DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

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). This notice includes the following proposed exemptions: D–11655, Renaissance Technologies, Inc. (Renaissance or the Applicant); D–11677, Weyerhaeuser Company (Weyerhaeurser) and Federalway Asset Management LP (collectively the Applicants); and D–11680, Citigroup Inc. (Citigroup); *et al.*)

DATES: 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.

ADDRESSES: 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.

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 email or FAX. Any such comments or requests should be sent either by email 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.

WARNING: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

SUPPLEMENTARY INFORMATION:

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). 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.

Renaissance Technologies, LLC (Renaissance, or the Applicant)

Located in New York, New York

[Application No. D–11655]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847 August 10, 1990).

Section I. Covered Transactions Involving IRAs Subject to Title I and TITLE II of ERISA

If the exemption is granted, the restrictions of section 406(a)(1)(A) and (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (D) of the Code,[1] shall not apply, effective January 1, 2012, to:

(a) The direct or indirect acquisition by a Participant's IRA of an interest in a Medallion Fund through such IRA's acquisition of an interest in a New Medallion Vehicle;

(b) The acquisition of an additional interest by a Participant's IRA in a New Medallion Vehicle; and

(c) The redemption of all or a portion of a Participant's IRA's interest in a New Medallion Vehicle.

This proposed exemption is subject to the general conditions set forth below in Section III.

Section II. Covered Transactions Involving IRAs Subject to Title II of ERISA Only

If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (D) of the Code,[2] shall not apply, effective January 1, 2012, to:

(a) The direct or indirect acquisition by a Spouse's IRA of an interest in a Medallion Fund through such IRA's acquisition of an interest in a New Medallion Vehicle;

(b) The acquisition of an additional interest by a Spouse's IRA in a New Medallion Vehicle; and

(c) The redemption of all or a portion of a Spouse's IRA's interest in a New Medallion Vehicle.

This proposed exemption is subject to the general conditions set forth below in Section III.

Section III. General Conditions

(a) An IRA's acquisition of an interest in a New Medallion Vehicle is made at the specific direction of an IRA Holder.

(b) Renaissance renders no investment advice (within the meaning of 29 CFR 2510.3–21(c)) to IRA Holders concerning a potential acquisition of an

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

[2] Pursuant to 29 CFR 2510.3–2(d), the Spouses' IRAs are not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

interest in a New Medallion Vehicle and does not engage in marketing activities or offer employment-related incentives of any kind intended to cause IRA Holders to consider such acquisition.

(c) An interest in a New Medallion Vehicle is only available to IRA Holders who satisfy the securities law-based investor qualifications applicable to all investors in such New Medallion Vehicle.

(d) No commissions, sales charges, or other fees or profit participations in the form of performance allocations or otherwise, direct or indirect, are assessed against an IRA in connection with its acquisition and holding of an interest in a New Medallion Vehicle.

(e) An IRA pays no more and receives no less for its particular interest in any of the New Medallion Vehicles than they would in an arm's length transaction with an unrelated party.

(f) An IRA's interest in a New Medallion Vehicle is redeemable, in whole or in part, without the payment of any redemption fee or penalty, no less frequently than on a quarterly basis upon no less than 10 days advance written notice.

(g) An acquisition or redemption of an IRA's interest in a New Medallion Vehicle is made for fair market value, determined as follows:

(1) Equity securities are valued at their last sale price or official closing price on the market on which such securities primarily trade using sources independent of Renaissance and the issuer. If no sales occurred on such day, equity securities are valued at the last reported independent ''bid'' price or, if sold short, at the last reported independent ''asked'' price.

(2) Fixed income securities are valued on either the basis of ''firm quotes'' obtained at the time of an acquisition or redemption from U.S.-registered or foreign broker-dealers, which are registered and subject to the laws of their respective jurisdiction, which quotes reflect the share volume involved in the transaction, or on the basis of prices provided by independent pricing services that determine valuations based on market transactions for comparable securities and various relationships between such securities that are generally recognized by institutional traders.

(3) Options are valued at the mean between the current independent ''bid'' price and the current independent ''asked'' price or, where such prices are not available, are valued at their fair value in accordance with Fair Value Pricing Practices by the Renaissance Valuation Committee, which utilizes a set of defined rules and an independent review process.

(4) If current market quotations are not readily available for any investments, such investments are valued at their fair value by the Renaissance Valuation Committee in accordance with Fair Value Pricing Practices.

(h) Redemption of an IRA's interest in a New Medallion Vehicle, in whole or in part, is made in cash.

(i) In the event that a redemption of any portion of an IRA Holder's interest in any of the Medallion Funds becomes necessary as the result of a reduction of the Investment Allocation applicable to an IRA Holder, then, at such IRA Holder's election, a redemption is first made of the IRA Holder's taxable investments (if any) prior to his or her IRA's interest in a New Medallion Vehicle.

(j) With respect to the investment by Participants in the New Medallion Vehicles through IRAs, Renaissance acknowledges that such investments may constitute investments by a ''pension plan'' within the meaning of section 3(2) of the Act, and the Applicant represents that, with respect to such investments, it will comply with all applicable requirements of Title I of the Act.

(k) Renaissance does not use the fact that IRAs invested in the Funds in any marketing activities or publicity materials for the Funds.

(l) In advance of the initial investment by an IRA in a New Medallion Vehicle, the IRA Holder receives:

(1) A copy of the proposed exemption and the final exemption, following the publication of the final exemption in the **Federal Register**;

(2) A private offering memorandum (with all related exhibits) describing the relevant investment vehicles, including its investment objectives, risks, conflicts, operating expenses and redemption and valuation policies, and any IRA Holder whose IRA owns an interest in a New Medallion Vehicle receives the same disclosures and information provided to other investors with respect to the Fund in which he or she invests; and

(3) All reasonably available relevant information as such IRA Holder may request.

(m) On an on-going basis, Renaissance provides each IRA Holder whose IRA owns an interest in a New Medallion Vehicle with the following information:

(1) Unaudited performance reports at the end of each month; and

(2) Audited annual financial statements following the end of each calendar year.

(n) Prior to the acquisition by an IRA of an interest in a New Medallion Vehicle or each Fund or vehicle in which, or through which, a New Medallion Vehicle invests, Renaissance or the applicable New Medallion Vehicle manager (the New Medallion Vehicle Manager):

(1) Agrees to submit to the jurisdiction of the federal and state courts located in the State of New York;

(2) Agrees to appoint an agent for service of process for the New Medallion Vehicle, and any other Fund described in this section, in the United States (the Process Agent);

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

(4) Agrees that any enforcement by an IRA Holder of his or her rights pursuant to this exemption will, at the option of the IRA Holder, occur exclusively in the United States courts.

(o) Renaissance maintains or causes to be maintained for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (p)(i) below to determine whether the conditions of this proposed exemption, if granted, have been met, provided that (i) a separate prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Renaissance, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest or disqualified person other than Renaissance 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 by paragraph (p)(i) below; and

(p)(i) Except as provided below in paragraph (p)(ii), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (o) 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, the Commodity Futures Trading Commission (CFTC), or the U.S. Securities and Exchange Commission (SEC), and

(B) Any IRA Holder or any duly authorized representative or beneficiary of an IRA; and

(ii) None of the persons described above in paragraph (p)(i)(B) shall be authorized to examine trade secrets of Renaissance, or commercial or financial information which is privileged or confidential, and should Renaissance

refuse to disclose information on the basis that such information is exempt from disclosure, Renaissance 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 IV. Definitions

For purposes of this proposed exemption:

(a) The term ''Renaissance'' means Renaissance Technologies, LLC, and its affiliates.

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

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such entity (for purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual); and

(2) Any officer of, director of, or partner in such person.

(c) The term ''Fair Value Pricing Policies'' means the Official Pricing Policy established in good faith by the Renaissance Valuation Committee for valuing an instrument, which is subject to the approval of the Renaissance Technologies LLC Board of Directors.

(d) The term ''Fund'' or ''Funds'' means, individually or collectively, the nine privately offered U.S. and non-U.S. collective investment vehicles managed by Renaissance, comprised almost exclusively of assets of Renaissance and its owners and employees (the Proprietary Funds) and the five privately offered U.S. and non-U.S. collective investment vehicles, consisting primarily of assets of clients of Renaissance (the non-Proprietary Funds).

(e) The term ''Investment Allocation'' means the permitted investment allocation in the Medallion Funds applicable to a Renaissance employee, which such employee and his or her Spouse may utilize to make investments in a Medallion FF or Kaleidoscope, or in an applicable New Medallion Vehicle investing in such Funds, subject to each such employee's overall Investment Allocation limit.

(f) The term ''IRA'' means an ''individual retirement account'' as defined under section 408(a) of the Code or a ''Roth IRA'' as defined under section 408A of the Code that is beneficially owned by an IRA Holder.

(g) The term ''IRA Holder'' means a Participant, or the Spouse of a Participant, who is eligible to invest in a New Medallion Vehicle through his or her IRA.

(h) The term ''Kaleidoscope'' means Kaleidoscope Fund LLC, a Delaware limited liability company established by Renaissance to facilitate the investment by certain employees of Renaissance in the other Proprietary Funds.

(i) The term ''Medallion Funds'' means six of the nine Proprietary Funds, organized in a ''master-feeder'' investment structure, comprised of six Medallion Fund feeder funds (Medallion FFs) engaging in their investment and trading activities only through certain master funds and their subsidiaries (the Medallion Master Funds).

(j) The term ''New Medallion Vehicle'' or ''New Medallion Vehicles'' means, individually or collectively, New Medallion FF, the New Medallion Conduit, and New Kaleidoscope.

(k) The term ''New Kaleidoscope'' means Kaleidoscope RF Fund LLC, the Delaware limited liability company to be established by Renaissance in order to facilitate the investment in the Medallion Funds (through the New Medallion Conduit), by IRA Holders who do not meet the investor qualifications to invest in the New Medallion FF.

(l) The term ''New Medallion Conduit'' means Medallion RMPRF Fund LP, the Bermuda Limited Partnership that is treated as a corporation for US Federal Income Tax purposes, to be established by Renaissance in order to facilitate the investment by New Kaleidoscope in the Medallion Funds.

(m) The term ''New Medallion FF'' means Medallion Fund RF LP, the Bermuda Limited Partnership that is treated as a corporation for US Federal Income Tax purposes, to be established by Renaissance in order to facilitate an IRA Holder's investment in the Medallion Master Funds.

(n) The term ''Participant'' means a former participant in the Renaissance Technologies, LLC 401(k) Plan (the 401(k) Plan) who received a distribution of their entire account balance in the 401(k) Plan prior to December 31, 2010 as a result of the termination of such plan, and is either an employee or a Permitted Owner of Renaissance at the time of such individual's investment in the New Medallion Vehicles.

(o) The term ''Permitted Owners'' means the seven individuals permitted to invest in the Medallion Funds following the termination of their Renaissance employment, comprised of three Renaissance ''founders,'' and four former employees who are owners of Renaissance.

(p) The term ''Renaissance Valuation Committee,'' or ''RVC,'' means the committee, established by Renaissance in 2008, that oversees and monitors the valuation process, and establishes the methods of, and procedures for, valuing various instruments traded by Renaissance (e.g., the Proprietary Funds), composed of high-level Renaissance employees who also are Fund investors.

(q) The term ''Spouse'' means a person who is (a) married to a Participant, or (b) to the extent not prohibited by applicable law, in a civil union or similar marriage-equivalent institution established pursuant to State law of the State where the Participant resides (or otherwise recognized by the State where the Participant resides) with a Participant.

Section IV. Effective Date

If granted, this proposed exemption will be effective as of January 1, 2012.

Summary of Facts and Representations[3]

The Applicant

1. Renaissance is an investment adviser registered with the SEC and a commodity pool operator and commodity trading advisor registered with the CFTC. The firm was founded in 1982 and is headquartered in New York City, and its research and trading activities are conducted from its office in East Setauket, New York. Renaissance implements quantitative investment strategies on behalf of its clients, employing quantitative analysis, specifically, mathematical and statistical methods, to uncover technical indicators with predictive value. This analysis is used to construct proprietary computer models which use publicly available financial data to identify and implement trading decisions electronically. Renaissance's quantitative analysis and trading activities are applied to mature, highly liquid, publicly-traded instruments in both U.S. and foreign markets.

2. The Applicant has approximately 275 employees, about 100 of whom are owners of Renaissance. According to the Applicant, many of Renaissance's employees are specialists with non-financial backgrounds, including mathematicians, physicists, astrophysicists, and statisticians. In this respect, about a third of the more than 200 employees at the Long Island office have Ph.D.s.

[3] The Summary of Facts and Representations (the Summary) is based on the Applicant's representations and does not reflect the views of the Department.

3. Renaissance is the investment manager of the Funds, fourteen privately offered U.S. and non-U.S. collective investment vehicles with aggregate net assets under management as of April 30, 2011 of approximately $19 billion. Renaissance's nine Proprietary Funds are comprised almost exclusively of assets of Renaissance and its owners and employees, and include, among others, the six Medallion Funds and Kaleidoscope. According to the Applicant, none of the assets of any Proprietary Fund is treated as ''plan assets'' of any ''benefit plan investor,'' as those terms are defined in section 3(42) of the Act and 29 CFR 2510.3–101. Renaissance's non-Proprietary Funds consist primarily of assets of clients, such as foundations, private- and public-sector pension funds, financial institutions, and high net worth individuals, as well as a small amount of proprietary assets.

According to Renaissance, as of April 30, 2011 the breakdown of aggregate assets under management between the Proprietary Funds and the non-Proprietary Funds is $13.3 billion and $5.8 billion, respectively. Of this, the Applicant states that the Medallion Funds (described below) represent approximately $10.2 billion of the Proprietary Funds' assets under management as of April 30, 2011.

The Medallion Funds

4. Renaissance explains that the Medallion Funds are organized in a ''master-feeder'' structure, with investors owning shares of a ''feeder fund'' that invests directly in one or more ''master funds,'' generally organized as such for tax or other regulatory reasons. There are six Medallion FFs, each of which is intended for investors who meet certain criteria specific to that Medallion FF concerning that investor's residency (U.S. or non-U.S.) and regulatory status under the U.S. federal securities laws. All equity interests in each Medallion FF are owned by the investors in that Medallion FF, and, as described below, also by Renaissance (in certain Medallion FFs).

5. The Applicant states that the Medallion FFs all have the same investment objectives and trading strategies and currently do, and will, invest and trade together through the same master trading vehicles that were formed solely for that purpose. In this regard, each Medallion FF engages in its investment and trading activities only through the Medallion Master Funds. Investors contribute capital to a Medallion FF and receive interests or shares (depending on the Medallion FF structure as either a partnership or a corporation) in such Medallion FF. All investment capital in each Medallion FF (minus a small amount necessary to pay expenses at the Medallion FF level) is re-invested in the Medallion Master Funds where all investment and trading activities occur. According to the Applicant, as a practical matter, the Medallion FFs have a minimum capital investment requirement of $25,000, from subscribers but do have the discretion to accept less in appropriate circumstances.

6. The Medallion Master Funds and the Medallion FFs are organized as either limited partnerships or corporations, and all equity interests in the Medallion Master Funds are owned collectively and directly by one or more of the Medallion FFs, and indirectly, primarily by Renaissance, owners of Renaissance, and Renaissance's employees. All investors in the Medallion FFs (as well as the other Proprietary Funds and non-Proprietary Funds) must, among other things, meet the entry requirements established under the U.S. federal securities laws for admission.[4] Further, the Medallion Funds are audited annually by a nationally-recognized accounting firm.

7. The Applicant states that the primary objective of each Medallion Fund is to achieve appreciation of its assets through investment and trading in a variety of both securities-related and futures-related financial instruments. According to the Applicant, the Medallion Funds seek out investments that are reasonably liquid in nature and that complement their other trading activities. The Applicant states further that the Medallion Funds trading takes place on organized U.S. and foreign exchanges, as well as through the interbank or cash markets, or on or through recognized markets of regional, national or international standing, based on a proprietary and highly confidential computational trading system developed by Renaissance.

8. According to the Applicant, the Medallion Funds invest and trade in various types of financial instruments as determined by Renaissance, including, without limitation: (a) Equity securities and related instruments, such as common and preferred stocks, ADRs, options, warrants, convertible securities and swaps and other derivatives relating to equity securities, (b) futures contracts (and options thereon) and forward contract transactions, and (c) fixed income securities and related derivatives, including U.S. and non-U.S. government issued (and U.S. government agency guaranteed) securities, mortgage-related securities and derivatives and credit default swaps. The Applicant explains that allocations of the Medallion Funds' assets among these investment areas will vary based on market opportunities and other related factors. Furthermore, the Medallion Funds also may utilize other securities, options, cash instruments, interest rate swaps and futures and other derivatives for hedging purposes. Nevertheless, the Applicant notes that the Medallion Funds are not limited to the specific investments described above and Renaissance has the exclusive responsibility for choosing the investments and strategies in which the Medallion Funds may from time to time invest and the amount of capital that will be invested.

9. According to the Applicant, Renaissance operates a diverse proprietary equity trading program consisting of several different equity trading strategies primarily based on technical methods that produce a statistical forecast of future prices of individual securities. In this regard, the Applicant explains that the Medallion Funds' portfolio of equity securities may consist of both long and short positions, and a substantial portion of the positions are structured as derivative transactions. Furthermore, the Applicant notes that Renaissance may from time to time develop and utilize other equity trading strategies as a part of the Medallion Funds' overall equity trading program, which may be integrated into the existing Medallion Master Funds and their subsidiaries or may be implemented through new affiliates of such Funds.

10. According to the Applicant, the Medallion Funds' investment strategy for its proprietary futures trading program is based primarily on technical analysis using a trading method based on input from certain proprietary computer programs, databases and algorithms, and to a limited extent on the basis of fundamental analysis of factors affecting prices of futures instruments. The Applicant notes that a wide variety of traditional commodity futures contracts are traded, together with certain financial futures contracts and contracts in major currencies, although there will not necessarily be positions in each such contract on every day.

11. The Applicant states that the Medallion Funds also invest and trade

[4] The Medallion FFs currently operate under the exemptions set forth in sections 3(c)(7), 3(c)(1), or 6(b) of the 1940 Act, and Rule 506 of Regulation D under the Securities Act of 1933, as amended (the 1933 Act).

in a variety of fixed income securities as a cash management strategy in support of its other investment programs. According to the Applicant, these fixed income securities include, but are not limited to, U.S. government-issued (and U.S. government agency-guaranteed) and non-U.S. government issued instruments including securities and repurchase and/or reverse repurchase transactions thereon. The Applicant states further that cash instruments, such as money market shares, also are employed, as are mortgage-related securities and derivatives, and credit default swaps.

12. According to the Applicant, the Medallion Funds use leverage in their investment and trading activities, derived from two sources—borrowed funds in securities transactions and inherent leverage embedded in futures contracts and related instruments. In this regard, the Medallion Funds borrow, either directly or indirectly, in order to finance the acquisition of securities and secure such borrowings with its assets, at market rates of interest without recourse to the Funds' investors. The Applicant states that the amount of these borrowings varies, but that the Medallion Funds' equities positions generally equal 4 to 5 times its investor capital. According to the Applicant, futures and forward contracts trading also is leveraged in that the margin deposits required to establish and to maintain these positions create inherent leverage on these transactions, but do not involve any borrowed funds (they are good faith deposits).[5]

13. The Applicant states that the risk of investing in the Medallion Funds results from a variety of factors, including the volatility in the various markets for financial instruments that the Funds trade in, the use of leverage (which can exacerbate both profits and losses), and the uncertainty of governmental actions around the world and their impact on the interconnected global financial markets (e.g., actions of central banks that affect interest rates in various currencies). However, the Applicant observes that these risks are mitigated by several factors, including the Medallion Funds' broad investment diversification, the liquidity of most of the instruments the Funds trade, the quarterly liquidity afforded to each investor, and the success that Renaissance has achieved in trading the various Medallion Funds that have resulted in average annual returns (before management fees and performance allocations) of 76.91% over the past twenty years.

The Kaleidoscope Fund

14. One of the nine Proprietary Funds maintained by Renaissance is Kaleidoscope, a Delaware limited liability company, established exclusively as a ''perk'' to Renaissance's employees who do not meet the financial qualification requirements under the U.S. federal securities laws for eligibility to invest in any of the other eight Proprietary Funds.[6] Kaleidoscope is a ''fund-of-funds'' that currently invests in the Medallion Funds through one of the Medallion FFs, known as ''Medallion RMP,'' in addition to the other Proprietary Funds. As of April 30, 2011, Kaleidoscope held approximately $29.1 million in assets under management, approximately $8.9 million of which was invested in Medallion RMP. Further, as Kaleidoscope only invests in the Proprietary Funds, it invests indirectly in the instruments and transactions that such Funds invest in directly. Kaleidoscope is also audited annually by a nationally-recognized accounting firm.

The RIFF and RIEF Funds

15. In addition to the Medallion Funds and Kaleidoscope, RIEF RMP LLC (RIEF) and RIFF RMP LLC (RIFF) make up the remainder of the Proprietary Funds. RIEF is a Delaware limited liability company that does not trade in a master-feeder structure, but instead engages in direct investing and has multiple classes of ownership interests. RIEF invests and trades for its own account primarily in a widely diversified portfolio consisting almost exclusively of listed U.S. and non-U.S. equity securities that are publicly traded on U.S. securities exchanges, and to a more limited extent in derivatives, such as exchange traded futures contracts and total return swaps. RIFF is also a Delaware limited liability company, but, unlike RIEF, it operates in a master-feeder structure similar to the Medallion Funds. Thus, all investment decisions are made at the level of the ultimate RIFF master fund, through which RIEF invests and trades primarily in futures contracts on organized exchanges, forward contracts, and other derivative instruments.

16. Investors in RIEF and RIFF are limited primarily to certain of Renaissance's employees and their family members, as well as entities maintained for the benefit of the foregoing persons, each of whom meets the applicable federal securities law requirements.[7] Such investors either invest directly by acquiring interests in such Funds, or they may invest indirectly through Kaleidoscope. RIEF and RIFF are subject to both SEC registration and regulation by the CFTC, and are both audited annually by a nationally-recognized accounting firm.[8]

The Interests of Renaissance and its Owners and Employees in the Medallion Funds

17. Renaissance is the general partner of the Medallion FFs and Medallion Master Funds that are organized as limited partnerships, and certain of Renaissance's owners serve as directors of the Medallion FFs and Medallion Master Funds that are organized as non-U.S. corporations. Renaissance is also the investment manager to all the Medallion Funds, including both Medallion FFs and Medallion Master Funds, and has investment discretion over their assets. However, the Applicant states that Renaissance's role as ''investment manager'' of the Medallion FFs is extremely narrow in practice, as each Medallion FF, by its terms, only may invest in, and thus effectively is ''hardwired'' to, the Medallion Master Funds. In effect, the Applicant contends, Renaissance's role at the Medallion FF level is more administrative than investment related (as compared to the role of an ''investment manager'' as defined in Section 3(38) of the Act).

18. As the investment manager of the Medallion Funds, Renaissance receives a quarterly, fixed management fee from each Medallion FF, based on the net asset value of each Medallion fund at the beginning of each semi-annual period (January 1 and July 1 of each year), and payable in cash. However,

[5] The Applicant explains that futures contract positions on recognized exchanges in the U.S. may be acquired with initial margin deposits generally that range from 2% to 15% of the face amount of a contract (e.g., a $37,997 contract to acquire wheat can be established with an initial deposit of $3,037 (8% of its face value).

[6] Kaleidoscope currently operates under the exemption set forth in section 3(c)(1) of the 1940 Act and Rule 506 of Regulation D under the 1933 Act.

[7] According to the Applicant, Renaissance owns less than 1% of the equity interests in each of RIEF and RIFF, and no Participant is a majority owner of either of such Funds. Therefore, the Applicant states that neither RIEF nor RIFF are parties in interest or disqualified persons with respect to IRAs investing therein. As a result, the Department is not proposing exemptive relief for such transactions, nor fully describing them, herein.

[8] RIEF qualifies under section 6(b) of the 1940 Act and Rule 506 of Regulation D under the 1933 Act, and RIFF qualifies under Rule 506 of Regulation D under the 1933 Act (there is no parallel exemption under the 1940 Act because RIFF trades primarily in futures, and thus is a ''futures'' fund and not a ''securities'' fund).

Renaissance does not receive a management fee from any of the Medallion Master Funds. These management fees are charged at the annualized rate of 5% of net asset value (i.e., 2½% of net asset value at the beginning of each semi-annual period). Thus, the most recent fixed quarterly management fees paid to Renaissance by the Medallion FFs are equal to approximately $107 million.

19. Renaissance also maintains substantial capital investments in the four U.S. Medallion FFs that are organized as Delaware limited partnerships, and hence has a ''capital account'' in each U.S. Medallion FF. In addition, Renaissance owns a separate class of non-participating shares in the two non-U.S. Medallion FFs that are organized as Bermuda corporations. Combined, Renaissance owns approximately 28.49% of the combined equity interests in the Medallion FFs.[9] Because the Medallion FFs directly invest solely in the Medallion Master Funds, Renaissance indirectly owns 28.49% of the combined equity interests in the Medallion Master Funds.

20. Renaissance also receives a contractual performance allocation equal to a percentage of the semi-annual net profits that are earned by each investor, from (a) the two non-U.S. Medallion FFs, through its separate class of non-participating shares in each such non-U.S. Medallion FF, and (b) each of the four U.S. Medallion FFs through its capital account in each such Medallion FF. According to the Applicant, performance allocations are calculated and assessed on an investor-by-investor basis within each Medallion fund in an amount that ranges between 20% and 44% of the new high net capital appreciation (realized and unrealized) experienced by each investor during each semi-annual period (i.e., January 1 to June 30 and July 1 to December 31 of each year).[10] The Applicant states that the performance allocation is calculated on a ''high-watermark'' basis (i.e., only after any cumulative net losses from prior semi-annual calculation periods are overcome).[11] Thus, the quarterly performance allocations paid to Renaissance by the Medallion FFs for the most recent calculation period are equal to approximately $891 million. Furthermore, payment of such performance allocations increases the amount of Renaissance's capital account in the applicable Medallion Fund. According to the Applicant, Renaissance then has the option in whole or in part to withdraw such performance allocation in cash or to leave the performance allocation in its capital account (which is available to be withdrawn at any time in the future).

Renaissance does not receive a performance allocation directly from any of the Medallion Master Funds. However, as a result of its contractual performance allocations from the Medallion FFs, Renaissance indirectly holds a 36% profits interest in the Medallion Master Funds.

21. According to the Applicant, since the Medallion Master Funds are owned by the Medallion FFs, Renaissance has an indirect profits interest in the Medallion Master Funds in excess of 50% through a combination of its (a) profit participation in the Medallion FFs' net profits received through the performance allocations resulting from the Medallion Master Funds' trading and investment activities, and (b) direct ownership interests in the U.S. Medallion FFs, which in turn invest in the Medallion Master Funds.[12] The Applicant explains that, since Renaissance holds a 36% profits interest in the Medallion Master Funds through its contractual performance allocations from the Medallion FFs, 64% of the profits interest in the Medallion Master Funds remains to be divided among all equity holders, in proportion to their equity ownership in the Medallion FFs. Because Renaissance owns approximately 28.49% of the combined equity interests in the Medallion FFs, they own a corresponding 18.23% interest in profits in the Medallion Master Funds based on their equity interest in the Medallion FFs (28.49% of 64% = 18.23%). Thus, Renaissance has a 54.23% profits interest (36% + 18.23% = 54.23%) in the Medallion Master Funds.

22. Renaissance's owners and employees (and their affiliated entities) also may invest in the Medallion FFs in their personal capacities (if they meet the investor qualification requirements applicable to such Funds) and would thus have direct ownership interests in the Medallion FFs (but not necessarily in the same Medallion FFs or in the same proportions). As of April 30, 2011, such individuals owned approximately 71.46% of the total assets under management of the Medallion FFs, or $7.3 billion.

23. In addition, small ownership interests in the Medallion FFs are held by Kaleidoscope (0.09% or $8.9 million) and certain ''outsiders,'' i.e., individuals who are employed by two entities in which Renaissance has a minority ownership interest in connection with these entities' management of two venture capital partnerships (0.13% or $13.4 million). As described below, the investment by Kaleidoscope facilitates the indirect investment in the Medallion FFs by individuals who do not otherwise qualify to invest directly in such Funds.

24. Renaissance is also the managing member of Kaleidoscope and its investment manager. However, since Renaissance maintains Kaleidoscope purely as a ''perk'' to its employees, it does not receive any performance allocations or management fees (or other compensation) from Kaleidoscope for acting as its managing member or investment manager, respectively. Kaleidoscope does, however, pay management fees to, and is subject to performance allocations at the investee Fund levels in the same manner as are all other investors. The Applicant explains that Kaleidoscope currently invests only in Medallion RMP, RIEF, and RIFF. As an investor in such Funds, Kaleidoscope is subject to the same fixed fees and performance allocations payable to Renaissance as are all the other investors in such Funds (although such fees and allocations may vary by investor). In this regard, the most recent fixed quarterly management fees and performance allocations for the most recent calculation period paid to Renaissance by Medallion RMP, that are allocable to Kaleidoscope's investment in such Fund, are equal to $196,154, and $774,654, respectively. However, no extra compensation is paid to Renaissance for its role in managing Kaleidoscope.

[9] According to the Applicant, Renaissance directly owns 28.41% of the combined Medallion FFs, but Kaleidoscope, which invests directly in the Medallion FFs, is owned approximately 94.6% by Renaissance and 5.4% by its owners, directors, and employees. Taking this into account, Renaissance's equity ownership percentage of the combined Medallion FFs is actually 28.49%.

[10] The Applicant states that calculating the performance allocation on an investor-by-investor basis assures that every investor only pays a performance allocation on its own investment profits (because it is possible for a Fund to have net profits while certain investors do not).

[11] The Applicant explains that performance allocations are not assessed on any unrecouped losses from prior periods, which must be made up before a new performance allocation is assessed. Furthermore, the Applicant notes that performance allocations are assessed as of a redemption date that occurs in the middle of a performance allocation calculation period with respect to any redeemed amounts as of that date. In such event, the date used to calculate appreciation of the Funds is the date of redemption.

[12] Section 3(14)(G) of the Act and/or section 4975(e)(2)(G) of the Code provides that a partnership is a party in interest or a disqualified person with respect to a plan if 50% or more of the capital or profits interest in the partnership is owned by, among others, a fiduciary, service provider, or an employer any of whose employees are covered by such plan.

25. As of April 30, 2011, Kaleidoscope held $29,117,684 in assets under management, approximately $60,037 of which represented expenses accrued to the partners in such Fund. Furthermore, as of April 30, 2011, Renaissance held an ownership interest in Kaleidoscope worth $27,554,570 or approximately 94.6% of the Fund's value, and Renaissance's owners and employees (and their affiliated entities, e.g., personal trusts) held an ownership interest of approximately 5.4% of Kaleidoscope's assets under management, or $1,563,114, in their personal capacities.

The Decision To Terminate the 401(k) Plan

26. Renaissance previously sponsored the 401(k) Plan for its employees. All aspects of the 401(k) Plan, including the investment options, were provided by Fidelity Investments (Fidelity), the Plan recordkeeper, and a directed trustee and an unrelated party. Renaissance relates that many of its employees expressed an interest to invest their retirement assets in the Medallion Funds or in some other investment vehicle that is managed by Renaissance. According to the Applicant, these individuals were dissatisfied with the investment options offered under the 401(k) Plan and their marked volatility and poor performance (many 401(k) Plan investment options lost over 40% of their value in 2008 alone), and they desired to take advantage of the Funds' comparatively high investment returns. The Applicant notes that the Medallion Funds have historically been excellent investments, earning a net average return in excess of 40 percent per annum since 1998, including net returns for 2005 through 2010 ranging from approximately 33 to 98 percent.[13] In addition, according to the Applicant, Kaleidoscope has earned a net average return in excess of 22 percent per annum since its inception in 2007.

27. The Applicant relates that there were a number of factors which, taken together, led Renaissance to conclude that the best opportunity for its employees to invest their retirement assets in the Medallion Funds was through the termination of the 401(k) Plan and the application for an administrative exemption to permit Participants to invest in the Medallion Funds through their IRAs. As a threshold consideration, Renaissance explains that Fidelity's management policies would not permit unregistered, alternative investment vehicles such as the Funds as an investment option for the Plan. However, even if Fidelity had agreed to allow the 401(k) Plan to offer the Funds as an investment option, the Applicant suggests that there were considerable legal obstacles to establishing such investments options.

28. According to the Applicant, offering the Funds as investment options under the 401(k) Plan could have created a potential issue under section 404(c) of the Act in connection with Participants' ability to reallocate their investments among the different investment options in the 401(k) Plan.[14] The Applicant explains that, although the Medallion Funds invest primarily in liquid investments which can be valued on a daily basis, they permit redemptions only on a quarterly or monthly basis. By contrast, the 401(k) Plan investments were comprised of mutual funds that permitted investments in or out on a daily basis (subject to frequent trading restrictions imposed by some of the mutual funds). Renaissance suggests that, if the 401(k) Plan investment options other than the Medallion Funds all allowed daily investments and redemptions, but the Medallion Funds did not, there could have been a question as to whether the regulations under section 404(c) of the Act were satisfied.

29. The Applicant also observes that, as a tax-qualified plan, the 401(k) Plan was subject to the nondiscrimination requirements of section 401(a)(4) of the Code, including the requirement that benefits, rights and features under the 401(k) Plan be available on a basis that does not discriminate in favor of non-highly compensated employees. In order to comply with provisions of laws governing securities and futures contracts, and provisions relating to the registration of fund offerings and pre-filing requirements linked to investor financial qualifications, each Fund (except Kaleidoscope) provides financial standards for ownership that would exclude some persons who were participants in the Plan. Thus, according to the Applicant, if a group of 401(k) Plan participants was ineligible to invest in the Funds through the Plan as a result of those restrictions, and those participants were non-highly compensated employees, there could be an issue as to whether the Plan satisfied the requirements under section 401(a)(4) of the Code.[15]

30. Finally, the Applicant states that an important consideration for Renaissance was to give participants the opportunity to take advantage of the special rule for spreading the tax liability from a Roth conversion in 2010 over two taxable years.[16] The Applicant explains that, while legislation was adopted in September 2010 to amend section 402A of the Code to permit a ''Roth rollover'' inside a qualified plan, there was no IRS guidance on this provision in 2010, while there was guidance on Roth IRA conversions. Thus, Renaissance determined that it was most advantageous to the Participants to terminate the 401(k) Plan in October 2010, so that Participants could take their distributions prior to the end of that year, because they would only have the opportunity to take advantage of the ''two-year averaging'' tax benefit if such election was made in 2010.

31. Accordingly, the Applicant terminated the 401(k) Plan, causing the distribution of the 401(k) Plan's account balances (the Proceeds) to Participants. Renaissance intended that Participants would receive their Proceeds in newly created or pre-existing IRAs or Roth IRAs and could either invest in the Funds through a group of new feeder funds, described below, designed specifically for that purpose, or, if they desired, in unrelated investments managed by third parties. Furthermore, Renaissance intended that the Spouses of Participants would be allowed to invest alongside such Participants through their IRAs to the extent such investment is allowed under Renaissance's investment guidelines governing the Medallion Funds.

32. The Applicant states that most of Renaissance's approximately 275 current employees are potential IRA investors in the Funds. They note that 249 of Renaissance's employees are currently investors in the Funds on an after-tax basis. The Applicant notes further that, based on the amount of Proceeds, the potential amount of IRA assets of Participants that could be invested in the Funds if the proposed transactions are granted exemptive relief is equal to approximately $88 million (representing all Participants' account balances). However, according to the Applicant, some Proceeds were distributed to persons (e.g., former employees) who are not eligible to

[13] As the New Medallion Vehicles will not charge fees or profit participations in the form of performance allocations, Renaissance anticipates that their returns to IRA investors will exceed the historical net returns of the existing Proprietary Funds.

[14] 29 CFR 2550.404c–1(b)(2)(ii)(C) provides that ''each investment alternative * * * [must permit] participants and beneficiaries to give investment instructions with a frequency which is appropriate in light of the market volatility to which the investment alternative may reasonably be expected to be subject.''

[15] See Income Tax Reg. 1.401(a)(4)–4(e)(3)(i) and (iii)(C).

[16] See section 408A(3)(A)(iii) of the Code.

invest in the new feeder funds,[17] and it will not be clear how many employees intend to invest in the Funds through IRAs until after such new feeder funds are established and begin accepting investments. In addition, the Applicant states that the IRAs of Spouses also may be permitted to invest in the Funds, and it is impossible to know how many of these persons will invest. Nevertheless, the Applicant believes that the total of all of such IRA investments would constitute less than one percent (1%) of its total assets under management.

The New Medallion Vehicles

33. In order to facilitate investment by Participants and their Spouses in the Proprietary Funds, Renaissance has proposed to create a group of new feeder funds that will only accept investment from the IRAs of such individuals; provided that, in order for a Participant or a Participant's Spouse to invest, such Participant is employed by Renaissance at the time of such investment.[18] Specifically, Renaissance has proposed to create the New Medallion FF, the New Medallion Conduit, and New Kaleidoscope, referred to as the ''New Medallion Vehicles,'' in order to facilitate the investment of IRAs into the Medallion Funds, in addition to two other new feeder funds designed to facilitate the investment by IRAs into RIEF and RIFF.[19]

34. According to the Applicant, the New Medallion Vehicles are an essential part of the covered transactions, because: (a) They are necessary for the IRA Holders in each Fund to avoid being subject to taxes on unrelated business taxable income under the Code on the income resulting from each Fund's borrowings; (b) they are required to assure compliance to the maximum extent with the requirements of the various United States securities laws; and (c) in the case of New Medallion FF, it is preferable (although not essential) to create a new vehicle that would be parallel to the New Medallion Conduit (where a new vehicle was essential) rather than create a new class of an existing Medallion FF.

35. New Medallion FF would be organized as a Bermuda Limited Partnership that elects to be treated as a corporation for US Federal Income Tax purposes, and will invest directly in the Medallion Master Funds. New Medallion FF would be available only to IRAs maintained by Participants who meet the same investor qualifications as those investing in the Medallion Funds. The Applicant states that absolutely no management fees or other fees or profit participations in the form of performance allocations or otherwise, direct or indirect, will be charged to or imposed on IRAs that invest in the New Medallion FF.

36. New Kaleidoscope is proposed to be a new fund-of-funds patterned after Kaleidoscope that is available only to IRAs maintained by Participants that do not meet the investor qualifications to invest directly in the New Medallion FF. New Kaleidoscope would be organized as a Delaware limited liability company, and will invest in the Medallion Master Funds through the New Medallion Conduit, a Bermuda Limited Partnership that will elect to be treated as a corporation for US Federal Income Tax purposes.[20] In addition, New Kaleidoscope will invest in the two other newly established feeder funds which are designed to facilitate investment in RIEF and RIFF. Absolutely no management fees or other fees or profit participations in the form of performance allocations or otherwise, direct or indirect, will be charged to IRAs that invest any Proceeds in New Kaleidoscope.[21]

37. The investment portfolios of New Medallion FF and New Kaleidoscope will be different from each other but will have the same respective portfolios as the existing Medallion FFs and Kaleidoscope, respectively, as described above. For example, the Applicant explains that the New Medallion FF will invest alongside the other Medallion FFs in the Medallion Master Funds, which generally invest and trade in the transactions and instruments described above. As New Kaleidoscope only invests in the Medallion Master Funds (through the New Medallion Conduit) and the other two non-Medallion Proprietary Funds, it will not have its own portfolio of investments but instead will own indirect interests in each of the instruments and transactions that such Funds invest in directly. Thus, New Kaleidoscope will have the same portfolio as Kaleidoscope.

Qualifications To Invest in the New Medallion Vehicles

38. The Applicant states that, in order to qualify for investment in one of the New Medallion Vehicles with an IRA, such an individual must generally be either a current employee or owner of Renaissance who received Proceeds, or such person's Spouse, except for the Permitted Owners of Renaissance who may be eligible to invest in the New Medallion Vehicles past the termination of their employment. Additionally, an ''IRA Holder'' must meet the particular securities law based investor qualifications of such New Medallion Vehicles.

39. According to Renaissance, an IRA investing in the New Medallion FF will be required to be a ''Qualified Purchaser'' as defined in section 3(c)(7) of the 1940 Act, an IRA whose beneficial owner is a ''knowledgeable employee'' as defined in Rule 3c–5 of the 1940 Act (a Knowledgeable Employee), or an ''Accredited Investor,'' as defined in Rules 501–506 of Regulation D under the 1933 Act.[22] Renaissance explains that an IRA qualifies as an Accredited Investor if the person for whose benefit it is established is an Accredited Investor in his/her own right or if the IRA has a net worth of at least $15 million.

40. The Applicant states that New Kaleidoscope will qualify as a 3(c)(1) fund under the 1940 Act, and thus will accept investment by IRAs that are Accredited Investors, plus up to 35 non-Accredited Investors.[23] The New Medallion Conduit, through which New Kaleidoscope will invest in the Medallion Master Funds, will similarly allow investment by Accredited Investors and up to 35 non-Accredited Investors. Thus, the Applicant explains that any investors in New Kaleidoscope

[17] The eligibility requirements for investing in the New Medallion Vehicles are discussed below.

[18] However, according to the Applicant, there are seven owners of Renaissance (the Permitted Owners), who would be eligible to invest their IRAs in the new feeder funds regardless of whether they are employed by Renaissance.

[19] Because neither RIEF nor RIFF are covered under the exemptive relief proposed herein, the new feeder funds created to facilitate investment in the Funds by IRAs are not fully described herein.

[20] New Medallion FF and the New Medallion Conduit are structurally identical, save for the securities law qualifications for investors' admittance, as described below. Furthermore, New Medallion FF will accept direct IRA investment, whereas the New Medallion Conduit will only accept investment by New Kaleidoscope, and thus will have no direct investment by IRAs.

[21] The Applicant notes that IRAs investing in the two new feeder funds designed to facilitate the investment into RIEF and RIFF, will similarly not be charged management fees or profit participations of any kind.

[22] A Qualified Purchaser under the 1940 Act is an individual who owns at least $5,000,000 in investments (as defined in Rule 2a51–1 under the 1940 Act). An Accredited Investor under the 1933 Act is an individual who (i) has a net worth, or joint worth with that person's spouse, at the time of his purchase in excess of $1,000,000 (excluding the value of the primary residence of such person); or (ii) had an income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and who reasonably expects an income in excess of the same income level in the current year.

[23] Under Regulation D of the 1933 Act, up to 35 persons who are not Accredited Investors are eligible to invest in any vehicle that determines to accept them (as have Kaleidoscope and one of the Medallion Funds).

in excess of 35 must be Accredited Investors.[24]

41. The Applicant notes that the investor qualifications for New Kaleidoscope mirror those of Kaleidoscope itself, as there are no financial qualification requirements for investors in the Kaleidoscope Fund. Accordingly, the Applicant believes that it is consistent with the purpose for which Kaleidoscope was created that anyone eligible to invest in Kaleidoscope who wishes to invest his or her IRA in New Kaleidoscope should be able to do so, without further investment restrictions. Furthermore, the Applicant notes that by combining investment by New Kaleidoscope (including the New Medallion Conduit) with investment by the New Medallion FF in the Medallion Master Funds, Renaissance will be able to maximize the number of IRAs that can be invested in the Medallion Funds.[25]

42. According to the Applicant, based on representations made by the 249 employees that invest in the Funds on an after-tax basis, approximately 100 are Qualified Purchasers and approximately 125 (who are not Qualified Purchasers) are Accredited Investors. The Applicant notes that all the Qualified Purchasers also are Accredited Investors. The other 24 employees invested in the Applicant's Funds on an after-tax basis are neither Qualified Purchasers nor Accredited Investors.

Coverage Issues Related to the Investment by IRAs in the New Medallion Vehicles

43. The Applicant notes that the characteristics of the structure and implementation of the transactions described herein raise certain coverage issues under Title I of the Act. In this regard, the Department believes that, with respect to the investment by Participants' IRAs in the Proprietary Funds, the transactions described herein do not satisfy the requirements for the safe harbor for individual retirement accounts under DOL Regulation 29 CFR 2510.3–2(d). The Department is unable to conclude that, with respect to the investment by Participants' IRAs in the New Medallion Vehicles, Renaissance has not created a pension plan subject to Title I of the Act. However, the Department notes that the IRAs beneficially owned by the Spouses of Participants would be not subject to Title I of the Act, but would remain subject to Title II of the Act and the rules and regulations promulgated thereunder.

44. As a result of the Department's view that the covered transactions may constitute a Title I plan with respect to the investment of Participants' IRAs in the New Medallion Vehicles, the Department believes that Renaissance, as the sponsor of a Title I plan and the fiduciary with respect to the Participants' IRAs, would be required to operate the arrangement in accordance with Title I of the Act. This includes, to the extent applicable, ensuring compliance with section 404 of the Act and the duty to diversify plan investments. In this regard, the Department does not believe that it would be practical to develop a single percentage limitation that would apply to investment in the Medallion Funds by IRAs due to the different types of investment activities engaged in by such entities. The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries, and in a prudent fashion. Section 404(a)(1)(C) of the Act further requires that a fiduciary diversify the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

Accordingly, it is the responsibility of the relevant fiduciary intending to take advantage of the relief provided by this proposed exemption to determine the appropriate level of investment in the Medallion Master Funds, based on the particular facts and circumstances, consistent with its responsibilities under section 404 of the Act.[26]

The Request for Exemptive Relief

45. The Applicant states that, prior to an IRA Holder's investment of Proceeds in a New Medallion Vehicle, such IRA Holder will have no disqualified person or party in interest relationship with Renaissance or any affiliate of Renaissance (in this regard, see 29 CFR 2510.3–2(d)). However, the Applicant states that IRAs will hold 25% or more of the equity interests in each New Medallion Vehicle in which they invest.[27] The IRAs are ''benefit plan investors'' for purposes of section 3(42) of the Act and 29 CFR 2510.3–101, as the IRAs constitute plans described in section 4975(e)(1) of the Code, and in the case of IRAs owned by Participants, may constitute an ''employee benefit plan(s)'' under section 3(3) of the Act.[28] Thus, investment by benefit plan investors in each New Medallion Vehicle would be deemed ''significant,'' and each IRA would own an undivided interest in the assets of each New Medallion Vehicle in which it invests.[29]

46. According to the Applicant, once a Participant's IRA invests in a New Medallion Vehicle, establishing the plan asset relationships described above, Renaissance, the Medallion Master Funds, and certain employees, officers, directors, and 10% owners of each will become parties in interest under section 3(14) of the Act and/or disqualified persons and section 4975(e)(2) of the Code, with respect to IRAs that invest in the New Medallion Vehicles.[30]

47. As a result, the Applicant states that the indirect acquisition by an IRA of an interest in a Medallion Master Fund through such IRA's acquisition of an interest in a New Medallion Vehicle constitutes the initial prohibited transaction, pursuant to section 406(a)(1)(A) and (D) of the Act and/or section 4975(c)(1)(A) and (D) of the Code. After such initial acquisition of an interest in a Medallion Master Fund has been made by an IRA, additional acquisitions or redemptions of interests in a New Medallion Vehicle by such IRA would constitute additional prohibited transactions pursuant to section 406(a)(1)(A) and (D) of the Act and/or section 4975(c)(1)(A) and (D) of the Code.

48. Furthermore, the Applicant states that Renaissance's provision of services to a New Medallion Vehicle would constitute a prohibited transaction pursuant to section 406(a)(1)(C) of the Act and/or section 4975(c)(1)(C) of the

[24] The Applicant notes that potential non-Accredited Investors in New Kaleidoscope will be admitted in the order that Participants' completed IRA transfer applications are received. However, the Applicant does not expect there to be 35 such applications, as there are currently only 25 non-Accredited Investors in Kaleidoscope.

[25] The Applicant notes that section 3(c)(7) of the 1940 Act does not limit the number of investors a Fund may take, but Funds qualifying under section 3(c)(1) of the 1940 Act are limited to 100 in number.

[26] The Department notes that its views regarding the Applicant's establishment of a plan, and the operation of such plan, subject to Title I of the Act, also extend to the investment by IRAs in the new feeder funds created by Renaissance to facilitate the investment by IRAs in RIEF and/or RIFF.

[27] According to the Applicant, benefit plan investors will not hold 25% or more of the equity interests in any Medallion Master Fund or any other Fund maintained by Renaissance.

[28] 29 CFR 2510.3–101(f)(2). As stated above, the Department is unable to conclude that Renaissance has not established a Title I plan pursuant to 29 CFR 2510.3–2(d).

[29] 29 CFR 2510.3–101(a)(2).

[30] As the Applicant states, neither RIEF nor RIFF are currently parties in interest and/or disqualified persons with respect to the IRA Holders. It is the Department's view that, absent a current showing of a disqualified person relationship, no exemptive relief for such transactions is appropriate. However, once a disqualified person relationship exists between the IRAs and the two non-Medallion Proprietary Funds, the Applicant could resubmit an application for exemptive relief for covered transactions involving those Funds.

Code with respect to each IRA investing in such New Medallion Vehicle. The Applicant explains that Renaissance will provide certain administrative services to the New Medallion Vehicles that are strictly ministerial in nature. However, the Applicant states that Renaissance will also provide a ''limited'' amount of investment management services where, for example, it makes semi-annual distributions,[31] or limits the overall size of the Medallion Funds, either of which could cause a full or partial redemption of an IRA investment.

49. However, the Applicant states that Renaissance's providing of investment management and ministerial services to a New Medallion Vehicle would be exempted by section 408(b)(2) of the Act (provided all conditions were satisfied). Section 408(b)(2) of the Act provides relief for the ''[c]ontracting or making reasonable arrangements with a party in interest for office space, or legal, accounting or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor.'' [32] Under the Department's regulations, a service is necessary for the establishment or operation of a plan if the service is ''appropriate and helpful to the plan obtaining the service in carrying out the purposes for which the plan is established or maintained.'' [33]

50. Nevertheless, the Applicant contends that a single, individual exemption covering section 406(a)(1)(A), (C), and (D) of the Act and/or section 4975(d)(1)(A), (C), and (D) of the Code would be appropriate, given that the parties to whom this relief would apply are all individuals. Otherwise, according to the Applicant, an IRA Holder would be forced to rely in part on section 408(b)(2) of the Act and in part on the administrative exemptive relief provided herein, which the Applicant suggests is unnecessarily burdensome on such individual investors.

51. Despite the Applicant's concerns, the Department believes that it would be more appropriate for the Applicant to rely on the statutory relief in section 408(b)(2) of the Act and/or section 4975(d)(2) of the Code for Renaissance's provision of investment management and ministerial services to the IRAs, rather than to propose administrative exemptive relief for such transactions. As a fiduciary to the New Medallion Vehicles, it would ultimately be Renaissance's responsibility to determine whether the services it provides satisfy all of the conditions set forth in the statutory exemption and pertinent regulations. Moreover, Renaissance should be in the best position to determine whether the conditions of that exemption are satisfied, and to demonstrate compliance therewith.

52. Accordingly, the Applicant is seeking administrative exemptive relief under section 408(a) of the Act and/or section 4975(c)(2) of the Code from the prohibitions outlined in sections 406(a)(1)(A) and (D) of the Act and section 4975(c)(1)(A) and (D) of the Code, for the following transactions: (a) The direct or indirect acquisition by a Participant's IRA of an interest in a Proprietary Fund through such IRA's acquisition of an interest in a New Medallion Vehicle; (b) the acquisition of an additional interest by a Participant's IRA in a New Medallion Vehicle; and (c) the redemption by a Participant's IRA of all or a portion of its interest in a New Medallion Vehicle. Additionally, the Applicant is seeking administrative exemptive relief under section 4975(c)(2) of the Code from the prohibitions of section 4975(c)(1)(A) and (D) of the Code for the following transactions: (a) The direct or indirect acquisition by a Spouse's IRA of an interest in a Proprietary Fund through such IRA's acquisition of an interest in a New Medallion Vehicle; (b) the acquisition of an additional interest by a Spouse's IRA in a New Medallion Vehicle; and (c) the redemption by a Spouse's IRA of all or a portion of its interest in a New Medallion Vehicle.[34]

Investments in the New Medallion Vehicles To Be Made at IRA Holders' Discretion

53. Renaissance notes that each Participant has complete investment discretion over his or her Proceeds. Thus, a Participant could, in his or her discretion, receive the Proceeds as taxable income and choose to invest them as he or she determines. One investment option would be to roll the Proceeds over to an IRA (either a Roth IRA or a traditional IRA). The Applicant notes that, subject to an IRA Holder's Investment Allocation discussed below, no upper dollar amount limitations would be imposed on the portion of the Proceeds which a Participant may invest in the New Medallion Vehicles. However, for administrative reasons, the Applicant states that it is necessary to provide for a $1,000 minimum threshold for each New Medallion Vehicle.[35] Nevertheless, a Participant could invest none, some, or all of his or her Proceeds in the New Medallion Vehicles. An IRA Holder could also redeem his or her interest in the Funds at his or her discretion, subject to the redemption guidelines attributable to the respective New Medallion Vehicles, described below.

54. Moreover, the Applicant states that it has not provided, nor will it at any time provide, investment advice concerning an IRA Holder's investment of their IRA in the New Medallion Vehicles or offer any financial or employment-related incentives to invest in the Funds. The Applicant notes that there have been no official communications with Participants regarding the opportunity to invest in the Funds through IRAs since the termination of the 401(k) Plan, except that Renaissance's general counsel recently advised the Firm's management committee that comments on the application were received and are being addressed. However, the Applicant states that, once the proposed exemption is granted, it will provide certain disclosures intended to facilitate the informed decision making of IRA Holders regarding the investment of their IRAs in the New Medallion Vehicles.

55. According to Renaissance, in advance of the initial investment by an IRA in a New Medallion Vehicle, each IRA Holder will receive (a) the copy of the proposed exemption and the final

[31] Renaissance states that, because of capacity constraints in the operation of the strategy employed by the Medallion Funds, for a number of years the Funds have returned all or substantially all of their profits to investors.

[32] Section 408(b)(2) of the Act.

[33] 29 CFR 2550.408(b)(2).

[34] The Applicant states that it does not believe relief from section 406(b)(1) or (2) of the Act and/or section 4975(c)(1)(E) or (F) of the Code is necessary in connection with the covered transactions, because, according to Renaissance, neither it nor any IRA Holder will be using any of its authority, control or responsibility as a fiduciary to benefit itself or a person in which it has an interest which may affect the exercise of its best judgment as a fiduciary. The Department notes that regulation 29 CFR 2550.408b–2(e)(2) provides that a fiduciary does not engage in an act described in section 406(b)(1) of the Act if the fiduciary does not use any of the authority control, or responsibility that makes him a fiduciary to cause a plan to pay additional fees for a service furnished by such fiduciary or to pay a fee for a service furnished by a person in which the fiduciary has an interest that may affect the exercise of his judgment as a fiduciary. It is also the Department's view that generally a fiduciary's decision to retain itself or an affiliate service provider whose fees will be paid by the plan sponsor (or who does not charge fees of any kind for the provision of services) will not involve an adversity of interests as contemplated by section 406(b)(2) of the Act. Accordingly, the decision to invest the IRAs' assets in the Funds, which are managed by Renaissance, would not appear, in itself, to raise issues under section 406(b)(1) or (b)(2) of the Act.

[35] The Applicant states that the New Medallion Vehicles' offering documents will provide for a $1,000 minimum investment unless Renaissance agrees to accept less in a particular circumstance.

exemption, following the publication of the final exemption in the **Federal Register**, (b) a private offering memorandum (with all related exhibits) describing the relevant investment vehicles, including its investment objectives, risks, conflicts, operating expenses and redemption and valuation policies (which disclosures and information will be the same as that provided to other investors with respect to the Fund in which such IRA Holder invests), and (c) any other reasonably available relevant information as such IRA Holder may request. Moreover, after the initial investment by an IRA in a New Medallion Vehicle, on an on-going basis, Renaissance will provide each IRA Holder whose IRA owns an interest in a New Medallion Vehicle with (a) unaudited performance reports at the end of each month, and (b) audited annual financial statements following the end of each calendar year.

56. The Applicant observes that, as IRA Holders have the discretion to invest in the New Medallion Vehicles, they may use whatever IRA custodian they so choose. According to the Applicant, two major financial institutions with which it has banking and other customer and investment relationships have indicated that they would be willing to act as IRA custodians on a fee-free basis through their private wealth management divisions to facilitate Participants' IRA investments.[36] The Applicant has also identified other IRA custodians who are willing to act as custodians for investments that are not publicly-traded, on a fee-basis, whose names Renaissance will make available to IRA Holders who inquire. However, the Applicant stresses that it will not make any endorsement or recommendation concerning IRA custodians, and will impose no restrictions on the custodian that a Participant may use, and neither Renaissance nor any Participant (or Spouse) will obtain any additional benefit from using a particular custodian.

57. Finally, the Applicant notes that there should not be any institutional or corporate pressure on Participants to invest in the New Medallion Vehicles, as only a small number of individuals within Renaissance will have actual knowledge of an employee's investment in the New Medallion Vehicles. According to Renaissance, the CFO/CCO and the General Counsel would have access to that information, in addition to approximately 10 other employees of Renaissance in Investor Relations, Fund Accounting, and Infrastructure, who, as a result of their respective job positions, are responsible for the preparation and distribution to investors of investor statements.

Voting of IRAs' Interests in the New Medallion Vehicles

58. According to the Applicant, IRA investors in the New Medallion Vehicles will have certain voting rights that will mirror the rights of other investors in the existing Medallion and Kaleidoscope Funds. In this regard, the Applicant states that IRA Holders will generally have the right to vote for all material amendments to an organizational document (i.e., a limited partnership agreement or a limited liability company agreement) that either are proposed by, or are consented to by, Renaissance (i.e., those amendments not involving ministerial, legally mandated, or technically conforming or corrective changes). For example, the Applicant observes that IRA Holders also may vote to approve (a) the admission of an additional general partner to New Medallion FF or New Medallion Conduit proposed by Renaissance, or (b) the appointment of a liquidator when one is required and Renaissance is unable to serve in such a role. Finally, in the event of a New Medallion Vehicle's dissolution, IRA Holders will generally have the right to vote to continue or reconstitute (as applicable) the business of each New Medallion Vehicle and to select one or more successors to Renaissance as its manager.

The Applicant states that IRA Holders will be able to exercise their voting rights either (a) at a formal meeting of all investors where votes may be exercised in person or by proxy, or (b) by executing a written consent pursuant to a prior written solicitation from Renaissance on reasonable prior notice. Furthermore, each New Medallion Vehicle will have the right to vote on certain matters arising at their master fund levels. However, the Applicant notes that these master fund voting rights effectively are held by Renaissance because of its control position with respect to each master fund entity. Nevertheless, the Applicant represents that it will seek the consent of IRA Holders for matters described above to the extent that a situation arises at a master fund level where it would be inequitable or imprudent for Renaissance not to obtain the requisite IRA Holder consents at the feeder fund level consistent with the IRA Holders' voting rights set out above.

Voluntary Redemptions of IRAs' Interests

59. The Applicant states that voluntary redemptions of an IRA's interest in a New Medallion Vehicle would be available periodically with prior notice given to Renaissance. The Medallion Funds permit redemptions to be effected quarterly on 10 days' prior notice, and the New Medallion FF would also allow redemptions quarterly on 10 days' prior notice. Kaleidoscope also has quarterly redemptions on 45 days' prior notice and New Kaleidoscope would be the same. At present, greater than 75% of the Medallion Funds' net assets are in cash, cash equivalents or can be liquidated into cash on one week's notice or less. The same is true indirectly for Kaleidoscope, which invests in the Medallion Funds as well as the other two non-Medallion Proprietary Funds.

60. According to the Applicant, redemptions of investors' interests in the Funds are normally made in cash, as the Funds do not ordinarily invest in illiquid investments. Further, since the IRAs' potential combined interests in the New Medallion Vehicles are not expected initially to exceed 1% of the total assets of all Renaissance-managed funds, any request for redemption by an IRA from any of the New Medallion Vehicles should be redeemable in cash on a timely basis. However, the provision for in-kind distributions exists in the operating agreements of the Funds in the event of an unforeseen event, such as the liquidation of a Fund where the issuer of one its portfolio securities is in bankruptcy.

Nevertheless, the Department is concerned that, in the event that a Fund makes a distribution in-kind to an IRA, such IRA may receive illiquid assets in exchange for its interest in the New Medallion Vehicles, and consequently may experience difficulty in realizing full value in redemption of its investment in the Funds. In response to the Department's concerns, the Applicant states that it will provide for any redemption of IRAs' interests in the New Medallion Vehicles in cash.

Compulsory Redemptions of IRAs' Interests

61. Renaissance states that its investment and trading strategy for the

[36] Deutsche Bank AG provides brokerage and other investment-related services, including acting as a prime broker and equity derivatives counterparty, to the Medallion Funds, and receives market-competitive fees from such Funds for those services; and JPMorgan Chase & Co. provides brokerage and banking services to all of Applicant's Funds, and receives market-competitive fees from the Funds for those services. The Applicant emphasizes that neither custodian will receive any fees from a New Medallion Vehicle, although they will receive market-rate fees from such New Medallion Vehicle's underlying master funds for separate services that they perform for such Funds.

Medallion Funds cannot be executed efficiently if too much capital has been invested in such Funds. Therefore, the Medallion Funds have for a number of years imposed an aggregate limit on the amount of capital that the Medallion Funds can accept. The Applicant explains that, as a result, each Renaissance employee from the President to the lowest-paid employee, has a permitted ''Investment Allocation'' in the Medallion Funds that is based on his or her compensation level, and, if applicable, an employee's ownership interest in Renaissance itself, and is adjusted at the beginning of each semi-annual period (January 1 and July 1 of each year). The Investment Allocation specifies the aggregate dollar amount that each Renaissance employee is entitled, at the employee's discretion, to invest in a Medallion Fund, subject to that employee's ability to comply with all applicable securities law requirements for the relevant Medallion Fund, or in Kaleidoscope (which invests up to 40% of its assets in Medallion and the balance in the remaining two non-Medallion Proprietary Funds).

62. The Applicant states that IRA Holders would be able, at their discretion, to utilize their Investment Allocations in connection with making an investment of some or all of their IRA assets in the New Medallion Vehicles, subject to each Participant's overall Investment Allocation limit. In addition, Renaissance permits an employee to share his or her Investment Allocation with certain family members. Thus, a Spouse could invest his or her IRA in New Medallion FF or in New Kaleidoscope to the extent of the remainder of such IRA Holder's Investment Allocation. However, the Applicant states that, on occasion, Renaissance may proportionately reduce employees' Investment Allocations, in order, for example, to maintain the Funds' profitability or to permit an allocation to be made to new employees.[37] According to the Applicant, any reduction of Investment Allocations would be effected on a pro rata basis with respect to all Renaissance employees with Investment Allocations.[38]

63. In the event IRA Holders' Investment Allocations are reduced, the Funds may be forced to redeem a portion of such IRA Holders' interests in New Medallion FF or New Kaleidoscope. The Applicant states that the size of such IRA Holders' redemption would correspond to the amount necessary to lower an IRA Holder's total investment in the Funds to comply with the limit imposed by his or her Investment Allocation. According to the Applicant, in the event that an IRA Holder had both an individual account and an IRA account invested in the Medallion Funds, he or she would generally be able to choose from where the redemption would come. Furthermore, the Applicant suggests that an IRA Holder should be able to redeem a portion of his or her IRA's interest without any adverse tax consequence by reinvesting the IRA in other assets.[39]

64. Redemptions of IRAs' interests in the New Medallion Vehicles may also be necessary when IRA Holders terminate employment with Renaissance. According to the Applicant, when employees and owners of Renaissance terminate employment, they retain their Investment Allocations for a period of between 6 to 12 months following such termination, depending upon an employee's length of service and other negotiated terms of the employment arrangement. The Applicant states that an IRA would generally also be permitted to retain its interest in a New Medallion Vehicle for up to 12 months, and potentially as long as 14 months or more, following the date of termination.

65. Thereafter, the Applicant explains that IRA Holders could, in their sole discretion, transfer their IRAs' investments to RIEF or RIFF (but not the newly created feeder funds for such Funds), or redeemed outright in exchange for cash.[40] Likewise, the Applicant states that, if a person ceases to be a Spouse, he or she is no longer eligible to invest in any New Vehicle and will be redeemed. Renaissance notes that such Funds are generally available to employees of Renaissance as investments past termination of their employment, but that IRA Holders' investments transferred to such Funds will be subject to the payment of management fees and profit participations in the same manner as such individual's taxable investments.[41]

Valuations of IRAs' Interests in the New Medallion Vehicles

66. According to Renaissance, the Medallion Funds are designed to trade highly diversified portfolios of liquid securities and other instruments traded on international exchanges or derivatives whose value is based on such liquid securities or instruments. The Applicant notes that to the extent that a Fund's assets are traded through OTC derivative products, the majority of those products follow the liquidity of the underlying assets.

67. The Applicant emphasizes that Renaissance's valuation policies would apply equally to all investors, including IRA Holders. According to the Applicant, an acquisition or redemption of an IRA's interest in a New Medallion Vehicle would be made for fair market value. Renaissance explains that equity securities are valued at their last sale price or official closing price on the market on which such securities primarily trade using sources independent of Renaissance and the issuer. Furthermore, if no sales occurred on such day, equity securities are valued at the last reported independent ''bid'' price or, if sold short, at the last reported independent ''asked'' price. Fixed income securities are valued on either the basis of ''firm quotes'' obtained at the time of an acquisition or redemption from U.S.-registered or foreign broker-dealers, which are registered and subject to the laws of their respective jurisdiction, which quotes reflect the share volume involved in the transaction, or on the basis of prices provided by independent pricing services that determine valuations based on market transactions for comparable securities and various relationships between such securities that are generally recognized by institutional traders.

[37] As noted above, because of capacity constraints in the operation of the Medallion Funds, Renaissance may determine the appropriate size of the Medallion Funds and reduce investors' Investment Allocations accordingly.

[38] As noted above, Renaissance has the option in whole or in part to receive its performance allocation in cash or to leave such amounts in its capital account, which could cause a corresponding reduction in the Investment Allocations of other investors, including IRAs. The Department generally notes that, even if a transaction, at its inception, did not involve a violation of section 406(b)(1) or (b)(2) of the Act, if a divergence of interests develops between the IRA and the fiduciary (or persons in which the fiduciary has an interest), the fiduciary must take steps to eliminate the conflict of interest in order to avoid engaging in a prohibited transaction.

[39] In such case, an IRA Holder may desire to reallocate his or her IRA's investments to investments outside of the Funds or to the other new feeder funds for RIEF or RIFF that are designed to accept investment from Participants' IRAs and are not subject to Investment Allocations.

[40] The Applicant states that Renaissance generally desires to restrict the availability of fee-free investment in the New Medallion Vehicles and the new feeder funds for RIEF and RIFF to IRAs of current employees and owners of Renaissance (and such individuals' spouses).

[41] Notwithstanding the foregoing, the Applicant notes that there are seven Participants, the Permitted Owners, whose IRA investments (and those of their Spouses) would not be compulsorily redeemed from the New Medallion Vehicles upon their termination of employment with Renaissance, comprised of a group referred to as Renaissance ''founders'' and current owners who are also permitted to retain a reduced Investment Allocation.

68. Options are valued at the mean between the current independent ''bid'' price and the current independent ''asked'' price or, where such prices are not available, are valued at their fair value in accordance with Fair Value Pricing Practices by the Renaissance Valuation Committee, which utilizes a set of defined rules and an independent review process. Except for derivative transactions described above, Renaissance states that the Funds generally do not invest in other non-publicly traded investments. However, in the very unlikely event that neither primary nor secondary pricing sources are available for a particular security or instrument, Renaissance would assess in good faith all information available in the market, including dealer quotations, and establish ''fair value'' according to their Fair Value Pricing Policies established by Renaissance Valuation Committee.

69. The Applicant explains that the Renaissance Valuation Committee establishes valuation policies and provides a check and balance on the entire valuation process. Among other things, Renaissance states that it meets monthly with Renaissance's Fund Accounting Group, which is responsible for the daily valuation issues, interfaces with the Fund's auditors when necessary to assist the auditors in understanding certain valuations in connection with the auditors review of the Funds' financial statements, and keeps abreast of industry valuation standards in an attempt to assure that Renaissance follows ''best valuation practices.''

70. According to the Applicant, Renaissance's Official Pricing Policy reflects Renaissance's judgment of best practices in the financial services industry for valuing various assets. The Applicant notes that the methodology utilized in establishing these policies involves constant reassessment and review to determine whether or not Renaissance's pricing sources and reliance thereon are fair and reasonable and consistent with practices of other firms and professionals in the financial services industry, and these policies attempt to be as objective and fair as they can be given the circumstances.

71. The Applicant clarifies that, with respect to ''hard to value assets,'' the following guidelines generally will apply for stale or unpriced equity securities trading on U.S. or Foreign Exchanges:

If the security has not been traded for a period of 30 days or less, then the last price from the pricing source as per the official pricing policy will be applied as the closing price.

If the security has not traded for a period of more than 30 days but less than 60 days, then the last price from the pricing source as per the official pricing policy will be reduced by 50% and applied as the closing price.

If the security has not traded for a period of more than 60 days, then the last price from the pricing source as per the official pricing policy will be reduced by 90% and applied as the closing price.

If a security has been delisted from an exchange, then the security will be marked to zero.

If, from time to time, a quoted price is not available for a particular security, the RVC will establish a methodology for valuing the security, and the ultimate valuation is subject to approval by the Renaissance Technologies LLC Board of Directors.

72. It is stressed by the Applicant that the RVC's pricing policies are not ad hoc. Rather, according the Applicant, the policies established to address hard to value assets are applied uniformly and equitably across all Funds at the same time. However, the Applicant explains that by definition, hard to value assets frequently will have their own unique circumstances that require flexibility and judgment to value them; and not rigid and inflexible rules. Thus, the Applicant notes that the policy is to obtain the best available information from leading data vendors and other pricing sources and to use that information to value these assets as fairly, equitably and uniformly as possible.[42]

Statutory Findings

73. According to the Applicant, the proposed exemption is administratively feasible because it is similar to other relief that the Department previously granted in Prohibited Transaction Exemption (PTE) 91–1 and PTE 2008–03,[43] and the purchase of interests in the New Medallion Vehicles would be consummated at the discretion of the Participants and regulated by certain provisions of the 1940 Act and the 1933 Act, as described above.

74. The Applicant further states that the proposed exemption is in the interest of the IRAs and their beneficiaries, because, if the Medallion Funds' investments continue to perform in a manner consistent with their historical returns, the IRAs will realize excellent investment returns compared to the alternatives previously available in the 401(k) Plan or otherwise in the marketplace. Furthermore, IRA Holders would be able to take advantage of those above-average investment returns on a tax-deferred (or in the case of a Roth IRA, tax-free), and a fee-free, basis.

The Applicant offers that many investment management firms seek to permit their employees to invest in the investment products that they manage. In its conversations with the Department, the Applicant emphasized that it is motivated by goodwill in creating the New Medallion Vehicles to accept Participants' IRA investments, and that Renaissance will not benefit in any material sense from such transactions. In this regard, the Applicant observes that Renaissance will not charge or accept any fees or profit participations, and no compensatory benefit will be received by any owner or employee of Renaissance in connection with an IRA's investment in a New Medallion Vehicle.[44]

In addition, according to the Applicant, no meaningful marketing benefit could inure to Renaissance through IRA Holders' purchasing of interests in the New Medallion Vehicles. The Applicant contends that current and potential third party investors are already well aware of the significant holdings by Applicant's own employees and directors in the Funds in such individuals' personal capacities. Renaissance states that the Medallion Funds are already virtually entirely owned by employees of Renaissance and their families.

[42] The Applicant notes that Renaissance's asset valuations are also reviewed by the Funds' auditors in connection with their certification of audited financial statements for the Funds under GAAP.

[43] PTE 2008–03, published in the **Federal Register** at 73 FR 13582 (March 13, 2008), granted exemptive relief for (A) the acquisition, from an offshore corporation (the Offshore Corporation) of non-voting equity securities, representing an economic interest in the Offshore Corporation by an ERISA-covered client plan (the Client Plan), where the Offshore Corporation is a party in interest with respect to the Client Plan, due to the ownership of all of the voting equity shares of the Offshore Corporation by Wellington Global Administrator, Ltd., a subsidiary of Wellington Management, which is (or may become) a fiduciary and a service provider with respect to the Client Plan; and (B) the redemption of the Client Plan's Shares by the Offshore Corporation either in cash or in kind; and PTE 91–1, published in the **Federal Register** at 56 FR 448 (January 4, 1991), granted exemptive relief for the acquisition, sale or redemption of limited partnership units between pension plans (the Plans) investing in the International Small Float Fund (the Fund) and PIM, the general partner of the Fund and a party in interest to the Plans.

[44] Renaissance notes that certain operating expenses of the New Medallion Vehicles payable to third parties will be paid from the assets of the New Medallion Vehicles, but nothing in the manner of management fees or performance allocations, direct or indirect, will accrue to the Applicant. Additionally, the underlying Funds in which the New Medallion Vehicles invest will incur substantial obligations to pay third party brokerage commissions, option premiums, and other transaction costs, regardless of whether the Funds realize any profits. Such expenses, as noted in certain of the Funds' ''Private Offering Memoranda,'' are significantly higher than those incurred by most other investment programs, due to the highly active nature of Renaissance's trading programs.

75. Finally, Renaissance states that the proposed exemption is protective of IRAs and their beneficiaries because all transactions would be required to be effected at the discretion of IRA Holders. Renaissance has not made, nor will it make, an endorsement or recommendation to Participants that they establish IRAs to invest any Proceeds in the New Medallion Vehicles. Moreover, Renaissance will not engage in any marketing activities intended to cause IRA Holders to consider such an investment or offer any financial or employment-related incentive for IRA Holders to invest in the New Medallion Vehicles. Further, the Applicant contends that neither Renaissance nor any employee or owner of Renaissance will exercise any of its authority, control, or responsibility as a fiduciary of a New Medallion Vehicle to benefit itself or a person in which it has an interest which may affect the exercise of its best judgment as a fiduciary.

The Applicant observes that no IRA Holder will be able to invest in a New Medallion Vehicle for a particular Fund unless he or she satisfies the securities law-based requirements for other investors in the same Fund. In addition, prior to and during an investment in the Funds, IRA Holders will receive written disclosures allowing them to make informed decisions regarding any determination to invest (or redeem) Proceeds in the Funds. The Applicant notes that each Medallion Fund's investment objectives, strategies, risks, and mechanics of maintaining an investment (including information about redemptions), are described in detail in the relevant offering document delivered to each investor. Renaissance points out that the Participants are comprised of a highly educated cadre of professionals with over 200 combined Ph.D.'s in mathematics, physics, and statistics. Thus, they explain, the population of potential IRA Holders is on the whole more educated, and possibly more sophisticated, that the average investor, and thus better able to judge the merits of an investment in the Funds.

The Applicant states that the risks involved in the proposed transactions are mitigated by several factors, including the Medallion Funds' broad investment diversification, the liquidity of most of the instruments that the Medallion Funds trade, and the quarterly liquidity afforded to each investor. Moreover, the Applicant represents that it is knowledgeable and experienced in the transactions contemplated by the Funds and has a significant record of positive investment returns. Moreover, only a relatively small amount of IRA assets would be invested through the New Medallion Vehicles, facilitating the valuation and ready redemption of such investments, in cash, upon the receipt of a redemption request.

Finally, with respect to the investment by Participants in the New Medallion Vehicles through IRAs, the Applicant acknowledges that such investments may constitute investments by a ''pension plan'' within the meaning of Section 3(2) of the Act and the Applicant represents that, with respect to such investments, it will comply with all applicable requirements of Title I of the Act. Moreover, prior to the acquisition by an IRA of an interest in a New Medallion Vehicle, the Applicant states that it will submit to the jurisdiction of the federal and state courts located in the State of New York, take steps to facilitate the service of process by an IRA Holder, and submit itself to jurisdiction in the United States courts, in the event that an IRA Holder is required to exercise his or her rights pursuant to this exemption.

Summary

76. In summary, the Applicant represents that the covered transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code because:

(a) An IRA's acquisition of an interest in a New Medallion Vehicle will only be made at the specific direction of an IRA Holder.

(b) Renaissance will render no investment advice to IRA Holders concerning a potential acquisition of an interest in a New Medallion Vehicle and will not engage in marketing activities or offer employment-related incentives of any kind intended to cause IRA Holders to consider such acquisition.

(c) An interest in a New Medallion Vehicle will only be available to IRA Holders who satisfy the securities law-based investor qualifications applicable to all investors in such New Medallion Vehicle.

(d) No commissions, sales charges, or other fees or profit participations in the form of performance allocations or otherwise, direct or indirect, will be assessed against an IRA in connection with its acquisition and holding of an interest in a New Medallion Vehicle.

(e) An IRA will pay no more and receive no less for its particular interest in any of the New Medallion Vehicles than it would in an arm's length transaction with an unrelated party.

(f) An IRA's interest in a New Medallion Vehicle will be redeemable, in whole or in part, without the payment of any redemption fee or penalty, no less frequently than on a quarterly basis upon no less than 10 days advance written notice.

(g) All acquisitions and redemptions by an IRA of its interest in a New Medallion Vehicle will be made for fair market value.

(h) Redemption of an IRA's interest in a New Medallion Vehicle, in whole or in part, will be made in cash.

(i) In the event that a redemption of any portion of an IRA Holder's interest in any of the Medallion Funds becomes necessary as the result of a reduction of the Investment Allocation applicable to an IRA Holder, then, at such IRA Holder's election, a redemption will first be made of the IRA Holder's taxable investments (if any) prior to his or her IRA's interest in a New Medallion Vehicle.

(j) With respect to the investment in the New Medallion Vehicles through Participants' IRAs, Renaissance acknowledges that such investments may constitute investments by a ''pension plan'' within the meaning of section 3(2) of the Act, and the Applicant represents that, with respect to such investments, it will comply with all applicable requirements of Title I of the Act.

(k) Renaissance will not use the fact that IRAs invested in the Funds in any marketing activities or publicity materials for the Funds.

(l) In advance of the acquisition of an interest by an IRA in a New Medallion Vehicle, and periodically thereafter, the IRA Holder will receive certain disclosures and financial information related to the Funds, described herein, enabling such individual to make an informed decision regarding his or her investment in the Funds.

(m) Renaissance, the New Medallion Vehicles, and each Fund or vehicle in which, or through which, a New Medallion Vehicle invests, will agree to the legal jurisdictional, service of process, and venue requirements described herein.

(n) Renaissance will comply with the recordkeeping requirements provided herein to enable certain authorized persons to determine whether the conditions of the exemption have been met, for so long as such records are required to be maintained.

Notice to Interested Persons

Notice of the proposed exemption will be given to interested persons within 3 days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will be given to interested persons who are

current employees by electronic mail, with receipt of delivery requested (or its equivalent), and to other interested persons by overnight mail with proof of delivery required. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 33 days of the publication of the notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Warren Blinder of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

Weyerhaeuser Company (Weyerhaeuser) and Federalway Asset Management LP (Collectively, the Applicants)

Located in Federalway, Washington

[Application No. D–11677]

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).

Section I: Specific Proposed Exemption Involving the Contribution In-Kind

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and 4975(c)(1)(E) of the Code,[45] shall not apply, effective as of the date of the publication of a final exemption in the **Federal Register**, to the contribution in-kind by the Weyerhaeuser Company (Weyerhaeuser), the sponsor of the Weyerhaeuser Pension Plan (the Plan), of a bundle of assets (the Assets) owned by Weyerhaeuser Asset Management LLC (WAM), a wholly-owned subsidiary of Weyerhaeuser NR Company which is in turn a wholly-owned subsidiary of Weyerhaeuser, to the Weyerhaeuser Company Master Retirement Trust (the Master Trust); provided that the conditions, as set forth, below, in section IV, and the following conditions are satisfied:

(a) Prior to the execution and closing on the in-kind contribution of the Assets, an independent, qualified fiduciary (the I/F), as defined in section V(k), acting on behalf of the Master Trust, determines whether and on what terms to enter into the in-kind contribution of such Assets;

(b) The I/F negotiates, reviews, and approves the specific terms and conditions of the in-kind contribution of the Assets and determines, prior to entering into such in-kind contribution, that such transaction is feasible, in the interest of, and protective of the Master Trust and its participants and beneficiaries;

(c) The I/F takes the necessary steps to ensure compliance by Weyerhaeuser with the terms and conditions of the in-kind contribution of the Assets;

(d) As of the date the Assets are contributed to the Master Trust, the contributed value of the Assets is equal to the fair market value of the Assets, as determined by the I/F;

(e) The terms and conditions of the in-kind contribution of the Assets are no less favorable to the Master Trust than terms negotiated at arm's length under similar circumstances between unrelated parties;

(f) The fair market value of the Assets will constitute less than one percent (1%) of the assets of the Master Trust at the time such Assets are contributed to the Master Trust;

(g) The Master Trust incurs no commissions, fees, costs, or other charges and expenses in connection with the in-kind contribution of the Assets to the Master Trust;

(h) The in-kind contribution of the Assets is a one-time transaction;

(i) The fair market value of the Assets is *not* credited in the prefunding balance for purposes of calculating the minimum required contributions of Weyerhaeuser to the Plan;

(j) Pursuant to the royalty interest agreement (the Royalty Agreement) with Federalway Asset Management LP (Newco), the Master Trust will be entitled to receive annual royalty payments in the amount of 12.5 percent (12.5%) on revenues of less than $25 million per year and 15 percent (15%) on revenues of more than $25 million per year; and

(k) The termination of Newco as investment manager of the Master Trust will have no impact on the Master Trust's rights under the Royalty Agreement.

Section II: Specific Proposed Exemption Involving the Management by Newco of the Assets of Employee Benefit Plans

Effective for a period of five (5) years, beginning on the date of the publication of a final exemption in the **Federal Register** and ending on the day which is five (5) years from such publication date, the restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to:

(a) Any transaction between a party in interest, as defined in section V(e), with respect to the Plan and the Master Trust in which such Plan has an interest; and any transaction between a party in interest, as defined in section V(e), with respect to any other employee benefit plan or employee benefit plans sponsored by Weyerhaeuser (the Other Plan(s)) and the Master Trust in which such Other Plan(s) have an interest; and

(b) Any transaction between a party in interest, as defined in section V(e), and any employee benefit plan or any employee benefit plans, as defined in section V(i), (the Client Plan(s)), where such Client Plan has engaged Newco to act as investment manager within the meaning of section 3(38) of the Act, or where such Client Plan is invested in a collective investment vehicle managed by Newco, the assets of which are treated as plan assets under section 3(42) of the Act; provided that:

(1) Newco has discretionary authority or control with respect to the assets of the Plan, the assets of the Other Plan(s), or the assets of the Client Plan(s) which are invested in an investment fund (a Managed Account) involved in any such transaction;

(2) Newco satisfies the definition, as set forth, below, in section V(a)of this exemption; and

(3) The conditions as set forth, below, in section III, and section IV, are satisfied.

Section III: Specific Conditions Applicable to Transactions Described in Section II of This Proposed Exemption

(a) At the time of the transaction, as defined in section V(h), neither the party in interest, as defined in section V(e), nor any affiliate, as defined in section V(b):

(1) Has the authority to appoint or terminate Newco as a manager of the Managed Account involved in the transaction, or

(2) Has the authority to negotiate on behalf of the Plan, the Other Plan(s), or the Client Plan(s), the terms of the management agreement with Newco

[45] 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.

(including renewals or modifications thereof) with respect to the Managed Account involved in the transaction.

Notwithstanding the foregoing, in the case of a Managed Account in which two (2) or more unrelated plans, as defined in section V(i), have an interest, a transaction with a party in interest, as defined in section V(e), with respect to a plan will be deemed to satisfy the requirements of section III(a), if the assets of the plan managed by Newco in the Managed Account, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof, as described in section V(b)(1)) or by the same employee organization, and managed in the same Managed Account, represent less than 10 percent (10%) of the assets of the Managed Account;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 2006–16 (71 FR 63786; October 31, 2006) (relating to securities lending arrangements) (as amended or superseded),

(2) Prohibited Transaction Exemption 83–1 (48 FR 895; January 7, 1983) (relating to acquisitions by plans of interests in mortgage pools) (as amended or superseded), or

(3) Prohibited Transaction Exemption 82–87 (47 FR 21331; May 18, 1982) (relating to certain mortgage financing arrangements) (as amended or superseded);

(c) The terms of the transaction are negotiated on behalf of the Managed Account by, or under the authority and general direction of, Newco, and either Newco, or (so long as Newco retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by Newco, makes the decision on behalf of the Managed Account to enter into the transaction, provided that the transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest, as defined in section V(e);

(d) The party in interest, as defined in section V(e), dealing with the Managed Account is neither Newco nor a person related to Newco, within the meaning of section V(g);

(e) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of Newco, the terms of the transaction are at least as favorable to the Managed Account as the terms generally available in arm's length transactions between unrelated parties;

(f) Neither Newco nor any affiliate thereof, as defined in section V(c), nor any owner, direct or indirect, of a 5 percent (5%) or more interest in Newco is a person who within the ten (10) years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of:

(1) Any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization;

(2) Any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary;

(3) Income tax evasion;

(4) Any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities;

(5) Conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or

(6) Any other crime described in section 411 of the Act. For purposes of this section III(f), a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

Section IV—General Requirements Applicable to Transactions Described in Section I and Section II of This Proposed Exemption

(a) Newco or an affiliate, as defined in section V(l), maintains or causes to be maintained within the United States, for a period of six (6) years from the date of each covered transaction, the records necessary to enable the persons described, below, in section IV(b)(1)(A)–(E), to determine whether the conditions of this proposed exemption have been met, except that:

(1) a separate prohibited transaction will not be considered to have occurred solely because, due to circumstances beyond the control of Newco and/or its affiliates, as defined in section V(l), the records are lost or destroyed prior to the end of the six (6) year period, and

(2) No party in interest or disqualified person, as defined in section V(e), other than Newco, 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 section IV(b)(1).

(b)(1) Except as provided in section IV(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 IV(a) are unconditionally available for examination at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or of the Internal Revenue Service;

(B) Any fiduciary of the Plan, any fiduciary of any Other Plan(s), any fiduciary of any Client Plan(s), and any duly authorized representative of such fiduciary;

(C) Any contributing employer to the Plan, any contributing employer to any Other Plan(s), any contributing employer to any of the Client Plan(s), and any duly authorized employee representative of such contributing employer;

(D) Any participant or beneficiary of the Plan, any participant or beneficiary of any Other Plan(s), any participant or beneficiary of any Client Plan(s), and any duly authorized representative of such participants or beneficiaries; and

(E) Any employee organization whose members are covered by the Plan, any employee organization whose members are covered by the Other Plan(s), and any employee organization whose members are covered by any Client Plan(s);

(2) None of the persons, described in section IV(b)(1)(B) through (E), shall be authorized to examine trade secrets of Newco or its affiliates, as defined in section V(l), or commercial or financial information which is privileged or confidential.

Section V—Definitions

(a) For purposes of this proposed exemption, the term, Federalway Asset Management LP, and the term, ''Newco,'' means a fiduciary (as defined in section V(j)) which is an investment adviser registered under the Investment Advisers Act of 1940 that has total client assets under its management and control in excess of $85,000,000, as of the date Newco commences operations, and shareholders' or partners' equity (as defined in section V(m) in excess of $1,000,000.

(b) For purposes of section III(a), an ''affiliate'' of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, 10 percent (10%) or more partner, or highly compensated employee as defined in section 4975(e)(2)(H) of the Code (but

only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets involved in the transaction. A named fiduciary (within the meaning of section 402(a)(2) of the Act) of a plan with respect to the plan assets involved in the transaction and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of section III(a), if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(c) For purposes of section III(f), an ''affiliate'' of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H)) or officer (earning 10 percent (10%) or more of the yearly wages of such person), or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.

(d) For purposes of section V(b), section V(c), and section V(l), the term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) For purposes of this proposed exemption, the term, ''party in interest,'' means a person described in section 3(14) of the Act and includes a ''disqualified person,'' as defined in Code section 4975(e)(2).

(f) For purposes of section V(c)(2) and section V(l)(2), the term, ''relative,'' means a relative as that term is defined in section 3(15) of the Act, or a brother, a sister, or a spouse of a brother or sister.

(g) Newco is ''related'' to a party in interest for purposes of section III(d), if, as of the last day of its most recent calendar quarter: (i) Newco owns a 10 percent (10%) or more interest in the party in interest; (ii) a person controlling, or controlled by, Newco owns a 20 percent (20%) or more interest in the party in interest; (iii) the party in interest owns a 10 percent (10%) or more interest in Newco; or (iv) a person controlling, or controlled by, the party in interest owns a 20 percent (20%) or more interest in Newco. Notwithstanding the foregoing, a party in interest is ''related'' to Newco if: (i) A person controlling, or controlled by, the party in interest has an ownership interest that is less than 20 percent (20%) but greater than 10 percent (10%) in Newco and such person exercises control over the management or policies of Newco by reason of its ownership interest; (ii) a person controlling, or controlled by, Newco has an ownership interest that is less than 20 percent (20%) but greater than 10 percent (10%) in the party in interest and such person exercises control over the management or policies of the party in interest by reason of its ownership interest. For purposes of this definition:

(1) The term ''interest'' means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest if, other than in a fiduciary capacity, the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(h) For purposes of this proposed exemption, the time as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the date of the publication of the final exemption in the **Federal Register** or a renewal that requires the consent of the Newco occurs on or after the date of the publication of the final exemption in the **Federal Register**, and the requirements of the final exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this paragraph shall be construed as exempting a transaction entered into by a Managed Account which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the final exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for the final exemption.

(i) For purposes of this proposed exemption, the terms, ''employee benefit plan'' and ''plan,'' include an employee benefit plan described in section 3(3) of the Act and/or a plan described in section 4975(e)(1) of the Code, but do *not* include a plan sponsored by Newco or any affiliate of Newco.

(j) For purposes of section V(a), the term ''fiduciary'' means a fiduciary managing the assets of a plan, as defined in section V(i), in a Managed Account that is independent of and unrelated to the employer sponsoring such plan. For purposes of this proposed exemption, a fiduciary will not be deemed to be independent of and unrelated to the employer sponsoring the plan, if such fiduciary directly or indirectly controls, is controlled by, or is under common control with the employer sponsoring the plan.

(k) For purposes of section I, the term, ''I/F,'' means a fiduciary that:

(1) Can demonstrate, through experience and/or education, proficiency in matters involving the in-kind contribution of assets, including assets such as the Assets which are the subject of section I of this proposed exemption;

(2) Is an expert with respect to the valuation of assets, such as the Assets, or has the ability to access (itself or through persons engaged by it) appropriate data regarding the value of assets, such as the Assets, in the relevant market;

(3) Has not engaged in any criminal activity involving fraud, fiduciary standards, or securities law violations;

(4) Is appointed to act on behalf of the Master Trust for all purposes related to in-kind contribution of the Assets; and

(5) Is independent of and unrelated to Weyerhaeuser and its affiliates, as defined, below, in section V(l). For purposes of this proposed exemption, a fiduciary will not be deemed to be independent of and unrelated to Weyerhaeuser and its affiliates if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with

Weyerhaeuser and its affiliates, as defined, below, in section V(l),

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration in connection with any of the transactions described in this proposed exemption; except that an I/F may receive compensation for acting as an I/F in connection with the transactions contemplated herein, if the amount or payment of such compensation is not contingent upon or in any way affected by the I/F's ultimate decisions, and

(iii) The annual gross revenue from Weyerhaeuser and its affiliates, as defined, below, in section V(l), received by such fiduciary, during any year of its engagement, does not exceed one percent (1%) of such fiduciary's annual gross revenue from all sources for its prior tax year.

(l) For purposes of section IV(a) and section V(k), the term, ''affiliate,'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

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

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

(m) For purposes of section V(a), the term ''shareholders' or partners' equity'' means the equity shown in the balance sheet, as of the date Newco commences operations, prepared in accordance with generally accepted accounting principles.

Temporary Nature of the Exemption

Effective Date: With regard to the transaction described in section I, the Department has determined that the relief proposed with respect to such transaction shall be effective, as of the date of the publication of the final exemption in the **Federal Register**.

With regard to the transactions described in section II, the Department has determined that the relief proposed with respect such transactions is temporary in nature, and, if granted, shall be effective, beginning on the date of the publication of the final exemption in the **Federal Register** and ending on the day which is five (5) years from the date of the publication of the final exemption in the **Federal Register**. Accordingly, relief described in this proposed exemption, if granted, with respect to the transactions described in section II will not be available upon the expiration of such five-year period for any new or additional transactions, as described herein, after such date, but would continue to apply beyond the expiration of such five-year period for continuing transactions entered into within the five-year period; provided that the conditions of this proposed exemption, if granted, continue to be satisfied. Should the applicant wish to extend, beyond the expiration of such five-year period, the relief provided for new or additional transactions, as described in section II, the Applicants may submit another application for exemption. In this regard, the Department expects that prior to filing another exemption application seeking relief for new or additional transactions, as described in section II, the Applicants should be prepared to demonstrate compliance with the conditions of the final exemption.

Summary of Facts and Representations

1. The Plan is a non-contributory defined benefit pension plan tax-qualified under section 401(a) of the Code. As of June 1, 2011, the date the Applicants filed the application for exemption, the Plan is the sole defined benefit pension plan sponsored by Weyerhaeuser. The Plan is maintained for salaried employees of Weyerhaeuser and participating subsidiaries. The Plan also covers certain hourly employees. In this regard, the Weyerhaeuser Company Retirement Plan for Hourly Rated Employees and the Weyerhaeuser Company Retirement Plan for Salaried Employees were merged, effective December 31, 2010, and were renamed the Weyerhaeuser Pension Plan, which is the Plan that is subject to this proposed exemption. As of January 1, 2011, the Plan had 75,607 participants.

It is represented that, as of December 31, 2010, the Plan had assets with a fair market value of $4.235 billion, with projected benefit obligations of $4.233 billion, and with a funded ratio of 100.47%. In this regard, it is represented that the Plan is fully-funded as of January 2008, 2009, 2010. Further, the Plan has no minimum required contribution due in 2011.

2. Established in 1900, Weyerhaeuser (NYSE: WY) operates in 10 countries, primarily in the United States and Canada. Weyerhaeuser's four major business segments span nearly all aspects of the forest products industry, including cellulose fibers, real estate, timberlands, and wood products. In this regard, Weyerhaeuser manages 20.5 million acres of forests and generated approximately $6.6 billion in net sales in 2010. As the sponsor of the Plan, Weyerhaeuser is a party in interest with respect to the Plan, pursuant to section 3(14)(C) of the Act.

3. The named fiduciary for the Plan, within the meaning of section 402(a)(2) of the Act, is an investment committee (the Investment Committee). As a fiduciary with respect to the Plan, the Investment Committee is a party in interest, pursuant to section 3(14)(A) of the Act. Plan administration and investment monitoring are the responsibilities of the administrative committee and the Investment Committee, respectively. Certain employees of Weyerhaeuser and its subsidiaries serve as members of these two (2) committees. The Chairman of the Investment Committee is a retired employee of and currently a consultant to Weyerhaeuser.

4. The assets of the Plan are held in a Master Trust. The Master Trust is qualified under the Code and is exempt from federal income taxes. The Plan received a favorable determination letter from the Internal Revenue Service (IRS), dated October 28, 2005. The Plan has been amended and restated since that date. However, it is the opinion of Weyerhaeuser that the Plan, as amended and restated, meets the Code requirements; and that therefore, the Master Trust continues to be tax exempt.

The Master Trust has total assets, as of December 31, 2010, of approximately $4.235 billion. As of June 1, 2011, the Plan is the only plan funded by the Master Trust. The trustee of the Master Trust is Bank of New York Mellon Corporation. The custodian for the group annuity contract held in the Master Trust is Metropolitan Life Insurance Company.

5. During 2008 and 2009, Morgan Stanley Investment Management, Inc. (Morgan Stanley), and Northwater Capital Management Inc. (Northwater), and WAM acted as investment managers of the assets of the Plan in the Master Trust. It is represented that Morgan Stanley and Northwater each qualify as qualified professional asset managers (QPAMs) under Prohibited Transaction Exemption 84–14 (PTE 84–14).G [46] Effective July 1, 2009, Northwater's investment management duties were transferred to WAM.

WAM provides a broad array of investment advisory and investment management services to the Master Trust. It is represented that WAM is a registered investment adviser with the Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended. It is further

[46] 49 FR 9494, March 13, 1984, *as corrected* at 50 FR 41430, October 10, 1985, *amended at* 70 FR 49305, August 23, 2005, and *amended at* 75 FR 38837 (July 6, 2010).

represented that WAM qualifies as an in-house asset manager (INHAM) within the meaning of Prohibited Transaction Exemption 96–23.[47] If the proposed exemption is granted, it is represented that WAM will cease to be an investment manager for the Master Trust.

As the current investment managers with respect to the assets of the Plan, Morgan Stanley and WAM are fiduciaries, pursuant to section 3(21)(A) of the Act and are parties in interest with respect to the Plan, pursuant to section 3(14)(A) of the Act. Further, Morgan Stanley and WAM, as service providers to the Plan, are parties in interest with respect to the Plan, pursuant to section 3(14)(B) of the Act. As a wholly-owned subsidiary of a wholly-owned affiliate of Weyerhaeuser, WAM is also a party in interest with respect to the Master Trust, pursuant to 3(14)(G) of the Act.

The In-Kind Contribution of Assets to the Plan

6. Section I of this proposed exemption describes an in-kind contribution of assets. Specifically, Weyerhaeuser proposes to contribute in-kind to the Master Trust certain Assets which are owned by WAM. It is represented that the proposed contribution of the Assets will not be used to reduce Weyerhaeuser's cash contributions to the Plan. In this regard, it is represented that the fair market value of the Assets will not be credited in the prefunding balance for purposes of calculating minimum required contributions by Weyerhaeuser to the Plan.

As Weyerhaeuser is the sponsor of the Plan, the Applicants are concerned that the in-kind contribution of the Assets by Weyerhaeuser to the Master Trust could be viewed as a prohibited transaction, pursuant to section 406(a)(1)(A) of the Act for which an exemption would be needed.[48] Further, as both WAM and Weyerhaeuser are parties in interest with respect to the Plan, the in-kind contribution to the Master Trust by Weyerhaeuser of the Assets owned by WAM raises issues of conflict of interest for which the Applicants have requested relief from sections 406(b)(1) and 406(b)(2) of the Act.

The Assets arise from WAM's management of the assets of the Master Trust and WAM's management of the assets of the Weyerhaeuser Company Limited Master Trust (the Canadian Trust), established in connection with Weyerhaeuser's Canadian pension plans. The Assets include: (1) A limited right to disclose the ''Weyerhaeuser'' name; (2) access to WAM's historical investment performance calculations and related work papers; (3) access to the books and records of the Canadian Trust; (4) certain business contracts; (5) computers, scanners, printers, MFD's, polycom video conference hardware; (6) office furniture and fixtures; (7) information filed within personal hard drives and filed within shared drives of transferring employees; (8) various newsletters, publications, reviews, analysis, and reports; (9) books, studies, research articles, and publications purchased by WAM; and (10) various analytical models, spread sheets, and periodic reports. It is represented that, if this proposed exemption is granted, the fair market value of the Assets when contributed in-kind to the Master Trust will constitute less than one percent (1%) of the assets of the Master Trust.

7. The Assets contributed in-kind by WAM and certain other property owned by the Master Trust, including performance backup books and records relating to WAM's management of the Master Trust (collectively, the Licensed Assets) will be licensed by the Master Trust under the Royalty Agreement with Newco. Newco will be permitted to market the track record of WAM and may refer to the management by certain WAM personnel of all or a portion of the Master Trust when marketing to other clients. Pursuant to the Royalty Agreement, the Master Trust will be entitled to receive annual royalty payments of a specified percentage [49] of Newco's revenue, other than any revenue received by Newco relating to Newco's management of the assets of the Plan invested in the Master Trust.

In accordance with section 3.4 of the Royalty Agreement, commencing on December 31, 2018, the Master Trust could elect to require Newco to purchase the royalty interest and the Licensed Assets (the Put) in exchange for payment within a certain time frame of an amount based upon a specific formula, as set forth in the Royalty Agreement. Under the terms of the Put, proceeds equal to four (4) times the prior year's royalty payment are payable no later than 180 days following the ''put option measurement date.'' The ''put option measurement date'' is generally the December 31st following the one year anniversary of the date on which the Master Trust gives notice of its intent to exercise the Put, but in no event earlier than December 31, 2020. The Investment Committee would be responsible for exercising the Put.

In accordance with section 3.3 of the Royalty Agreement, commencing on December 31, 2020, Newco could elect to require the Master Trust to sell the royalty interest and the Licensed Assets to Newco (the Call) in exchange for payment within a certain time frame of an amount based upon a specific formula, as set forth in the Royalty Agreement. Under the terms of the Call, proceeds equal to five (5) times the prior year's royalty payment are payable no later than 180 days following the ''call option measurement date.'' The ''call option measurement date'' is generally the December 31st following the one year anniversary of the date on which Newco gives notice of its intent to exercise the Call, but in no event earlier than December 31, 2022. A majority of the Board of Directors of Federalway Asset Management GP LLC (the Newco GP) would be responsible for exercising the Call. The Royalty Agreement, pursuant to section 3.6 therein, also makes provision for Newco to charge back-end fees to the Master Trust.[50]

[47] 61 FR 15975, April 10, 1996, amended at 76 FR 18255 (April 1, 2011).

[48] The Applicants site to Advisory Opinion 81–69A (July 28, 1981) in which the Department determined that in-kind contributions of property to a defined benefit pension plan would be a prohibited sale or exchange of property between a plan and a party in interest under section 406(a)(1)(A) of the Act, because such in-kind contribution would constitute a discharge by the employer of its legal obligation to make a yearly cash contribution to such plan.

[49] It is represented that the specified percentage would be 12.5% on revenues of less than $25 million per year and 15% on revenues of more than $25 million per year.

[50] The Applicants have not requested any relief from the prohibited transactions provision of the Act, with respect to the entry into the Royalty Agreement between Newco and the Master Trust, nor have the Applicants requested any relief for the operation of the terms of such agreement, including the exercise of the Put, or the exercise of the Call, and the receipt by Newco of back-end fees. In the opinion of the Applicants, Newco is not a fiduciary to the Master Trust with respect to the decision by the Master Trust to enter into the Royalty Agreement nor with respect to the operation of the Royalty Agreement, the exercise of the Put, the exercise of the Call, or the receipt of back-end fees, all of which the Applicants maintain are independent rights that are unconnected with any determination of whether the Master Trust becomes or remains a client of Newco. The Investment Committee and Newco represent that they are comfortable that the terms of the Royalty Agreement represent an arm's-length transaction and that the consideration, as set forth in the Royalty Agreement represents fair market value. Accordingly, the Investment Committee and Newco intend to rely on the relief provided by the statutory exemption, as set forth in section 408(b)(17) of the Act with respect to the decision by the Master Trust to enter into the Royalty Agreement, and with respect to the operation of the Royalty Agreement, the exercise of the Put, the exercise of the Call, and the receipt of back-end fees by Newco. The Department, herein, is offering no view as to the Applicant's reliance on the statutory exemption, as set forth in section 408(b)(17) of the Act, for such transactions, nor is the Department offering any view, as to whether the Applicants satisfy the conditions, as set forth in

8. The Applicants represent that the in-kind contribution of the Assets to the Master Trust, as described in section I of the proposed exemption, is administratively feasible in that such in-kind contribution will be a one-time transaction. The Applicants represent further that the transaction, as described in section I of this proposed exemption, is feasible, as the Applicants will be required to maintain records necessary to enable the Department and the IRS and other interested parties to determine whether the conditions of this proposed exemption, if granted, have been met.

9. The Applicants represent that the transaction, described in section I of the proposed exemption, is protective of the rights of participants and beneficiaries of the Plan, because Evercore Trust Company, N.A. (Evercore Trust) has been retained by Weyerhaeuser and by the Investment Committee, pursuant to a written agreement (the Agreement), dated June 9, 2011, to serve as the I/F, who will act on behalf of the Plan with respect to the contribution in-kind of the Assets.

Evercore Trust's responsibilities, pursuant to such Agreement, are to: (a) Determine whether to accept on behalf of the Plan the contribution in-kind of the Assets, subject to the Department's grant of a final exemption; (b) prepare the valuation of the current fair market value of the Assets; (c) negotiate on behalf of the Plan the terms and conditions of the contribution in-kind of the Assets; and (d) render an opinion in the form of a report suitable for submission to the Department in connection with the application for exemption. In addition, it is represented that Evercore Trust will take the necessary steps to ensure compliance by Weyerhaeuser with the terms and conditions of the in-kind contribution of the Assets. Further, as of the date the Assets are contributed to the Master Trust, the contributed value of the Assets will be equal to the fair market value of the Assets, as determined by Evercore Trust.

The Applicants represent that Evercore Trust is qualified to serve as the independent fiduciary in connection with the proposed in-kind contribution of the Assets. In this regard, Evercore Trust is a nationally chartered trust bank with 12.8 billion in assets under management. Evercore Trust is a subsidiary of Evercore Partners, Inc. (NYSE:EVR) which provides specialized investment management, independent fiduciary, and trustee services to employee benefit plans. Charles E. Wert and Norman P. Goldberg at Evercore Trust lead a multi-disciplinary team of 29 professionals, including relationship managers, plan administrators, financial analysts, and in-house legal counsel.

Evercore Trust represents that it is independent and unrelated to Weyerhaeuser and the Investment Committee. In this regard: (a) Evercore Trust does not directly or indirectly control, is not controlled by, and is not under common control with, Weyerhaeuser; (b) neither is Evercore Trust nor any of its officers, directors, or employees an officer, director, partner, or employee of Weyerhaeuser (nor a relative of such persons); (c) Evercore Trust may receive compensation from Weyerhaeuser only for performing the services for acting as the I/F, as described in the Agreement, as long as the amount of such payment is not contingent upon or in any way affects such services; and (d) the annual compensation received by Evercore Trust, pursuant to the Agreement, does not exceed one percent (1%) of annual gross revenue of Evercore Trust.

Evercore Trust represents that it understands and acknowledges its duties and responsibilities under ERISA in acting as the I/F on behalf of the Plan in connection with the in-kind contribution of the Assets. In this regard, Evercore Trust represents that it is required to act solely in the interest of the Plan's participants and beneficiaries with care, skill, and prudence in discharging its obligations.

It is represented that Evercore Trust conducted a thorough due diligence process in evaluating the proposed in-kind contribution of the Assets. In this regard, the due diligence process involved a number of meetings with personnel from Weyerhaeuser, WAM, Lindsay Goldberg, and the Applicants' outside counsel. These meetings were conducted in person by Evercore Trust in an on-site visit with Weyerhaeuser and WAM personnel in Federal Way, WA on September 27, 2011, as well as via email and telephone conference calls. It is represented that these sessions enabled Evercore Trust to understand a number of important elements related to the in-kind contribution of the Assets, including the investment performance of WAM, the Plan's funded status, the projections for Newco, and the estimated cash flow to be generated by the Royalty Agreement. In addition, Evercore Trust reviewed and relied on a variety of information provided by Weyerhaeuser, represented to be accurate and complete in all material respects. In addition, Evercore Trust independently gathered and reviewed additional information that was publicly available.

In evaluating whether to accept the in-kind contribution of the Assets on behalf of the Plan, Evercore Trust determined that the Plan would receive significant monetary benefits associated with such Assets. In this regard, once Newco is retained by the Client Plans, the Plan would accrue royalty payments. Based on the Royalty Agreement and certain base case projections for Newco (the Base Case Projections),[51] the Assets would generate $1.3 million in royalty payments in year three (3) after start up. Based on the Base Case Projections and reasonable assumptions, Evercore Trust has projected that the Plan would receive between $17 million and $24.8 million in total royalty payments excluding any revenue received from the exercise of the Put or the Call. In addition, the Plan would receive proceeds associated with the expected exercise of either the Put or the Call. Based on the Base Case Projections and reasonable assumptions, Evercore Trust has projected that the Plan would receive either $13.2 million from the exercise of the Put in year nine (9) after start up or $18.9 million from the exercise of the Call in year eleven (11) after start up. Based on these calculations the Plan would receive between $30.2 million and $43.7 million in total proceeds generated by the Assets over these timeframes.

With respect to diversification, to the extent that the *returns generated by the Assets were uncorrelated to the returns* generated by the Master Trust's investment portfolio, the in-kind contribution of the Assets would potentially reduce volatility for the Plan.

With respect to Plan funding, the Plan does not have a required minimum contribution due in 2011. In this regard, it is represented that the in-kind contribution of the Assets would be a voluntary contribution of assets to the Plan. Moreover, Evercore Trust represents the proposed in-kind contribution of the Assets would have no adverse effect on Weyerhaeuser's

such statutory exemption. Further, the Department, herein, is not providing any relief with regard to the entry into the Royalty Agreement, nor is the Department providing any relief, herein, with regard to the operation of terms of the Royalty Agreement, including the Put, the Call, and the back-end fees.

[51] Newco management prepared *pro forma* projections for Newco for six (6) years based on WAM's track record, cost structure, discussions with potential clients of Newco, and general industry conditions. As the Base Case Projections were prepared for Newco as a consolidated business, Evercore Trust reviewed all the revenue and cost assumptions underlying the Base Case Projections and concluded such assumptions were reasonable.

ability to satisfy future funding requirements of the Plan and would not materially impact Weyerhaeuser's operations, or financial condition. Accordingly, Evercore Trust represents that the in-kind contribution of the Assets will not be used to reduce Weyerhaeuser's cash contribution to the Plan and will not be used to directly offset future required contributions.

With regard to the arrangement between the Plan and Newco, Evercore Trust states that the in-kind contribution of the Assets would indirectly support the continuity of the Plan's current investment team. In addition, the Plan would not be responsible for any start-up costs associated with Newco. Further, the Plan would not be locked into a long term arrangement with Newco, nor would the Investment Committee be prevented from selecting another service provider in the future.

Evercore Trust states that the Plan would benefit from the favorable fee arrangement to be established with Newco. In this regard, the initial fee schedule to be charged by Newco to the Plan is designed to cover cost without a profit margin. It is represented that Newco will charge 25 basis points of assets under management to provide full service investment advisory and investment management services to the Plan, whereas Newco expects to charge 50 basis points for such services to the Client Plans. Further, in the opinion of Evercore Trust the floor and the cap on annual charges provides the Plan with greater certainty related to investment management fees. Accordingly, Evercore Trust concluded that the Plan would be no worse off with the fees charged by Newco than its current fee arrangement with WAM.

Finally, Evercore Trust considered and resolved several possible issues associated with the in-kind contribution of the Assets. In this regard, Evercore Trust concluded that the stated limit on the growth of Newco and the Investment Committee's ongoing duty to monitor the Plan's service providers mitigates the risk that Newco's attention to the Plan's assets will decline as Newco develops and maintains new clients. Further, in the view of Evercore Trust, potential conflicts of interest that could arise, if the Investment Committee were reluctant to replace Newco as a service provider, are addressed by the fact that the Assets would represent less than .3 percent (.3%) of the Plan's assets and should not influence prudent fiduciary decision-making. Accordingly, Evercore Trust concluded that these potential issues are insignificant, unlikely, and vastly outweighed by the expected benefits associated with the in-kind contribution of the Assets to the Plan.

Based on the preceding analysis, Evercore Trust has determined that on behalf of the Plan that it would be prudent to accept the in-kind contribution of the Assets and that such contribution in-kind is in the interests of the Plan and its participants and beneficiaries. In the opinion of Evercore Trust, the in-kind contribution of the Assets would provide monetary, diversification, and funding benefits to the Plan without significant costs or downside risk. Therefore, Evercore Trust has determined to accept on behalf of the Plan the in-kind contribution of the Assets, subject to the Department's grant of a final exemption. Evercore Trust has also concluded that additional negotiation on the terms and conditions of the proposed in-kind contribution of the Assets is not necessary, because the proposed structure provides sufficient protection of the Plan's interests.

10. The Applicants believe that the relief requested in section I of this proposed exemption offers significant potential benefits to the Plan. In this regard, as of the date the Assets are contributed to the Master Trust, the contributed value of the Assets will be equal to the fair market value of the Assets, as determined by Evercore Trust.

Evercore Trust represents that it is qualified to serve as the independent appraiser of the fair market value of the Assets, because of Evercore Trust's comprehensive valuation experience utilizing the discounted cash flow approach (the DCF Approach) upon which Evercore Trust relied in valuing the Assets.

With regard to the methodology used, Evercore Trust employed the DCF Approach [52] to value the stream of royalty payments to the Master Trust and the Put and the Call, pursuant to the Royalty Agreement. Under the DCF Approach, the free cash flow of the Assets is estimated and then discounted back to the present at a weighted average cost of capital. In addition, a residual value multiple or growth rate is generally assigned and then applied to the last year of the projected cash flow to take into account the future free cash flows into perpetuity.

As only gross fees from assets under management from the Client Plan generate royalty payments, only assumptions regarding these fees directly impact the valuation of the Assets. The assumptions used by Evercore Trust for such gross fees from assets under management from the Client Plans are as follows: (a) A fee of 50 basis points, based on Newco's expectations of the fees clients will pay; (b) a $2 billion client acquired at the beginning of year three; and a $2 billion client acquired at the beginning of year six, based on the current pipeline of potential new clients and a long lead time to attract clients; and (c) six percent (6%) assets under management growth from existing clients based on the historical performance of the Master Trust assets managed by WAM. Evercore Trust reviewed the assumptions regarding such gross fees and found them reasonable.

Further, Evercore Trust in valuing the Assets under the DCF Approach considered three (3) possible scenarios: (a) The royalty payments are continued in perpetuity; (b) the Put is exercised on December 31, 2020, (in which case the royalty payments would not be continued); and (c) the Call is exercised on December 31, 2022, (also in which case the royalty payments would not be continued). In discussions with Weyerhaeuser, Newco management, and LG Asset Management L.P. (Lindsay Goldberg) (*see,* paragraph no. 14, below), Evercore Trust was told that it as highly likely that the Put or the Call will be exercised and that there is about an equal chance that the Put or the Call will be exercised. As a result, Evercore Trust weighted exercising the Put and the Call at 50 percent (50%) each and did not give any weight to the scenario where the Master Trust received royalty payments in perpetuity.

It is represented that Evercore Trust valued the potential Put and Call using the DCF Approach, whereby Evercore Trust calculated the exercised value of the Put and the Call and discounted those values back to the present at a weighted average cost of capital and weighed the three (3) scenarios to arrive at a valuation conclusion for the Assets. Evercore Trust used a 15 percent (15%) discount rate, based on the implied cost of equity for Newco, assuming Newco was 100% equity financed. Further, Evercore Trust did not deduct taxes from the stream of payments, because the Plan does not pay taxes. Accordingly, in the opinion of Evercore Trust the fair market value of the Assets, as of October 21, 2011, the date of the valuation report, is $11,700,000.

11. In addition, it is represented that the in-kind contribution of the Assets, as described in section I of this

[52] It is represented that the Evercore Trust did not use the comparable precedent transactions approach, as information regarding comparable precedent transactions of similar assets was not publicly available. Further, Evercore Trust did not employ the comparable valuation multiples approach, because there are no instructive publicly traded comparable securities.

proposed exemption, will be in the interest of the Plan and its participants and beneficiaries, because the Plan will not pay any commissions, fees, costs, charges, or other expenses in connection with the in-kind contribution of Assets to the Plan.

Management by NEWCO of All or a Portion of the Assets in the Master Trust

12. It is represented that the Master Trust has been at the forefront of investing in alternative investment vehicles for more than 20 years. In this regard, the Master Trust's investments include cash and short-term investments, hedge funds, private equity, real estate fund investments, and common and preferred stock. In addition, the Master Trust is invested in equity index derivatives, fixed income derivatives, swaps, and other derivative instruments. For approximately the past seven (7) years, it is represented that a large portion of the assets of the Master Trust have been managed in this way by an investment team employed ''in house'' by WAM, as an INHAM, pursuant to PTE 96–23.

13. It is represented that key personnel of the investment team currently employed ''in house'' by WAM will be leaving WAM (the Former WAM Personnel) and will be forming Newco, a new registered investment adviser under the Investment Advisers Act of 1940, as amended. The Former WAM Personnel who join Newco will be entering into employment agreements with Newco. Newco will be a Delaware limited partnership which will be outside of the Weyerhaeuser control group. Newco intends to market an alternative asset management platform designed to provide full-service investment advisory and investment management services to unrelated entities. These unrelated entities will include large investment firms such as foundations, sovereign wealth funds, endowment funds, public funds, and corporate pension funds (collectively, the Funds). Newco would initially target a few of the Funds unrelated to Weyerhaeuser with investable asset between $1 billion and $2 billion to add as new clients (the Unrelated Funds) Newco would initially limit the number of Unrelated Funds to between two (2) to five (5). Salim Shariff would be the Chief Investment Officer and President of Newco.

14. In connection with the establishment and operation of Newco, the Former WAM Personnel will enter into a joint venture with an affiliate of Goldberg Lindsay & Co. LLC (GLCo). GLCo, a registered investment adviser, is the investment manager to a series of private investment funds with aggregate capital commitments of approximately $10 billion that are focused on making long-term equity investments in established industries. The affiliate of GLCo which will enter into the joint venture with Former WAM Personnel is LG Asset Management L.P., and is referred to, herein, as Lindsay Goldberg. It is represented that Lindsay Goldberg will assist Newco with the provision of (or, in the alternative, the retention of persons to provide) various services, including marketing, IT operations, HR, administration, and use of space. However, Lindsay Goldberg will not provide portfolio management services. Such portfolio management services will be provided exclusively by Newco.

It is represented that Lindsay Goldberg has an experienced team of investment professionals led by its co-managing partners, Alan E. Goldberg (Mr. Goldberg) and Robert D. Lindsay (Mr. Lindsay) each of whom has more than 25 years of private investment experience.

15. Newco will initially be funded by Lindsay Goldberg. In this regard, it is represented that the Master Trust will not pay, directly or indirectly, any part of Newco's start up fees. Approximately 60 percent (60%) of Newco will be owned by Lindsay Goldberg. Approximately 40 percent (40%) of Newco will be owned by key personnel of Newco. A substantial portion of the equity of Newco will be held by the Former WAM Personnel.

16. The Newco GP will be a Delaware limited liability company. The Newco GP will be managed by a board of four (4) managers (the Board). Lindsay Goldberg will be entitled to appoint two (2) managers to the Board of the Newco GP. The Former WAM Personnel will be entitled to appoint one (1) manager to the Board. The Master Trust will be entitled to appoint one (1) of the managers to the Board.

17. Weyerhaeuser and the Investment Committee wish to retain the services of the Former WAM Personnel after such personnel have been engaged by Newco. In this regard, Weyerhaeuser has determined that expansion of WAM under the corporate umbrella, as a wholly-owned business providing investment management services to unrelated entities is not within its overall corporate strategy and would not be a core business of Weyerhaeuser. Accordingly, to accommodate the desire of the Former WAM Personnel to expand their business operations and also to ensure the continuity of investment management services provided to the Master Trust by the Former WAM Personnel, the Investment Committee has made a preliminary determination to engage Newco as an investment manager, within the meaning of section 3(38) of the Act, for some or all of the assets in the Master Trust. It is represented that any such investment management services provided by Newco to the Master Trust will be pursuant to a written investment management agreement terminable by the Investment Committee on reasonably short notice.[53] The Master Trust will have no obligation to engage Newco or to continue the services of Newco for any set period of time. It is represented that initially Newco will charge a fee for providing investment management services to the Master Trust at a cost that approximates the cost incurred by WAM to manage the Master Trust's assets (*i.e.,* no profit margin included). In this regard, it is represented that the initial *ad valorem* fee charged would be 25 basis points with a floor and a cap on annual increases of 3 percent (3%) and 6 percent (6%), respectively. The Applicants represent that the fees payable by the Master Trust to Newco will be significantly less than ''market rate'' fees for similar services.[54]

It is represented that the determination of the Investment Committee to hire Newco as the investment manager for some or all of the assets in the Master Trust is conditioned upon the grant by the Department to Newco of a final exemption permitting Newco to enter into transactions on behalf of the Master Trust, as though Newco were a QPAM. Accordingly, the Applicants have requested that the proposed exemption be modeled after PTE 84–14, as amended.

18. PTE 84–14 generally permits various parties in interest with respect

[53] It is represented that termination of Newco as investment manager of the Master Trust will have no impact on the Master Trust's rights under the Royalty Agreement, discussed above.

[54] The Applicants have not requested and the Department, herein, is not providing any relief for the receipt of a fee by Newco from the Master Trust for the provision of investment management services to such Master Trust. The statutory exemption, as set forth in section 408(b)(2) of the Act and the Department's regulations, pursuant to 29 CFR 2550.408b-2, provides relief from section 406(a) of the Act for contracting or making reasonable arrangements with a party in interest for services necessary for the establishment or operation of a plan, if no more than reasonable compensation is paid therefore. The Department, herein, is offering no view, as to whether the receipt by Newco of a fee for the provision of investment management services to the Master Trust is covered by such statutory exemption, nor is the Department, herein, offering any view as to whether Newco satisfies the conditions set forth in such statutory exemption.

to an employee benefit plan to engage in a transaction involving plan assets, if the transaction is authorized by a QPAM, provided certain conditions are satisfied. Specifically, the Applicants seek an individual exemption for transactions that are described in Part I of PTE 84–14.[55] Part I of PTE 84–14 provides relief from the restrictions of section 406(a)(1)(A)–(D) of the Act and section 4975(c)(1)(A)-(D) of the Code for transactions between a party in interest with respect to an employee benefit plan and an investment fund in which such plan has an interest and which is managed by a QPAM, provided certain conditions are satisfied.

One such condition (the Diverse Clientele Test), as set forth in Part I(e) of PTE 84–14, requires that:

> The transaction is not entered into with a party in interest with respect to any plan whose assets managed by QPAM, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof * * * or by the same employee organization, and managed by the QPAM, represent more than 20 percent of the total client assets managed by the QPAM at the time of the transaction.

Another condition, as set forth in Part VI(a)(4) of PTE 84–14(the Assets Under Management Test), requires that an investment adviser registered under the Investment Advisers Act of 1940 have total client assets under its management and control in excess of $85,000,000, as of the last day of its most recent fiscal year. As a newly established entity, Newco will not be able, as of the last day of its most recent fiscal year, to satisfy the Assets Under Management Test, as set forth in PTE 84–14. However, it is anticipated that Newco will have $85,000,000 in assets under management on the date it commences operations.

In addition, another condition, as set forth in Part VI(a)(4) of PTE 84–14 (the Shareholders'/Partners' Equity Test), requires that an investment adviser in order to qualify as a QPAM must either have shareholders' or partners' equity in excess of $1 million, as evidenced by the most recent balance sheet prepared within the immediately preceding two years, or payment of all of its liabilities including any liabilities that may arise by reason of a breach or violation of a duty described in sections 404 and 406 of the Act unconditionally guaranteed by a party, including an affiliate, a bank, a saving and loan, an insurance company, or a broker-dealer who must satisfy certain net worth requirements. As a newly established entity, Newco will not be able to satisfy the Shareholders'/Partners' Equity Test, as set forth in PTE 84–14, because it will not have a recent balance sheet prepared within the immediately preceding two years. However, it is represented that Newco will be capitalized in excess of $1 million, as of the date Newco commences operations.

19. Because Newco does not satisfy the Assets under Management Test, the Shareholders'/Partners' Equity Test, and the Diverse Clientele Test, as those tests are set forth in PTE 84–14, Newco will not qualify as a QPAM with respect to the Master Trust. Accordingly, the Applicants request that the Department grant exemptive relief that will permit Newco to act as though it were a QPAM, in light of the fact that: (a) Newco's investment team will consist of the same Former WAM Personnel who managed the assets of the Master Trust as an INHAM; (b) on the day Newco commences operation, it will be capitalized in excess of $1 million; and (c) on the day Newco commences operation, it is anticipated that Newco will have $85,000,000 in assets under management.

20. In the opinion of the Applicants the proposed transactions, as set forth in section II, are administratively feasible, because such transactions are similar in some respect to other class and administrative exemptions previously granted by the Department. In this regard, the Former WAM Personnel who will be employed by Newco will continue to implement the investment management strategy that has been in operation for the past seven (7) year under the auspices of WAM. In addition, it is represented that the transactions, as described in section II of this proposed exemption would not impose any administrative burdens on the Department which are not already imposed by PTE 84–14.

Further, the transactions, as described in section II of this proposed exemption are feasible, as the Applicants will be required to maintain records necessary to enable the Department and the IRS and other interested parties to determine whether the conditions of the proposed exemption, if granted, have been met.

21. With respect to the transactions described in section II of this proposed exemption, it is represented that the conditions, as set forth in section III of this proposed exemption provide sufficient safeguards for the protection of the Plan, any Other Plan(s) and any Client Plan(s). In this regard, the transactions which are the subject of section II of this proposed exemption cannot be part of an agreement, arrangement, or understanding designed to benefit a party in interest. Neither Newco nor a person related to Newco may engage in transactions with a Managed Account. Any party in interest (including a fiduciary) which deals with a Managed Account may only be a remote party in interest, and such party in interest may not have discretionary authority or control with respect to the investment of plan assets involved in the transaction nor render investment advice with respect to those assets.

22. It is represented that the transactions described in section II of the proposed exemption are in the interest of the Plan, any Other Plan(s), and any Client Plan(s) which invest in a Managed Account, because Newco will be able to negotiate transactions with parties in interest with respect to such plan(s) where such transactions are beneficial. Absent the proposed exemption, such plan(s) would be precluded from engaging in such transactions, even though such transactions may offer favorable investment opportunities.

Further, the Applicants maintain that if the Department were to deny to Newco the relief, as set forth in section II of the proposed exemption, the Master Trust would lose access to the Former WAM Personnel who have been running a large portion of the assets of the Plan in the Master Trust for over seven (7) years. Further, if the Department were not to grant to Newco the ability act as though it were a QPAM, Newco would not be able to continue to implement its proven investment strategy on behalf of the Master Trust, as counterparties are not willing to enter into transactions with the Master Trust, other than under the umbrella of PTE 84–14 or similar exemptive relief.

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

(a) Prior to the execution and closing on the in-kind contribution of the Assets, Evercore Trust, acting on behalf of the Master Trust, will determine whether and on what terms to enter into the in-kind contribution of such Assets;

(b) Evercore Trust will negotiate, review, and approve the specific terms of the in-kind contribution of the Assets and will determine, prior to entering into such in-kind contribution, that such transaction is feasible, in the interest of, and protective of the Master Trust and its participants and beneficiaries;

(c) Evercore Trust will take the necessary steps to ensure compliance by

[55] The Applicants have not requested an administrative exemption for the transactions described in Part II, Part III, and Part IV, and Part V of PTE 84–14.

Weyerhaeuser with the terms and conditions of the in-kind contribution of the Assets;

(d) As of the date the Assets are contributed to the Master Trust, the contributed value of the Assets will be equal to the fair market value of the Assets, as determined by Evercore Trust.

(e) The terms and conditions of the in-kind contribution of the Assets will be no less favorable to the Master Trust than terms negotiated at arm's length under similar circumstances between unrelated third parties;

(f) The fair market value of the Assets will constitute less than one percent (1%) of the assets of the Master Trust at the time such Assets are contributed to the Master Trust;

(g) The Master Trust will incur no commissions, fees, costs, or other charges and expenses in connection with the in-kind contribution of the Assets to the Master Trust; and

(h) The in-kind contribution of the Assets is a one-time transaction;

(i) On the day Newco commences operation, Newco will be capitalized in excess of $1 million, and on the same day, it is anticipated that Newco will have $85,000,000 in assets under management;

(j) Newco will be able to continue to implement a proven investment strategy on behalf of the Master Trust;

(k) The proposed exemption will ensure the continuity of investment management services provided to the Master Trust by the Former WAM Personnel, who have been running a large portion of the assets of the Plan in the Master Trust in recent years;

(l) The Master Trust will not be precluded from engaging in transactions with parties in interest, even though such transactions may offer favorable investment opportunities;

(m) The transactions which are the subject of section II of this proposed exemption cannot be part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(n) Neither Newco nor a person related to Newco may engage in transactions with a Managed Account;

(o) Any party in interest (including a fiduciary) which deals with a Managed Account may only be a remote party in interest, and such party in interest may not have discretionary authority or control with respect to the investment of plan assets involved in the transaction nor render investment advice with respect to those assets; and

(p) The Applicants will be required to maintain records necessary to enable the Department and the IRS and other interested parties to determine whether the conditions of the proposed exemption, if granted, 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 all the participants in the Plan, the active employees, terminated participants and each beneficiary.

It is represented that these several classes of interested persons will be notified of the publication of the Notice through different methods. In this regard, notification will be provided within twenty (20) days of the date of publication of the Notice in the **Federal Register**, by posting at locations customarily used for notices regarding labor-management matters for review. Such posting 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 (the Supplemental Statement) as required, pursuant to 29 CFR 2570.43(b)(2), which will advise interested persons of their right to comment and to request a hearing.

It is represented that Weyerhaeuser will also provide notice to each terminated participant and each beneficiary receiving benefits of the publication of the Notice by first class mail, within twenty (20) 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 such interested persons of their right to comment and to request a hearing.

The Department must receive all written comments and/or requests for a hearing no later than thirty (30) days from the *later of:* (1) The date a copy of the Notice and a copy of the Supplemental Statement are posted; or (2) the date of the mailing first class of a copy of the Notice and a copy of the supplemental Statement to terminated participants and beneficiaries of the Plan.

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

Citigroup Inc. (Citigroup)

Located in New York, New York

Exemption Application Number D–11680

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[56]

If the proposed exemption is granted, Citigroup Inc. and its current and future affiliates (collectively, Citigroup) shall not be precluded, as of December 1, 2010, from functioning as a ''qualified professional asset manager'' (QPAM), pursuant to Prohibited Transaction Exemption 84–14 (PTE 84–14), (49 FR 9494 March 13, 1984, as amended on August 23, 2005 at 70 FR 49305), solely because of a failure to satisfy Section I(g) of PTE 84–14, as a result of Citigroup's affiliation with Citibank Belgium SA (CBB), an entity convicted of six (6) counts of criminal activity in Belgium, provided that the following conditions are met:

(a) The affiliate convicted under Belgium law does not provide fiduciary or QPAM services to employee benefit plans (plans) or otherwise exercise discretionary control over plan assets;

(b) ERISA-covered assets are not involved in the misconduct that is the subject of the affiliate's conviction(s);

(c) Citigroup imposes its internal procedures, controls, and protocols on the affiliate to reduce the likelihood of any recurrence of misconduct to the extent permitted by local law;

(d) This exemption is not applicable if Citigroup, or any affiliate (other than branches or affiliates found liable for similar crimes in Belgium in connection with the sale of certain structured notes (the Lehman Notes) is convicted of any of the crimes described in Section I(g) of PTE 84–14;

(e) Citigroup maintains records that demonstrate that the conditions of the exemption have been and continue to be met for at least six years following the conviction of an affiliate under Belgium law;

(f) Citigroup has adopted procedures to afford ample protection of the interests of participants and beneficiaries of employee benefit plans; and

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

(g) Citigroup complies with the other conditions of PTE 84–14, as amended.

Effective Date: This proposed exemption, if granted, will be effective as of December 1, 2010.

Summary of Facts and Representations

1. Citigroup Inc. (Citigroup), is a multinational financial services corporation headquartered in New York. Citigroup operates, for management reporting purposes, principally via two primary business segments: Citicorp, consisting of Citigroup's Regional Consumer Banking businesses (including retail banking and Citi-branded cards in North America, EMEA, Latin America and Asia) and Institutional Clients Group (including securities and banking and transaction services); and Citi Holdings, consisting of Citigroup's Brokerage and Asset Management and Local Consumer Lending businesses. Citigroup, through securities and banking, offers a wide array of investment and commercial banking services and products for corporations, governments, institutional and retail investors, and high-net-worth individuals. The applicant represents that on March 31, 2011, Citicorp held approximately $1.3 trillion of assets and $784 billion of deposits, representing approximately 68% of Citigroup's total assets and approximately 91% of its deposits. In addition, Citigroup provides fiduciary and asset management services to employee benefit plans described in section 3(3) of the Act. Citigroup manages billions of dollars representing ERISA-covered plan assets. Therefore, it would not be uncommon for a plan for which Citigroup currently serves as a QPAM to engage in a transaction which may involve a party in interest. The applicant represents that without the ability to function as a QPAM pursuant to PTE 84–14, virtually no manager of ERISA assets will be able to manage such assets effectively.

2. Section I(g) of PTE 84–14 precludes a person who otherwise qualifies as a QPAM from serving as a QPAM if such person or an affiliate thereof has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described under Section I(g) of PTE 84–14, section 411 of the Act and various laws incorporated by reference in section 411 of the Act. The applicant represents that the violations which would jeopardize Citigroup's QPAM status involve convictions of Citibank Belgium SA (CBB), a wholly-owned legal entity incorporated under Belgium law that is responsible for the retail banking activities of Citigroup in Belgium, and three (3) of CBB's employees. CBB is a part of Citigroup's global consumer banking business line and focuses on the distribution of banking products to consumers by offering a wide range of credit cards, installment credit and deposit services and investment products to its approximately 580,000 customers, and acts as an intermediary for life insurance products. The applicant represents that CBB has no ERISA plan clients and is not expected to have any ERISA plan clients in the future.

3. On August 14, 2009, CBB and three (3) of its employees [57] were criminally charged on six (6) counts in connection with certain structured bond products issued by Lehman Brothers (Lehman). The Court's decision was announced on December 1, 2010.[58] The applicant represents that, in general, the criminal convictions of CBB and the three employees were related to the use of certain marketing letters and leaflets, as well as a prospectus, describing the characteristics of certain bond products issued by Lehman. Some of these materials had not been approved by the appropriate Belgium regulator (the FSMA, formerly known as the CBFA) at the time of distribution, as required by local law. Additionally, CBB was convicted for the use of unclear and misleading sales documentation and for inadequate oversight of the sales agency network. The applicant represents that the convictions related to the violation of the following Belgian Statutes: Act of 16 June 2006 regarding the public offers of investment instruments and the admission of investments instruments to trading on regulated markets (the Prospectus Act), Article 60; the Prospectus Act, Article 69; and Act of 14 July 1991 on commercial practices and on information and protection of the consumer (the Commercial Practices Act), Article 94. The applicant further represents that the Court's judgment did not detail the statutory provisions on which each conviction is based, that these convictions are on appeal by CBB and Mr. Staroukine as of the date of this proposal, and that criminal acts are neither authorized nor condoned by Citigroup.

4. Citigroup represents that although none of the unlawful misconduct involved its (or its affiliates') investment management activities, the criminal conduct described above would preclude each component of Citigroup and other affiliated investment managers from serving as a QPAM pursuant to 84–14. Accordingly, the applicant requests an exemption to enable Citigroup and any of its current or future affiliates to act as a QPAM despite their failure to satisfy Section I(g) of PTE 84–14 solely as a result of CBB and its employees' December 1, 2010 criminal conviction in Belgium. The transactions covered by the proposed exemption would include the full range of transactions that can be executed by investment managers who qualify as QPAMs pursuant to PTE 84–14. If granted, the exemption will enable Citigroup and its current and future affiliates to qualify as QPAMs by satisfying all conditions of PTE 84–14, unless Citigroup or any other affiliate (other than branches or affiliates found liable for similar crimes in Belgium in connection with the sale of the Lehman Notes) is convicted of any additional instances of the crimes described in Section I(g) of PTE 84–14.

5. The applicant maintains that the requested exemption is protective of the rights of participants and beneficiaries of affected plans because: (a) After the time of the conduct described herein, Citigroup launched an initiative to establish global standards for addressing the risk associated with its retail and investment products businesses; (b) a global policy has been created to assist Citigroup's investment professionals in meeting their responsibilities related to ensuring that investment product sales are suitable for clients in the context of the client's investment objectives, risk tolerance, and knowledge and experience; (c) Citigroup's suitability processes include a classification system for Citigroup accounts, a corresponding client rating scale, and defined mechanisms for framing suitability judgments; (d) consistent requirements were developed through the policy for mandatory sales force training on products, as well as Citigroup policies; (e) the investment product risk group has standardized requirements for review and approval of new products, as well as third party structured note issuers; (f) a local compliance staff reports to the global Chief Compliance Officer to ensure independence; (g) training regarding the policy and the applicant's other global policies and procedures is conducted in the local language; (h) CBB has voluntarily agreed to participate in the FSMA's moratorium applicable to distribution of structured products to retail investors; and (i) the applicant has

[57] Jose de Peneranda de Fanchimont, Chief Compliance Officer, is no longer employed by CBB; Bernard Beyens, former Belgium Country Counsel, is no longer employed by CBB; and Francois Staroukine, is the current Belgium Country Counsel for CBB.

[58] The sentencing date is also December 1, 2010.

updated its procedures regarding review of marketing materials and communications related to ratings changes which should be reflected in marketing materials, in order to ensure compliance with the laws of Belgium.[59]

The proposed exemption also contains conditions, in addition to those imposed by PTE 84–14, which are designed to ensure the presence of adequate safeguards to protect the interests of the ERISA plan participants and beneficiaries against wrongdoers now and in the future. In this regard, the proposed exemption will be applicable if: (a) CBB has not, and does not, provide fiduciary or QPAM service to employee benefit plans covered by ERISA or otherwise exercise discretionary control over ERISA assets; (b) ERISA-covered assets were not involved in the conduct that is the subject of the affiliate's convictions; (c) Citigroup has imposed and will continue to impose its internal procedures, controls, and protocols on the affiliate to reduce the likelihood of any recurrence of misconduct to the extent permitted by local law; (d) The exemption will not be applicable if the applicant or any affiliate (other than branches or affiliates found liable for similar circumstances in Belgium in connection with the sale of the Lehman Notes) is convicted of any of the crimes described in Section I(g) of PTE 84–14; (e) Citigroup has kept and will continue to keep records that demonstrate that the conditions of the exemption have been and continue to be met for at least 6 years following the conviction of an affiliate; and (f) Citigroup has adopted procedures to afford ample protection of the interests of participants and beneficiaries of employee benefit plans.

6. The applicant represents that the proposed exemption is administratively feasible because it does not require the Department to oversee or administer any aspect of the relief provided. Further the applicant represents that the exemption will enable the plans to continue their current investment strategy with their current investment manager.

Moreover, the applicant notes that if the Department denies the requested exemption, the applicant will be unable to manage assets on an optimal basis subject to ERISA or the prohibited transaction provisions of the Code, thereby making it difficult for the applicant to enter into the transactions deemed necessary to meet the plans' investment mandates. The applicant also states that plans would need to find other investment managers who could manage the assets in the strategy dictated by the plan.

7. The applicant represents that it has adopted substantial compliance policies and procedures intended to ensure that the applicable legal requirements are satisfied and that the highest standard of business integrity is maintained wherever the applicant conducts business. Employees of the applicant have been required to complete mandatory policy awareness training, which included training on global policy disclosure standards. Also, sales, marketing and promotional materials must now be approved by the applicant's legal and/or compliance department or the designated authorities prior to distribution. The applicant further represents that Mr. Staroukine, although currently serving as CBB's Belgium Country Counsel, has no involvement with ERISA plans, and will not have any future dealings with any ERISA plan assets while he is employed by the applicant, CBB or an affiliate.

8. In summary, it is represented that the transactions have satisfied and will satisfy the statutory criteria for an exemption under 408(a) because: (a) The affiliate convicted under Belgium law has not provided and will not provide fiduciary or QPAM services to ERISA-covered plans or otherwise exercise discretionary control over plan assets; (b) ERISA-covered assets have not been involved and will not be involved in the misconduct that is the subject of the affiliate's conviction; (c) Citigroup has continued and will continue to impose its internal procedures, controls, and protocols on the affiliate to reduce the likelihood of any recurrence of misconduct to the extent permitted by local law; (d) this exemption is not applicable if Citigroup, or any affiliate (other than branches or affiliates found liable for similar crimes in Belgium in connection with the sale of the Lehman Notes) is convicted of any of the crimes described in Section I(g) of PTE 84–14; (e) Citigroup has maintained and will maintain records that demonstrate that the conditions of the exemption have been met for at least six years following the conviction of the affiliate under Belgium law; and (f) Citigroup has adopted procedures which have afforded and will afford ample protection of the interests of participants and beneficiaries of employee benefit plans.

Notice to Interested Persons

The applicant represents that because those potentially interested ERISA-covered plans cannot all be identified, the only practical means of notifying such plans of this proposed exemption is by publication in the **Federal Register**. Therefore, comments and requests for a hearing must be received by the Department not later than 30 days from the publication of this notice of 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.

[59] The applicant represents that in the event of a breach of the policies and/or procedures listed, an evaluation will be performed to determine if any future modifications are needed in the overall compliance structure.

Signed at Washington, DC, this 13th day of January, 2012.

Ivan Strasfeld,

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

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