption to all interested persons by personal delivery within ten days of the date of publication of the notice of proposed exemption in the **Federal Register**. The notice will include a copy of the proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments regarding the proposed exemption and requests for a public hearing are due within 40 days of the date of publication of the notice of pendency in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (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 of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

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

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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of October, 2002.

Ivan Strasfeld,

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

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