Phone: 413/545–6641, or via e-mail at: *Loomis@nrc.umass.edu*. Also, you may send comments to Dr. James Gramann, NPS Social Science Program, 1201 ''Eye'' St. (2300), Washington, DC 20005 or via e-mail at *James_Gramann@partner.nps.gov*. All responses to this notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

To Request a Draft of Proposed Collection of Information Contact: David K. Loomis, Ph.D., Department of Natural Resources Conservation, University of Massachusetts, 160 Holdsworth Way, Amherst, MA 01003: or via phone at Phone: 413/545–6641, or via e-mail at: *Loomis@nrc.umass.edu*; or Cliff McCreedy, Marine Resource Management Specialist, National Park Service, 1201 Eye Street, NW., 11th Floor (2301), Washington, DC 20005; or via phone at 202/513–7164, or via e-mail at *cliff_mccreedy@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. James Gramann, NPS Social Science Program, 1201 ''Eye'' St. (2300), Washington, DC 20005; or via phone at 202/513–7189; or via e-mail at *James_Gramann@partner.nps.gov*. You are entitled to a copy of the entire ICR package free of charge.

SUPPLEMENTARY INFORMATION:

Title: Social Science Assessment and Geographic Analysis of Marine Recreational Uses and Visitor Attitudes at Dry Tortugas and Biscayne National Parks.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: New Collection.

Description of Need: The National Park Service (NPS) Act of 1916, 38 Stat 535, 16 USC 1, *et seq.,* requires that the NPS preserve national parks for the use and enjoyment of present and future generations. The National Park Service is developing a visitor-focused program to reduce recreational impacts on marine resources in certain ocean units of the National Park System. The program aims to remove and mitigate degradation of ocean resources by enabling visitors to avoid boat grounding, anchor damage, fishing violations, wildlife disturbance, invasive species introduction, pollution and other impacts from boating, fishing, scuba diving, snorkeling and kayaking. Coral reefs, seagrass beds, fish, birds, marine mammals and other sensitive habitats and wildlife are particularly vulnerable to damage or disturbance. However, most visitors will use marine resources responsibly if provided appropriate information and navigational tools to encourage safe and environmentally sound behavior. Dry Tortugas National Park (DRTO) has adopted various anchoring or fishing prohibitions, and Biscayne National Park (BISC) is developing a Fisheries Management Plan and amendments to the Park General Management Plan. In order to succeed, these measures require a full understanding of local visitor use patterns and attitudes and a strategy to incorporate this information into resource management, education and enforcement efforts. The project will survey visitor attitudes, perceptions and beliefs concerning marine resources and provide a geospatial assessment of geographic locations of visitor uses at DRTO and BISC. The reports will be used to assess levels and patterns of recreational uses in these parks and develop and evaluate strategic communication efforts. This information will support efforts to address marine recreational impacts on sensitive habitats and marine resources, and guide strategies to reduce these impacts through education and outreach, navigational aids, and enhanced compliance with rules and regulations, working closely with the public and marine recreational communities.

Automated data collection: This information will be collected by identifying voluntary participants and providing surveys to be completed and returned via postal mail or electronic mail.

Description of respondents: Visitors to Biscayne and Dry Tortugas National Parks, Florida who visit between February 1st, 2010 and November 1st, 2010.

Estimated average number of respondents: We will contact 5,000 individuals stratified by month and expect 2,500 or 50 percent, to agree to respond.

Estimated average number of responses: We expect to collect 2,500 completed surveys.

Estimated average burden hours per response: 3 minutes for non-respondents and 23 minutes for respondents.

Frequency of Response: 1 time per respondent.

Estimated total annual reporting burden: 1,083 hours.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 29, 2009.

Cartina Miller,

NPS, Information Collection Clearance Officer.

[FR Doc. E9–10482 Filed 5–5–09; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Development of Voluntary Standard (ANSI/ROV—1—200X) for Recreational Off-Highway Vehicles

Correction

In notice document E9–9395 appearing on page 18747 in the issue of April 24, 2009, make the following corrections:

1. On page 18747, the subject is corrected to read as set forth above.

2. On the same page, in the second column, in the final paragraph, ''September 12, 200 (7 FR 53043)'' is corrected to read ''September 12, 2008 (73 FR 53043)''.

[FR Doc. Z9–9395 Filed 5–5–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Nos. and Proposed Exemptions; D–11498, MarkWest Energy Partners, L.P.; D–11508, Barclays Global Investment, N.A. and Its Affiliates and Successors (BGI) and Barclays Capital Inc. and Its Affiliates and Successors (BarCap) (collectively Applicants); and D–11523, The Bank of New York Mellon Corporation (BNYMC) and Its Affiliates (Collectively, BNY Mellon), et al.]

Notice of Proposed Exemptions

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 (ERISA or 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–5700, 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: *moffitt.betty@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.

MarkWest Energy Partners, L.P. Located in Denver, Co

[Application No. D–11498]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

I. Retroactive Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 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) and 4975(c)(1)(E) of the Code,[1] shall not apply, effective February 21, 2008:

(a) To the acquisition by the individually, directed accounts (the Account(s)) of participants in the MarkWest Hydrocarbon, Inc. 401(k) Savings and Profit-Sharing Plan (the Plan), of publicly traded partnership units (the Units) issued by MarkWest Energy Partners, LP (Partners), the parent of MarkWest Hydrocarbon Inc. (Hydrocarbon), which is the sponsor of the Plan, as a result of the conversion of the common stock of Hydrocarbon (the Stock) held by the Plan into Units, pursuant to a plan of Redemption and Merger (the Merger); and

(b) to the holding of such Units by the Accounts in the Plan; provided that the conditions, as set forth, below, in this section I(b)(1) through (13), and the general conditions, as set forth, below, in section III of this proposed exemption, were satisfied at the time the transaction, described, above, in sections I(a) of this proposed exemption, was entered into and the transaction, described, above, in section I(b) of this proposed exemption occurred:

(1) The past acquisition and holding of the Units by the Accounts in the Plan occurred in connection with the conversion of the Stock, pursuant to the terms of the Merger, which was the result of an independent act of Hydrocarbon, as a corporate entity;

(2) All shareholders of the Stock, including the participants in the Accounts in the Plan, were treated in a like manner with respect to all aspects of the redemption and conversion of the Stock, pursuant to the terms of the Merger;

(3) The past acquisition and holding of the Units by the Accounts in the Plan occurred in accordance with provisions in the Plan for individual participant direction of the investment of the assets of such Accounts;

(4) The past acquisition and holding of the Units were each one-time transactions, and the dispositions of the Units by the Accounts in the Plan occurred in a series of transactions for cash on the New York Stock Exchange (NYSE);

(5) The participants in the Accounts in the Plan were provided with all shareholder rights and with the opportunity to direct the trustee of the Plan to vote ''for'', ''against,'' or ''abstain'' with regard to the redemption and conversion of the Stock held in the Accounts in the Plan, pursuant to the terms of the Merger.

(6) The decision as to which compensation package to accept, in connection with the redemption and conversion of the Stock held in Accounts in the Plan, was made in accordance with the directions of the individual participants in whose Accounts such Stock was held, or, in the case of Accounts in the Plan for which no participant direction was given, the decision as to which compensation package to accept, in connection with the redemption and conversion of the Stock held in such Accounts in the Plan, was made in accordance with the directions of an independent, qualified fiduciary (the I/F), acting on behalf of such Accounts;

(7) The Units acquired, as a result the conversion of the Stock held in the Accounts in the Plan, pursuant to the

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

terms of the Merger, were held in such Accounts for no more than a period of sixty (60) days after such Units were acquired by such Accounts;

(8) The Accounts in the Plan disposed of all of the Units that such Accounts acquired as a result of the conversion of the Stock; and such dispositions occurred on the NYSE in a series of blind transactions for cash resulting in a weighted average price per Unit of no less than $32.394,

(9) The cash proceeds from such dispositions of the Units by the Accounts in the Plan were distributed thereafter to each of the Accounts based on the number of Units held in each such Account;

(10) The decision to dispose of the Units, acquired by the Accounts in the Plan as a result of the conversion of the Stock was made by the I/F, acting on behalf of each such Account;

(11) The Accounts in the Plan did not pay any fees, commissions, transaction costs, or other expenses in connection with the redemption of the Stock by Hydrocarbon, the conversion of the Stock into Units, the acquisition and holding of such Units by such Accounts in the Plan, or the disposition of the Units on the NYSE ;

(12) At the time each of the transactions, described, above, in sections I(a) and I(b) of this proposed exemption occurred, the individual participants whose Accounts in the Plan engaged in each such transaction, or the I/F, acting on behalf of Accounts in the Plan for which no participant direction was given, determined that each such transaction was in the interest of the participants and beneficiaries of such Accounts; and

(13) The I/F took all appropriate actions necessary to safeguard the interests of the Accounts in the Plan, in connection with the transactions, described, above, in sections I(a)and I(b) of this proposed exemption.

II. Prospective Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(E) and 406(a)(2) of the Act shall not apply, effective, as of the date a final exemption is published in the **Federal Register**, to:

(a) The purchase of Units in the future by the Accounts in the Plan, and

(b) The holding of such Units by the Accounts in the Plan, provided that the conditions, as set forth below, in this section II(b)(1) through (8), and the general conditions, as set forth, below, in section III of this proposed exemption, are satisfied at the time the transaction, described, above, in section II(a) of this proposed exemption is entered into, and at the time the transaction, described, above, in section II(b) of this proposed exemption occurs:

(1) The decision by the Accounts in the Plan as to whether to engage in the purchase, the holding, or the sale of the Units shall be made by the individual participants of the Accounts in the Plan which engage in such transactions;

(2) Hydrocarbon, rather than the Accounts in the Plan, shall bear any fees, commissions, expenses, or transaction costs, with respect to the purchase, holding, or sale of the Units;

(3) Each purchase and each sale of any of the Units shall occur only in blind transactions for cash on the NYSE at the fair market value of such Units on the date of each such purchase and each such sale;

(4) Each purchase and each sale of any of the Units shall occur on the same day (or if such day is not a trading day, the next day) as the direction to purchase or to sell the Units is received by the administrator of the Plan from the applicable participant of an Account which is engaging in such purchase or such sale;

(5) The terms of each purchase and each sale are at least as favorable to the Account as terms generally available in comparable arm's-length transactions between unrelated parties;

(6) Prior to the purchase by an Account in the Plan of any Units, Partners provides the participant who is directing the investment of such Account in the Units with the most recent prospectus describing the Units, and the most recent quarterly statement, and annual report, concerning Partners, and thereafter, provides such participant with updated prospectuses on the Units, and updated quarterly statements, and annual reports of Partners, as published;

(7) Prior to a participant of an Account in the Plan engaging in the purchase of any Units, Partners must provide the following disclosures to such participant. The disclosure must contain the following information regarding the transactions and a supplemental disclosure must be made to the participant directing the covered investments if material changes occur. This disclosure must include:

(A) Information relating to the exercise of voting, tender, and similar rights with respect to the Units;

(B) The exchange or market system where the Units are traded; and

(C) A statement that a copy of the proposed and final exemption shall be provided to participants upon request.

(8) Each participant in an Account in the Plan shall have discretionary authority to direct the investment of such Account:

(A) To sell the Units purchased by such Account no less frequently than monthly, and

(B) to vote, tender, and exercise similar rights with respect to the Units held in such Account.

III. General Conditions

(a) Partners or its affiliates maintain, or cause to be maintained, for a period of six (6) years from the date of each of the covered transactions such records as are necessary to enable the persons described, below, in section III(b)(1), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to the Plan which engages in the covered transactions, other than Partners and its affiliates, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination, as required, below, by section III(b)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Partners and its affiliates, such records are lost or destroyed prior to the end of the six-year period.

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

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

(B) Any fiduciary of the Plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

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

(D) Any participant or beneficiary of the Plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in section III(b)(1)(B)–(D) shall be authorized to examine trade secrets of Partners and its affiliates, or commercial

or financial information which is privileged or confidential; and

(3) Should Partners or its affiliates refuse to disclose information on the basis that such information is exempt from disclosure, Partners or its affiliates shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Summary of Facts and Representations

1. The Plan is a 401(k) defined contribution profit-sharing plan, established on August 1, 1993. Fidelity Management Trust Company (Fidelity) with offices in Boston, Massachusetts is the trustee for the Plan.

Full-time permanent employees of Hydrocarbon are eligible to participate in the Plan. There are an estimated 441 participants and beneficiaries in the Plan. Individual Accounts are maintained for each participant in the Plan. Each participant's Account is credited with the participant's contribution, non-discretionary matching contributions made by Hydrocarbon, any allocations of discretionary contributions made by Hydrocarbon, and any earnings or losses and expenses, which are allocated based on the balance in each participant's Account.

Participants direct the investment of their contributions into various investment options offered by the Plan. The Plan currently offers mutual funds and a collective trust fund as investment options. As of September 9, 2008, the approximate aggregate fair market value of the total assets of the Plan was $23,058,075.

Prior to the consummation of the Merger, discussed in greater detail below, the Plan permitted investments in shares of the common Stock of Hydrocarbon, which at that time was publicly traded. It is represented that shares of such Stock are ''qualifying employer securities,'' pursuant to section 407(d)(5) of the Act.[2]

Immediately prior to the Merger, the Plan held approximately 137 million shares of Hydrocarbon Stock, representing 2 percent (2%) of the outstanding shares of such Stock. As of December 31, 2007, the value of the Hydrocarbon Stock represented approximately 49 percent (49%) of the aggregate value of the assets of the Plan. After the effective date of the Merger, Hydrocarbon Stock was delisted from the American Stock Exchange, and the Stock was eliminated as an investment option under the Plan.

2. Hydrocarbon, the sponsor and named fiduciary of the Plan, is the applicant (the Applicant) for this proposed exemption. Hydrocarbon was founded in 1988 as a partnership and later incorporated in the state of Delaware. Currently, Hydrocarbon has offices located in Denver Colorado. Hydrocarbon completed an initial public offering of its common Stock in 1996.

3. On January 25, 2002, Hydrocarbon formed Partners, a master limited partnership with MarkWest Energy, GP, L.L.C., as the general partner (the GP). As of December 31, 2006, Hydrocarbon owned a 17 percent (17%) interest in Partners and an 89.7 percent (89.7%) ownership interest in the GP.

Partners is a Delaware limited partnership, engaged in the gathering, transportation and processing of natural gas, the transportation, fractionation, and storage of natural gas liquids, and the gathering and transportation of crude oil. Partners conducts business in the southwest, northeast, and the Gulf Coast of the United States.

Partners does not have any employees. Employees of Hydrocarbon operate Partner's facilities and provide general and administrative services. As of September 28, 2007, Hydrocarbon employed approximately 318 people for these purposes.

4. On September 5, 2007, Hydrocarbon entered into a Plan of Redemption and Merger with Partners and with MWEP, L.L.C. (MWEP), which is a wholly-owned subsidiary of Partners. The terms of the Merger were negotiated between Hydrocarbon and Partners. It is represented that no shareholder was treated in a different manner, pursuant to the terms of the Merger. On February 21, 2008, the Merger was consummated. Accordingly, as a result of the Merger, MWEP merged with and into Hydrocarbon, and Hydrocarbon became a direct wholly-owned subsidiary of Partners.

It is represented that, as minority shareholders, the Accounts in the Plan did not have the ability to materially influence the structure of the Merger. It is represented that under the terms of the Plan, voting rights to the Stock were passed through to participants in Accounts in the Plan. Accordingly, the participants in the Accounts in the Plan were provided with shareholder rights to vote ''for'' or ''against,'' or ''abstain'' with regard to the Merger and to elect the form of consideration such Accounts would receive as a result of the Merger. The deadline for the exercise of such rights was February 13, 2008.

Under the terms of the Merger, shareholders of the Stock, including the participants of Accounts in the Plan, were permitted to elect to receive consideration for their shares of Stock in the form of: (a) An exchange of all shares of Stock attributable to an Account in the Plan for a stated consideration of $20 in cash and 1.285 Units per share of Stock; (b) an exchange of all shares of Stock attributable to an Account in the Plan for 1.905134 Units per share of Stock, (c) an exchange of all shares of Stock attributable to an Account in the Plan for $61.442663 of cash per each share of Stock, or (d) an exchange of a specific portion of the shares of Stock attributable to an Account in the Plan for cash and the balance in Units. It is represented that Stock exchanged for cash was redeemed by Hydrocarbon immediately prior to the Merger.

As a result of the Merger, it is represented that shareholders of the Hydrocarbon Stock received in the aggregate consideration of approximately 15,400,000 Units and $240,000,000 in cash. Specifically, the Accounts in the Plan exchanged 229,372 shares of Stock for 294,743 Units and received approximately $4.6 million in cash.[3]

It is represented that the cash payments were made to the Accounts in the Plan through a redemption process in which no brokerage fees were paid. In order to accommodate the redemption of the Stock, the Plan adopted an amendment to add a money market fund, Fidelity Retirement Money Market Portfolio, as an investment option. All cash proceeds from the redemption of the Stock were directed into this money market fund for each participant in the Accounts in the Plan.

Units acquired by the Accounts in the Plan as a result of the Merger were permitted to remain in the Plan for up to sixty (60) days from the date of such

[2] The Department, herein, is not opining as to whether the Hydrocarbon Stock satisfies the definition of ''qualifying employer securities'', as set forth in section 407(d)(5) of the Act, nor is the Department, herein, providing any relief from Title I or Title II of the Act for the acquisition and holding of such Stock by the Plan.

[3] In the opinion of the Applicant, the cash portion of the consideration received by the Accounts in the Plan, as a result of the redemption of the Stock held by such Accounts in the Plan, is statutorily exempt, pursuant to section 408(e) of the Act. Section 408(e) of the Act provides that a plan may sell ''qualifying employer securities,'' to a party in interest, provided the plan receives adequate consideration, and no commission is charged. The Department, herein, is offering no view, as to whether the cash redemption of the Hydrocarbon Stock held in the Accounts in the Plan satisfied the requirements of the statutory exemption provided under section 408(e) of the Act. The Department, herein, is not providing any exemptive relief, with respect to such redemption of such Stock by the Accounts in the Plan.

acquisition. During this period of time, it is represented that the Units in the Accounts in the Plan were held by an independent trustee, other than Fidelity. In this regard, Banker's Trust Company (Banker's) was appointed to act as directed trustee to receive the Units on behalf of the Accounts in the Plan. It is further represented that the participants in the Accounts in the Plan were not permitted to direct any activity with respect to these Units during this sixty (60) day period.

Hydrocarbon retained an independent, qualified, fiduciary, as discussed in greater detail below, to direct the dispositions of the Units within the 60 day period from the date such Units were acquired by such Accounts. It is represented that all Units in the Accounts in the Plan had been sold by April 4, 2008. The proceeds from the dispositions of the Units received by each participant's Account equaled the number of Units previously held in each such participant's Account, multiplied by $32.394, which is the weighted average sales price of all Units sold from the Plan in a series of blind transactions for cash on the NYSE. The proceeds from the sale of the Units were directed to the money market fund in the appropriate participants' Accounts. The participants in the Account in the Plans did not pay any fees, commissions or similar charges with respect to the disposition of the Units on the NYSE.

6. The Units of Partners are limited partnership units. Such Units are publicly traded on the NYSE under the symbol MWE. As of the date the application for exemption was submitted to the Department, there were 56,639,952 Units outstanding. The average daily trading volume for the Units is approximately 120,000. The Applicant maintains that for purposes of regulation by the Securities and Exchange Commission and the rules of the NYSE, the Units are similar to publicly traded securities.

It is represented that the Units are securities under federal securities law and constitute ''employer securities'' under section 407(d)(1) of the Act.[4] However, the Units do not satisfy the definition of ''qualifying employer securities'' under the section 407(d)(5) of the Act.[5] Because the Units are not qualifying employer securities, the Plan could not have acquired the Units in the past, in connection with the conversion of the Stock into Units, pursuant to the Merger, without violating section 406(a)(1)(A) and 406(a)(1)(E) of the Act and 4975(c)(1)(A) of the Code and cannot purchase the Units on the NYSE in the future without violating sections 406(a)(1)(E) the Act. For the same reason, the Plan could not have held the Units in the past and cannot hold the Units in the future, without violating section 406(a)(2) of the Act.

It is represented that qualifying employer security investments are commonly offered by employers when designing 401(k) plans. In the opinion of the Applicant, there is no valid public policy reason to deny employees of a publicly traded partnership a similar investment opportunity. It is represented that, if the requested exemption is granted, Hydrocarbon will amend the Plan in all necessary respects to provide for the prospective purchase and holding of the Units.[6]

8. As the employer any of whose employees are covered by the Plan, Hydrocarbon is a party in interest with respect to the Plan, pursuant to section 3(14)(C) of the Act. As the owner of Hydrocarbon, Partners is a party in interest with respect to the Plan, pursuant to section 3(14)(E). Fidelity, as trustee, Hydrocarbon, the named fiduciary, and Banker's, the directed trustee, are fiduciaries with respect to the Plan, pursuant to section 3(14)(A) of the Act.

9. Hydrocarbon is seeking an exemption, effective February 21, 2008, for the past acquisition by the Accounts of the Units issued by Partners, as a result of the conversion of the Stock into Units, pursuant to the Merger, and the holding of such Units by the Accounts in the Plan. Accordingly, Hydrocarbon has requested retroactive relief from the restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), and 406(b)(2) of the Act.

Further, Hydrocarbon and the Plan desire an exemption in order to make the Units available in the future to the employees of Hydrocarbon through the Accounts of participants in the Plan. Specifically, the Applicant requests relief to permit the Accounts in the future to purchase Units for cash in blind transactions on the NYSE and to hold such Units. Accordingly, prospective relief from the restrictions of 406(a)(1)(E) and 406(a)(2) of the Act has been requested.

10. It is represented that the past acquisition and holding of the Units, pursuant to the Merger were feasible in that the past acquisition and holding of the Units were each one-time transactions.

11. It is represented that the past acquisition and holding of the Units by the Accounts in the Plan provided sufficient safeguards for such Accounts and for the participants and beneficiaries of such Plan. In this regard, the past transactions occurred, in connection with the Merger, in which all shareholders of the Stock, including the Accounts in the Plan, were treated in like manner with respect to all aspects of the redemption and conversion of the Stock. The participants in the Accounts in the Plan were provided with shareholder rights and with the opportunity to direct the trustee of the Plan to vote ''for,'' ''against,'' or ''abstain'' with regard to the redemption and conversion of the Stock held in the Accounts in the Plan, pursuant to the Merger. The decision as to which compensation package to accept, in connection with the redemption of the Stock held in Accounts in the Plan, was made in accordance with the directions of the individual participants in whose Accounts such Stock was held. Furthermore, the decision to redeem for cash the Stock held in Accounts in the Plan for which no participant direction was received, and the decision to dispose of all of the Units in the Accounts in the Plan for cash on the NYSE within a period of no more than sixty (60) days was made by the I/F.

12. It is represented that on August 17, 2007, well in advance of the Merger, Hydrocarbon retained Consulting Fiduciaries, Inc. (CFI), located in Northbrook, Illinois, to serve as the I/F acting on behalf of the Plan. When hired, CFI acknowledged that it is a fiduciary with respect to the Plan, as that term is defined in the Act.

CFI is registered as an investment adviser under the Investment Advisers Act of 1940. CFI is qualified in that it provides professional independent fiduciary decision making, consultation, and alternative dispute resolution services to plans, plan sponsors, trustees, and investment advisers. David L. Heald, JD (Mr. Heald) and Mr. Seymour R. Zilberstein (Mr. Zilberstein)

[4] Section 407(d)(1) of the Act defines the term, ''employer security,'' as ''a security issued by an employer of employees covered by the plan, or by an affiliate of such employer.''

[5] Section 407(d)(5) of the Act defines the term, ''qualifying employer security,'' as an employer security which is stock, a marketable obligation (as defined in subsection (e)), or an interest in certain publicly traded partnerships.

[6] Section 29 CFR 2550.404c–1(d)(2)(ii)(E)(4)(i) provides that in order for the limitation on liability of plan fiduciaries under section 404(c) of the Act to apply, the securities must be qualifying employer securities, as defined in section 407(d)(5) of the Act. Because the Units are not qualifying employer securities, as defined in section 407(d)(5) of the Act, the relief afforded by section 404(c) of the Act would not be available to Hydrocarbon, the sponsor of the Plan. The Department notes that the fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary from the general fiduciary responsibility provisions of section 404 of the Act.

are the founding principals of CFI. It is represented that Mr. Heald's and Mr. Zilberstein's qualifications include over 37 years and 35 years, respectively, of legal and management experience with trust companies and institutional investment advisers. Mr. Heald is also a Charter Fellow of the American College of Employee Benefits Counsel. Both Mr. Heald and Mr. Zilberstein are active in professional associations.

CFI was retained to: (a) Review and evaluate the Merger, (b) direct the trustee of the Plan to take appropriate action (including the execution of any pass-through voting procedures, if necessary), (c) make an election on the form of consideration for those Accounts in the Plan for which no participant direction was received, and (d) to the extent any Units were acquired in the Merger, to ensure that such Units were disposed of in a timely and prudent manner. It is represented that CFI had full discretion and was fully empowered to act on behalf of the Plan in determining what action to take with respect to the Merger, and to direct the trustee. In the event of a pass-through vote, CFI had discretion to determine how to vote any unallocated shares of Stock and any allocated shares of Stock held in the Plan for which no participant direction was received and to direct the trustee accordingly. Upon completion of its assignment, CFI provided a written report to the Plan summarizing its activities, including, but not limited to, a review of the process undertaken by CFI, the issues considered, and the information reviewed in formulating the conclusions reached.

It is represented that in addition to the proxy package provided to each participant of the Accounts in the Plan, CFI provided a notice to each such participant that described CFI's role, its process of consideration, and the position it would take with respect to voting and to electing the form of consideration to be received from the Merger. CFI also informed participants that any Units received as a result of the Merger consideration would be sold on the public market and that there could be no guarantee as to the price that would be received in such sale. It is represented that participants returned voting directions with respect to 69,742 shares of Stock, leaving 165,733 shares of Stock to be voted by CFI. It is represented that on February 19, 2008, CFI directed the vote on behalf of the Plan in favor of the Merger and elected to receive the maximum amount of cash consideration for the Stock. On February 21, 2008, it was announced that the Merger had been approved. On February 26, 2008, it was announced that the cash consideration had not been oversubscribed, so any shareholder, including the Accounts in the Plan, electing all cash would receive all cash. Subsequently, CFI received information from Fidelity that the Plan had received approximately 71,994 Units, as part of the Merger consideration elected by participants. Pursuant to CFI's direction, the Units were sold in the open market receiving total proceeds of $2,332,176 or $32.394 per Unit which was the equivalent of $61.71 per each share of Stock converted into Units.

13. CFI, acting as independent fiduciary for the Plan, determined that the Merger was fair and in the best interest of the Plan. In reaching this decision, CFI undertook a process of review which included visits with the management of Hydrocarbon, review of relevant documents regarding the business of Hydrocarbon, and the Merger, discussions with outside advisors and consultants to Hydrocarbon, and an analysis of the terms of the Merger. In addition, CFI on September 2, 2007, retained the services of Stout Risius Ross, Inc. (SRR) to act as independent financial advisor in connection with the Merger, to perform a financial analysis, and to issue a fairness opinion with respect to the Merger.

SRR is a financial advisory firm specializing in business valuations, investment banking, and restructuring and performance improvement. SRR's business valuation practice provides valuations of privately held business and business interests for all purposes. It is represented that SRR is qualified in that it has provided financial advisory services for more than 100 employee benefit plan clients.

SRR represents that it is independent in that the professional fees for the services rendered in connection with the transactions described in section I(a) and I(b) of this proposed exemption were not contingent upon the opinion expressed in their report. Further, neither SRR nor any of its employees has a present or intended financial relationship with or interest in the Plan, Hydrocarbon, or Partners.

In order to assess the fairness of the terms and conditions of the Merger, SRR prepared a valuation analysis of Hydrocarbon and Partners (ignoring the effects of the Merger) to determine if the publicly traded price of each entity was a reasonable representation of its value. In addition, SRR prepared a valuation analysis of Partners on a post-merger basis, to assess the value of the Units following the Merger, because part of the consideration was in the form of Units.

In performing its valuation analysis, SRR considered several valuation approaches, including the Income Approach, the Market Approach, and the Asset-Based Approach. Specifically, after giving consideration to the facts and circumstances surrounding Hydrocarbon and Partners, it is represented that SRR relied on the Guideline Company Method (a form of the Market Approach) and the Discounted Cash Flow Method (a form of the Income Approach).

In a written report issued September 28, 2007, SRR concluded that: (a) The consideration received by the Plan for its Hydrocarbon Stock was not less than the fair market value of such shares; and (b) the overall terms and conditions of the Merger were fair to the Plan from a financial point of view. In the opinion of SRR, the Merger would create value for the Plan, because the consideration received for the shares of Stock held by the Plan was worth at least 20 percent (20%) more than the publicly traded value of those shares (prior to the announcement of the Merger).

14. It is represented that the prospective transactions are feasible in that Hydrocarbon will amend the Plan in all necessary respects to provide for the purchase and holding of the Units in the future. Further, Hydrocarbon will bear the cost of filing the application and the cost of notifying interested persons.

15. It is represented that there are sufficient safeguards to permit the transactions for which prospective relief is requested. In this regard, future decisions to purchase, to hold, and to sell the Units will be made by the participants of the Accounts in the Plan no less frequently than monthly. Prior to the purchase of Units by the Account in the Plan, participants who are directing such investment in Units will receive the most recent copies of the prospectus of the Units, and the most recent quarterly statements, and annual report of Partners and updates, as published. Prior to purchase, and subsequent to purchase, if material changes occur, disclosures to participants in the Accounts of the Plan who are directing the investment in the Units will include information relating to the exercise of voting, tender, and similar rights with respect to the Units, the exchange on which the Units are traded, and a copy of the proposed and final exemption, upon request. In addition, participants in the Account in the Plan which holds Units shall have the same rights as all other holders of Units. These rights include voting rights, as set forth in the

Third Amended and Restated Agreement of Limited Partnership of MarWest Energy Partners, L.P.

The imposition of a 20 percent (20%) limitation on the amount of assets of each Account in the Plan which can be comprised of Units will also insure that each Account will not become unduly concentrated in Units.

It is further represented that because the Units are publicly traded on the NYSE, a ready market for the Units exists. Accordingly, in the opinion of the Applicant the Units have sufficient liquidity and market-pricing protections. It is represented that the fact that the Units are traded on the NYSE will insure that each participant's Account in the Plan will receive arm's length terms. Further, the fair market value for the Units, whether the Plan purchases or sells such Units, will be determined by the price of such Units on the NYSE.

Hydrocarbon, rather than the Accounts in the Plan, shall bear any fees, commissions, expenses, or transaction costs, with respect to the purchase, holding, or sale of the Units. It is represented that when the Accounts in the Plan previously provided for the purchase of Stock and when the Accounts in the Plan disposed of the Units in the past, the broker was Fidelity. Fidelity is not an affiliate of Partners and no fees or other amounts were shared with Partners. A broker has not yet been selected for the purpose of future purchases or sales of the Units on the NYSE by the Accounts in the Plan. If the proposed exemption is granted and the Accounts in the Plan are permitted to purchase and sell Units on the NYSE, it is represented that no affiliate of Partners will be used as a broker, and no fees or other amounts will be shared with Partners.

16. In the opinion of the Applicant, the purchase and holding of the Units, for which prospective relief is requested, are in the interest of Accounts in the Plan. In this regard, such transactions in the future will enable employees of Hydrocarbon to share in the growth of Partners and provide such employees with a more generally efficient and inexpensive means to participate in the growth of and profitability of the energy sector of the economy.

17. In summary, the Applicant represents that the retroactive transactions and the prospective transactions which are the subject of this proposed exemption satisfy the statutory criteria of section 408(a) of the Act and section 4975 of the Code because:

(a) The past acquisition and holding of the Units by the Accounts in the Plan occurred in connection with the conversion of the Stock, pursuant to the terms of the Merger, which was the result of an independent act of Hydrocarbon, as a corporate entity;

(b) All shareholders of the Stock, including the participants in the Accounts in the Plan, were treated in like manner with respect to all aspects of the redemption and conversion of the Stock, pursuant to the terms of the Merger;

(c) The past acquisition and holding of the Units by the Accounts in the Plan occurred in accordance with Plan provisions for individual participant direction of investments of the assets of such Accounts;

(d) The past acquisition and holding of the Units were each one-time transactions, and the dispositions of the Units by the Accounts in the Plan occurred in a series of transactions on the NYSE;

(e) The participants in the Accounts in the Plan were provided with all shareholder rights and with the opportunity to direct the trustee of the Plan to vote ''for,'' ''against,'' or ''abstain'' with regard to the redemption and conversion of the Stock held in the Accounts in the Plan, pursuant to the Merger;

(f) The decision as to which compensation package to accept, in connection with the redemption and conversion of the Stock held in Accounts in the Plan, was made in accordance with the directions of the individual participants in whose Accounts such Stock was held, or, in accordance with the directions of the I/F, acting on behalf of Accounts for which no participant direction was given;

(g) The Units acquired, as a result of the conversion of the Stock held in the Accounts in the Plan, pursuant to the terms of the Merger, were held in such Accounts for no more than a period of sixty (60) days after such Units were acquired by such Accounts;

(h) The Accounts in the Plan disposed of all of the Units that such Accounts acquired as a result of the conversion of the Stock; and such dispositions occurred on the NYSE in a series of blind transactions for cash resulting in a weighted average price per Unit of no less than $32.394;

(i) The cash proceeds from such dispositions of the Units by the Accounts in the Plan were distributed thereafter to each of the Accounts based on the number of Units held in each such Account;

(j) The decision to dispose of the Units, acquired by the Accounts in the Plan as a result of the conversion of the Stock was made by the I/F, acting on behalf of each such Account;

(k) The Accounts in the Plan did not pay any fees, commissions, transaction costs, or other expenses in connection with the redemption of the Stock by Hydrocarbon, the conversion of the Stock into Units, and acquisition and holding of such Units by such Accounts in the Plan or the disposition of the Units on the NYSE;

(l) At the time each of the transactions, described, above, in sections I(a) and I(b) of this proposed exemption occurred, the individual participants of the Account that engaged in each such transaction, or the I/F, acting on behalf of the Accounts for which no participant direction was given, determined that each such transaction was in the interest of the participants and beneficiaries of such Accounts;

(m) The I/F took all appropriate actions necessary to safeguard the interests of the Accounts in the Plan, in connection with the transactions, described, above, in sections I(a) and I(b) of this proposed exemption;

(n) Hydrocarbon, rather than the Accounts in the Plan, will bear any fees, commissions, expenses, transaction costs, or other expenses with respect to the prospective purchase, holding, or sale of the Units;

(o) The decision by the Accounts in the Plan as to whether to engage in the prospective purchase, holding, or sale of the Units will be made by the individual participants of the Accounts in the Plan which engage in such transactions;

(p) Each purchase and each sale of any of the Units in the future will occur only in blind transactions on the NYSE for cash at the fair market value of such Units on the date of each such purchase and each such sale;

(q) Each purchase and each sale of any of the Units in the future will occur on the same day (or if such day is not a trading day, on the next day) as the direction to purchase or to sell the Units is received by the administrator of the Plan from the applicable participant of an Account which is engaging in such purchase or such sale;

(r) Immediately following a purchase of Units in the future by an Account, the fair market value of all of the Units held in such Account will not exceed twenty percent (20%) of the aggregate fair market value of the assets in such Account;

(s) The terms of each prospective purchase and each prospective sale of the Units are at least as favorable to the

Account as terms generally available in comparable arm's-length transactions between unrelated parties;

(t) Prior to the purchase by an Account in the Plan of any Units, Partners will provide the participant who is directing the investment of such Account with the most recent prospectuses, quarterly statements, and annual reports, and thereafter provides updated prospectuses, quarterly statements, and annual reports, as published;

(u) Prior to a participant of an Account in the Plan engaging in the purchase of any Units, Partners will provide the certain disclosures to such participant and a supplemental disclosure must be made to the participant directing, if material changes occur;

(v) Each participant in an Account in the Plan will have discretionary authority to direct the investment of such Account to sell the Units purchased by such Account no less frequently than monthly, and to vote, tender, and exercise similar rights with respect to the Units held in such Account; and

(w) Partners or its affiliates will maintain, or cause to be maintained, for a period of six (6) years from the date of any of the covered transactions such records as are necessary to determine whether the conditions of this exemption have been met.

Notice to Interested Persons

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include the participants of the Plan, the fiduciaries of the Plan, and the trustees of Plan.

It is represented that each of these classes of interested persons will be notified of the publication of the Notice by mail, within fifteen (15) calendar days of publication of the Notice in the **Federal Register.** Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all interested persons of their right to comment and to request a hearing.

Any written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

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

Barclays Global Investors, N.A. and its affiliates and successors (BGI) and Barclays Capital Inc. and its affiliates and successors (BarCap) (collectively Applicants); Located in San Francisco, CA, and New York, NY
[Application No. D–11508]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act, section 8477(c)(3) of the Federal Employees' Retirement System Act of 1986 (FERSA) 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).

Section I—Temporary Exemption for Securities Lending Transactions Involving Index and Model-Driven Funds That Are Based on BarCap-Lehman Indices

If the exemption is granted, for the period from September 22, 2008, through the earlier of (i) the effective date of an individual exemption granting permanent relief for the following transactions or (ii) one year from the grant date of this individual exemption (the Relief Period), the restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act, section 8477(c)(2)(A) and (B) of FERSA, 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 lending of securities carried out on behalf of Client Plans in reliance on Prohibited Transaction Exemption (PTE) 2002–46 [7], where the applicable Index or Model-Driven Fund managed by BGI meets the definition of an ''Index Fund'' or a ''Model-Driven Fund'' as set forth in Section III of PTE 2002–46 but for the fact that the underlying index is a BarCap-Lehman Index, provided that all of the other conditions of PTE 2002–46 and the conditions set forth in Section IV of this proposed exemption are met.

Section II—Temporary Exemption for Transactions Involving Exchange-Traded Funds That Are Index and Model-Driven Funds Based on BarCap-Lehman Indices

If the exemption is granted, effective for the Relief Period, the restrictions of section 406(a) and (b) of the Act, section 8477(c)(2) of FERSA, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to transactions carried out on behalf of Client Plans in reliance upon Prohibited Transaction Exemption (PTE) 2008–01 [8], where the applicable Index or Model-Driven Fund would meet the definition of an ''Index Fund'' or a ''Model-Driven Fund'' as set forth in Section V of PTE 2008–01 but for the fact that the underlying index is a BarCap-Lehman Index, provided that all of the other conditions of PTE 2008–01 and the conditions set forth in Section IV of this proposed exemption are met.

Section III—Temporary Exemption for Principal Transactions With the BarCap-Lehman Broker-Dealer

If the exemption is granted, effective for the Relief Period, the restrictions of section 406(a) and 406(b)(1) and (2) of the Act, section 8477(c)(2)(A) and (B) of FERSA, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase or sale of fixed income securities between BGI on behalf of Client Plans and the BarCap-Lehman Broker-Dealer (Covered Principal Transactions) provided that the conditions set forth in Section V are met.

Section IV—Conditions Applicable to Sections I and II

(a) Each BarCap-Lehman Index is a published Index widely used in the market by independent institutional investors other than pursuant to an investment management or advisory relationship with BGI and is prepared or applied in the same manner for non-affiliated customers as for BGI.

(b) Prior to the use of a BarCap-Lehman Index in connection with the exemption and on an annual basis thereafter (but in no event prior to the date that is 90 days following the date of the publication of this proposed exemption in the **Federal Register**), BGI will provide BarCap with a list of BarCap Lehman Indices proposed to be used by BGI in connection with the exemption. BarCap will certify to BGI whether, in its reasonable judgment, each such index is widely used in the market. In making this determination, BarCap shall take into consideration factors such as (i) publication by Bloomberg, or a similar institution involved in the dissemination of financial information, (ii) hits on relevant websites including LehmanLive (or any successor website maintained by BarCap or its affiliate(s)) and Bloomberg.com (or similar website), and (iii) delivery of index information to

[7] 67 FR 59569, September 23, 2002.

[8] 73 FR 3274, January 17, 2008.

clients by means other than through Web site access.

(c) Any fees charged for the use of the BarCap-Lehman Index are paid by BGI and not Client Plans.

(d) Information barriers are in place throughout the Relief Period between BGI and BarCap such that BGI is not provided access to information regarding the rules, decisions and data underlying the BarCap-Lehman Indices before such information is provided to users of such Indices who are independent of BarCap and such rules, decisions and data are determined objectively without regard to BGI's use of such BarCap-Lehman Indices.

(e) At the end of the Relief Period, a Qualified Independent Reviewer, as defined in Section VII(n), shall issue a written report (the Compliance Report), following its review of relevant BarCap-Lehman Indices and the underlying rules, certifying to each of the following:

(i) Each BarCap-Lehman Index was operated in accordance with objective rules, in the ordinary course of business as would be conducted between unaffiliated parties;

(ii) No manipulation of any BarCap-Lehman Index for the purpose of benefiting BGI, BarCap, or their affiliates occurred;

(iii) In the event that any rule change occurred in connection with the rules underlying any BarCap-Lehman Index, such rule change was not made for the purpose of benefiting BGI, BarCap, or their affiliates;

(iv) Based on a review of the factors cited in condition (b) above, each BarCap-Lehman Index was widely used in the market during the Relief Period;

(v) Based on the result of the Qualified Independent Reviewer's factual inquiries to the Applicants, condition (d) above was met; and

(vi) Based on the Qualified Independent Reviewer's review of paid bills or invoices, condition (c) above was met with respect to the fee or fees paid in connection with each transaction.

The Compliance Report shall be issued no later than 90 days following the end of the Relief Period describing the steps performed during the course of the Qualified Independent Reviewer's review, the level of compliance with conditions (e)(i) through (vi), and any specific instances of non-compliance. The Compliance Report shall be included in the records maintained by BGI pursuant to Section VI of this proposed exemption, and BGI shall notify the independent fiduciary(ies) of each Client Plan, as part of its regular disclosure with respect to the applicable Fund(s), that the Compliance Report is available for their review.

(f) The Index or Model-Driven Funds described in Sections I and II meet the definition of Index Fund or Model-Driven Fund in Sections VII(k) or (l) of this proposed exemption.

Section V—Conditions Applicable to Section III

(a) BGI exercises discretionary authority or control or renders investment advice with respect to the Client Plan assets involved in the Covered Principal Transaction solely in connection with an Index Fund or Model-Driven Fund in which Client Plans invest.[9]

(b) Each Covered Principal Transaction occurs as a direct result of a Triggering Event, as defined in Section VII(o), and is executed no later than the close of the third business day following such Triggering Event.

(c) Each Covered Principal Transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security.

(d) Each Covered Principal Transaction is on terms that BGI reasonably determines to be more favorable to the Client Plan than the terms of an arm's length transaction with an unaffiliated counterparty would have been.

(e) Each Covered Principal Transaction is executed either:

(i) through an automated routing system reasonably designed to ensure execution at the best available net price to the Client Plan for the number of securities to be purchased or sold in the Covered Principal Transaction; or

(ii) at a net price to the Client Plan for the number of securities to be purchased or sold in the Covered Principal Transaction which is as favorable or more favorable to the Client Plan as the prices at which at least two independent Approved Counterparties, who are ready and willing to trade the relevant security, offer to purchase or sell such security.

(f) The Covered Principal Transaction does not involve any security issued by Barclays PLC.

(g) At the end of the Relief Period, a Qualified Independent Reviewer shall issue a Compliance Report certifying to each of the following:

(i) Based on a review of execution policies and procedures during the Relief Period and a sample of Covered Principal Transactions, that the policies and execution procedures used in connection with Covered Principal Transactions were reasonably designed to obtain best execution for the securities to be purchased or sold in the Covered Principal Transaction; and

(ii) Each sampled Covered Principal Transaction occurred in accordance with conditions (a), (b), (c) and (e) above. The Compliance Report shall be issued no later than 90 days following the end of the Relief Period describing the steps performed during the course of the Qualified Independent Reviewer's review, the level of compliance with conditions (g)(i) and (ii), and any specific instances of non-compliance. The Compliance Report shall be included in the records maintained by BGI pursuant to Section VI of this proposed exemption, and BGI shall notify the independent fiduciary(ies) of each Client Plan, as part of its regular disclosure with respect to the applicable Fund(s), that the Compliance Report is available for their review.

(h) In the case of any Covered Principal Transaction in connection with an Index Fund or a Model-Driven Fund with respect to which the underlying Index is a BarCap-Lehman Index, each of conditions (a) through (f) set forth in Section IV above is met.

Section VI—Recordkeeping Conditions Applicable to Sections I, II and III

(a) BGI maintains, or causes to be maintained, for a period of six (6) years following the end of the Relief Period the records necessary to enable the persons described in paragraph (b) below to determine whether the conditions of the exemption have been met, including the Compliance Reports described in Sections IV(e) and V(g), and records which identify with respect to the Covered Principal Transactions:

(i) On a Fund by Fund basis, the specific Triggering Events which result in the creation of the index or model prescribed output describing the characteristics of the securities to be traded; [10]

(ii) On a Fund by Fund basis, the index or model prescribed output which described the characteristics of the securities to be traded in detail sufficient to allow an independent plan fiduciary or the Qualified Independent Reviewer to verify that each of the above decisions for the Fund was made in response to specific Triggering Events; and

[9] This does not preclude, in the case of a BGI Plan that is a defined contribution plan under which participants direct the investment of their accounts among various investment options, the discretionary authority to select and offer investment options under the plan.

[10] Characteristics of the securities used in rebalancing a fixed income index would include changes in (a) amount of securities, (b) duration, (c) yield curve, and (d) convexity.

(iii) On a Fund by Fund basis, the actual trades executed by the Fund on a particular day, the identity of the counterparty, the prices offered by the Approved Counterparties, if relevant, and which of those trades resulted from Triggering Events.

Such records must be readily available to assure accessibility and maintained so that an independent fiduciary, the Qualified Independent Reviewer, or other persons identified below in paragraph (b) of this Section, may obtain them within a reasonable period of time. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of BGI, the records are lost or destroyed prior to the end of the six-year period; and no party in interest other than BGI and its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (b) below.

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

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

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

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

(D) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such Client Plan participant or beneficiary; and

(E) The Qualified Independent Reviewer.

(2) None of the persons described above in subparagraphs (B)–(E) of paragraph (b)(1) are authorized to examine the trade secrets of BGI or its affiliates or commercial or financial information that is privileged or confidential.

(3) Should BGI refuse to disclose information on the basis that such information is exempt from disclosure, BGI shall, by the close of the thirtieth (30th) day following the request, provide written notice advising that person of the reason for the refusal and that the Department may request such information.

Section VII—Definitions

(a) *Approved Counterparty:* A dealer that (x) is either (i) registered in accordance with section 15(b) of the Exchange Act or (ii) exempt from the requirement to register as a dealer under the Exchange Act because it is a bank that buys and sells government securities (as such terms are defined in the Exchange Act) and (y) meets the credit and execution standards of BGI as described in paragraph 20 of the Summary of Facts and Representations herein.

(b) *Barclays:* Barclays PLC and its direct and indirect subsidiaries.

(c) *BarCap:* Barclays Capital Inc. and its successors.

(d) *BarCap-Lehman Broker-Dealer:* BarCap's U.S. broker-dealer business, including the broker-dealer business acquired by BarCap from Lehman on September 22, 2008.

(e) *BarCap-Lehman Index:* A generally accepted standardized securities Index created by Lehman prior to the closing of the Asset Purchase Agreement on September 22, 2008, and maintained by its successor, BarCap.

(f) *BGI:* Barclays Global Investors, N.A., its investment advisory affiliates and their respective successors.

(g) *BGI Plan:* A Plan maintained by BGI or an affiliate for the benefit of its own employees.

(h) *Client Plan:* An employee benefit plan subject to the Act, FERSA and/or the Code, whose assets are managed by or which is advised by BGI, or a BGI-managed fund or separate account in which assets of such plans are invested.

(i) *Exchange Act:* The Securities Exchange Act of 1934, as amended.

(j) *Index:* A securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients;

(B) A publisher of financial news or information; or

(C) A public stock exchange or association of securities dealers; and

(2) The index is either (i) created and maintained by an organization independent of Barclays or (ii) a BarCap-Lehman Index; and

(3) The index is a generally accepted standardized index of securities which is not specifically tailored for the use of BGI.

(k) *Index Fund:* Any investment fund, account or portfolio sponsored, maintained, trusteed or managed by BGI in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an Index by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which either (i) BGI or its affiliate does not use its discretion, or data within its control, to affect the identify or amount of securities to be purchased or sold or (ii) the underlying Index is a BarCap-Lehman Index;

(3) That contains ''plan assets'' subject to the Act; and

(4) That involves no agreement, arrangement or understanding regarding the design or operation of the Fund which is intended to benefit BGI its affiliate or any party in which BGI or its affiliate may have an interest.[11]

(l) *Model-Driven Fund:* Any investment fund, account or portfolio sponsored, maintained, trusteed or managed by BGI in which one or more investors invest and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria to transform an Index using either (i) independent third-party data not within the control of BGI or an affiliate or (ii) data provided by the BarCap-Lehman Broker-Dealer that is commercially available on a widespread basis to unaffiliated end users such as mutual funds and collective investment funds on the same terms and conditions;

(2) Which contains ''plan assets'' subject to the Act; and

(3) That involves no agreement, arrangement or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit BGI or its affiliate or any party in which BGI or its affiliate may have an interest.[12]

(m) Lehman: Lehman Brothers Holdings Inc. and, as the context requires, its subsidiaries and affiliates prior to September 15, 2008.

(n) *Qualified Independent Reviewer:* A third party appointed by BGI that is independent of Barclays and its

[11] This requirement does not preclude BGI's payment of fees to BarCap for use of the Indices.

[12] This requirement does not preclude BGI's payment of fees to BarCap for use of the Indices or data.

affiliates and has extensive experience in reviewing and/or auditing transactions and procedures involving assets of plans subject to the Act, FERSA and/or the Code for the purpose of confirming that the applicable transactions or procedures serve the best interests of such plans.

(o) *Triggering Event:* Any of the following events in connection with an Index Fund or a Model-Driven Fund (together, ''Funds''):

(1) A change in the composition or weighting of the Index underlying a Fund by either (i) the independent organization creating and maintaining the Index or (ii) in the case of a BarCap-Lehman Index, by the BarCap-Lehman Broker-Dealer. In the case of a change described in clause (ii) of the preceding sentence, the change is uniformly applied to all customers using the Index, including non-affiliated customers, and is not adopted for the purpose of benefiting BGI.

(2) A material amount of net change in the overall level of assets in a Fund, as a result of investments in and withdrawals from the Fund, provided that:

(A) Such material amount has either been identified in advance as a specified amount of net change relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each Client Plan having assets held in the Fund prior to, or within ten (10) days following, its inclusion as a ''triggering event'' for such Fund or BGI has otherwise disclosed to the independent fiduciary the parameters for determining a material amount of net change, including any amount of discretion retained by the BGI that may affect such net change; and

(B) Investments or withdrawals as a result of BGI's discretion to invest or withdraw assets of a BGI Plan, other than a BGI Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options, including the applicable Fund, will not be taken into account in determining the specified amount of net change;

(3) An accumulation in the Fund of a material amount of either:

(A) Cash which is attributable to interest or dividends on, and/or tender offers for, portfolio securities; or

(B) Stock attributable to dividends on portfolio securities; provided that such material amount has been identified in advance as a specified amount relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each Client Plan having assets held in the Fund prior to, or within ten (10) days following, its inclusion as a ''triggering event'' for such Fund, or BGI has otherwise disclosed to the independent fiduciary the parameters for determining a material amount of accumulated cash or securities, including any amount of discretion retained by the BGI that may affect such net change.

(4) A change in the composition of the portfolio of a Model-Driven Fund mandated solely by operation of the formulae contained in the computer model underlying the Fund where the basic factors for making such changes (and any fixed frequency for operating the computer model) have been disclosed in writing to an independent fiduciary of each Client Plan having assets held in the Fund prior to, or within ten (10) days following, its inclusion as a ''triggering event'' for such Fund; or

(5) A change in the composition or weighting of a portfolio for an Index or Model-Driven Fund which results from an independent fiduciary's direction to exclude certain securities or types of securities from the Fund, notwithstanding that such securities are part of the Index used by the Fund.

Summary of Facts and Representations

Background

1. BGI is a national banking association headquartered in San Francisco, California. BGI is the largest asset manager in the U.S., with over $1.9 trillion in assets under management worldwide and over $1.1 trillion in assets under management in the U.S. as of June 30, 2008. A significant amount of BGI's assets under management in the U.S. consists of assets of employee benefit plans subject to ERISA, FERSA and/or the Code, including assets managed by BGI for the Federal Thrift Savings Fund established pursuant to the provisions of FERSA (the ''Federal Thrift Savings Fund''). BGI is also a market leader in index and model-driven investment products.

2. BarCap is a U.S. registered securities broker-dealer and futures commission merchant headquartered in New York, with registered domestic branch offices in Boston, Chicago, Miami, Los Angeles and San Francisco. BarCap's broker-dealer activities include significant participation in the market in U.S. Treasury securities, one of the most liquid and transparent fixed income securities markets; BarCap had approximately 10.2% of the overall Treasury securities market as of the close of the third quarter of 2008. BarCap is also a market leader in the market for inflation-protected U.S. Treasury securities, with a market share of approximately 28.5% of the market as of the close of the third quarter of 2008.

3. Both BGI and BarCap are indirect subsidiaries of Barclays PLC, a public limited company organized under the laws of England and Wales.

4. On September 16, 2008, BarCap, Lehman Brothers Holdings Inc. (''Lehman Parent'') and certain subsidiaries of Lehman Parent [13] entered into an Asset Purchase Agreement (the ''Asset Purchase Agreement'') pursuant to which BarCap acquired most of Lehman's U.S. broker-dealer business (the U.S. broker-dealer business of BarCap, including the acquired broker-dealer business of Lehman, is referred to herein as the ''BarCap-Lehman Broker-Dealer''). The acquisition contemplated by the Asset Purchase Agreement (the ''Sale'') closed on Monday, September 22, 2008.

5. The assets acquired by BarCap in the Sale include rights to all Lehman indices and the analytics that support such indices. Prior to the Sale, Lehman was the world's largest provider of fixed income indices. Lehman published the first total return bond index, the U.S. Aggregate Index, and was the leading fixed income index provider since the 1970s. Lehman produced many of the most widely followed benchmarks in the global and U.S. debt markets. Prior to the Sale, approximately $4 trillion in assets worldwide was benchmarked to Lehman's Global Aggregate Index and its subcomponents. Approximately $1.5 trillion of that amount was benchmarked to Lehman's U.S. Aggregate Index and its subcomponents. The entire U.S. debt market covered by the U.S. Aggregate Index is valued at approximately $10.5 trillion; fully one seventh (14%) of that market was benchmarked to Lehman's U.S. Aggregate Index. Lehman estimated that more than 90% of fixed income investors in the U.S. used Lehman indices. BGI used Lehman indices for the vast majority of its fixed income index and model driven investment products. Nearly $70 billion (99%) of BGI's U.S. fixed income indexed assets were indexed to a Lehman index.

6. In addition, prior to the Sale, Lehman was a significant participant in the fixed income markets as a broker-dealer and was frequently used by BGI for fixed income principal trades, participating in approximately 13% of BGI's client trades in fixed income

[13] Lehman Parent and its affiliates and subsidiaries (including former subsidiaries acquired by BarCap in the Sale) are collectively referred to herein as ''Lehman''.

securities. Following the Sale, the BarCap-Lehman Broker-Dealer has an increased presence in the market for U.S. Treasury securities and in particular inflation-protected securities. Combining the market shares of Bar-Cap as it existed prior to the Sale with the additional market share added as a result of the Sale, the BarCap-Lehman Broker-Dealer had a total share of approximately 12.4% of the overall market for U.S. Treasury securities and approximately 41.7% of the market for inflation-protected Treasuries as of October 1, 2008.

7. The Sale took place under extraordinary circumstances for the U.S. financial services industry generally, and on an unusually expedited time frame that was dictated by those exigent circumstances. Accordingly, the Applicants state that it was not practicable to submit a formal application for exemptive relief for the transactions in advance of the closing of the Sale. However, the Applicants contacted the Department on several occasions (in writing and by telephone) in advance of and immediately after the closing of the Sale to discuss the transactions, the unusual circumstances of the Sale and the interim relief that the Applicants expected to seek, which is materially the same as the relief requested herein.

8. The Applicants state that the advantages to Client Plans and their participants and beneficiaries of engaging in the transactions, and the harm to Client Plans and their participants and beneficiaries that would result if the transactions were prohibited, will continue to apply in the long term. Accordingly, Applicants expect to submit a further application at a later date for permanent relief.

Description of the Transactions

Use of BarCap-Lehman Indices

9. Prior to the Sale, Lehman was virtually the sole provider of standardized fixed income indices used by BGI in the U.S. market. BGI selected Lehman indices, which are widely regarded as preeminent in the market, for the vast majority of its fixed income index and model driven investment products. With these products, BGI either attempted to replicate the return on the relevant indices or to provide an enhanced return benchmarked against the indices. The majority of BGI's largest fixed income clients used Lehman indices, including the Federal Thrift Savings Fund and a large number of private-sector and other governmental pension plans.

10. On behalf of Client Plans, BGI effects various transactions involving Index Funds and Model-Driven Funds (Funds) in reliance on prohibited transaction exemptions that require the indices underlying the Funds to be created and maintained by an independent third party. These transactions include (x) the lending of securities to BarCap and other affiliates of BGI and the receipt of compensation by BGI in connection with such transactions where BGI acts as a fiduciary with respect to the Client Plan assets involved in the transaction in connection with an Index Fund or a Model-Driven Fund, in reliance on PTE 2002–46 and (y) the acquisition, sale or exchange by Client Plans of shares of exchange-traded funds advised by BGI that are Index Funds or Model-Driven Funds, and the receipt of fees by BGI for acting as an investment adviser to such funds and for providing certain secondary services, in reliance on PTE 2008–1. As a result of BarCap's acquisition of Lehman's indices, the Index Funds and Model-Driven Funds involved in these transactions that are based on Lehman indices no longer meet the requirements set forth in the respective exemptions that the underlying indices must be created and maintained by an organization independent of BGI and its affiliates.

11. The Applicants request relief, retroactive to September 22, 2008 (the closing date of the Sale), and for a period until the earlier of (i) effective date of an individual exemption granting permanent relief for the following transactions or (ii) one year from the grant date of this individual exemption (the ''Relief Period'') to permit transactions carried out in reliance on PTEs 2002–46 and 2008–1 involving Client Plan assets invested in Index Funds and Model-Driven Funds, where the underlying index is a BarCap-Lehman Index, to continue on a ''business as usual'' basis as if there were no affiliate relationship between BGI and the entity creating and maintaining the BarCap-Lehman Indices.

12. As a condition of the exemption, each BarCap-Lehman Index is required to be a published index widely used in the market by independent institutional investors other than pursuant to an investment management or advisory relationship with BGI, and such index must be prepared or applied in the same manner for non-affiliated customers as for BGI.

Prior to the use of a BarCap-Lehman Index in connection with the exemption and on an annual basis thereafter (but in no event prior to the date that is 90 days following the date of the publication of this proposed exemption in the **Federal Register**), BGI will provide BarCap with a list of BarCap Lehman Indices proposed to be used by BGI in connection with the exemption. BarCap will certify to BGI whether, in its reasonable judgment, each such index is widely used in the market. In making this determination, BarCap shall take into consideration factors such as (i) publication by Bloomberg, or similar institution involved in the dissemination of financial information, (ii) hits on relevant websites including LehmanLive (or any successor website maintained by BarCap or its affiliate(s)) and Bloomberg.com (or similar website), and (iii) delivery of index information to clients by means other than through website access.

Any fees charged for the use of the BarCap-Lehman Index will be paid by BGI and not Client Plans.

13. Additionally, information barriers will be in place throughout the Relief Period between BGI and BarCap such that BGI is not provided access to information regarding the rules, decisions and data underlying the BarCap-Lehman Indices before such information is provided to parties outside of BarCap and such rules, decisions and data must be determined objectively without regard to BGI's use of such BarCap-Lehman Indices.

14. At the end of the Relief Period, a Qualified Independent Reviewer will issue a written report (the Compliance Report) following its review of the relevant BarCap-Lehman Indices and the underlying rules, certifying to each of the following: (i) Each BarCap-Lehman Index was operated in accordance with objective rules, in the ordinary course of business as would be conducted between unaffiliated parties; (ii) no manipulation of any BarCap-Lehman Index for the purpose of benefiting BGI, BarCap, or their affiliates occurred; (iii) in the event that any rule change occurred in connection with the rules underlying any BarCap-Lehman Index, such rule change was not made for the purpose of benefiting BGI, BarCap, or their affiliates; (iv) based on a review of the factors considered by BarCap in its certification described in paragraph 12 above, each BarCap-Lehman Index was widely used in the market during the relief period; and (v) certain conditions of the exemption were met.

The Compliance Report shall be issued no later than 90 days following the end of the Relief Period describing the steps performed during the course of the Qualified Independent Reviewer's review, the level of compliance with the

applicable conditions ((i)–(v) described in the previous paragraph), and any specific instances of non-compliance. In addition, the Compliance Report shall be included in the records maintained by BGI pursuant to Section VI of this proposed exemption, and BGI shall notify the independent fiduciary(ies) of each Client Plan, as part of its regular disclosure with respect to the applicable Fund(s), that the Compliance Report is available for their review.

15. The Qualified Independent Reviewer will be a third party appointed by BGI that is independent of Barclays and its affiliates, and has extensive experience in reviewing and/or auditing transactions and procedures involving assets of plans subject to the Act, FERSA and/or the Code for the purpose of confirming that the applicable transactions or procedures serve the best interests of such plans.

Principal Transactions With the BarCap-Lehman Broker-Dealer

16. Prior to the Sale, Lehman was a significant participant in the fixed income markets as a broker-dealer. BGI frequently used Lehman as a dealer for fixed income securities trades on a principal basis based on a determination that Lehman provided best execution for the applicable trade, including trades for Index Funds and Model-Driven Funds in which Client Plans invest. Lehman was the second most frequently used dealer by BGI for fixed income principal trades, participating in approximately 13% of BGI' s client trades.

17. The Applicants state that obtaining the best available purchase or sale price for a particular trade presents special challenges in the fixed income market, which trades a very large array of different securities with specific features including some securities issued in relatively small numbers and/or in which markets are made by only a small number of dealers. The diminution in the number of market makers due to the recent exit of several major participants from the financial services industry through bankruptcies or acquisitions has heightened these challenges.

18. BGI's ability to obtain best execution of fixed income trades for Client Plans would be significantly curtailed without the ability to trade with the BarCap-Lehman Broker-Dealer, according to the Applicants. The interests of Client Plans and their participants and beneficiaries would be better served if such trades were permitted where the BarCap-Lehman Broker-Dealer provides the best available purchase or sale price for the security being traded, in accordance with conditions designed to safeguard the interests of Client Plans. Accordingly, the Applicants are requesting relief to permit principal trades of fixed income securities on behalf of Client Plans with the BarCap-Lehman Broker-Dealer, where such trades are carried out in connection with Index Funds and Model-Driven Funds and pursuant to ''Triggering Events''—that is, events identified in advance as triggers for purchasing and selling the Fund's portfolio.[14] Accordingly, the decision to purchase or sell a security would not be at BGI's discretion but would be made in accordance with pre-determined objective rules governing the composition of the Fund's portfolio.

19. Each Covered Transaction would be a purchase or sale, for no consideration other than cash payment against prompt delivery of a security. Each Covered Principal Transaction would be on terms that BGI reasonably determines in good faith to be more favorable to the Client Plan than the terms of an arm's length transaction with an unaffiliated counterparty would have been, for the number of shares to be purchased or sold, at the time of the transaction. Covered Principal Transactions will not involve any security issued by Barclays PLC.

20. Such trades would take place with the BarCap-Lehman Broker-Dealer only pursuant to procedures designed to ensure that best execution would be obtained for the Client Plan either through an automated routing system reasonably designed to ensure execution at the best available net price to the Client Plan for the number of securities to be purchased or sold, or at a price at least as favorable to the Client Plan as the prices at which at least two independent ''Approved Counterparties'' who are ready and willing to trade the relevant security offer to purchase or sell the security. BGI will keep records of the prices offered by the Approved Counterparties.

The Applicants provide the following description of the process used by BGI in approving counterparties. BGI's Global Credit Group (CGC) monitors counterparty exposures arising from the trading on a principal basis by BGI's clients/funds and is responsible for counterparty evaluation, exposure analysis and the management of trading limits. All counterparties must be formally approved by GCG prior to engaging in the trading on a principal basis, and trading limits for such trading are based on metrics which may include the following: asset class being traded, Ratings (S&P, Moody's, Fitch) book and market capital, published financials (for qualitative and quantitative review), due diligence visits covering business and risk management practices, and credit default swap (''CDS'') spreads (real time measure of default likelihood). In the case of ''delivery versus payment'' principal securities transactions and Qualified Forward Delivery Transactions, Counterparty exposure is controlled and monitored by establishing specific trading limits for the total amount of ''delivery versus payment'' exposure and Qualified Forward Delivery Transaction exposure for the particular counterparty. Exposure to a particular counterparty, including a counterparty that is a BGI affiliate, is monitored daily against the counterparty's individual trading limit and against any updates to GCG's assessment of such counterparty's credit quality or market volatility over the settlement period, and any changes to the applicable limit will be made as deemed appropriate by GCG.

21. At the end of the Relief Period, a Qualified Independent Reviewer will issue a written Compliance Report certifying to the following: (i) Based on a review of execution policies procedures during the Relief Period and a sample of the Covered Principal Transactions, that the policies and execution procedures used in connection with the transactions were reasonably designed to obtain best execution for the securities to be purchased or sold in the Covered Principal Transaction; and (ii) each sampled transaction occurred in accordance with certain conditions of the exemption. The Compliance Report will be issued no later than 90 days following the end of the Relief Period describing the steps performed during the course of the Qualified Independent Reviewer's review, the level of compliance with conditions (i) and (ii) described above, and any specific instances of non-compliance; and the Compliance Report shall be included in the records maintained by BGI pursuant to Section VI of this proposed exemption. In addition, BGI shall notify the independent fiduciary(ies) of each Client Plan, as part of its regular disclosure with respect to the applicable

[14] Applicants note that in-house plans of BGI (BGI Plans) are currently invested indirectly through a master-feeder structure in two U.S. fixed income Index Funds that participate in transactions for which retroactive relief is requested in the exemption application. As of September 30, 2008, approximately 0.03% of the assets of one of these Funds, and approximately 0.61% of the assets of the other Fund, consist of BGI Plan assets.

Fund(s), that the Compliance Report is available for their review.

22. Section VI requires that BGI maintain records necessary to allow a determination of whether the conditions of the exemption have been met. Those records must be maintained for a period of six (6) years from the end of the Relief Period. The records include the Compliance Reports as well as records which identify with respect to the Covered Principal Transactions:

(i) On a Fund by Fund basis, the specific Triggering Events which result in the creation of the index or model prescribed output describing the characteristics of the securities to buy or sell;

(ii) On a Fund by Fund basis, the index or model prescribed output which described the characteristics of the securities to buy or sell in detail sufficient to allow an independent plan fiduciary or Qualified Independent Reviewer to verify that each of the above decisions for the Fund was made in response to specific Triggering Events; and

(iii) On a Fund by Fund basis, the actual trades executed by the Fund on a particular day, the identity of the counterparty, the prices offered by the Approved Counterparties, if relevant, and which of those trades resulted from Triggering Events.

23. In summary, the Applicants represent that the transactions will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

a. *Administratively feasible.* With respect to the use of BarCap-Lehman Indices for transactions that were covered prior to the Sale by PTE 2002–46 and 2008–1, the transactions that would be covered by the requested exemption are essentially identical to those permitted under those exemptions, except that additional procedures and protections would be in place to ensure that use of the BarCap-Lehman Indices is not disadvantageous to Client Plans or manipulated to benefit the Applicants. With respect to principal transactions with the BarCap-Lehman Broker-Dealer pursuant to Index Funds and Model-Driven Funds, the transactions that would be covered by the requested exemption are substantially similar to the transactions permitted under PTE 75–1, Part IV (40 FR 50845, Oct. 31, 1975) (Market Maker Exemption). The Applicants will follow procedures similar to those set forth in the Market Maker Exemption to ensure that best execution is obtained on behalf of Client Plans. In addition, at the end of the Relief Period a Qualified Independent Reviewer will review procedures with respect to the transactions, and a sample of the transactions for compliance with the procedures, at the expense of Barclays. Granting the exemption will require no additional monitoring by the Department.

b. *In the interests of plans and participants and beneficiaries.* As discussed above, the Applicants state that the exemption would permit Client Plans to continue to invest in Index Funds and Model-Driven Funds based on the leading fixed income indices and to obtain best execution in purchases and sales of fixed income securities.

c. *Protective of the rights of participants and beneficiaries of such plan.* The requested exemption would require the Applicants to: (i) Obtain certification from a Qualified Independent Reviewer at the end of the Relief Period that each BarCap-Lehman Index was operated in accordance with objective rules, in the ordinary course of business as would be conducted between unaffiliated parties, no manipulation of any BarCap-Lehman Index for the purpose of benefiting the Applicants occurred, any change in the rules underlying any BarCap-Lehman Index was not made for the purpose of benefiting the Applicants, and that each BarCap-Lehman Index was widely used in the market during the Review Period; (ii) obtain certification from a Qualified Independent Reviewer at the end of the Relief Period that execution procedures used in connection with Covered Principal Transactions were reasonably designed to obtain best execution for the Client Plans and, based on a review of a sampling of Covered Principal Transactions, occurred in accordance with the conditions of the exemption; and (iii) maintain and comply with information barriers between BGI and BarCap such that BGI is not provided access to information regarding the rules, decisions or data underlying any BarCap-Lehman Index used during the Relief Period before such information is provided to parties outside of BarCap.

Notice to Interested Persons

Written notice will be provided to the Federal Retirement Thrift Investment Board and will be published in the **Federal Register**. Any written comments and/or requests for a hearing must be received by the Department from interested persons within 30 days of the publication of this proposed exemption in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd of the Department, 202–693–8554. (This is not a toll-free number.)

The Bank of New York Mellon Corporation (BNYMC) and its Affiliates (collectively, BNY Mellon) Located in New York, New York

Exemption Application Number D–11523

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 (ERISA or 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).[15]

Section I. Transactions

If the proposed exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective October 3, 2008, to the cash sale (the Sale) by a Plan (as defined in section II(d)) of certain Auction Rate Securities (as defined in section II(b)) to BNY Mellon, provided that the following conditions are met:

(a) The Sale was a one-time transaction for cash payment made on or before December 31, 2008 on a delivery versus payment basis in the amount described in paragraph (b);

(b) The Plan received an amount equal to the par value of the Auction Rate Securities (the Securities) plus accrued but unpaid income (interest or dividends, as applicable) as of the date of the Sale;

(c) The last auction for the Securities was unsuccessful;

(d) The Sale was made in connection with a written offer by BNY Mellon containing all of the material terms of the Sale;

(e) The Plan did not bear any commissions or transaction costs with respect to the Sale;

(f) A Plan fiduciary independent of BNY Mellon (in the case of a Plan that is an IRA, the individual for whom the IRA is maintained) determined that the Sale of the Securities was appropriate for, and in the best interests of, the Plan at the time of the transaction, and the Plan's decision to enter into the transaction was affirmatively made by such independent fiduciary on behalf of the Plan;

[15] For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

(g) BNY Mellon took all appropriate actions necessary to safeguard the interests of each Plan in connection with the Sale;

(h) The Plan does not waive any rights or claims in connection with the Sale;

(i) The Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(j) If the exercise of any of BNY Mellon's rights, claims or causes of action in connection with its ownership of the Securities results in BNY Mellon recovering from the issuer of the Securities, or any third party, an aggregate amount that is more than the sum of:

(1) The purchase price paid to the Plan for the Securities by BNY Mellon; and

(2) the income (interest or dividends, as applicable) due on the Securities from and after the date BNY Mellon purchased the Securities from the Plan, at the rate specified in the respective offering documents for the Securities or determined pursuant to a successful auction with respect to the Securities, BNY Mellon will refund such excess amount promptly to the Plan (after deducting all reasonable expenses incurred in connection with the recovery);

(k) Neither BNYMC nor any affiliate exercises investment discretion or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the decision to accept the written offer or retain the Security;

(l) BNY Mellon maintains, or causes to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the person described below in paragraph (m)(i), to determine whether the conditions of this exemption have been met, except that—

(i) No party in interest with respect to a Plan which engages in the covered transactions, other than BNY Mellon, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (m)(i);

(ii) A separate prohibited transaction shall not be considered to have occurred solely because due to circumstances beyond the control of BNY Mellon, such records are lost or destroyed prior to the end of the six-year period.

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

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

(B) Any fiduciary of any Plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

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

(D) Any participant or beneficiary of a Plan that engages in a covered transaction, or duly authorized employee or representative of such participant or beneficiary;

(ii) None of the persons described, above, in paragraph (m)(i)(B)–(D) shall be authorized to examine trade secrets of BNY Mellon, or commercial or financial information which is privileged or confidential; and

(iii) Should BNY Mellon refuse to disclose information on the basis that such information is exempt from disclosure, BNY Mellon shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II. Definitions

(a) The term ''affiliate'' means: any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term ''Auction Rate Security'' or ''Security'' means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) with an interest rate or dividend that is reset at specific intervals through a ''Dutch auction'' process;

(c) The term ''Independent'' means a person who is not BNYMC or an affiliate (as defined in Section II(a)); and

(d) The term ''Plan'' means: any plan described in section 3(3) of the Act and/or section 4975(e)(1) of the Code.

Effective Date: This proposed exemption, if granted, will be effective from October 3, 2008 through December 31, 2008.

Summary of Facts and Representations

1. The Bank of New York Mellon Corporation (BNYMC and, together with its affiliates, BNY Mellon), is a Delaware financial services company that provides a wide range of banking and fiduciary services to a broad array of clients, including employee benefit plans subject to the Act and plans subject to Section 4975 of the Code.

2. The plans that are the subject of this proposed exemption (Plans) consist of four Individual Retirement Accounts (IRAs), two ''SEP IRAs'' and a defined contribution profit sharing plan. The Plans are employee benefit plans or other plans subject to section 4975 of the Code and/or ERISA for which BNY Mellon currently serves as the custodian and/or trustee.

3. On October 3, 2008, BNY Mellon communicated in writing to its clients, including the Plans, its offer to purchase certain auction rate securities (i.e., the Securities) for an amount equal to the par value of the applicable Security, plus any accrued and unpaid income (interest or dividends, as applicable) thereon. The purchase transactions occurred on the first regular auction date for the applicable Security that followed the Plan's submission to BNY Mellon of its written acceptance of the offer. The applicant represents that no purchase transaction involving plan assets subject to ERISA or section 4975 of the Code occurred after December 31, 2008.

4. BNY Mellon represents that the Securities are debt or preferred equity auction rate securities issued with an interest or dividend rate that is reset on a regular basis (generally between every 7 and 35 days) through a ''Dutch auction'' process. Historically, by means of such auction process, the interest or dividend rate was periodically adjusted to a level at which demand for the Security depleted the available supply at a purchase price equal to the par value of the Securities. In this way, the auctions served as a form of secondary market for the Securities, by providing liquidity at par on a regular, periodic basis to any holder who wished to sell the Securities. The applicant represents that the Securities were frequently purchased by, or for the benefit of, clients seeking a reasonable short-term return and a high degree of liquidity.

5. If an auction for one of the Securities fails (e.g., because there is insufficient demand for the Security), the interest or dividend rate will be reset to the ''maximum rate'' or ''failed auction rate'' (in either case, ''default rate'') for that Security as specified in the offering documents for such Security. In some cases, the default rate changes from time to time as specified in the relevant documents. For the Securities that are the subject of this

exemption, such rates ranged from .168% to 4.8% per annum as of the date the purchase offer was made.

6. BNY Mellon states that auctions for the Securities have failed consistently since approximately February, 2008, with the result that the interest or dividend rate for each of the Securities presently equals the default rate and holders of the Securities have been unable to sell the Securities at their par value. As of the date the purchase offer was made, the default rate for three of the six Securities held by the Plans was higher than the rate set by the last successful auction for such Securities, while the last auction rate for the remaining three Securities held by Plans exceeded the default rate, determined as of such date, with respect to such Securities. In addition, because the auctions have failed consistently since February, 2008 and given the absence of any other meaningful secondary market for the Securities, the Securities no longer provide the liquidity that had been anticipated when they were acquired.

7. BNY Mellon represents that the following Securities were held by Plans and covered by BNY Mellon's offer described in Representation 3, above: (1) Minnesota St. Higher Ed., (2) Iowa Student Loan, (3) Brazos Texas Higher Ed., (4) Nuveen Quality PFD Income FDARP, (5) Nuveen PFD & CVT INC FD2 and (6) Northstar Ed. Fin Inc.

8. Generally, the Plans purchased the Securities through an underwriter unaffiliated with BNY Mellon. In all of those cases, BNY Mellon acted as discretionary trustee and caused the Plan to purchase the Securities. Only one Plan purchased Securities through a capital markets affiliate of BNYMC. In that one case, BNY Mellon was a non-discretionary custodian of the Plan and was directed to purchase the Securities by an independent fiduciary of that Plan.[16]

9. BNY Mellon states that the terms of the offer expressly provided that a client is not obligated to sell Securities and must affirmatively agree to enter into a sale of Securities to BNY Mellon (*i.e.,* a Sale). BNY Mellon represents that any Plan's decision to sell the Securities to BNY Mellon pursuant to its offer has been made by such Plan's fiduciary, who in all cases was independent of BNY Mellon. In the case of a Plan that is an IRA, such fiduciary was the individual for whom the IRA is maintained.

10. BNY Mellon estimates that the total aggregate par value plus accrued and unpaid income (interest or dividends, as applicable) thereon for all Securities held by clients subject to the offer is approximately $192,840,000. Securities held by the Plans represent approximately $1,050,000 of such total aggregate amount.

11. BNY Mellon represents that the Sale of the Securities by a Plan benefited the Plan because of the Plan's inability to sell the Securities at par as a result of the continuing failed auctions. In addition, BNY Mellon states that each transaction was a one-time Sale for cash in connection with which such Plan did not bear any brokerage commissions, fees or other expenses. BNY Mellon represents that it took all appropriate actions necessary to safeguard the interests of the Plans in connection with the Sale of the Securities by the Plans.

12. BNY Mellon states that, pursuant to the terms of the offer, the sale of Securities by a Plan to BNY Mellon resulted in an assignment of all of the Plan's rights, claims, and causes of action against an issuer or any third party arising in connection with or out of the client's purchase, holding or ownership of the Securities. This assignment did not include any rights, claims or other causes of action against BNY Mellon. Rather, such assignment was limited to rights, claims and causes of action against the issuers of the Securities and any third parties unrelated to BNY Mellon. This has been the case at all times from the date as of which retroactive relief has been requested. BNY Mellon states further that if the exercise of any of the foregoing rights, claims or causes of action results in BNY Mellon recovering from the issuer or any third party an aggregate amount that is more than the sum of (a) the purchase price paid for the Securities by BNY Mellon and (b) the income (interest or dividends, as applicable) due on the Securities from and after the date BNY Mellon purchased Securities from a Plan, at the rate specified in the respective offering documents for the Securities or determined pursuant to a successful auction with respect to the Securities, BNY Mellon will refund such excess amount promptly to the Plan (after deducting all reasonable expenses incurred in connection with the recovery).

13. In summary, BNY Mellon represents that the transactions satisfied the statutory criteria of section 408(a) of the Act and section 4975 of the Code because: (a) Each Sale was a one-time transaction for cash; (b) each Plan received an amount equal to the par value of the Securities, plus accrued but unpaid income (interest or dividends, as applicable), which was beneficial to the Plan due to the Plan's inability to sell the Securities at par because of continuing failed auctions; (c) no Plan paid any commissions or other transaction expenses with respect to the Sale; (d) each Plan voluntarily entered into the Sale, as determined in the discretion of the Plan's independent fiduciary; (e) BNY Mellon took all appropriate actions necessary to safeguard the interests of the Plans in connection with the transactions; and (f) BNY Mellon will promptly refund to the applicable Plan any amounts recovered from the issuer or any third party in connection with its exercise of any rights, claims or causes of action as a result of its ownership of the Securities, if such amounts are in excess of the sum of (i) the purchase price paid for the Securities by BNY Mellon and (ii) the income (interest or dividends, as applicable) due on the Securities from and after the date BNY Mellon purchased the Securities from the Plan, at the rate specified in the respective offering documents for the Securities or determined pursuant to a successful auction with respect to the Securities.

[16] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the Securities by any Plan, that is subject to Title I of the Act, violated any of the fiduciary responsibility provisions of Part 4 of Title I of ERISA. In this regard, 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. Accordingly, a Plan fiduciary must act prudently with respect to, among other things, the decision to engage (or to not engage) in a Sale. 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. Moreover, the Department is not providing any opinion as to 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 of 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.

Notice to Interested Persons

Written notice will be provided to an independent representative of each Plan that elected to sell the Securities to BNY Mellon. The notice shall contain a copy of the proposed exemption as published in the **Federal Register** and an explanation of the rights of interested parties to comment regarding the proposed exemption. Such notice will be provided by first class mail within 15 days of the issuance of the proposed exemption. Any written comments must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, 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 30th day of April , 2009.

Ivan Strasfeld,

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

[FR Doc. E9–10361 Filed 5–5–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions and Grant of Individual Exemptions involving: 2009–13, The Bank of New York Mellon Corporation (the Applicant); and 2009–14, UBS AG (UBS), and Its Affiliates UBS Financial Services Inc. (UBS Financial), and UBS Financial Services Inc. of Puerto Rico (PR Financial) (Collectively, the Applicants)

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 (ERISA or 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, D.C. 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.

Exemption

Section I—Transactions

The restrictions of section 406 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 (F) of the Code, shall not apply, effective December 24, 2008, to the purchase of certain securities (the Securities), as defined below in Section III(h), by an asset management affiliate of The Bank of New York Mellon Corporation (BNYMC), as ''affiliate'' is defined below in Section III(c), from any person other than such asset management affiliate of BNYMC or any affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such Securities, where a broker-dealer affiliated with BNYMC (the Affiliated Broker-Dealer), as defined below in Section III(b), is a manager or member of such syndicate (an ''affiliated underwriter transaction'' (AUT [1])) and/or where an Affiliated Trustee, as defined below in Section III(m), serves as trustee of a trust that issued the Securities (whether or not debt securities) or serves as indenture trustee of Securities that are debt Securities (an ''affiliated trustee transaction'' (ATT [2]))

[1] For purposes of this proposed exemption, an In-House Plan may engage in AUTs only through investment in a Pooled Fund.

[2] For purposes of this proposed exemption, an In-House Plan may engage in ATTs only through investment in a Pooled Fund.