

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

**[Prohibited Transaction Exemption 2002-47; Exemption Application No. D-10989 et al.]**

**Grant of Individual Exemptions; Investors Savings Bank Pension Plan (the Plan)**

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

**ACTION:** Grant of individual exemptions.

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

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

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

**Statutory Findings**

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

- (a) The exemption is administratively feasible;
- (b) The exemption is in the interests of the plan and its participants and beneficiaries; and
- (c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

**Investors Savings Bank**

Pension Plan (the Plan) Located in Milburn, New Jersey

[Prohibited Transaction Exemption 2002-47; Exemption Application No. D-10989]

**Exemption**

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sales by the Plan of certain securities (the Securities) to Investors Savings Bank, a party in interest with respect to the Plan, provided that the following conditions were satisfied: (1) Each sale was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sales; (3) for each Security that was publicly traded, the Plan received an amount equal to the highest, as of the date of the sale, of (a) the Plan's cost, (b) the book value, or (c) the fair market value of the Security, as determined by an independent, third-party market source; and (4) for each Security that was not publicly traded, the Plan received an amount equal to its cost for the Security, which was in excess of the fair market value of the Security on the date of the sale.

**Effective Date:** The exemption is effective as of January 4, 1999.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 9, 2002 at 67 FR 51877.

**For Further Information Contact:** Ms. Karin Weng of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

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

[Prohibited Transaction Exemption 2002-48; Exemption Application No. D-10991]

**Exemption****Section I—Transactions**

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

- (a) The lending of securities, under certain "exclusive borrowing" arrangements, to

(1) Deutsche Bank AG (Deutsche Bank) (including the New York Branch of Deutsche Bank (DBNY)); or  
 (2) Its affiliates Deutsche Bank Securities Inc. (DBS), Deutsche Bank Trust Company Americas (DBT), the "Foreign Borrowers" (as defined in Section III), and any branch or affiliate of Deutsche Bank that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or a U.S. bank (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 equal to a percentage of the value of the total balance of the outstanding borrowed securities, or (iii) any combination of (i) and (ii) (collectively,

the Exclusive Fee). If the Borrower deposits cash collateral, all the earnings generated by such cash collateral shall be returned to the Borrower—provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings on the collateral may be retained by the Plan, or the Plan may agree to pay the Borrower a rebate fee and retain the earnings on the collateral (the Shared Earnings Compensation). If the Borrower deposits non-cash collateral, all earnings on the non-cash collateral shall be returned to the Borrower—provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee (the Lending Fee) (the Lending Fee and the Shared Earnings Compensation are collectively referred to as the “Transaction Lending Fee”). The Transaction Lending Fee, if any, shall be either in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement. Any change in the Exclusive Fee or the Transaction Lending Fee that the Borrower pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of the Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

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

(g) By the close of business on or before the day the loaned securities are delivered to the Borrower, the Plan receives from the Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or

instrumentalities, irrevocable bank letters of credit issued by a U.S. bank other than Deutsche Bank or any affiliate thereof, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption (PTE) 81-6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) (and as further amended or superseded).<sup>1</sup> Such collateral will be deposited and maintained in an account which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held with a third party, an affiliate of the Borrower, or a branch of Deutsche Bank other than the Borrower that is a trustee or custodian of the Plan. If maintained by an affiliate of the Borrower or a branch of Deutsche Bank other than the Borrower, the collateral will be segregated from the assets of such affiliate or branch.

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

(i) Before entering into a Borrowing Agreement, the Borrower furnishes to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as

well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement—provided, however, that in the case of a Borrower that is a branch of Deutsche Bank, the Borrower will furnish to the Plan the most recent publicly available audited and unaudited statement of Deutsche Bank's financial condition.

(j) The Borrowing Agreement contains a representation by the Borrower that, as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

(k) The Plan receives the equivalent of all distributions made during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of tax withholdings)<sup>2</sup> had it remained the record owner of the securities.

(l) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty (except for, if the Plan has terminated its Borrowing Agreement, the return to the Borrower of a pro-rata portion of the Exclusive Fee paid by the Borrower to the Plan) whereupon the Borrower delivers securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities.

(m) In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement, the Plan or its agent will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the United States with respect to the difference between the replacement cost of securities and the market value of the collateral on the

<sup>1</sup> PTE 81-6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

<sup>2</sup> The Department notes the Borrowers' representation that dividends and other distributions on foreign securities payable to a lending Plan are subject to foreign tax withholdings and that the Borrower will always put the Plan back in at least as good a position as it would have been had it not loaned securities.

date the loan is declared in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate, including reasonable attorneys' fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly indemnify the Plan.

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

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

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations, or employee organization, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are “plan assets” under 29 CFR 2510.3-101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Borrowers, the foregoing \$50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million—provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

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

employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity.

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

(ii) Has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million. (In addition, none of the entities described above is formed for the sole purpose of making loans of securities.)

(p) Prior to any Plan's approval of the lending of its securities to the Borrowers, a copy of this exemption (and the notice of pending) is provided to the Plan, and the Borrower informs the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.<sup>3</sup>

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

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

<sup>3</sup> The Department notes the Borrowers' representation that, under the exclusive borrowing arrangements, neither the Borrower nor any of its affiliates will perform the essential functions of a securities lending agent, *i.e.*, the Borrowers will not be the fiduciary who negotiates the terms of the Borrowing Agreement on behalf of the Plan, the fiduciary who identifies the appropriate borrowers of the securities, or the fiduciary who decides to lend securities pursuant to an exclusive arrangement. However, the Borrowers or their affiliates may monitor the level of collateral and the value of the loaned securities.

(1) Such Foreign Borrower is subject to regulation by (i) the Bundesanstalt fuer Finanzdienstleistungsaufsicht (the BAFin) in Germany, (ii) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (iii) the Ministry of Finance or the Financial Services Agency and the Tokyo Stock Exchange or the Osaka Stock Exchange in Japan, (iv) the Office of the Superintendent of Financial Institutions Canada, Ontario Securities Commission, and the Investment Dealers Association in Canada, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a-6 (17 C.F.R. 240.15a-6) under the Securities Exchange Act of 1934 (the 1934 Act) that provides foreign broker-dealers a limited exception from U.S. registration requirements;

(3) All collateral is maintained in U.S. dollars or in U.S. dollar-denominated securities or letters of credit, or other collateral permitted under PTE 81-6 (as amended or superseded);

(4) All collateral is held in the United States and the situs of the Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 C.F.R. 2550.404(b)-1; and

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

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

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

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

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

(s) The Borrower maintains, or causes to be maintained, within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that

(1) A prohibited transaction will not be considered to have occurred if, due

to circumstances beyond the control of Deutsche Bank and/or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

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

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

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

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

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

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

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

### Section III—Definitions

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

(i) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with, the person. (For purposes of this paragraph, the term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual);

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

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

(b) The term *Foreign Borrower* or *Foreign Borrowers* means Deutsche Bank or any broker-dealer or bank that, now or in the future, is a branch or an

affiliate of Deutsche Bank that is subject to regulation by (i) the BAFin in Germany, (ii) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (iii) the Ministry of Finance or the Financial Services Agency and the Tokyo Stock Exchange or the Osaka Stock Exchange in Japan, (iv) the Office of the Superintendent of Financial Institutions Canada, Ontario Securities Commission, and the Investment Dealers Association in Canada, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

(c) The term “Borrower” or “Borrowers” means DBS, DBNY, DBT, and the Foreign Borrowers, or any branch or affiliate of Deutsche Bank that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or a U.S. bank.

Effective Date: The exemption is effective as of April 24, 2001.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to the notice of proposed exemption published on July 3, 2002 at 67 FR 44625.

### Written Comments

The Department received one written comment with respect to the notice of proposed exemption (the Proposal). The comment was submitted by the applicant, who requested certain clarifying modifications and additions to the operative language in the final exemption, as well as to the Summary of Facts and Representations (the Summary) in the Proposal (see 67 FR 44625). The requested modifications and additions to both the operative language and the Summary, are discussed below.

1. The applicant wished to clarify that the term “Deutsche Bank” includes its branches, such as Deutsche Bank AG, New York Branch (DBNY), and to add Deutsche Bank Trust Company Americas (DBT) to the list of covered Borrowers.

Thus, Section I(a) of the Proposal (67 FR 44625, column 3) has been revised to read as follows (note deleted and italicized language):

- (1) Deutsche Bank AG (Deutsche Bank) (*including the New York Branch of Deutsche Bank (DBNY)*); or
- (2) its affiliates Deutsche Bank Securities Inc. (DBS), Deutsche Bank [delete “AG, New York Branch (DBNY)’] Trust Company

*Americas (DBT)*, [delete “and”] the “Foreign Borrowers” (as defined in Section III), *and any branch or affiliate of Deutsche Bank that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or a U.S. bank* (collectively, with Deutsche Bank, referred to as the “Borrowers,” as defined in Section III)

2. Similarly, Section III(b) of the Proposal (67 FR 44628, center column) defining “Foreign Borrowers” has been revised to read as follows (note deleted and italicized language):

The term “Foreign Borrower” or “Foreign Borrowers” means *Deutsche Bank* or any broker-dealer or bank that, now or in the future, is a *branch or an affiliate of Deutsche Bank that is subject to regulation by (i) the BAFin [delete “BAK and the Deutsche Bundesbank”] in Germany, \* \* \*, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.*

For an explanation regarding the “BAFin” and the italicized language added to the end of clause (v), above, see Comment 8, below.

3. Further, Section III(c) of the Proposal (67 FR 44628, center column) defining “Borrowers” has been revised to read as follows (note deleted and italicized language):

The term “Borrower” or “Borrowers” means [delete “Deutsche Bank”] DBS, DBNY, DBT, and the Foreign Borrowers, [delete “and”] or any [delete “other”] *branch or affiliate of Deutsche Bank that, now or in the future, is a U.S. registered broker-dealer or a government securities broker or dealer or a U.S. bank*.

4. The revisions in Comment 2, above, should also be made to the corresponding paragraph in Item 1 of the Summary (67 FR 44629, column 1) (note deleted and italicized language):

Deutsche Bank requests an individual exemption to cover *DBNY, DBS, DBT, the Foreign Borrowers identified above, as well as any [delete “broker-dealer or bank”] other branch or affiliate of Deutsche Bank that, now or in the future, is [delete “an affiliate of Deutsche Bank that is”] (i) a U.S. registered broker-dealer or government securities broker or dealer or a U.S. bank, or (ii) that is subject to regulation by (a) the BAFin [delete “BAK, and the Deutsche Bundesbank”] in Germany, (b) the Financial Services Authority and the Securities and Futures Authority in the United Kingdom, (c) the Ministry of Finance or the Financial Services Agency and the Tokyo Stock Exchange or the Osaka Stock Exchange in Japan, (d) the Office of the Superintendent of Financial Institutions Canada, Ontario*

Securities Commission, and the Investment Dealers Association in Canada, or (e) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia, *or any governmental regulatory authority that is a successor in interest to any such regulator.*

5. The second sentence of Section II(h) of the Proposal (67 FR 44626, center column) regarding monitoring of the collateral has been revised to read as follows (note deleted and italicized language):

The level of the collateral is monitored daily by the Plan or its designee, which may be Deutsche Bank or any of its *branches or* affiliates, including [delete Deutsche Bank Trust Company Americas] DBT, which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan.

Further, the words *ldquo;branches or”* should be added to the corresponding second sentence of the second paragraph in Item 10 of the Summary (67 FR 44631, center column).

6. The applicant wished to add the italicized language, below, to the first sentence of Section II(m) of the Proposal (67 FR 44626, column 3) regarding default by the Borrower. Thus, Section II (m) has been revised to read as follows:

In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement, the Plan or its agent will have the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price.

Further, the same addition should be made to the corresponding first sentence in Item 15 of the Summary (67 FR 44632, center column).

7. The applicant stated that the use of the term “confirmations” in Section II(q) of the Proposal connotes confirmation slips described in Rule 10b-10 under the 1934 Act, which applies to securities transactions, not to securities lending transactions. Thus, the last sentence of Section II(q) (67 FR 44627, center column) has been revised to read as follows (note deleted and italicized language):

Also, upon request of the Plan, the Borrower will provide the Plan with daily [delete “confirmations”] notifications of securities lending transactions.

Further, the same revision should be made to the corresponding last sentence in Item 10 of the Summary (67 FR 44631, column 3).

8. The applicant stated that there has been a change in the identity of the

governmental regulatory authority in Germany. Following the adoption on April 22, 2002 of the Law on Integrated Financial Services Supervision (Gesetz ueber die integrierte Finanzaufsicht—FinDAG), the Federal Authority for Financial Services Supervision (Bundesanstalt fuer Finanzdienstleistungsaufsicht—BAFin) was established on May 1, 2002. The functions of the former offices for banking supervision (Gesetzesaufsichtsamt fuer das Kreditwesen—BAKred), insurance supervision (Bundesaufsichtsamt fuer das Versicherungswesen—BAV), and securities supervision (Bundesaufsichtsamt fuer den Wertpapierhandel—BAWe) have been combined in a single state regulator that supervises banks, financial services institutions, and insurance undertakings across the entire financial market and comprises all the key functions of consumer protection and solvency supervision. The new BAFin has been created to ensure a consistent regulation and supervision of the financial services and markets in Germany through one single authority. The applicant also noted generally that, in foreign jurisdictions, the authority to regulate securities transactions and securities lending transactions may change from agency to agency, from time to time, or the legal name of the appropriate regulator may change.

Thus, Section II(r)(1) of the Proposal (67 FR 44627, column 3), a supplemental requirement for Foreign Borrowers, has been revised to refer to the “BAFin,” as well as by adding the italicized language and the end of clause (v):

(1) Such Foreign Borrower is subject to regulation by (i) the [delete “Bundesaufsichtsamt fuer das Kreditwesen (the BAK) and the Deutsche Bundesbank”] *Bundesanstalt fuer Finanzdienstleistungsaufsicht (the BAFin)* in Germany, \* \* \*, or (v) the Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and the Australian Stock Exchange Limited in Australia, *or any governmental regulatory authority that is a successor in interest to any such regulator.*

Further, consistent with the above (as well as Comments 2 & 4), paragraph (i) in Item 17 of the Summary (67 FR 44632, column 3), should be revised such that the Foreign Borrower may be a bank *“or a broker-dealer”* that is subject to regulation by the various foreign regulators listed (substituting “BAFin” for “BAK and the Deutsche Bundesbank”), as well as *“any governmental regulatory authority that*

*is a successor in interest to any such regulator.”*

9. The applicant wished to correct duplicative references to Deutsche Bank, already included in the revised definitions of “Foreign Borrower” and “Borrower.”

Thus, the following revisions have been made to Section II(r)(5), (r)(5)(iv), and (s) of the Proposal (67 FR 44627, column 3) (note deleted language):

(5) Prior to entering into a transaction involving a Foreign Borrower, [delete “Deutsche Bank or”] the Foreign Borrower must \* \* \*

(iv) Agree that enforcement by a Plan of the indemnity provided by [delete “Deutsche Bank or”] the Foreign Borrower will occur in the U.S. courts.

(s) [Delete “Deutsche Bank or”] The Borrower maintains, or causes to be maintained, within the United States for a period of six years \* \* \*

Further, the same revision should be made to Footnote 8 in Item 4 of the Summary (67 FR 44630, column 1) as follows:

Under certain circumstances described in the April 9, 1997 No-Action Letter (e.g., clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and [delete “Deutsche Bank or between a Plan a the Foreign Borrower \* \* \*

10. The applicant wished to make the following correction to the third paragraph in Item 1 of the Summary (67 FR 44628, column 3) (note deleted language):

(c) Morgan Grenfell & Co., Ltd., located in London, is subject to regulation in the United Kingdom by the Financial Services Authority [delete “in respect of prudential supervision”];

11. The applicant wished to add the following sentence after the first sentence in Item 7 of the Summary (67 FR 44630, column 3):

The form of the Borrowing Agreement to be used in foreign jurisdictions will reflect appropriate local industry or market standards. [FN 11]

[FN 11] For example, the form of the Borrowing Agreement to be used in the United Kingdom differs from the standard U.S. Borrowing Agreement. Under the form Borrowing Agreement to be used in the United Kingdom, the Plan receives title to (rather than a pledge of or a security interest in) the collateral.

The applicant noted that the revisions, above, are consistent with the language of a similar recent exemption [see PTE 2002-33 (67 FR 42077, June 20, 2002)] for Morgan Stanley Dean Witter & Co. in the notice of proposed exemption relating thereto (67 FR 15241, March 29, 2002) (see 67 FR at 15245, column 3, Item 8).

12. The applicant wished to add a new Item 10 to follow Item 9 of the Summary (67 FR 44631, column 1), with the remaining items appropriately renumbered:

10. An independent fiduciary of the Plan may provide written instructions directing that the investment of any cash collateral, or any portion thereof, be managed by Deutsche Bank or any branch or affiliate thereof, or be invested in one or more mutual funds managed by Deutsche Bank or any branch or affiliate thereof. Deutsche Bank or such branch or affiliate, as applicable, may receive a reasonable and customary investment management fee, provided that the independent fiduciary of the Plan approves such compensation arrangement, after receiving written disclosure of the compensation arrangement to be paid to Deutsche Bank or such branch or affiliate, as applicable, in connection with such investment management. The independent fiduciary of the Plan may revoke such written instructions at any time. [FN 12]

[FN 12] This transaction is outside the scope of the proposed exemption. The Department notes that it is the responsibility of Deutsche Bank or such branch or affiliate to determine whether the conditions of section 408(b)(2) of the Act will be met with respect to the transaction (*i.e.*, the reasonable contract or arrangement requirement and the reasonable compensation requirement).

The applicant noted that the paragraph and footnote, above, are consistent with the language of a similar recent exemption [see PTE 2002-44 (67 FR 56597, September 4, 2002)] for Goldman, Sachs & Co. in the notice of proposed exemption relating thereto (67 FR 44633, July 3, 2002) (see 67 FR 44640, column 1, Item 16).

13. Finally, the applicant requested that the third sentence in old Item 10 of the Summary (67 FR 44631, center column), to be renumbered as Item 11, be revised to be consistent with Section II(g) of this exemption (note deleted and italicized language):

For this purpose, the collateral may be held on behalf of the Plan [delete "by"] with a third party, an affiliate of the Borrower, or a branch of Deutsche Bank other than the Borrower, that is [delete "the"] a trustee or custodian of the Plan.

The Department has modified the language of this exemption to reflect the applicant's clarifications to the record, as discussed above, and acknowledges such clarifications as they relate to the information contained in the Proposal, as published in the **Federal Register** on July 3, 2002.

Accordingly, based upon the information contained in the entire record, the Department has determined to grant the proposed exemption as modified herein.

For Further Information Contact: Ms. Karin Weng of the Department,

telephone (202) 693-8540. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

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

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

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

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

**Ivan Strasfeld,**

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

[FR Doc. 02-25599 Filed 10-7-02; 8:45 am]

**BILLING CODE 4510-29-P**

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (02-121)]

#### National Environmental Policy Act; International Space Research Park at the John F. Kennedy Space Center, Florida

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of intent to prepare an environmental impact statement (EIS) and conduct scoping meetings for the

proposed International Space Research Park (ISRP) on the John F. Kennedy Space Center (KSC).

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA intends to conduct scoping and prepare an EIS for the proposed International Space Research Park (ISRP) on the John F. Kennedy Space Center (KSC). NASA is proposing an agreement with the State of Florida, through the Florida Space Authority (FSA), to allow the State of Florida to develop up to 160 hectares (400 acres) of land on KSC as a research park. The State of Florida would develop the property in phases during the next 20 to 25 years. KSC, which is located in Brevard County on the east coast of Florida, is a major locus within NASA of Shuttle and International Space Station (ISS) activities and is adjacent to Cape Canaveral Air Force Station (CCAFS) from which many NASA missions are launched. NASA's goal in developing the ISRP at KSC is to provide an opportunity for commercial, research and educational interests from both governmental and non-governmental sectors to develop new, state-of-the-art facilities to promote the expanded use of space.

The EIS will address, among other matters, the environmental impacts of the development and operation of the research park at two possible locations on KSC.

**DATES:** Interested parties are invited to submit comments on environmental concerns in writing on or before December 9, 2002, to assure full consideration. In addition, interested parties may attend one or both of the two public scoping meetings to be held on October 24, 2002. The first meeting will be held at the KSC Visitors Complex at 9:30 a.m. The second meeting will be held at the Florida Solar Energy Center on the Cocoa Campus of the Brevard Community College at 7 p.m.

**ADDRESSES:** Written comments should be addressed to Mr. Mario Busacca, Environmental Program Office, Mail Code TA-C3, Kennedy Space Center, Florida, 32899. Comments may also be sent by electronic mail to: *Mario.Busacca-1@ksc.nasa.gov*, by facsimile to Mr. Busacca's attention at 321-867-8040, or by visiting the ISRP