

Signed at Washington, DC, this 3rd day of April 2009.

**Richard Church,**

*Trade Adjustment Assistance.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-65,620]

#### Foamade Industries, Inc.; Auburn Hills, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 17, 2009 in response to a petition filed by company officials on behalf of workers at Foamade Industries, Inc., Auburn Hills, Michigan.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 1st day of April 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**Notice of a Proposed Amendment to Prohibited Transaction Exemption (PTE) 90-29, 55 FR 21459 (May 24, 1990), as Amended by PTE 97-34, 62 FR 39021 (July 21, 1997), PTE 2000-58, 65 FR 67765 (November 13, 2000), PTE 2002-41, 67 FR 54487 (August 22, 2002) and PTE 2007-05, 72 FR 13130 (March 20, 2007) as Corrected at 72 FR 16385 (April 4, 2007) (PTE 2007-05), (PTE 90-29), Involving Merrill Lynch, Pierce, Fenner & Smith, Inc., the Principal Subsidiary of Merrill Lynch & Co., Inc. and Its Affiliates (Merrill Lynch) and to PTE 2002-19, 67 FR 14979 (March 28, 2002) as Amended by PTE 2007-05, (PTE 2002-19), Involving J.P. Morgan Chase & Company and Its Affiliates (D-11519)**

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Notice of a Proposed Amendment to PTE 90-29.

**SUMMARY:** This document contains a notice of pendency before the

Department of Labor (the Department) of a proposed amendment to PTE 90-29 and PTE 2002-19, Underwriter Exemptions.<sup>1</sup> The Underwriter Exemptions are individual exemptions that provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (Plans) of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The proposed amendment to PTE 90-29 and 2002-19, if granted, would provide a six month period to resolve certain affiliations, as a result of Bank of America Corporation's acquisition of Merrill Lynch, between Bank of America, N.A., the Trustee, and Merrill Lynch as members of the Restricted Group, as those terms are defined in the Underwriter Exemptions (the Proposed Amendment). The Proposed Amendment, if granted, would affect the participants and beneficiaries of the Plans participating in such transactions and the fiduciaries with respect to such Plans.

**DATES:** Written comments and requests for a hearing should be received by the Department by June 5, 2009.

**ADDRESSES:** All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (Attention: Exemption Application Number D-11519). Interested persons are invited to submit comments and/or hearing requests to the Department by the end of the scheduled comment period either by facsimile to (202) 219-0204 or by electronic mail to [moffitt.betty@dol.gov](mailto:moffitt.betty@dol.gov). The application pertaining to the Proposed Amendment (Application) and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Wendy M. McCoolough of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

<sup>1</sup>The "Underwriter Exemptions" are a group of individual exemptions that provide substantially identical relief for the operation of certain asset-backed or mortgage-backed investment pools and the acquisition and holding by Plans of certain securities representing interests in those investment pools.

**SUPPLEMENTARY INFORMATION:** This document contains a notice of pendency before the Department of a proposed exemption to amend PTE 90-29 and PTE 2002-19, Underwriter Exemptions. The Underwriter Exemptions are a group of individual exemptions granted by the Department that provide substantially identical relief from certain of the restrictions of sections 406 and 407 of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by sections 4975(a) and (b) of the Internal Revenue Code of 1986, as amended (Code), by reason of certain provisions of section 4975(c)(1) of the Code for the operation of certain asset pool investment trusts and the acquisition, holding, and disposition by Plans of certain asset-backed pass-through certificates representing undivided interests in those investment trusts.

All of the Underwriter Exemptions were amended by PTE 97-34, 62 FR 39021 (July 21, 1997), PTE 2000-58, 65 FR 67765 (November 13, 2000), and PTE 2007-05, 72 FR 13130 (March 20, 2007), as corrected at 72 FR 16385 (April 4, 2007). Certain of the Underwriter Exemptions were amended by PTE 2002-41, 67 FR 54487 (August 22, 2002) or modified by PTE 2002-19.

The Department is proposing this amendment to PTE 90-29 and to PTE 2002-19 pursuant to 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).<sup>2</sup>

1. The Underwriter Exemptions permit Plans to invest in pass-through securities representing undivided interests in asset-backed or mortgage-backed investment pools (Securities). The Securities generally take the form of certificates issued by a trust (Trust). The Underwriter Exemptions permit transactions involving a Trust, including the servicing, management and operation of the Trust, and the sale, exchange or transfer of Securities evidencing interests therein, in the initial issuance of the Securities or in the secondary market for such Securities (the Covered Transactions). The most recent amendment to the Underwriter Exemptions is PTE 2007-05, 72 FR 13130 (March 20, 2007), as corrected at 72 FR 16385 (April 4, 2007) (PTE 2007-05). One of the General Conditions of the Underwriter Exemptions, as amended, requires that the Trustee not

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

be an "Affiliate" of any member of the "Restricted Group" other than an "Underwriter." PTE 2007-05, subsection II.A.(4). The term "Restricted Group" is defined under section III.M. as: (1) Each Underwriter; (2) Each Insurer; (3) The Sponsor; (4) The Trustee; (5) Each Servicer (6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer; (7) Each counterparty in an Eligible Swap Agreement; or (8) Any Affiliate of a person described in subsections III.M.(1)-(7)." The term "Servicer" is defined to include "the Master Servicer and any Subservicer." PTE 2007-05, section III.G. The term "Affiliate" is defined, in part, to include "(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (2) Any officer, director, partner, employee \* \* \* of such other person; and (3) Any corporation or partnership of which such other person is an officer, director or partner." PTE 2007-05, section III.N.

2. On May 24, 1990, PTE 90-29 was granted to Merrill Lynch, Pierce, Fenner & Smith, Inc. (MLPFS), the principal subsidiary of Merrill Lynch. MLPF&S is a Delaware corporation registered with and regulated by the SEC as a broker-dealer, and is a member of the New York Stock Exchange, and the National Association of Securities Dealers, Inc. MLPFS is also regulated by the Municipal Securities Rulemaking Board (with respect to municipal securities activities), the Commodity Futures Trading Commission, and the National Futures Association (with respect to MLPFS's activities as a futures commission merchant). MLPFS is a leading broker and/or dealer in the purchase and sale of corporate equity and debt securities, mutual funds, money market instruments, government securities, high yield bonds, municipal securities, financial futures contracts, and options. As a leading investment banking firm, MLPFS provides corporate, institutional, and government clients with a wide variety of financial services including underwriting the sale of securities to the public, structured and derivative financing, private placements, mortgage and lease financing, and financial advisory services, which includes advice on mergers and acquisitions. MLPFS also acts as a prime broker for hedge funds. Further, MLPFS operates mutual fund

advisory programs, which provide plans governed by ERISA or section 4975 of the Code investment advice concerning purchasing mutual funds shares.

3. Bank of America Corporation (Bank of America or the Applicant) notes that it is the parent holding company of Bank of America, N.A., the Trustee of each of the commercial or residential mortgage-backed securitizations in the Covered Transactions. The Proposed Amendment was requested by application dated November 24, 2008, and as updated by Bank of America (the Application). The Applicant states that on January 1, 2009 (the Acquisition Date), Bank of America acquired Merrill Lynch (the Acquisition). Merrill Lynch is a holding company that, through its subsidiaries, provides broker-dealer, investment banking, financing, wealth management, advisory, insurance, lending and related products and services on a global basis. Merrill Lynch is a "Consolidated Supervised Entity,"<sup>3</sup> and is subject to group-wide supervision by the SEC. On March 4, 2009, the Applicant explained that Merrill Lynch & Co., Inc. (Parent or Merrill Lynch) is the ultimate parent of all of its subsidiaries, and was (prior to its acquisition by Bank of America) a publicly traded holding company. Among the direct subsidiaries of the Parent, each 100% owned by Parent, are Merrill Lynch Group, Inc. (MLG), Merrill Lynch Bank & Trust Co., FSB (MLBT) and Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPFS).

For the Covered Transactions that are the subject of the Applicant's request, Merrill Lynch Mortgage Capital Inc. (Mortgage Capital) is the Sponsor of certain transactions subject to PTE 90-29 and is an indirect, 100% owned subsidiary of MLG. Mortgage Capital's direct 100% owned subsidiaries include Merrill Lynch Mortgage Lending, Inc.,

<sup>3</sup> Effective August 2004, the Securities Exchange Commission (Commission) adopted rule amendments that established a voluntary, alternative method for computing net capital for certain broker-dealers. As a condition to its use of the alternative method, a broker-dealer's ultimate holding company and affiliates (referred to collectively as a consolidated supervised entity or CSE) must consent to group-wide Commission supervision. These rules, among other things, respond to international developments. Specifically, affiliates of certain US broker-dealers that conduct business in the European Union (EU) have stated that they must demonstrate that they are subject to consolidated supervision at the ultimate holding company level that is "equivalent" to EU consolidated supervision. Commission supervision incorporated into these rule amendments addresses this standard. These amendments and the SEC's program for consolidated supervision of broker-dealers and affiliates will minimize duplicative regulatory burdens on firms that are active in the EU, as well as in other jurisdictions that may have similar laws.

the Sponsor of certain Covered Transactions, Merrill Lynch Mortgage Investors, Inc., the Sponsor of one Covered Transaction and Wilshire Credit Corporation (Wilshire), the Servicer of certain Covered Transactions.

Mortgage Capital purchased Wilshire in January 2004. MLBT is the 100% parent of FF Mortgage Corporation, which in turn is the 100% parent of Home Loan Services, Inc. (HLS), a Servicer of certain of the Covered Transactions. On October 20, 2006, MLBT acquired the subprime mortgage assets of National City Bank, including the stock of First Franklin Financial Corporation (FFFC), National City Home Loan Services (the related servicing platform) and the mortgage loan origination platform of National City Bank (which operated as the First Franklin Financial division of National City Bank). The mortgage loan origination platform was subsequently transferred into First Franklin Financial Corporation. With the acquisition, the servicing division was renamed HLS and this entity services First Franklin loans. HLS is a direct 100% owned subsidiary of MLBT. FFFC is the Sponsor of certain of the Covered Transactions. On March 5, 2008, Parent announced that FFFC would no longer originate loans. Concurrent with this announcement, FF Mortgage Corporation sold the stock of FFFC to Merrill Lynch Mortgage Services Corporation, a subsidiary of Mortgage Capital (which actions were taken to satisfy the Office of Thrift Supervision). PTE 90-29 was granted to MLPFS, a direct 100% owned subsidiary of Parent and the Underwriter of certain of the Covered Transactions.

4. The Acquisition caused certain transactions previously subject to PTE 90-29 or PTE 2002-19 to fail to satisfy the requirement under the Underwriter Exemptions that the Trustee not be an Affiliate of any member of the Restricted Group other than an Underwriter. PTE 2007-05 subsection II.A.(4). Currently, for transactions where Merrill Lynch is the Servicer, a six-month period is provided by the Underwriter Exemptions to sever the affiliation between the Servicer and the Trustee if the affiliation occurred after the initial issuance of the Securities. PTE 2007-05, subsection II.A.(4)(b). However, there is currently no transitional relief under PTE 90-29 where Merrill Lynch is a Sponsor, Underwriter or a Swap Counterparty and Bank of America, N.A. is the Trustee. Accordingly, Bank of America seeks a temporary amendment to PTE 90-29 to provide for a six-month period for resolution of certain

prohibited affiliations caused by the Acquisition of Merrill Lynch by Bank of America, the parent of the Trustee.

In addition, the Applicant requests that the amendment provide similar relief for one other Covered Transaction, JPM 2003-ML1, where Bank of America is Trustee and Merrill Lynch is a Sponsor. In this transaction, the Underwriter, J.P. Morgan Securities Inc., who is unrelated to Bank of America, relies upon PTE 2002-19, granted to J.P. Morgan Chase & Co. and its affiliates. The Applicant provides that J.P. Morgan Securities Inc. is the principal nonbank subsidiary of J.P. Morgan Chase & Co. JP Morgan Chase Commercial Mortgage Securities Corp. is 100% owned by JPMorgan Chase Bank, N.A., which in turn, is 100% owned by J.P. Morgan Chase & Co. JP Morgan Chase Commercial Mortgage Securities Corp. has confirmed to the Applicant that it has been notified of the application for the Proposed Amendment and has agreed to coverage under the Proposed Amendment. Bank of America represents that it has placed a notice on its web pages for each of the Covered Transactions affected by the Acquisition and that this notice would be updated upon publication of the Proposed Amendment, and if granted, the final amendment. Further, the Web pages will note the appointment of any co-trustee and the appointment of the replacement trustee. The Applicant states that Bank of America, N.A., in its role of Trustee, will bear the cost of appointing such co-trustee and that there will be no financial impact on any Underwriter.

5. Bank of America represents that the Covered Transactions affected by the Acquisition consist of 49 commercial or residential mortgage-backed securitizations (CMBS or RMBS) (Securitizations) as detailed at section III.KK of the Proposed Amendment (the Securitizations List). Bank of America states that all of the Securitizations were structured and are managed to meet the requirements of PTE 90-29 or in the case of JPM 2003-ML1, PTE 2002-19, in each case as amended by PTE 2007-05. Bank of America, N.A. is the Trustee in each of the Securitizations. The Applicant represents that, in its role as Trustee, Bank of America, N.A. is obligated under both the operative documents that securitize the loans, and under state law relating to fiduciaries, to protect the interests of security holders. Specifically, the Trustee is required to enforce the rights of security holders against other parties to the transaction, including Servicers, Swap Counterparties and loan sellers. The Applicant notes further that in practice,

due to industry standards and reputation concerns by the various parties, little such protection or enforcement is necessary, and the Trustee's role, while vigilant, is relatively passive. Merrill Lynch is a party to each of the Securitizations in the capacity or capacities detailed in the Securitizations List. The Applicant states that, in any of these capacities, Merrill Lynch is obligated, under the operative documents of the transaction, to perform its designated duties under contractual and, in some cases, industry standards for the benefit of security holders. The Applicant represents that each of the Pooling and Servicing Agreements has been structured to comply with PTE 90-29 or in the case of JPM 2003-ML1, PTE 2002-19 and that each of the Trusts has been managed in accordance with the related Pooling and Servicing Agreement. Consequently, Securities issued by each Trust currently are eligible for purchase by Plans that meet the requirements of PTE 90-29 or in the case of JPM 2003-ML1, PTE 2002-19.

6. The Applicant states that none of the Trusts were formed or marketed with the knowledge that Bank of America and Merrill Lynch would become affiliated. In this regard, the Applicant notes that there are no securitizations on the Securitization List that closed later than 2007; the Acquisition was announced in the third quarter of 2008. The Applicant states that, in general, the Pooling and Servicing Agreements governing the applicable Securitizations permit the cures detailed in their Application by contemplating a Trustee's resignation and replacement so as to comply with applicable law and providing the Trustee the ability to appoint co-trustees and other agents authorized to carry out the Trustees' duties. The Applicant notes that the agreements do not provide specific qualifications for co-trustees. While the agreements vary in the detail, after due diligence, the Applicant asserts that it is not aware of any provisions of the agreements or SEC requirements that preclude the cures detailed in the Application.

7. Bank of America represents in its Application that during the proposed six month resolution period, for each Securitization on the Securitization List, the Trustee shall appoint a co-trustee, which is not an Affiliate of Bank of America, no later than the earlier of (a) April 1, 2009 or (b) five business days after Bank of America, N.A., the Trustee, has become aware of a conflict between the Trustee and any member of the Restricted Group that is an Affiliate of the Trustee. The co-trustee will be

solely responsible for resolving such conflict between the Trustee and any member of the Restricted Group that has become an Affiliate of the Trustee as a result of the Acquisition; provided that if the Trustee has resigned on or prior to April 1, 2009, and no event described in clause (b) has occurred, no co-trustee shall be required since a replacement trustee would be in place by April 1, 2009. Bank of America represents that as Trustee, Bank of America, N.A. will appoint a co-trustee with the knowledge and skill necessary to resolve any conflict arising between Bank of America, N.A. and any Bank of America affiliated member of the Restricted Group. In the event that a co-trustee were appointed, such co-trustee would assume Bank of America, N.A.'s role under the related Pooling and Servicing Agreement (solely with respect to any conflict between Bank of America, N.A. and a Bank of America affiliate that is a member of the Restricted Group) until a replacement trustee replaced Bank of America, N.A.

On January 29, 2009, The Applicant informed the Department that Bank of America, N. A. is resigning as Trustee from a total of 70 transactions (this number includes transactions where the conflict is not ERISA-related and the transaction is not on the Securitization List). Bank of America, N.A. resigned from 12 of these transactions on December 31, 2008, will resign from 50 of these transactions by March 31, 2009, and will resign from the remaining 8 no later than June 30, 2009. Of the 12 transactions BofA resigned from on December. 31, 2008, it resigned from 2 solely for ERISA purposes and 10 solely for securities law purposes. As of January 29, 2009, 27 transactions had received replacement trustees. The Applicant represented that the replacement trustees for the remaining transactions were currently being negotiated. On March 16, 2009, the Applicant informed the Department that for all 49 of the Covered Transactions on the Securitization List, the replacement trustees will be in place as of March 31, 2009. Wells Fargo Bank, N.A. will be the replacement trustee for five of the Covered Transactions and U.S. Bank National Association will be the replacement trustee for the remaining 44 Covered Transactions. The Applicant has further indicated that there were no actual conflicts from the date that the affiliation arose, January 1, 2009 through March 20, 2009. Thus, no co-trustee had to be appointed during that period. The Applicant noted that in cases where the Trustee is also the securities administrator, Bank of

America, N.A. will resign as Trustee and remain securities administrator.

For purposes of this Proposed Amendment, a conflict would arise whenever (a) Merrill Lynch is a member of the Restricted Group and fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Bank of America, N.A., as Trustee, or (b) Bank of America, N.A., as Trustee, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Merrill Lynch, a member of the Restricted Group. The time as of which a conflict occurs is the earlier of the day immediately following the last day on which compliance is required under the relevant Pooling and Servicing Agreement; or the day on which a party affirmatively responds that it will not comply with a request for performance.

Additionally, for purposes of this Proposed Amendment, the term conflict includes but is not limited to, the following: (1) Merrill Lynch's failure, as Sponsor, to repurchase a loan for breach of representation within the time period prescribed in the relevant Pooling and Servicing Agreement, following Bank of America, N.A.'s request, as Trustee, for performance; (2) Merrill Lynch, as Sponsor, notifies Bank of America, N.A., as Trustee, that it will not repurchase a loan for breach of representation, following Bank of America, N.A.'s request that Merrill Lynch repurchase such loan within the time period prescribed in the relevant Pooling and Servicing Agreement (the notification occurs prior to the expiration of the prescribed time period for the repurchase); and (3) Merrill Lynch, as Swap Counterparty, makes or requests a payment based on a value of LIBOR<sup>4</sup> that Bank of America, N.A., as Trustee, considers erroneous.

8. In correspondence dated January 29, and February 3, 2009, Bank of America represented to the Department that it and Merrill Lynch were currently identifying replacement trustees to replace Bank of America, N.A. as Trustee in approximately 70 transactions. The Applicant stated that it intends to complete the negotiations and paperwork on an ongoing basis, with the effective date for all changes to be April 1, 2009. The Applicant noted that in contrast to co-trustees, any replacement trustee will have to meet the requirements of the related Trust agreement for qualification as a Trustee (i.e., will meet the same requirements

that Bank of America, N.A. (and its predecessor, LaSalle Bank, N.A. had to meet). A copy of a typical Pooling and Servicing Agreement requirements for a Trustee was provided to the Department. The Applicant further noted that if a conflict were to arise prior to April 1, 2009 with respect to any Trust, the most likely course would be that Bank of America, N.A. would promptly resign as Trustee and the replacement trustee would assume its role earlier than scheduled. The next most likely scenario is that the party that would become the replacement trustee (and hence meets the requirements of the related Pooling and Servicing Agreement for qualification as a Trustee) would be appointed co-trustee under the terms of the Proposed Amendment. The Applicant stated, however, there might be situations where either such course of action would be impossible or impractical, in which case the parties would have to appoint a different co-trustee until the replacement trustee assumed its role.

The Applicant states that in certain cases, Bank of America, N.A. will continue as a securities administrator, retaining certain reporting requirements but be responsible to the replacement trustee. The replacement trustee will have legal title to the assets of the trust, will have fiduciary responsibility to the securities holders and will be responsible for supervising Bank of America, N.A. in whatever role it retains.

9. Bank of America represents that, as of March 20, 2009, there was no outstanding conflict requiring resolution involving Bank of America, N.A. and any Merrill Lynch entity involved in the transactions listed in the Securitizations List. Further, Bank of America has stated that it would notify the Department of Labor of any conflict that arose prior to the replacement of Bank of America, N.A. as Trustee in any of these transactions. The Applicant notes that, as a technical matter, in the most likely case (e.g. the assertion of a breach of representation or warranty by the Sponsor), the Pooling and Servicing Agreements all require that the Trustee provide the offending party 90 days to cure the issue before the Trustee may take any action to do so itself. Consequently, if an issue would have arisen after January 1, 2009; the Trustee would not have been able to take any action to cure the issue until after April 1, 2009. The Applicant asserts that since it is expected that the Trustee replacements will be made by April 1, 2009, it is not anticipated that a conflict will arise while Bank of America, N.A.

is the Trustee of any of the Covered Transactions.

10. The Applicant notes that Plans acquired Securities issued under the Securitizations in reliance on the exemptive relief provided by the Underwriter Exemptions. Absent additional relief, the Acquisition has caused these granted exemptions to cease to apply to several of the Securitizations. Bank of America represents that the Securities issued in transactions such as the Securitizations are attractive investments for Plans subject to Title I of ERISA or section 4975 of the Code and conversely, such plans are an important market for issuers of such Securities. Bank of America asserts that to force Bank of America, N.A. to resign as Trustee in all of the Securitizations before the Acquisition was not administratively feasible because the number of available trustees is limited and there is work required in changing trustees. Similarly, to have the exemptions no longer apply to the Securitizations would force the Plans to sell their securities in the current unstable market, likely at a loss. The Applicant additionally notes that although the Acquisition has been widely covered, it is conceivable that Plan fiduciaries would not realize that the Underwriter Exemption relied upon by the Plans had ceased to apply, raising the possibility that a Plan would not sell and that non-exempt prohibited transactions would occur.

11. Bank of America states that the Plans purchased Securities in reliance on PTE 90-29 or PTE 2002-19. At that time, the Plans had no knowledge that the Trustee would become an Affiliate of one or more members of the Restricted Group. On or after the Acquisition, except in cases covered by PTE 90-29 as amended by PTE 2000-58 (providing a six-month window for Trustee-Servicer affiliations) or PTE 2002-41 (Trustee-Underwriter affiliations), the purchased Securities would no longer be afforded coverage under the Underwriter Exemptions and the Plans would have been obligated to sell the Securities prior to January 1, 2009. The Applicant asserts that this is problematic for several reasons. First, as is customary for such transactions, the physical securities are not used in most cases. Rather, an electronic system, usually the Depository Trust Company's electronic system, is utilized and the securities are in global form. In such cases, it is difficult (and may be impossible) to ascertain the beneficial ownership of the securities, meaning that it is not known whether Plans are owners and to what extent. The Applicant asserts that identifying the

<sup>4</sup> The London Interbank Offered Rate.

affected Plans would be time consuming and expensive, and may be impossible to do with complete accuracy because of the book-entry system under which Securities were issued. As stated above, the Applicant represents that notice of this request for relief was posted on the Trustee's website at the time this Application was submitted, which would be updated to reflect any action of the Department with respect to the Application. The Applicant has informed the Department that, although Bank of America, N.A. will have been replaced as Trustee by April 1, 2009, Bank of America, N.A. will remain as the Securities Administrator for any of the Securitizations on the Securitization List for which it was providing such services. Further, the Applicant has indicated that either Bank of America, N.A. (in cases where Bank of America, N.A. continues as Securities Administrator) or the replacement trustee (in all other cases) will continue to update its website concerning the status of the Proposed Amendment. In this regard, the Applicant also requests that the publication of the Proposed Amendment in the **Federal Register** serve as the Notice to Interested Persons for purposes of this submission.

Second, and more importantly, the current disruption in the mortgage-backed securities market makes sales problematic, both in terms of finding buyers and establishing proper valuation. Granting the requested relief prevents these problems. The Applicant states further that the relief is of the same duration, six months, as that already provided by the Department for Trustee-Servicer affiliations, suggesting that the Department has already determined that this period is sufficiently brief to prevent serious conflicts of interest from arising.

12. Bank of America requests that the relief, if granted, be made retroactive to January 1, 2009, the Acquisition Date. If the relief is granted retroactively, Plans would be able to retain their prior Securitization investments and to purchase Securities in the secondary market relying upon the Underwriter Exemptions once exemptive relief is granted, even if the transactions originally closed or will close prior to the date the final Amendment is published in the **Federal Register**, if granted by the Department.

#### General Information

The attention of interested persons is directed to the following:

1. The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary

or other party in interest or disqualified person from certain other provisions of the Act and 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 require, among other things, a fiduciary to discharge his or her 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 requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

2. Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plans and of their participants and beneficiaries and protective of the rights of participants and beneficiaries of the plans; and

3. The proposed amendment, 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.

#### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending amendment to the address above, within the time frame set forth above, after the publication of this proposed amendment in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the Application at the address set forth above.

#### Proposed Exemption

Based on the facts and representations set forth in the application, 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, August 10, 1990), the Department proposes to modify Prohibited Transaction Exemption (PTE) 90-29, 55 FR 21459 (May 24, 1990), as amended by PTE 97-34, 62 FR 39021 (July 21, 1997), PTE 2000-58, 65 FR 67765 (November 13, 2000), PTE 2002-

41, 67 FR 54487 (August 22, 2002) and PTE 2007-05, 72 FR 13130 (March 20, 2007), as corrected at 72 FR 16385 (April 4, 2007) (PTE 2007-05), (PTE 90-29) and to modify PTE 2002-19, 67 FR 14979 (March 28, 2002) as amended by PTE 2007-05, (PTE 2002-19).

1. Subsection II.A.(4) of PTE 90-29 and PTE 2002-19 is amended to add a new subsection (c) that reads as follows:

(c) Effective January 1, 2009 through July 1, 2009, Bank of America, N.A., the Trustee, shall not be considered to be an Affiliate of any member of the Restricted Group solely as the result of the acquisition of Merrill Lynch & Co., Inc. and its affiliates (Merrill Lynch) by Bank of America Corporation and its subsidiaries (Bank of America), the parent holding company of Bank of America, N.A. (the Acquisition), which occurred after the initial issuance of the Securities, provided that:

(i) The Trustee, Bank of America, N.A., ceases to be an Affiliate of any member of the Restricted Group no later than July 1, 2009;

(ii) Any member of the Restricted Group that is an Affiliate of the Trustee, Bank of America, N.A., did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from January 1, 2009 through the date the member of the Restricted Group ceased to be an Affiliate of the Trustee, Bank of America, N.A.; and

(iii) In accordance with each Pooling and Servicing Agreement, the Trustee, Bank of America, N.A., appoints a co-trustee, which is not an Affiliate of Merrill Lynch or any other member of the Restricted Group, no later than the earlier of (A) April 1, 2009 or (B) five business days after Bank of America, N.A. becomes aware of a conflict between the Trustee and any member of the Restricted Group that is an Affiliate of the Trustee. The co-trustee will be responsible for resolving any conflict between the Trustee and any member of the Restricted Group that has become an Affiliate of the Trustee as a result of the Acquisition; provided, that if the Trustee has resigned on or prior to April 1, 2009 and no event described in clause (B) has occurred, no co-trustee shall be required.

(iv) For purposes of this subsection II.A.(4)(c), a conflict arises whenever (A) Merrill Lynch, as a member of the Restricted Group, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Bank of America, N.A., as Trustee, or (B) Bank of America, N.A., as Trustee, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Merrill Lynch, a member of the Restricted Group.

The time as of which a conflict occurs is the earlier of: the day immediately following the last day on which compliance is required under the relevant Pooling and Servicing Agreement; or the day on which a party affirmatively responds that it will not comply with a request for performance.

For purposes of this subsection II.A.(4)(c), the term “conflict” includes but is not limited to, the following: (1) Merrill Lynch’s failure, as Sponsor, to repurchase a loan for breach of representation within the time period prescribed in the relevant Pooling and Servicing Agreement, following Bank of America, N.A.’s request, as Trustee, for performance; (2) Merrill Lynch, as Sponsor, notifies Bank of America, N.A., as Trustee, that it will not repurchase a loan for breach of representation, following Bank of America, N.A.’s request that Merrill Lynch repurchase such loan within the time period prescribed in the relevant Pooling and Servicing Agreement (the notification occurs prior to the expiration of the prescribed time period for the repurchase); and (3) Merrill Lynch, as Swap Counterparty, makes or requests a payment based on a value of the London Interbank Offered Rate (LIBOR) that Bank of America, N.A., as Trustee, considers erroneous.

2. The Definition of “Underwriter” at section III.C. of PTE 90–29 and PTE 2002–19 is temporarily replaced with a definition that includes J.P. Morgan Securities Inc. and reads:

C. Effective January 1, 2009 through July 1, 2009, “Underwriter” means:

- (1) Merrill Lynch or J.P. Morgan Securities Inc.;
- (2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entities; or
- (3) Any member of an underwriting syndicate or selling group of which such firm or person described in subsections III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

3. The Definition of “Sponsor” at section III.D. of PTE 90–29 and PTE 2002–19 is temporarily extended to

include language applicable to transactions on the Securitization List at section III.KK and reads:

D. “Sponsor” means:

- (1) The entity that organizes an Issuer by depositing obligations therein in exchange for Securities; or
- (2) Effective January 1, 2009 through July 1, 2009, for those transactions listed on the Securitization List at section III.KK., Merrill Lynch.

4. Section III of PTE 90–29 and PTE 2002–19 is temporarily amended to add a new section III.KK that reads as follows:

KK. Effective January 1, 2009 through July 1, 2009,

“Securitization List” means:

Name	Issuance type	MLynch role
CMAC Series 1997 ML1	C	S, U
WFPD 1996 WFP-D	C	S, U
Merrill Lynch 2003-KEY 1	C	S, U
Merrill Lynch Series 1997-C1	C	S, U
Merrill Lynch Series 2004-KEY 2	C	S, U
Merrill Lynch Series 2006-C2	C	S, U
Mezz Cap 2004-C2	C	S, U
C-BASS 2007-CB4	R	S, U
First Franklin MLT 2006-FF18	R	S, U, MS
First Franklin MLT 2007-01	R	S, U, MS
First Franklin MLT 2007-02	R	U, MS
First Franklin MLT 2007-03	R	U, MS
First Franklin MLT 2007-4	R	S, U, MS
First Franklin MLT 2007-5	R	S, U, MS
First Franklin MLT 2007-A	R	S, U, MS
First Franklin MLT 2007-FF1	R	S, U, MS
First Franklin MLT 2007-FF2	R	S, U, MS
First Franklin MLT 2007-FFA	R	S, U, MS
First Franklin MLT 2007-FFC	R	S, U, MS
First Franklin MLT 2007-H1	R	S, U, MS
Merrill Lynch Series 2005-SL3	R	S, U, MS
Merrill Lynch Series 2006-AHL1	R	S, U, MS
Merrill Lynch Series 2006-AR1	R	S, U, MS
Merrill Lynch Series 2006-FF1	R	S, U, MS
Merrill Lynch Series 2006-FM1	R	S, U, MS
Merrill Lynch Series 2006-HE2	R	S, U, MS
Merrill Lynch Series 2006-HE3	R	S, U, MS
Merrill Lynch Series 2006-HE4	R	S, U, MS
Merrill Lynch Series 2006-HE6	R	S, U, MS
Merrill Lynch Series 2006-MLN1	R	S, U, MS
Merrill Lynch Series 2006-OPT1	R	S, U
Merrill Lynch Series 2006-RM1	R	S, U, MS
Merrill Lynch Series 2006-RM2	R	S, U, MS
Merrill Lynch Series 2006-RM3	R	S, U
Merrill Lynch Series 2006-RM4	R	S, U, MS
Merrill Lynch Series 2006-RM5	R	S, U, MS
Merrill Lynch Series 2006-SD1	R	S, U, MS
Merrill Lynch Series 2006-SL1	R	S, U, MS
Merrill Lynch Series 2006-WMC2	R	S, U, MS
Merrill Lynch Series 2007-HE1	R	S, U, MS
Merrill Lynch Series 2007-HE3	R	S, U, MS
Merrill Lynch Series 2007-SD1	R	S, U, MS
MLMI Trust 2002-AFC1	R	S, U
Ownit Mort Loan ABS 2006-3	R	S, U
Ownit Mort Loan ABS 2006-4	R	S, U
Ownit Mort Loan ABS 2006-5	R	S, U
Ownit Mort Loan ABS 2006-6	R	S, U
Ownit Mort Loan ABS 2006-7	R	S, U

Name	Issuance type	MLynch role
JP Morgan Chase 2003-ML1 (U—JP Morgan Securities Inc.) .....	C .....	S

Legend: C = Commercial mortgage-backed securitizations.  
 R = Residential mortgage-backed securitizations.  
 U = Underwriter.  
 S = Sponsor.  
 MS = Master Servicer (either HLS or Wilshire).  
 MLynch = Merrill Lynch.

The availability of this amendment, if granted, is subject to the express condition that the material facts and representations contained in the Application are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the Application change, the amendment will cease to apply as of the date of such change. In the event of any such change, an application for a new amendment must be made to the Department.

Signed at Washington, DC, this 30th day of April, 2009.

**Ivan L. Strasfeld,**  
*Director of Exemption Determinations,  
 Employee Benefits Security Administration,  
 U.S. Department of Labor.*  
 [FR Doc. E9-10362 Filed 5-5-09; 8:45 am]  
**BILLING CODE 4510-29-P**

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

[TA-W-65,173]

**Superior Fabrication Company LLC, Kincheloe, MI; Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 9, 2009 in response to a petition filed by a company official on behalf of workers of Superior Fabrication Company LLC, Kincheloe, Michigan.

The petitioner has requested that the petition be withdrawn. Therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 1st day of April, 2009.

**Richard Church,**  
*Certifying Officer, Division of Trade Adjustment Assistance.*  
 [FR Doc. E9-10375 Filed 5-5-09; 8:45 am]  
**BILLING CODE 4510-FN-P**

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

[TA-W-65,626]

**Russell Brands, LLC, Coosa River Yarn Division, Wetumpka, AL; Notice of Termination of Investigation**

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 18, 2009 in response to a petition filed by a company official on behalf of workers of Russell Brands, LLC, Coosa River Yarn, Wetumpka, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 1st day of April, 2009

**Richard Church,**  
*Certifying Officer, Division of Trade Adjustment Assistance.*  
 [FR Doc. E9-10388 Filed 5-5-09; 8:45 am]  
**BILLING CODE 4510-FN-P**

**MILLENNIUM CHALLENGE CORPORATION**

[MCC FR 09-09]

**Request for Information From the Private Sector for Malawi Compact Program Development**

**AGENCY:** Millennium Challenge Corporation.

**ACTION:** Invitation for private sector input.

**Authority:** 22 U.S.C. 7701 *et seq.*

**SUMMARY:** The Millennium Challenge Corporation (“MCC”) is a U.S. Government agency created in 2004 to administer the Millennium Challenge Account. Its mission is to reduce poverty through the promotion of sustainable economic growth. Since 2004, MCC has signed Compact programs with eighteen partner countries ranging from \$66 million to \$698 million. In April 2009, the Government of Malawi (“GoM”) through “MCA-Malawi” presented a

proposal including three projects to MCC for potential Compact funding. This Request for Information (“RFI”) aims to solicit feedback from the private sector on these projects.

**SUPPLEMENTARY INFORMATION:** This solicitation has the following objectives: (a) Share best practices and private sector experiences on similar projects from other countries; (b) Generate opportunities for leverage of Compact funds with private sector financing, trade, and investment; and (c) Solicit information about opportunities and challenges facing businesses in the sectors which have been identified for possible Compact projects.

This solicitation is focused on the three following project proposals, which are posted publicly in full detail at <http://www.mca-m.gov.mw/index.php/concept-papers/81>:

The proposed “Energy” project would fund increased availability of reliable and quality power, access to power, efficient power service delivery, and improved natural resources management.

The proposed “Transport” project would fund more reliable, efficient and affordable transport options through road and rail investments.

The proposed “Governance” project would fund improvements to the public financial management and budget oversight system as well as assistance to GoM anti-corruption agencies.

Where possible, respondents are encouraged to provide information based on experience in the country. Experiences from other countries may also be applicable. MCA-Malawi may use information provided by the private sector to structure projects for Compact funding.

**FOR FURTHER INFORMATION:** Visit <http://www.mca-rn.gov.mw/>. Responses to and questions about this Request for Information should be e-mailed to [info@mca-m.gov.mw](mailto:info@mca-m.gov.mw) and to [psi@mcc.gov](mailto:psi@mcc.gov).

**DATES:** Companies, other organizations, and individuals are invited to submit responses on or before Friday, May 15, 2009.