(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 140,000 responses at 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 70,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: February 26, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 03–4910 Filed 2–28–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–10840, et al.]

Proposed Exemptions; Deutsche Bank AG

AGENCY: Employee Benefits Security 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 Employee Benefits Security Administration (EBSA), 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 EBSA 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 Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Deutsche Bank AG
Located in New York, New York
Exemption Application Number D–10840

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code) and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Retroactive Relief

For the period from June 4, 1999 until the date this proposed exemption is granted, the restrictions of section 406(a) and (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 investment of the assets of a Bank Plan or a Client Plan (either, a Plan) in deposits of Deutsche Bank AG, its current or future branches, and/or its current or future subsidiaries, if—

(a) Deutsche Bank AG is supervised by the Deutsche Bundesbank and/or the Bundesanstalt fur Finanzdienstleistungsaufsicht (the BAFin),[1] and, in the case of a subsidiary of Deutsche Bank AG, is also supervised by similar local government authorities;

(b) The deposit bears a rate of interest that is reasonable, as defined in section III(f);

(c) The investment is:

(i) Made by a Bank Plan; or

(ii) Made by a Client Plan and expressly authorized pursuant to a provision of such Plan (or trust thereof) or expressly authorized by an independent fiduciary,[2] as defined in

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[1] For purposes of this exemption, if granted, supervision of Deutsche Bank AG by the BAFin is deemed to include supervision of Deutsche Bank AG by the Federal Banking Supervisory Authority (das Bundesaufsichtsamt fuer das Kreditwesen), the predecessor to the BAFin.

[2] The Department notes that the Act's general standards of fiduciary conduct would apply to arrangements involving the investment of Plan assets permitted by this proposed exemption, if

Continued

section III (g), with respect to such Plan; and

(d) in situations where Deutsche Bank AG, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank AG does not average, over any six month period, more than 5% of the total amount of the plan's assets managed by such investment manager.

Section II—Prospective Relief

Effective after the date this proposed exemption is granted, the restrictions of section 406(a) and (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 investment of the assets of a Plan in deposits of Deutsche Bank AG, its current or future branches, and/or its current or future subsidiaries, if—

(a) Deutsche Bank AG is supervised by the Deutsche Bundesbank and/or the BAFin, and, in the case of a subsidiary of Deutsche Bank AG, is also supervised by similar local government authorities;

(b) The deposit bears a rate of interest that is reasonable, as defined in section II (f);

(c) Prior to: (i) An investment of Plan assets in bank deposits; or (ii) the commencement of any Deutsche Bank AG program that invests Plan assets in such deposits, an independent fiduciary (other than with respect to a Bank Plan) receives a written disclosure describing:

(A) The circumstances pursuant to which Plan assets will be invested in deposits of Deutsche Bank AG or its subsidiaries or branches; and

(B) A description of the applicable sovereign regulatory authority/ authorities governing the activities of Deutsche Bank AG;

(d) A fiduciary independent of Deutsche Bank AG and its affiliates (other than with respect to a Bank Plan) receives, upon request, copies of the most recent financial statement of Deutsche Bank AG and/or its subsidiaries;

(e) Immediately after any material adverse change in the financial condition of Deutsche Bank AG, Deutsche Bank AG will notify each Plan fiduciary of such material adverse change and will not use its authority to continue the program of deposits with respect to the Plans without the consent of a Bank Plan fiduciary or an independent Client Plan fiduciary;

(f) In situations where Deutsche Bank AG, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank AG does not average, over any six month period, more than 1% of the total amount of the plan's assets managed by such investment manager;

(g) Deutsche Bank AG—

(1) Agrees to submit to the jurisdiction of the United States;

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

(3) Consents to service of process on the Process Agent;

(4) Agrees that it may be sued in the United States Courts in connection with the transactions described in this proposed exemption;

(5) Agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank AG; and

(6) Agrees to comply with, and be subject to, all relevant provisions of the Act.

(h) The investment is:

(i) Made by a Bank Plan and authorized by a Bank Plan fiduciary; or

(ii) Made by a Client Plan and authorized by an independent fiduciary with respect to such Client Plan. Notwithstanding (h)(i) and (h)(ii) above, authorization for the investment by a Plan in the deposits of Deutsche Bank AG may be presumed notwithstanding that Deutsche Bank AG does not receive any response from such Plan pursuant to two written requests by Deutsche Bank AG (one request by a certified mailing that contains only such request) for the authorization, provided that: (A) with respect to Plans that invest in the deposits of Deutsche Bank AG prior to the date this proposed exemption is granted, the first request occurs not later than 45 days after the date the proposed exemption is granted and the second request occurs within 30 days thereafter; and (B) with respect to Plans that invest in the deposits of Deutsche Bank AG following the date this proposed exemption is granted, the first request occurs at least 45 days prior to such investment and the second request occurs within 30 days thereafter;

(i) Investments in the deposits of a subsidiary of Deutsche Bank AG will be backed by the full faith and credit of Deutsche Bank AG;

(j) Short-term debt issued by Deutsche Bank AG is rated in one of the three highest categories by an independent rating agency such as Standard & Poors, Moody's or a similar institution;

(k) Deutsche Bank AG 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 below in paragraph (1) of this proposed exemption to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Deutsche Bank AG, the records are lost or destroyed prior to the end of the six-year period; and

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

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

(ii) Any fiduciary of a Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraphs (l)(1)(ii) and (iii) shall be authorized to examine trade secrets of Deutsche Bank AG, or commercial or financial information that is privileged or confidential.

Section III—Definitions

(a) The term ''bank'' means a bank supervised by the United States, a state, or a sovereign government.

(b) An ''affiliate'' of a person includes:

(1) Any person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such person;

granted. In this regard, section 404 of the Act requires, among other things, a fiduciary to discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, an independent fiduciary with respect to a Plan must act prudently with respect to: (1) The decision to enter into an arrangement described herein; and (2) the negotiation of the terms of such an arrangement, including, among other things, the specific terms by which Plan assets will be invested in the deposits of Deutsche Bank AG. The Department further emphasizes that it expects plan fiduciaries, prior to allowing or authorizing the transactions described herein, to fully understand the benefits and risks associated with such transactions, following disclosure by Deutsche Bank AG of all relevant information. In addition, the Department notes that such plan fiduciaries must periodically monitor, and have the ability to so monitor, the services provided by Deutsche Bank AG.

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

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

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

(d) A ''Client Plan'' refers to an employee benefit plan as described in section 3(3) with respect to which Deutsche Bank AG acts as a trustee or custodian.

(e) A ''Bank Plan'' means a plan sponsored or maintained by:

(1) Deutsche Bank AG or any person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, Deutsche Bank AG or;

(2) Any entity in which Deutsche Bank AG holds more than a ten percent equity interest.

(f) A ''reasonable'' rate of interest means a rate of interest determinable by reference to short-term rates available to other customers of the bank, those offered by other banks, those available from money market funds, those applicable to short-term instruments such as repurchase agreements, or by reference to a benchmark such as sovereign short term debt (e.g., in the U.S., treasury bills), all in the jurisdiction where the rate is being evaluated. The requirement that an interest rate be ''reasonable'' does not preclude the payment of no interest in situations where the deposit is with a branch or subsidiary of Deutsche Bank AG that acts as a local subcustodian and no interest is paid to similarly situated custody clients of the global custodian so long as, prior any investment in deposits that pays no interest, Deutsche Bank AG discloses to the appropriate Plan fiduciary that no interest may be paid with respect to an arrangement described above. Notwithstanding the foregoing, if local law is changed to preclude the payment of interest, and Deutsche Bank AG discloses such fact to the appropriate Plan fiduciary as soon as reasonably possible.

(g) An ''independent fiduciary'' means a fiduciary independent of Deutsche Bank AG and its affiliates who has the authority to make the investments described herein, or to instruct the trustee or other fiduciary with respect to such investments, and who has no interest in the transaction which may affect the exercise of such authorizing fiduciary's best judgment as a fiduciary so as to cause such authorization to constitute an act described in section 406(b) of the Act.

Summary of Facts and Representations

1. Deutsche Bank AG (hereinafter, Deutsche Bank or the Applicant) is a German banking corporation and commercial bank that provides a wide range of services to various types of entities worldwide. Deutsche Bank is one of the largest financial institutions in the world in terms of assets held, managing over $585 billion in assets either through collective trusts, separately, managed accounts, or mutual funds.

Deutsche Bank Trust Company Americas (DBTCA)[3] is a wholly-owned indirect subsidiary of Deutsche Bank. DBTCA is a commercial bank that provides a wide range of services to various types of entities worldwide.

2. In general terms, the transactions contained in this proposed exemption involve the investment of ''idle'' foreign currency in bank deposits, either directly or through a cash management program. In this regard, the Applicant states that, for various reasons, a portfolio manager may seek to hold foreign currency ''idle'' for short periods of time. For example, the Applicant states that an investment manager may hold ''idle'' the foreign currency a portfolio has received from the liquidation of foreign securities while determining how to reinvest such currency.

3. According to the Applicant, there are limited options with respect to the investment of ''idle'' foreign currency. In this regard, the Applicant states that most short-term investment vehicles are denominated in U.S. dollars. As a result, to invest foreign currency in such vehicles, an investment manager would have to convert the foreign currency to U.S. dollars (and, thereafter, convert the U.S. dollars back to foreign currency). Due to the costs associated with such conversion(s), the Applicant states, it is often not economically viable to invest ''idle'' foreign currency in most of the financial vehicles available for short-term investments.

Given this and for the reasons stated below, the Applicant states that investment managers and plan sponsors often seek to invest ''idle'' currency in bank deposits. In this regard, the Applicant represents that most global banks take deposits in many different foreign currencies. Accordingly, an investment manager may invest the currency of a particular foreign nation in the same-currency deposits of a bank without incurring the costs associated with converting the currency from/to U.S. dollars.[4] The Applicant additionally represents that an investment in bank deposits may be made for short periods of time, rendering such investments vehicles essential in foreign markets where collective investment funds are not available to invest short-term cash balances. Finally, the Applicant states that an investment in bank deposits provides a competitive rate of return on currency being held ''idle'' pending reinvestment, making such an investment attractive with respect to portfolios investing globally.

4. The Applicant states that the investment of ''idle'' foreign currency in bank deposits may be achieved either directly or through cash management programs. According to the Applicant, the arrangement by which foreign currency is invested often is determined by the amount of time an investment manager anticipates the assets being invested will remain in such an investment vehicle. In this regard, the Applicant represents that an investment manager who seeks to invest plan assets in bank deposits on a day-to-day basis will likely allow such assets to be ''swept'' into the bank deposits of the plan's global custodian through a cash management program. Pursuant to such a program, uninvested cash balances left with any subcustodian are placed on an overnight basis into the same currency deposits of the global custodian or the subcustodian (which may or may not be a branch or an affiliate of the global custodian).[5]

By comparison, the Applicant represents that to the extent an investment manager expects ''idle'' foreign currency will remain in bank deposits on a short-term basis of fixed duration (*i.e.,* 30 days, 60 days, etc.), the manager may choose to invest the currency directly in bank deposits. Unlike a cash management program, this method of investing in bank deposits involves an investment manager's affirmative act of investing in the deposits of a particular bank (upon taking into consideration, among other things, the interest rates and credit ratings of various banks).

5. The Applicant states that global custodians often provide cash

[3] Formerly, Bankers Trust Company.

[4] For example, when a portfolio that uses the EAFE index as a benchmark (and has assets invested primarily in Europe, Asia and the Far East) holds ''idle'' foreign currency, the portfolio will generally allow such assets to remain in a foreign currency until the next investment in that country sector occurs.

[5] The Applicant notes, however, that in certain instances (*i.e.,* late trades) uninvested balances may have to remain with the subcustodian without being placed into the global custodian's deposits.

management services whereby foreign currency left with an affiliated subcustodian will be either: (1) Swept into the deposits of the global custodian (or branch of subsidiary thereof); or (2) left in a non-interest bearing account with the subcustodian. According to the Applicant, ''idle'' foreign currency may be swept to the global custodian for several reasons. For example, the global custodian may offer a better interest rate and/or have a better credit rating than banks that are not parties in interest with respect to such plan. By comparison, ''idle'' foreign currency may remain with the subcustodian in situations where the movement of the currency outside the subcustodial bank would be too costly. Finally, ''idle'' foreign currency may remain in the account of a client of the subcustodian in situations involving, among other things, late trades and unpredicted cash flows.

6. Accordingly, the Applicant seeks an exemption to permit the investment of Plan assets in deposits of Deutsche Bank and its non-U.S. banking branches and subsidiaries, either directly or through cash management programs. The Applicant states that this exemption, if granted, is intended to cover only those Plan investments in bank deposits that are temporary in nature.

The Applicant cites a lack of applicable statutory relief with respect to deposits in branches or subsidiaries of foreign banks affiliated with a custodian or a trustee when such foreign banks are not supervised by the U.S. or a state.[6] In addition, the Applicant cites a lack of administrative relief with respect to the investment of plan assets in overnight deposits by a plan sponsor who is not an in-house asset manager (*i.e.,* an INHAM as described in PTE 96–23 (61 FR 15975 (Apr. 10 (1996)) or by an investment manager who is not a qualified professional asset manager (*i.e.,* a QPAM as described in PTE 84–14 (49 FR 9494 (Mar. 13, 1984) and corrected at 50 FR 41430 (Oct. 10 1985)).

7. Specifically, the Applicant states that DBTCA is a global custodian that offers a cash management program (the DBTCA Program)[7] to every account for which it acts either as a custodian or trustee.[8] Such Program, the Applicant states, is comprised of two parts: One that relates to domestic portfolios (*i.e.,* assets that are invested in the U.S.) and another that relates to global portfolios. In this regard, the Applicant states that with respect to domestic-only portfolios, upon opening an account, the Plan fiduciary responsible for choosing DBTCA as the Plan's trustee or custodian also selects a sweep vehicle for cash left temporarily uninvested (Idle Cash) by the Plan's portfolio manager (which may or may not be DBTCA or an affiliate). The Applicant represents that the sweep vehicle is often a collective trust for short-term investments managed by DBTCA or an affiliate although, at the election of the fiduciary, the cash sweep vehicle may also be a mutual fund affiliated with DBTCA or a fund managed by, for example, an investment manager not affiliated with DBTCA. The Applicant states that Plans investing in DBTCA's collective funds are informed, as part of the disclosure that accompanies these investments, of the sweep vehicle used.

For global investments, the Applicant states that each Client Plan fiduciary and each Bank Plan fiduciary is provided detailed disclosure, including the types of overnight investments utilized by the global cash management program and the fees related to the program. ERISA clients investing globally that have uninvested U.S. dollars have access to the types of ''cash sweep'' vehicles described above.

According to the Applicant, Idle Cash is invested pursuant to the DBTCA cash management program in one of two ways. First, Idle Cash denominated as sweep currencies[9] are deposited in the London Branch of DBTCA (the London Branch) in the same currency in which it is maintained (although some residual amounts, in the same currency, may remain in the deposits of the local subcustodian). For all other currencies, the Applicant states, Idle Cash remains in deposits of the local subcustodian.

The Applicant states that, with respect to all currencies that are part of the sweep to the London Branch, the amount of interest paid equals the deposit rate less a cash management fee. In this regard, the deposit rate is the higher of the London Branch overnight deposit rate for such currency (generally, a weekly or monthly average, depending on the currency) or the subcustodian's rate. According to the Applicant, the cash management fees differ by currency and are disclosed in advance to an independent fiduciary for each Client Plan and an appropriate Bank Plan fiduciary for each Bank Plan. The Applicant notes that Plan fiduciaries are informed that they will earn interest at the calculated rate on the entire contractual cash balances[10] without any action necessary on their part and without any minimum balance requirements. In addition, the Applicant states that Plan fiduciaries are informed that their respective Plans will receive the specified rate on all cash that is part of the Plan's contractual cash balance, regardless of whether their contractual cash balance exceeds their actual balance.

Second, for all currencies that are not swept,[11] the Idle Cash will remain in deposits of the local subcustodian. Deutsche Bank represents that with respect to these currencies, Deutsche Bank earns a cash management fee. In markets where individual client accounts are maintained with the subcustodian due to local regulations, Plans will receive interest on actual balances with no minimum rate guaranteed. In these currencies, no fee

[6] The Applicant states that where the global custodian is a U.S. or state supervised bank or trust company, relief for the investment in bank deposits by a plan is provided by section 408(b)(4) of ERISA. In addition, the applicant states that in situations where the foreign subcustodian is not affiliated with the global custodian, the global custodian may rely on PTE 84–14 to exempt the extension of credit and the use of plan assets by the foreign subcustodian party in interest inherent in the investment in that subcustodian's deposits.

[7] According to Applicant, the DBTCA is currently the only cash management program offered by Deutsche Bank containing the types of transactions described herein.

[8] The Applicant states that Deutsche Bank is not seeking relief pursuant to this proposed exemption with respect to the Bankers Trust Program itself or, to the extent relevant, any other cash management program. Rather, the Applicant states that if this proposed exemption is granted, the Bankers Trust Program, and any future program involving the types of transactions provided relief herein, will comply with the statutory exemption contained in 408(b)(6) of ERISA. Accordingly, the Department is not providing any relief herein with respect to the Bankers Trust Program or any other cash management offered by Deutsche Bank AG.

[9] The Applicant represents that, as of January 29, 2000, the Australian Dollar, British Pound Sterling, Canadian Dollar, Danish Krone, EMU Euro, Hong Kong Dollar, Norwegian Krone, South African Rand, Swedish Krona, Swiss Franc, and the U.S. Dollar are considered sweep currencies. Pursuant to the Bankers Trust Program, U.S. Dollars are swept to the U.S. and put in collective trusts.

[10] A contractual balance, Deutsche Bank notes, is the cash, securities and other investments that the Client Plan would expect to have on a given date, assuming all transactions have settled in a timely fashion. Thus, assuming that an investment manager executed a sale of a security to settle trade date plus 3 days (T+3), and the investment manager did not execute a trade using those sales proceeds until a date two days hence, the proceeds would be swept to a deposit pursuant to the sweep program regardless of whether such proceeds are received on the third day.

[11] In this regard, as of January 29, 2000, the currencies on which interest is credited, but are not swept to the London Branch are: the Argentine Peso, Czech Koruna, Greek Drachma, Hungarian Forint, Indonesian Rupiah, Israeli Shekel, Japanese Yen, Jordanian Dinar, Korean Won, Mexican Peso, New Taiwan Dollar, New Zealand Dollar, Philippine Peso, Polish Zloty, Singapore Dollar, Slovak Koruna, Thai Baht, and Turkish Lire.

or spread is earned for the DBTCA program.

The Applicant represents that Plan sponsors and/or Plan investment managers will receive information regarding the amounts of Idle Cash remaining, account activity, and the rates paid on the Idle Cash through monthly reports. Plan sponsors and Plan investment managers may also receive such information through DBTCA's proprietary on-line system (provided that they arrange for this service).

8. The Applicant represents that Deutsche Bank is supervised by the Deutsche Bundesbank and the BAFin.[12] The Deutsche Bundesbank is the central bank of the Federal Republic of Germany and part of the European System of Central Banks (the ESCB). The Applicant represents that the Deutsche Bundesbank is primarily focused on maintaining the stability of the ''Euro''[13] and the execution of domestic and international payments. In addition, the Applicant states that the Deutsche Bundesbank also participates in the supervision of credit institutions and financial services institutions.

The BAFin is the German Federal Banking Supervisory Authority, an independent federal institution responsible to the German Ministry of Finance. The BAFin supervises the operations of banks, banking groups, financial holding groups and branches of foreign banks in Germany and has the authority to: (a) Issue and withdraw banking licenses; (b) issue regulations on the capital and liquidity requirements of banks; (c) request information and conduct investigations; and (d) intervene in cases of inadequate capital or liquidity, or in cases of endangered deposits or risk of bankruptcy by means of temporarily prohibiting certain banking transactions.

Specifically, the BAFin ensures that Deutsche Bank has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards such as: Requirements for adequate internal controls, oversight, administration and financial resources. The BAFin further reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the year-end auditor and through special audits as ordered by the supervisory authorities. The BAFin obtains information on the condition of Deutsche Bank and its branches by requiring the submission of periodic, consolidated financial reports, and through a mandatory annual report prepared by an independent auditor.[14]

Deutsche Bank represents that the annual audit includes foreign branches and subsidiaries. The auditor is required to give positive assurance regarding whether the institution has fulfilled its duties under the German Banking Act. This requires, Deutsche Bank notes, the auditor to comment on the asset quality and the internal control environment of each part of the institution, including subsidiaries, in detail. The BAFin also receives information regarding capital adequacy, country risk exposure and foreign exchange exposures from Deutsche Bank. German banking law mandates penalties to ensure correct reporting to the BAFin. The auditors of Deutsche Bank face penalties for gross violation of their auditing duties.

The BAFin supervises all branches of Deutsche Bank, wherever located, subjecting them to announced and unannounced on-site audits and all other supervisory controls applicable to German banks. Deutsche Bank represents that in its branches located in a member state of the European Economic Area (the EEA), such audits are carried out consistent with the applicable European Directives, and with respect to branches outside the EEA, consistent with the applicable international agreements, memoranda of understanding or other arrangements with the relevant foreign supervisory authorities. Deutsche Bank subsidiaries are consolidated with Deutsche Bank for purposes of the capital ratios that the bank is required to meet on a group-wide basis. Supervision extends to the adequacy of equity capital of banking and financial holding groups and compliance with the regulation regarding large loans granted by such groups.

9. Deposits in branches of Deutsche Bank are insured. In this regard, Deutsche Bank represents that there are two deposit insurance programs that currently cover Deutsche Bank and its foreign branches. The first is the European Union deposit insurance system, which insures deposits up to the lesser of 90% of the deposit or 20,000 euros. This statutory deposit protection system is maintained by the German Bank Institution for Indemnification, the Entschadigungseinrichtung dutscher Banken (the EdB), which is maintained by the Association of German Banks, the Bundesverband Deutscher Banken, and is subject to supervision by the BAFin.

The second deposit insurance program is the Deposit Protection Fund, the Einlagensicherungsfonds, maintained by the Association of German Banks. This fund, the participation in which is voluntary, safeguards liabilities in excess of the thresholds guaranteed by the European Union program, up to a protection ceiling for each creditor of 30% of the liable capital of the bank.[15] This program is funded by the premiums paid by participating German banks and deposit-taking trust companies. The fund relies on the Auditing Association of German Banks, which audits banks and makes recommendations that are required to be implemented.

Deposits in subsidiaries of Deutsche Bank are not insured through the German deposit insurance system. However, the Applicant represents that investments by Plans in the deposits of a subsidiary of Deutsche Bank will be backed by the full faith and credit of Deutsche Bank.

10. The Applicant proposes certain safeguards applicable to both the retroactive and prospective portions of this proposed exemption. In this regard, the Applicant states that the investment by a Plan in the deposits of Deutsche Bank will be limited. With respect to the retroactive portion of the exemption, if granted, in situations where Deutsche Bank AG, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank does not average, over any six month period, more than 5% of the total amount of the assets managed by such investment manager. With respect to the prospective portion of the exemption, if granted, the percentage limitation described above shall equal one percent. In all cases, the Applicant states, the interest earned on the deposits described herein will be

[12] Deutsche Bank AG, New York Branch, is regulated by the New York State Banking Department. In addition, certain activities of the U.S. affiliates of Deutsche Bank are regulated by the Federal Reserve Bank of New York.

[13] The term ''Euro'' means the single European currency adopted by eleven Member States of the European Union, which are: Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, and Spain.

[14] Deutsche Bank notes that the audits of their financials are done in accordance with the auditing standards established by the International Federation of Accountants (IFAC), which is an organization of national accountancy bodies, including the American Institute of Certified Public Accountants (AICPA), to develop and harmonize worldwide auditing standards. The financial statements are prepared in accordance with standards established by the International Accounting Standards Committee (IASC), which is a body formed to achieve uniformity in accounting principles used in financial statement reporting. The international equivalents to the U.S.'s AICPA and the Financial Accounting Standards Board (FASB) are the IFAC and the IASC, respectively.

[15] Liable Capital means the core capital and additional capital.

reasonable, determinable by reference to, among other things, short-term rates available to other customers of Deutsche Bank, those offered by other banks, and those available from money market funds. The Applicant notes that in situations where the deposit is with a branch or subsidiary of Deutsche Bank that acts as a local subcustodian, no interest may be paid with respect to such deposit to the extent that: no interest is paid to similarly situated custody clients of the global custodian, and, prospectively, Deutsche Bank discloses to the appropriate Plan fiduciary that no interest may be paid pursuant to such an arrangement. In addition, no interest may be paid in situations where local law is changed to preclude the payment of interest and Deutsche Bank discloses such fact to the appropriate Plan fiduciary as soon as reasonably possible.

Retroactively, a Client Plan must authorize an investment in the deposits of Deutsche Bank pursuant to a provision of such Plan or the trust thereof (unless the investments were expressly authorized by an independent fiduciary). Prospectively, investments in the deposits of Deutsche Bank must be: (i) Made by a Bank Plan and authorized by an Bank Plan fiduciary; or (ii) made a Client Plan and authorized by an independent fiduciary with respect to such Client Plan. In this regard, Notwithstanding, authorization for the investment by a Plan in the deposits of Deutsche Bank AG may be presumed notwithstanding that Deutsche Bank does not receive any response from such Plan pursuant to two written requests by Deutsche Bank (one request by a certified mailing that contains only such request) for the authorization, provided that: (A) With respect to Plans that invest in the deposits of Deutsche Bank prior to the date this proposed exemption is granted, the first request occurs not later than 45 days after the date the proposed exemption is granted and the second request occurs within 30 days thereafter; and (B) with respect to Plans that invest in the deposits of Deutsche Bank following the date this proposed exemption is granted, the first request occurs at least 45 days prior to such investment and the second request occurs within 30 days thereafter.

Further, Deutsche Bank has been and will continue to be supervised by the Deutsche Bundesbank and/or the BAFin, and, in the case of a subsidiary of Deutsche Bank, by similar local government authorities.

11. With respect to the prospective portion of this proposed exemption, the Applicant represents that Plans will be further protected in that Deutsche Bank will furnish to each Plan certain relevant information including its most recent available audited and unaudited financial statements and will give prompt notice of any material adverse changes in its financial condition that occur prior to the date of such statements. Upon giving this notice, the Applicant states, Deutsche Bank AG will not use its authority to continue the program of deposits with respect to the Plans without the consent of a Bank Plan fiduciary or an independent Client Plan fiduciary.

In addition, with respect to the deposit cash management program described herein, Deutsche Bank, and its branches and subsidiaries, will comply with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404b–1(a)(2)(i)(A).[16] Further, Deutsche Bank: (a) Agrees to submit to the jurisdiction of the courts of the United States; (b) agrees to appoint a Process Agent for service of process in the United States, which may be an affiliate; (c) consents to service of process on the Process Agent; (d) agrees that it may be sued in the courts of the United States in connection with transactions described in this proposed exemption; (e) agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank; and (f) agrees to comply with, and be subject to, all relevant provisions of the Act.

The Applicant states that the deposits described herein will be in safe, well-capitalized financial institutions. In this regard, the proposal prospectively requires that short-term debt issued by Deutsche Bank must be rated in one of the three highest categories by an independent rating agency such as Standard & Poors, Moody's or a similar institution.

12. The Applicant represents that the proposed exemption would be administratively feasible since the transactions would be transparent to Client Plan fiduciaries and no action on the part of the government or plan sponsors would be necessary to effectuate such transactions, other than the grant of the exemption and an initial authorization by a Client Plan fiduciary that is independent of Deutsche Bank (*i.e.,* an independent fiduciary) or an appropriate Bank Plan fiduciary.

13. In summary, the Applicant represents that, retroactively, the described transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act since, among other things:

(a) Deutsche Bank was supervised by the Deutsche Bundesbank and/or the BAFin, and, in the case of a subsidiary of Deutsche Bank, was also supervised by similar local government authorities;

(b) The deposits provided each affected Plan with a rate of interest that was reasonable; and

(c) In situations where Deutsche Bank, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank does not average, over any six month period, more than 5% of the total amount of the assets managed by such investment manager.

14. The Applicant represents that, prospectively, the described transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act since, among other things:

(a) Prior to either: An investment of Plan assets in bank deposits; or the commencement of any Deutsche Bank AG program that invests Plan assets in such deposits, an independent fiduciary (other than with respect to a Bank Plan) receives a written disclosure describing:

(i) The circumstances pursuant to which Plan assets will be invested in deposits of Deutsche Bank or its subsidiaries or branches; and

(ii) A description of the applicable sovereign regulatory authority/authorities governing the activities of Deutsche Bank;

(b) Immediately after any material adverse change in the financial condition of Deutsche Bank, Deutsche Bank will notify each Plan fiduciary of such material adverse change and will not use its authority to continue the program of deposits with respect to the Plans without the consent of the appropriate Bank Plan fiduciary or an independent Client Plan fiduciary;

(c) Deutsche Bank—

(1) Agrees to submit to the jurisdiction of the United States;

(2) Agrees to appoint the Process Agent;

(3) Consents to service of process on the Process Agent;

(4) Agrees that it may be sued in the United States Courts in connection with the transactions described in this proposed exemption;

(5) Agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank; and

(6) Agrees to comply with, and be subject to, all relevant provisions of the Act.

[16] The Department is expressing no opinion as to whether the requirements of ERISA section 404(b) and the regulations promulgated thereunder have been met.

(d) Investments in the deposits of a subsidiary of Deutsche Bank will be backed by the full faith and credit of Deutsche Bank; and

(e) Short-term debt issued by Deutsche Bank is rated in one of the three highest categories by an independent rating agency such as Standard & Poors, Moody's or a similar institution.

For Further Information Contact: Christopher Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

Metropolitan Life Insurance Company (MetLife)
Located in New York, NY
[Application No. D–11042]

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 (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[17] If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(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, effective April 6, 2001, to the cash sale (the Sale) to MetLife of a note (the Note), issued by the Pacific Gas & Electric Company (PG&E), by MetLife's Liquidity Plus Account (the Account) for which MetLife acts as investment manager and is a party in interest with respect to employee benefit plans (the Plans) invested in such Account, provided that the following conditions were met:

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

(b) The sales price for the Note was based upon an amount representing the greater of the Note's outstanding principal balance, plus accrued interest, or the Note's fair market value as determined by independent broker-dealers.

(c) The Account did not pay any fees, commissions or other expenses in connection with the Sale.

(d) As manager of the Account, MetLife determined, at the time of the transaction, that the Sale was appropriate for, and in the best interests of, the Account, the Plans investing therein, and their participants and beneficiaries.

(e) MetLife took all appropriate actions necessary to safeguard the interests of the Account and the Plans in connection with the Sale.

(f) If the exercise of any of MetLife's rights, claims or causes of action in connection with its ownership of the Note results in MetLife recovering from PG&E an aggregate amount that is greater than the sales price for such Note, MetLife will refund such excess amount to the Account.

Effective Date: If granted, this proposed exemption will be effective as of April 6, 2001.

Summary of Facts and Representations

1. MetLife is a life insurance company organized under the laws of New York and is subject to supervision and examination of the New York Superintendent of Insurance (the Superintendent). MetLife is a wholly owned subsidiary of MetLife, Inc., a publicly held Delaware corporation. In terms of assets, MetLife is the second largest life insurance company in the United States. As of September 30, 2002, MetLife, including its insurance company subsidiaries, had total assets under management of approximately $290.1 billion [18] and, as of December 31, 2001, approximately $1.9 trillion of life insurance in force. Among the insurance products and services it offers, MetLife and certain of its affiliates provide funding, asset management and other services for thousands of employee benefit plans subject to the provisions of Title I of the Act. MetLife maintains pooled and single plan separate accounts in which Title I pension, profit-sharing, welfare benefit, and thrift plans invest, and MetLife and/or its affiliates manage all or a portion of the assets of such separate accounts. Additionally, MetLife has a number of subsidiaries and affiliates that provide certain financial services, including investment management and brokerage services.

2. MetLife is the investment manager or adviser (or an affiliate of such investment manager or adviser) of various portfolios that are subject to the Act. Among the separate accounts managed by MetLife is the Account, which is a short term liquidity plus separate account that invests in short-term debt obligations. The Account is managed by MetLife on behalf of ERISA and non-ERISA regulated Plans, including the Metropolitan Life Retirement Plan for United States Employees (the MetLife Plan), the surviving entity following the merger of the Metropolitan Life Retirement Plan for United States Salaried Employees and the Metropolitan Life Retirement Plan for the United States Commissioned Employees. MetLife believes that the MetLife Plan became a participant in the Account at or near the time of its inception. The investing Plans hold units in the Account on a pro rata basis. MetLife represents that the purchase by the MetLife Plan of units in the Account is covered under section 408(b)(8) of ERISA.[19]

On February 2, 1971, the Account was initially approved by New York State Insurance Department (the NYSID), an independent state agency that regulates MetLife. The purpose of the Account is to achieve the highest possible current income consistent with the preservation of capital and maintenance of liquidity. The Account is permitted to invest in money market instruments with maturities of 13 months of less. Generally, the average maturity is less than 60 days. The Account is valued daily and is managed to maintain a stable one dollar value, similar to a money market fund. As of April 6,. 2001, which is the date of the Sale transaction described herein, the Account had a market value of $119,000,000. Also as of such date, participating investors in the Account included a number of ERISA Plan [20] and the MetLife Plan, which had invested approximately $66,746,000 in the Account.

3. On December 15, 2000, the Account purchased, in book-entry form, certain commercial paper (the Commercial Paper) (CUSIP 69430JPC1) from Merrill Lynch, an unrelated third party, at a discount from face value for $15,856, 284.27. The Commercial Paper, which was also issued on December 15, 2000 by PG&E, California's largest public utility and an unrelated party, had a maturity date of February 12, 2001. The par value [21] of the Commercial Paper was $16,031,000, which was payable at maturity. The Commercial Paper's yield was 6.723274 percent and it represented approximately 13 percent of the Account's assets.[22]

4. The decision to invest assets in the Commercial Paper was made by MetLife

[17] 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.

[18] This figure does not include the fourth quarter, which has not yet been published.

[19] The Department, is expressing no opinion herein on whether the purchase by the MetLife Plan of units in the Account is statutorily exempt under section 408(b)(8) of the Act.

[20] Primarily, defined benefit pension plans.

[21] Defined as the value of the Commercial Paper at maturity.

[22] As of December 15, 2000, the MetLife Pension Plan had total assets of $4,047,574,285.00. Of the total assets, the MetLife Pension Plan invested $11,494,583.03 in the Commercial Paper, which represented approximately 0.3 percent of such Plan's assets.

as investment manager of the Account. MetLife represents that the investment was consistent with the Account's investment policies and objectives.[23] At the time the Account acquired the Commercial Paper, it was rated ''A–1'' by Standard & Poor's Corporation and ''P–1'' by Moody's Investor Services, Inc.

5. Due to its inability to pay the principal amount of the Commercial Paper as a result of the energy crisis (the Energy Crisis),[24] PG&E unilaterally converted, dollar-for-dollar, the Commercial Paper into an interest-bearing floating rate note (*i.e.,* the Note) (also in book-entry form) in order to credit the holders of the Commercial Paper until it could resolve its difficulties. The conversion occurred on February 12, 2001. Everyone who held the Commercial Paper received Notes in the conversion, including the Account. The Note earned interest at the London Interbank Offered Rate (LIBOR), a floating rate with no fixed floor. According to the applicant, the LIBOR rate was presumably selected because it is a published rate that matches up with commercial paper rates. Although the Note had no specific maturity date, PG&E announced during a teleconference with all of its debt holders and in a subsequent news release that its plan was to pay the Note down as soon as possible. The Note is currently traded by independent brokers and is not listed on an exchange. As described below in Representation 6, no interest has been paid on the Note since PG&E's declaration of bankruptcy.

6. On April 6, 2001, PG&E declared bankruptcy and filed a voluntary petition under Chapter 11 of the Bankruptcy Code. As a result of PG&E's bankruptcy filing, the market value of the Note decreased according to verbal quotes obtained by MetLife's money traders from two independent brokers. Since the market values for all PG&E securities were trading below par and would continue to trade in that way until the bankruptcy was settled, MetLife determined that if the Account retained the Note, the value of the Account would be required to be reported below a value of $1.00 per share resulting in a loss to the Account investors. Therefore, MetLife sought permission from the NYSID to acquire the Note from the Account.

7. The transaction was subsequently approved by the NYSID on April 6, 2001, and it became effective on that date. MetLife purchased the Note from the Account for a cash payment of $16,041,857.11. This sum was the same as the par value of the Note, plus the accrued interest. The Account paid no commissions or other expenses in connection with the Sale. MetLife represents that the Sale allowed the Account to continue operation in the manner customers expected. Specifically, additions and withdrawals from the Account could continue to be made at $1.00 per share. Accordingly, MetLife requests an administrative exemption from the Department with respect to the Sale. If granted, the exemption will be effective on April 6, 2001.

8. MetLife represents that because PG&E had declared bankruptcy and purchasers would not pay face value for the Note, the purchase price was set above the market price. In this regard, MetLife has provided a letter from Gian Solomon, of the New York Money Desk of Goldman Sachs & Co. (Goldman Sachs) dated August 9, 2002 regarding the price at which the Commerical Paper would have traded on April 6, 2001. According to Mr. Solomon, Goldman Sachs did not effect any trades in the Commercial Paper on April 6, 2001. However, on April 3, 2001, Goldman Sachs effected trades in PG&E commercial paper having a scheduled maturity date of January 19, 2002, at dollar prices between $72–$74 of the par amount. Mr. Solomon notes that these dollar prices were below the face amount of such securities.

Mr. Solomon also states that Goldman Sachs has no interest in the Commercial Paper that is subject of the exemption request. Further, he represents that Goldman Sachs has no personal interest or bias with respect to the subject matter of the exemption application or the parties involved, and that Goldman Sachs has received no compensation for providing the pricing information.[25]

9. MetLife represents that the Sale resulted in an assignment of all of the Account's rights, claims and causes of action against PG&E. Accordingly, MetLife states that if the exercise of any of the foregoing rights, claims or causes of action results in its recovering from PG&E an aggregate amount that is greater than the sales price for the Note, such excess amount will be refunded to the Account (after deducting all reasonable expenses incurred in connection with the recovery).

10. In summary, it is represented that the transaction has satisfied the statutory criteria for an exemption under section 408(a) of the Act because:

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

(b) The sales price for the Note was based upon an amount representing the greater of the Note's outstanding principal balance, plus accrued interest, or the Note's fair market value as determined by independent broker-dealers.

(c) The Account did not pay any fees, commissions or other expenses in connection with the Sale.

[23] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the Note by the Account violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act. The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In this regard, the Department is not providing any opinion on whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including a plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a–1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than other comparable investments offering a similar return or result.

[24] In this regard, PG&E, along with other California utilities, was hit by soaring wholesale power costs and the state's 1996 deregulation law. Energy deregulation caused blackouts throughout California. Soaring utility rates were the subject of debate as the wholesale prices of electricity skyrocketed, jumping to an average of $30 per megawatt hour. California was the first state to deregulate its electricity market in 1996. The move was supposed to lower the bills of consumers by preventing most utilities from passing rising costs on to their customers. Under deregulation, the state's investor-owned utilities sold most of their power plants and were forced to repurchase them at higher market prices. PG&E was faced with $9 billion in debt and debt payments of $500 million in February 2001 and $1.6 billion in March 2001. PG&E, having only $500 million in cash reserves and little to no ability to borrow following rating downgrades, filed for bankruptcy on April 6, 2001.

[25] In addition to the above, MetLife represents that its money market traders obtained verbal bids for the Note on an indicative basis from three independent brokers at around the time of the Sale. According to MetLife, bids received from Goldman Sachs ranged from $57–$62 of the par value of the Note. Bids received from the Bank of America ranged from $56–$60 of the par value of the Note. Bids received from Merrill Lynch ranged from $55–$60 of the par value of the Note. MetLife further states that all of these bids were below the price that it paid for the Note.

(d) As manager of the Account, MetLife determined, at the time of such transaction, that the Sale was appropriate for, and in the best interests of, the Account, the Plans investing therein and their participants and beneficiaries.

(e) MetLife took all appropriate actions necessary to safeguard the interests of the Account and the Plans in connection with the Sale.

(f) If the exercise of any of MetLife's rights, claims or causes of action in connection with its ownership of the Note results in MetLife recovering from PG&E an aggregate amount that is greater than the sales price for such Note, MetLife will refund such excess amount to the Account.

Notice to Interested Persons

MetLife will provide notice of the proposed exemption to all interested persons by first class mail within 30 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 60 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.)

Archer Daniels Midland Company (Archer) Located in Decatur, Illinois
[Application No. D–11068]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Agrinational Insurance Company (Agrinational) in connection with insurance contracts sold by Minnesota Life Insurance Company (Minnesota Life), or any successor insurance company to Minnesota Life which is unrelated to Archer, to provide basic and supplemental life insurance benefits to participants in Archer's programs to provide such benefits to its employees (the Plans),[26] provided the following conditions are met:

(a) Agrinational—

(1) Is a party in interest with respect to the Plans by reason of a stock or partnership affiliation with Archer that is described in section 3(14) (E) or (G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state which has neither been revoked nor suspended;

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Vermont) by the Insurance Commissioner of the State of Vermont within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred; and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plans pay no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plans with respect to the direct sale of such contracts or the reinsurance thereof;

(d) In the initial year of any contract involving Agrinational, there will be immediate and objectively determined benefit to the Plans' participants and beneficiaries in the form of increased benefits;

(e) In subsequent years, the formula used to calculate premiums by Minnesota Life or any successor insurer will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

[26] Each Plan will be considered an ''employee welfare benefit plan'' as defined in section 3(1) of the Act.

(f) The Plans only contract with insurers with a rating of A or better from A. M. Best Company (Best's). The reinsurance arrangement between the insurers and Agrinational will be indemnity insurance only, *i,e.,* the insurer will not be relieved of liability to the Plans should Agrinational be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(g) Agrinational retains an independent fiduciary (the Independent Fiduciary), at Archer's expense, to analyze the transaction and render an opinion that the requirements of sections (a) through (f) have been complied with. For purposes of the proposed exemption, the Independent Fiduciary is a person who:

(1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Archer or Agrinational (this relationship hereinafter referred to as an ''Affiliate'');

(2) Is not an officer, director, employee of, or partner in, Archer or Agrinational (or any Affiliate of either);

(3) Is not a corporation or partnership; in which Archer or Agrinational has an ownership interest or is a partner;

(4) Does not have an ownership interest in Archer or Agrinational, or any of either's Affiliates;

(5) Is not a fiduciary with respect to the Plans Prior to the appointment; and

(6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an ''Independent Fiduciary,'' no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from Archer, Agrinational, or their Affiliates (including amounts received for services as Independent Fiduciary under any prohibited transaction exception granted by the Department) for that fiscal year exceeds 5 percent of that organization or individual's annual gross income from all sources for such fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow funds from Archer, Agrinational, or their Affiliates during the period that such organization or individual serves as Independent Fiduciary, and continuing for a period of six months after such organization or individual ceases to be an Independent Fiduciary, or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

Preamble

On August 7, 1979, the Department published a class exemption (Prohibited Transaction Exemption 79–41 (PTE 79–41), 44, FR 46365) which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales or life insurance, health insurance or annuity contracts with fund such plans if certain conditions are satisfied.

In PTE 79–41, the Department states its views that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction under the Act.

The Department further stated that as of the date of publication of PTE 79–41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and the unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

1. Archer is engaged in the business of procuring, transporting, storing, processing and merchandising agricultural commodities and products. It is one of the world's largest producers of oilseeds, corn and wheat. Archer also processes cocoa beans, milo, oats, barley and peanuts. Other operations include transporting, merchandising and storing agricultural commodities and products. These operations and processes produce products which have primarily two end uses: Food or feed ingredients. Each commodity processed is itself a feed ingredient as are the by-products produced during the processing of each commodity. Archer complements its own resources with a world-wide network of affiliates engaged in processing, transportation, storage and sales. Archer was incorporated under the laws of the State of Delaware in 1923 as successor to the Daniels Linseed Co., which was founded in 1902.

2. Agrinational is a wholly-owned subsidiary of Archer. Agrinational was incorporated in Vermont on September 10, 1987, and on September 21, 1987, the Commissioner of Banking and Insurance for the State of Vermont granted it a Certificate of Authority to transact the business of a captive insurance company in the State of Vermont. The only restrictions placed by the State of Vermont on the type of insurance that Agrinational may write pertain to personal motor vehicle or homeowner's insurance and to excess workers' compensation insurance under certain circumstances, and thus are not relevant to the exemption proposed herein.

3. At year end 2000, Agrinational had capital in the amount of $10,000,000, retained earnings in the amount of $22,731,920 and earned premium in the amount of $17,176,878. Agrinational presently provides insurance and reinsurance coverage for property, casualty and marine risks of Archer and its subsidiaries world-wide. In addition, Agrinational participates as a quota share reinsurer of various insurance company treaties that contain risks unrelated to Archer and its subsidiaries. The independent certified public accounting firm of Ernst & Young, LLP (EY), which prepared Agrinational's most recent audited financial statement, has served as Agrinational's auditor since its incorporation. EY will examine Agrinational's reserves on an annual basis in connection with the employee benefit business to be reinsured by Agrinational to ensure that appropriate reserve levels are maintained.

4. Archer maintains the ADM Omnibus Health and Welfare Plan for Salaried Employees and the ADM Omnibus Health and Welfare Plan for Hourly Employees (*i.e.,* the Plans) for substantially all of its salaried and hourly employees. The Plans provide both basic (the Basic Program) and supplemental (the Supplemental Program) life insurance programs. The Plans have been historically insured with Connecticut General Life Insurance Company, and, most recently, with Minnesota Life. However, Archer recently formulated a plan to utilize Agrinational for the reinsurance of benefits and has made or will make substantial improvements to the Plans in anticipation of that transaction.

5. Specifically, the new benefits are as follows:

(i) With respect to the life insurance program for salaried employees, the maximum benefit under the Basic Program has been increased from one-times base salary up to $100,000 to one-times base salary up to $1,000,000. In addition, the Basic Program will add an accelerated death benefit feature (which would provide benefits to the terminally ill) to the policy covering all participants. Finally, a non-contributory Accidental Death and Dismemberment benefit will be added to the Basic Program covering up to three times the basic life insurance benefit, subject to a schedule of amounts. All premiums under the Basic Program are fully paid by Archer. In addition, the maximum benefit under the Supplemental Program, which is employee paid, has been increased from up to four times salary with a cap of $1,000,000 to up to five times salary with a cap of $2,000,000. Dependent life insurance for the employee's spouse and children has been added on a voluntary basis. Portability of coverage has been added to all policies, so that coverage may continue at the group rates if a covered employee leaves employment. Finally, a waiver of premium provision has been added to the Supplemental and dependent coverage so in the event of the disability of the employee, coverage will continue without the payment of the premium. The new and/or enhanced benefits in the Supplemental Program are voluntary and the premiums are fully paid by the participants who elect them.

(ii) With respect to the life insurance program for hourly employees who are not covered by a collective bargaining agreement, the new non-contributory Accidental Death and Dismemberment benefit will be added to the Basic Program covering up to three times the basic life insurance benefit, subject to a schedule of amounts. All premiums under the Basic Program are fully paid by Archer. In addition, the Basic Program will add the accelerated death benefit feature (which would provide benefits to the terminally ill) to the policy covering all hourly employees who are not covered by a collective bargaining agreement. With respect to these employees, the Supplemental Program, which is employee paid, has been increased from various levels to up to five times base pay with a cap of $2,000,000, and dependent life insurance for the employee's spouse and children has been added on a voluntary basis; and

(iii) With respect to the life insurance program for hourly employees who are covered by a collective bargaining agreement, Archer cannot unilaterally implement similar improvements to those which will be made to the Programs for salaried employees and hourly employees not covered by a collective bargaining agreement. However, Archer will implement such improvements if agreed to by the unions representing the hourly employees.

In addition, Archer recently has enhanced benefits for employees by making two new benefit programs available for its salaried employees and for its hourly employees who are not covered by a collective bargaining agreement. Archer will also implement these programs for hourly employees covered by a collective bargaining agreement if agreed to by the unions representing such employees in collective bargaining. The first of the new benefits is a legal services program, which provides certain legal services through Hyatt Legal Plans, Inc., for a set premium each month. The premiums are paid by the employees through amounts deducted from their paychecks. The second new program is an auto and home insurance program, which offers eligible employees group rates for automobile, home and other personal property through Hanover Insurance Company. The premiums for this program are also paid by the employees.

6. The life insurance Plans are now insured by Minnesota Life, which currently has a rating of A++ from Best's. The applicant represents that if the Plans choose another insurer in the future, that insurer will have a rating of A or better from Best's. The applicant anticipates that upon the granting of the exemption proposed herein, Minnesota Life will enter into reinsurance agreements with Agrinational. Minnesota Life was recently acquired by Liberty Mutual Insurance Company (Liberty), an A+ rated (by Best's) carrier located in Boston, Massachusetts. Liberty is rated by Moody's as Aa3 (Excellent) and by Standard & Poor's as AA− (Very Strong).

Minnesota Life will continue to insure the Plan, with the enhanced new benefits. However, Minnesota Life will reinsure up to 100% of the risk with Agrinational. The percentage of the risk to be insured will be specified in the reinsurance agreements between Minnesota Life and Agrinational. The reinsurance agreements between Minnesota Life and Agrinational will be indemnity reinsurance only, so that Minnesota Life will not be relieved of its liability to the Plans should Agrinational be unwilling or unable to cover any liability arising from the reinsurance arrangement.

The Plans will pay no more than adequate consideration for the insurance contracts with Minnesota Life or any successor insurer. The formula used to calculate premiums by Minnesota Life or any successor insurer [27] will be similar to formulae used by other insurers providing life insurance coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer providing coverage under the Plans and its competitors with the same or a better rating providing the same coverage under comparable programs.

7. In connection with this exemption request, Agrinational has engaged the services of Milliman USA (Milliman), (formerly Milliman and Robertson, Inc.) as the Independent Fiduciary for the Plans. Milliman is an international firm of consultants and actuaries with expertise in all facets of employee benefits, including insurance. Charles M. Waldron, FSA (Mr. Waldron), a Principal and Consulting Actuary employed by Milliman, has signed the Independent Fiduciary representations on behalf of Milliman. Milliman's consultants are frequently retained to advise corporations on the insurance arrangements underlying their benefit programs and have considerable expertise in the area of reinsurance and captive insurers.

8. For purposes of demonstrating independence, Mr. Waldron has represented that:

(a) Neither he nor Milliman is an Affiliate of Archer, Minnesota Life or Agrinational;

(b) He is not an officer, director, employee of, or partner in Archer, Agrinational or Minnesota Life;

(c) Milliman is not a corporation in which Archer, Agrinational or any of the other insurers involved in the proposed transaction has an ownership interest or is a partner;

(d) Neither he nor Milliman has an ownership interest in Archer, Agrinational, or Minnesota Life, or in any Affiliate of those firms;

(e) He was not a fiduciary with respect to the Plans prior to his appointment for this transaction;

(f) He has acknowledged in writing on behalf of Milliman its acceptance of fiduciary obligations and has agreed not to participate in any decision with respect to any transaction in which either he or Milliman has an interest that might affect their fiduciary duty;

(g) The gross income received by Mr. Waldron and Milliman separately and combined from Archer, Agrinational, Minnesota Life, or their Affiliates (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department), does not exceed 5 percent of Mr. Waldron's or Milliman's gross annual income from all sources for any fiscal year; and

(h) Neither Milliman nor Mr. Waldron has acquired any property from, sold property to, or borrowed funds from Archer, Agrinational, or Minnesota Life or their Affiliates.

9. Mr. Waldron represents that Agrinational is licensed to do business in the State of Vermont and has been conducting business since 1987 insuring and reinsuring property, casualty and marine business. Agrinational's reserves for the past two (2) years have been reviewed by the actuarial services group of EY, which is a firm independent of Agrinational and Archer. Mr. Waldron has reviewed the report on the reserves and is satisfied that there are no issues to be resolved. In addition, Mr. Waldron represents that future reserves will be reviewed by a qualified actuary approved by the State of Vermont. Mr. Waldron has confirmed that Agrinational has undergone an examination by EY, an independent certified public accountant, for its last completed taxable year.

10. Mr. Waldon has concluded that, as a result of the reinsurance agreement described in representation 6, above, the Plans' risks will be 100% covered by Minnesota Life, a carrier rated A++ by Best's, even if Agrinational were unable or unwilling to cover the Plans' liabilities it is assuming as a result of the reinsurance agreement. Mr. Waldon represents that he has reviewed the terms of the proposed reinsurance agreement between Minnesota Life and Agrinational. Mr. Waldron states that the agreement provides for the risk retained by Agrinational to revert back to Minnesota Life at no further cost to the Plans should Agrinational be unable or unwilling to pay the benefits.

11. Mr. Waldron has represented that he reviewed the Plans' benefits before the reinsurance transaction and the benefits implemented in anticipation of

[27] The applicant states that any successor insurer would be a legal reserve life insurance company with assets of such a size as to afford similar protection and responsibility.

the reinsurance transaction. He has concluded that there is an immediate benefit to the Plans' participants from the reinsurance transaction. Generally all participants in the Supplemental Program receive increased benefits and options. For the Basic Program, generally all participants have received an accelerated death benefit coverage and will receive Accidental Death and Dismemberment Insurance up to three times the basic life insurance benefit. Finally, there are increased basic life insurance benefits for salaried employees with annual salaries exceeding specified amounts (e.g., $100,000).

12. Mr. Waldron makes the following representations concerning the determination of the initial premium to the Plans under the proposed arrangement. The Plans contacted Minnesota Life and were quoted a rate based on Minnesota Life's evaluation of the risk. Archer received quotes from three different companies to provide insurance coverage for the group life, supplemental life and dependent life insurance programs. From these three companies, Archer selected Minnesota Life, which was the middle one in terms of premium. Minnesota Life was 3% above the lowest cost and 7.5% below the highest cost provider. The premium paid to Agrinational is based on a reinsurance agreement where Agrinational receives a portion of the premium charged equal to the proportion of the risk that Agrinational covers. This is a typical reinsurance arrangement for life insurance products. Mr. Waldron further represents that, based upon his review, the premiums charged by Minnesota Life are similar to premiums charged by other insurers providing group life, supplemental life, and dependent life insurance under similar plans. The applicant represents that the Independent Fiduciary (i.e., either Milliman or another qualified fiduciary acting as a successor, as noted below) will confirm on an annual basis that each Plan is paying a rate comparable to that which would be charged by a comparably-rated insurer for a program of the approximate size of the Plan with comparable claims experience.

13. Milliman will represent the interests of the Plans as the Independent Fiduciary at all times.[28] Milliman will monitor compliance by the parties with the terms and conditions of the proposed reinsurance transaction, and will take whatever action is necessary and appropriate to safeguard the interests of the Plans and of their participants and beneficiaries.

14. The applicant represents that the proposed reinsurance transaction will meet the following conditions of PTE 79–41 covering direct insurance transactions:

(a) Agrinational is a party in interest with respect to the Plans (within the meaning of section 3(14)(G) of the Act) by reason of stock affiliation with Archer, which maintains the Plans;

(b) Agrinational is licensed to conduct reinsurance transactions by the State of Vermont. The law under which Agrinational is licensed requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(c) Agrinational has undergone an examination by the independent certified public accountant firm of EY for its last completed taxable year;

(d) Agrinational has received a Certificate of Authority from its domiciliary state, Vermont, which has neither been revoked nor suspended;

(e) The Plans will pay no more than adequate consideration for the insurance. In addition, in the initial year of the proposed reinsurance transaction, there will be an immediate and objectively determined benefit to the Plans' participants and beneficiaries in the form of increased benefits; and

(f) No commissions will be paid by the Plans with respect to the reinsurance arrangement with Agrinational, as described herein.

In addition, the Plans' interests will be represented by a qualified, independent fiduciary (*i.e.,* Milliman or its Successor), who has initially determined that the proposed reinsurance transactions will be in the best interests, and protective, of the Plans and their participants and beneficiaries. The Independent Fiduciary will also confirm on an annual basis that the Plans are paying a rate comparable to that which would be charged by a comparably-rated insurer for a program of the approximate size of the Plans with comparable claims experience.

15. In summary, the applicant represents that the proposed reinsurance transactions will meet the criteria of section 408(a) of the Act because: (a) The Plans' participants and beneficiaries are afforded insurance protection by Minnesota Life, a carrier rated A++ by Best's, at competitive market rates arrived at through arm's-length negotiations; (b) Agrinational, which will enter into the reinsurance agreements with Minnesota Life, is a sound, viable insurance company which has been in business since 1987; (c) the protections described in representation 14, above, provided to the Plans and their participants and beneficiaries under the proposed reinsurance transactions are based on those required for direct insurance by a ''captive'' insurer, under the conditions of PTE 79–41 (notwithstanding certain other requirements related to, among other things, the amount of gross premiums or annuity considerations received from customers who are not related to, or affiliated with the insurer);[29] (d) Mr. Waldron, acting on behalf of Milliman as the Plans' Independent Fiduciary, has reviewed the proposed reinsurance transaction and has determined that the transaction is appropriate for, and in the best interests of, the Plans and that there will be an immediate benefit to the Plans' participants as a result thereof by reason of an improvement in benefits under the terms of the Plans; and (e) Milliman will monitor compliance by the parties with the terms and conditions of the proposed reinsurance transaction, and will take whatever action is necessary and appropriate to safeguard the interests of the Plans and of their participants and beneficiaries.

For Further Information Contact: Gary H. Lefkowitz of the Department,

[28] In this regard, the applicant makes a representation regarding a successor independent fiduciary. Specifically, if it becomes necessary in the future to appoint a successor independent fiduciary (the Successor) to replace Milliman and Mr. Waldron, the applicant will notify the Department sixty (60) days in advance of the appointment of the Successor. Any Successor will have the responsibilities, experience and independence similar to those of Milliman and Mr. Waldron.

[29] The proposal of this exemption should not be interpreted as an endorsement by the Department of the transactions described herein. The Department notes that the fiduciary responsibility provisions of Part 4 of Title I of the Act apply to the fiduciary's decision to engage in the reinsurance arrangement.

Specifically, section 404(a)(1) of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of the plan. In this regard, the Department is not providing any opinion as to whether a particular insurance or investment product, strategy or arrangement would be considered prudent or in the best interests of a plan, as required by section 404 of the Act. The determination of the prudence of a particular product or arrangement must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular product or arrangement involved, including the plan's potential exposure to losses and the role a particular insurance or investment product plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties and responsibilities (see 29 CFR 2550.404a–1).

telephone (202) 693–8546. (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 26th day of February, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–4921 Filed 2–28–03; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003–03; Exemption Application No. D–11095 et al.]

Grant of Individual Exemptions; Reagent Chemical & Research, Inc. Employees' Profit Sharing Plan and Trust (the Plan)

AGENCY: Employee Benefits Security 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.

Reagent Chemical & Research, Inc. Employees' Profit Sharing Plan and Trust (the Plan); Located in Middlesex, New Jersey

[Prohibited Transaction Exemption No. 2003–03; Exemption Application No. D–11095]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of a 73.4815% tenancy-in-common interest (the Property Interest) by the Plan to Brian Skeuse, a vice president and shareholder of Reagent Chemical & Research, Inc., and his spouse, Jan Skeuse, parties in interest with respect to the Plan, provided that the following conditions are satisfied:

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

(b) The Plan receives the greater of either: (i) $180,029.68; or (ii) the current fair market value for the Property Interest established at the time of the sale by an independent qualified appraiser; and

(c) The Plan pays no commissions or other expenses associated with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on December 30, 2002 at 67 FR 79654.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

Michigan Conference of Teamsters Welfare Fund (the Plan); Located in Detroit, MI

[Prohibited Transaction Exemption 2003–04; Exemption Application No. L–11058]

Exemption

The restrictions of sections 406(a)(1)(A) and (D) of the Act shall not apply to the cash sale, by the Plan, of certain parcels of real estate (the Property) to the Detroit Teamsters Temple Association (DTTA), a party in interest with respect to the Plan and a lessee of a portion of such Property.