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–11664, Atlas Energy, Inc. Employee Stock Ownership Plan (the Plan); D–11718, Notice of Proposed Amendment to Prohibited Transaction Exemption (PTE) 2007–05, Involving Prudential Securities Incorporated; L–11720, The Mo-Kan Teamsters Apprenticeship and Training Fund (the Fund); L–11738, The Coca-Cola Company (TCCC) and Red Re, Inc. (Red Re) (together, the Applicants); and D–11671, Silchester International Investors LLP (Silchester or the Applicant).

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: All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

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 (76 FR 66637, 66644, October 27, 2011).[1] 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.

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Atlas Energy, Inc. Employee Stock Ownership Plan (the Plan) Located in Philadelphia, Pennsylvania

[Application No. D–11664]

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). If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D)–(E), 406(a)(2), 406(b)(1)–(2) and 407(a) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and 4975(c)(1)(D)–(E) of the Code, shall not apply, as of February 17, 2011, to the past acquisition and holding of certain units of Atlas Pipeline Holdings, L.P. (the AHD Units) by the Plan in connection with a merger (the Merger) of Arkham Corporation with and into Atlas Energy, Inc. (the Company), a party in interest with respect to the Plan, provided that the following conditions were satisfied:[2]

(a) The Plan's acquisition and holding of the AHD Units in connection with the Merger occurred as a result of an independent act of the Company as a corporate entity;

(b) All shareholders of the Company, including the Plan, were treated in a like manner with respect to all aspects of the Merger;

(c) An independent fiduciary determined that the consideration received by the Plan pursuant to the Merger was not less than fair market value and that the overall terms and conditions of the Merger were fair to the Plan;

(d) All shareholders of the Company, including the Plan, received the same proportionate number of AHD Units based upon the number of shares of Company stock held by such shareholders;

(e) Pursuant to the terms of the Plan and in connection with the Merger, each participant was entitled to direct the independent fiduciary as to how to vote the Company shares allocated to his or her account; and

(f) No commissions or other fees associated with the Merger were paid by the Plan except for brokerage charges and fees with respect to the subsequent sale of the AHD Units, which were paid

[2] For purposes of this proposed exemption, references to section 406 of the Act should be read to refer also to the corresponding provisions of section 4975 of the Code.

by the Plan to a person who is not affiliated with any Plan fiduciary.

Effective Date: This proposed exemption, if granted, will be effective February 17, 2011.

Summary of Facts and Representations

1. The prohibited transaction exemption proposed herein was requested by Atlas Energy Inc. (the Company) and GreatBanc Trust Company (GreatBanc)(together, the Applicants). Currently, the Company is a wholly-owned subsidiary of Chevron Corporation (Chevron). The Company is one of the largest producers of natural gas.

2. Before the Company's acquisition by Chevron, the Company established, on June 30, 2005, The Atlas Energy, Inc. Employee Stock Ownership Plan (the Plan), as part of a spin-off of the Company from Resource America,[3] at which time the Company became a publicly traded company incorporated in Delaware with offices in Philadelphia, Pennsylvania. The Plan was a leveraged ESOP until December 31, 2008, when the balance on the ESOP loan between the Company and the Plan was paid in full. The Plan's trustee was GreatBanc Trust Company (GreatBanc), an Illinois corporation with offices in Lisle, Illinois.

3. Each participant in the Plan had a Company Stock account and an ''Other Investments'' account; however, the Plan provided for investments primarily in common shares of Company Stock (Atlas Shares.) It is represented that the Atlas Shares are ''qualifying employer securities,'' within the meaning of section 407(d)(5) of the Act.[4]

4. With respect to the Company's acquisition by Chevron, the Company first entered into a ''Plan of Redemption and Merger'' on November 8, 2010, subject to a shareholder vote. The aggregate fair market value of the Plan's assets was approximately $29,776,689.49, as of December 31, 2010. The Plan had 820 participants and beneficiaries, as of the same date. As of December 31, 2010, the value of the approximately 671,656 Atlas Shares held by the Plan represented approximately 99 percent of the aggregate value of the Plan's assets, which, represented approximately one percent of the outstanding Atlas Shares.

5. On January 28, 2011, the Company's Board of Directors adopted a resolution to terminate the Plan. Subsequently, an application for a final determination letter with respect to the Plan's termination was submitted to the Internal Revenue Service (IRS) on January 31, 2011, and all participants became fully vested in their account balances.[5] As a shareholder with an approximately one percent ownership interest in the Company, the Plan did not have the ability to materially influence the structure and terms of the Merger. Under the terms of the Plan, voting rights passed through to participants in proportion to the number of Atlas Shares held in their respective Company Stock accounts in the Plan. Accordingly, the Plan participants were provided with shareholder rights to vote for or against the Merger. The deadline for the exercise of such rights was February 13, 2011. The Atlas shareholders voted for the Plan of Redemption and Merger, which occurred on February 17, 2011, through a reverse merger (the Merger) with the Arkham Corporation, a wholly-owned subsidiary of Chevron. Because of the manner in which the Merger was designed, Arkham merged with and into the Company (i.e., the Company became the surviving subsidiary of Chevron).

6. After February 17, 2011, Atlas Shares were delisted from the New York Stock Exchange (NYSE). All shareholders of the Company received the same consideration under the terms of the Merger, as described further below.

7. Immediately preceding the Merger, the Company held a 64 percent interest in Atlas Pipeline Holdings, L.P. (AHD), a Delaware limited partnership whose limited partnership units (the AHD Units) are publicly traded.

8. The Applicants represent that, pursuant to the terms of the Merger, shareholders of the Company (including, indirectly, the participants in the Plan) exchanged each of their Atlas Shares for $38.25 in cash and approximately 0.520 AHD Units (the Exchange).[6] The payment of the cash portion of the consideration was made to each participant's respective Other Investments Plan account and invested in a money market fund.

9. The Applicants represent that the AHD Units acquired and held by the Plan may violate sections 406(a)(1)(E), 406(a)(2), and 407 of the Act, which prohibit plans from acquiring and holding ''employer securities,'' as defined in section 407(d)(1) of the Act, that are not ''qualifying employer securities,'' as defined in section 407(d)(5) of the Act. Section 407(d)(1) of the Act defines the term ''employer securities'' as a security issued by an employer of employees covered by the plan, or by an affiliate of such employer. The Applicants note that although AHD is not a corporation and does not fall within the literal definition of an ''affiliate,'' as set forth in section 407(d)(7) of the Act,[7] AHD may nonetheless be considered an affiliate of the Company given the extent of the Company's ownership of AHD.[8] Therefore, the AHD Units may be considered ''employer securities'' for purposes of section 407 of the Act. The Applicants note further that section 407(d)(5) of the Act defines a ''qualified employer security'' as an employer security that is either stock, a marketable obligation or an interest in a publicly traded partnership that was in existence on December 17, 1987 (i.e., a grandfathered publicly-traded partnership). However, the AHD Units do not meet this definition since they are not stock, marketable obligations or grandfathered partnership interests.

10. The Applicants request further relief from sections 406(a)(1)(D) and 406(b)(1)–(2) of the Act. Section 406(a)(1)(D) prohibits the transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan. Section 406(b)(1) prohibits a fiduciary with respect to a plan from dealing with the assets of the plan in his own interest or for his own account. Section 406(b)(2) prohibits a fiduciary from acting, in his individual or in any other capacity, in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

[3] The plan sponsor is the plan administrator for the Plan.

[4] The Department expresses no opinion as to whether the Atlas Shares are ''qualifying employer securities,'' within the meaning of section 407(d)(5) of the Act.

[5] The Company will liquidate the Plan's trust and provide for final distributions to the participants as soon as administratively feasible after receipt of a favorable final determination letter from the IRS.

[6] See paragraphs 14–19 for a description of the process engaged in by Great Banc for determining whether the Merger was fair and in the best interests of the Plan. The Applicants also clarified that the Atlas Shares were transferred ultimately to Chevron, which provided only the cash consideration for the Atlas Shares. Therefore, the receipt by the Plan of the AHD Units was not consideration specifically in an exchange with Chevron as Chevron never owned AHD. Because the Company was an indirect majority owner of AHD, the Applicants represent that the receipt by the Plan of the AHD Units is analogous to a dividend-in-kind distribution rather than the receipt of consideration in an exchange with Chevron.

[7] Section 407(d)(7) of the Act provides generally that a corporation is an affiliate of an employer if it is a member of any controlled group of corporations of which the employer who maintains the plan is a member.

[8] In support of this view, the Applicants cite Advisory Opinion 80–55A (September 23, 1980), which considered whether a joint venture owning 65 percent of the interests in a corporation is considered an affiliate of the corporation pursuant to section 407(d)(7) of the Act.

11. GreatBanc served as the independent fiduciary for the Plan with respect to the Merger and Exchange. The Applicant represents that GreatBanc, a wholly-owned subsidiary of U.S. Fiduciary Services, Inc., is nationally recognized as a highly skilled trustee specializing in complex financial transactions. GreatBanc has offices in Chicago, New York City, and Milwaukee and has over $13 billion in client assets under supervision. GreatBanc has confirmed that less than one percent of its gross annual income is derived from the Company or an affiliate thereof.

12. In addition to the proxy information regarding the Merger that was provided to each participant in the Plan, GreatBanc provided a notice to each such participant that described GreatBanc's role and its process of consideration regarding the Merger. GreatBanc also informed participants that any AHD Units received pursuant to the Merger would be sold on the public market and that there was no guarantee as to the price to be received in such sale.

13. The Applicants represent that GreatBanc had full discretion and powers to act on behalf of the Plan in determining what action to take with respect to the Merger. Specifically, GreatBanc had authority to (a) review and evaluate the Merger, (b) take all appropriate action necessary in connection with the Merger (including the execution of the pass-through voting procedures under the terms of the Plan), (c) vote the Atlas Shares in those accounts for which no participant direction was timely received, and (d) ensure that the AHD Units were disposed of in a timely and prudent manner after the Merger.

14. The Applicants represent that as part of its fiduciary duties, GreatBanc: Reviewed relevant documents regarding the Company, AHD, and the Merger; held discussions with advisors and consultants, including Prairie Capital Advisors, Inc. (Prairie), GreatBanc's independent financial advisor; and performed an analysis of the terms of the Merger. Thereafter, the Applicants state that GreatBanc determined that the Merger was fair and in the best interests of the Plan.

15. Prairie is a financial advisory firm specializing in business valuations, investment banking, and restructuring and performance improvement. Prairie's business valuation practice provides valuations of privately held businesses and business interests for all purposes. The Applicants represent that Prairie Capital is qualified to advise GreatBanc in this matter having provided financial advisory services for more than 100 employee benefit plan clients.

16. The Applicants represent that the fees received by Prairie for services rendered in connection with the Merger were not contingent upon the opinion expressed by Prairie, described below, regarding the Merger. Further, neither Prairie nor any of its employees has a present or intended financial relationship with or interest in the Plan, AHD, or Chevron. It is represented that Prairie derived approximately 2.2 percent of its gross annual income from the Company and its affiliates.

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

18. Prairie issued a report to GreatBanc on February 15, 2011, expressing its opinion that: (a) The consideration received by the Plan for the Atlas Shares was not less than the fair market value of such shares; and (b) the overall terms and conditions of the Merger were fair to the Plan from a financial point of view. On or about February 15, 2011, GreatBanc made a determination, after receipt of the above-referenced report from Prairie, that: (a) The consideration received by the Plan for the Atlas Shares was not less than the fair market value of such shares; and (b) the overall terms and conditions of the Merger were fair to the Plan from a financial point of view.

19. The Applicants represent that GreatBanc could have decided to avoid any risk of involving the Plan in a prohibited transaction by either selling all of the Plan's Atlas Shares prior to the Merger, or by not exchanging the Atlas Shares, in part, for the AHD Units. However, after consulting with Prairie to determine which course of action was more prudent and fair to the Plan and its participants, GreatBanc determined that exchanging the Atlas Shares, in part, for the AHD Units would be the best course of action, provided a prohibited transaction exemption could be obtained from the Department.[9]

20. In this regard, the Applicants represent that GreatBanc determined, among other things, that, if the Atlas Shares were sold in the open market prior to the Merger, Plan participants would not receive the best value that they could have when compared to the total consideration the Plan could receive in the Exchange and the ultimate sale of the AHD Units. Additionally, GreatBanc determined that there could also be a risk to the Plan in selling the Atlas Shares prematurely if, for example, the Merger did not close, or if another potential buyer offered more for the Atlas Shares after these shares were sold. In such a situation, GreatBanc would have foregone the potential higher consideration that the Plan could have received for the Atlas Shares.

21. The Applicants represent that the Plan received a total of 349,471.7245 AHD Units pursuant to the Exchange. The AHD Units were freely transferable by non-affiliated entities, including the Plan; however, the Plan did not allow participants to direct any activity with respect to the AHD Units. In this regard, the Applicants represent that, following completion of the Merger on February 17, 2011, the AHD Units were sold in an orderly liquidation by GreatBanc in open market transactions on the NYSE between March 2, 2011 and March 10, 2011, in accordance with the prudence standards set forth under section 404 of the Act.[10] The proceeds from the dispositions of the AHD Units received by each participant's Other Investments account equaled the value of the AHD Units attributable to such account, multiplied by the weighted average sales price of all AHD Units sold on behalf of the Plan.

22. The proceeds from the sale of the AHD Units were allocated to the appropriate participants' Other Investments accounts and invested in the USFS Short Term Income Fund for Qualified Plans (the Fund). The Fund is a common/collective fund managed by Pennant Management, Inc. (Pennant), an affiliate of GreatBanc. Pennant receives a management fee of 40 basis points for their services to the Fund. GreatBanc represents that prior to investing the cash proceeds derived from the sale of AHD Units in the Fund, GreatBanc proposed several alternatives to the Company, as Plan sponsor, disclosing all relevant fees and expenses. The Company (and its new parent, Chevron) approved the investment of these proceeds in the Fund.[11] GreatBanc

[9] Prior to the Merger, the Applicants filed an exemption application with the Department, dated February 11, 2011.

[10] The brokerage fees associated with the sale of the AHD Units are discussed in paragraph 23 of the Facts and Representations.

[11] GreatBanc represents that because it disclosed all relevant information concerning fees and expenses to the Company before investments were made, and because GreatBanc received the written

represents that it waived all its fees related to these investments and received no direct or indirect compensation from Pennant, including revenue sharing or otherwise.

23. Except as described below, the Applicants represent that neither the Plan nor its participants paid any fees or commissions associated with the Merger. Neither the Plan nor its participants paid any fees or commissions with respect to the disposition of the AHD Units on the NYSE to a person affiliated with any Plan fiduciary. Although the sale of the AHD Units was through GreatBanc's affiliate, Pennant, neither GreatBanc nor Pennant received a fee for conducting the sale. Pennant executed the order through Jones Trading (Jones), which is not affiliated with GreatBanc and Pennant. According to the Applicants, the only brokerage charge paid by the Plan to Jones was an explicit rate of $0.01/share, which is below industry average, and the total commissions paid to Jones were $3,494.71. The Applicants also represent that the Plan paid a nominal Securities Exchange Commission (SEC) fee.[12] The Applicants further state that the sale of the AHD Units was conducted on an open market. This sale was effectuated so that the daily movement in the share price was not materially affected. The sale also was completed in a manner such that the market place was not aware of the identity of the seller.

24. In summary, the Applicants represent that the subject transactions satisfied the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The Plan's acquisition and holding of the AHD Units in connection with the Merger occurred as a result of an independent act of the Company as a corporate entity; (b) all shareholders of the Company, including the Plan, were treated in a like manner with respect to all aspects of the Merger; (c) An independent fiduciary determined that the consideration received by the Plan pursuant to the Merger was not less than fair market value and that the overall terms and conditions of the Merger were fair to the Plan; (d) all shareholders of the Company, including the Plan, received the same proportionate number of AHD Units based upon the number of shares of Company stock held by such shareholders; (e) pursuant to the terms of the Plan each participant was entitled to direct the independent fiduciary as to how to vote the Company shares allocated to his or her account with respect to the Merger; and (f) no fees, commissions or other fees associated with the Merger were paid by the Plan except for brokerage charges and fees with respect to the subsequent sale of the AHD Units, which were paid by the Plan to a person who is not affiliated with any Plan fiduciary.

For Further Information Contact: Eric A. Raps of the Department, telephone (202) 693–8532. (This is not a toll-free number).

Notice of Proposed Amendment to Prohibited Transaction Exemption 2007–05, 72 FR 13130 (March 20, 2007), Involving Prudential Securities Incorporated, et al., To Amend the Definition of ''Rating Agency''

[Application No. D–11718]

Proposed Amendment

Based on the facts and representations set forth in the application, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, October 27, 2011), the Department proposes to modify Section III.X of the individual Prohibited Transaction Exemptions (PTEs) and final authorizations approved by the Department under PTE 96–62 (67 FR 44622, July 3, 2002)(EXPRO), which are referred to herein as the ''Underwriter Exemptions,'' [13] as follows:

Section III.X:

Effective as of the date of publication of a final amendment to the Underwriter Exemptions in the **Federal Register**, the term ''Rating Agency'' means a credit rating agency that: (i) Is currently recognized by the U.S. Securities and Exchange Commission (SEC) as a nationally recognized statistical ratings organization (NRSRO); (ii) has indicated on its most recently filed SEC Form NRSRO that it rates ''issuers of asset-backed securities''; and (iii) has had, within a period not exceeding 12 months prior to the closing of the current transaction, at least three (3) ''qualified ratings engagements. A ''qualified ratings engagement'' is one (i) requested by an issuer or underwriter of securities in connection with the initial

approval of the Plan sponsor fiduciary, GreatBanc did not use its own fiduciary discretionary powers to generate an additional fee for itself and its affiliate, Pennant. In this regard, the Applicants represent that the receipt of fees by Pennant is statutorily exempt under section 408(b)(2) of the Act. The Department expresses no opinion herein as to whether the receipt of such fees by Pennant is exempt from the prohibited transaction provisions under section 408(b)(2) of the Act. Further, if this proposed exemption is granted, no relief would be provided for any violation of section 406(b) of the Act relating to the investment of proceeds from the Merger in the Fund.

[12] According to the Applicants, the fee was $6.71. The SEC fee is imposed by the Securities Exchange Act of 1934 and is independent of any associated brokerage commissions. The proceeds of the SEC fee are collected from brokerage firms and are forwarded to the U.S. Treasury.

[13] The term ''Underwriter Exemptions'' refers to PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 23144 (June 6, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6,1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 56 FR 7413 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 97–34, 62 FR 39021 (July 21, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); PTE 2000–41, 65 FR 51039 (August 22, 2000); PTE 2000–55, 65 FR 37171 (November 13, 2000); PTE 2002–19, 67 FR 14979 (March 28, 2002); PTE 2003–31, 68 FR 59202 (October 14, 2003); PTE 2006–07, 71 FR 32134 (June 2, 2006); PTE 2008–08, 73 FR 27570 (May 13, 2008); PTE 2009–16, 74 FR 30623 (June 26, 2009); and PTE 2009–31, 74 FR 59003 (November 16, 2009), each as subsequently amended by PTE 97–34, 62 FR 39021 (July 21, 1997) and PTE 2000–58, 65 FR 67765 (November 13, 2000) and for certain of the exemptions, amended by PTE 2002–41, 67 FR 5487 (August 22, 2002); thereby affecting and applying to: Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); Ironwood Capital Capital Partners Ltd., FAN 99–31E (December 20, 1999) (supersedes FAN 97–02E (November 25, 1996)); William J. Mayer Securities LLC, FAN 01–25E (October 15, 2001); Raymond James & Associates Inc. & Raymond James Financial Inc. FAN 03–07E (June 14, 2003); WAMU Capital Corporation, FAN 03–14E (August 24, 2003); and Terwin Capital LLC, FAN 04–16E (August 18, 2004); BNP Paribas Securities Corporation, FAN 07–06E (July 7, 2007); SunTrust Robinson Humphrey, Inc., FAN 08–03E (March 10, 2008); Jefferies & Company Inc., FAN 09–03E (March 9, 2009); NatCity Investments, Inc., FAN 09–06E (March 28, 2009); Amherst Securities Group, LLC, FAN 09–12E (September 14, 2009); Cantor Fitzgerald & Company, FAN 11–05E (June 6, 2011); and Cortview Capital Securities LLC, FAN 11–08E (October 10, 2011); which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions under the Department's EXPRO procedure.

offering of the securities; (ii) for which the credit rating agency is compensated for providing ratings; (iii) which is a public rating; and (iv) which involves the offering of securities of the type that would be granted relief by the Underwriter Exemptions.

Summary of Facts and Representations

Background

1. If granted, the proposed amendment described herein would amend the Underwriter Exemptions. The Underwriter Exemptions are individual exemptions and EXPRO final authorizations that provide relief for the origination of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (Plans) of certain asset-backed and mortgage-backed pass-through certificates representing undivided interests in those investment trusts. The Underwriter Exemptions provide relief from certain of the prohibited transaction restrictions of sections 406(a), 406(b) and 407(a) of the Act, as amended, and from the taxes imposed by section 4975(a) and (b) of the Code, as amended, by reason of certain provisions of section 4975(c)(1) of the Code. Those Underwriter Exemptions that were issued prior to 1997 were amended by PTE 97–34.[14] Those Underwriter Exemptions that were issued prior to 2001 were amended by PTE 2000–58.[15] Those Underwriter Exemptions that were issued prior to 2007 were amended by PTE 2007–05.[16] Certain of the Underwriter Exemptions were amended by PTE 2002–41.

The proposed amendment, if granted, would revise the definition of ''Rating Agency,'' as set forth in those exemptions and EXPRO final authorizations, by eliminating any specific reference to a particular credit rating agency, and substituting instead a requirement that a credit rating agency: (i) Be currently recognized by the U.S. Securities and Exchange Commission (SEC) as a nationally recognized statistical ratings organization (NRSRO); (ii) have indicated on its most recently filed SEC Form NRSRO that it rates ''issuers of asset-backed securities''; and (iii) have had at least 3 ''qualified ratings engagements'' within a period not exceeding 12 months prior to the closing of the current transaction.

For purposes of the proposed amendment, a ''qualified ratings engagement'' is one: (i) Requested by an issuer or underwriter of securities in connection with the initial offering of the securities; (ii) for which the credit rating agency is compensated for providing ratings; (iii) which is a public rating; and (iv) which involves the offering of securities of the type that would be granted relief by the Underwriter Exemptions.

The Department is proposing this amendment to the Underwriter Exemptions on its own motion pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, October 27, 2011).[17] The proposed amendment, if granted, would affect the participants and beneficiaries of Plans participating in such transactions, and fiduciaries with respect to such Plans.

Existing Relief

2. Section I of the Underwriter Exemptions permit, among other things, transactions involving the purchase by Plans of certain securities representing interests in asset-backed or mortgage-backed investment pools. The securities, which generally take the form of certificates issued by a trust, must be rated in one of the three highest rating categories (or four in the case of Designated Transactions)[18] by a Rating Agency. The Rating Agency, in assigning a rating to such securities, takes into account the fact that the Issuer may hold interest rate swaps or yield supplement agreements with notional principal amounts.

Section II of the original Underwriter Exemptions (PTEs 89–88, 89–89, and 89–90) sets forth general conditions which had to be met in order for an investing Plan to avail itself of the relief provided therein. Specifically, Section II.A(3) of those exemptions required that any certificate acquired by a plan must have received a rating at the time of acquisition that is in one of the three highest categories from either Standard & Poor's Corporation (currently, Standard and Poor's Rating Services), Moody's Investors Services, Inc. or Duff & Phelps. The Department notes that in First Boston Corporation's (First Boston) exemption application (PTE 89–90), First Boston requested that any certificate receiving a rating in the three highest rating categories from any NRSRO receive exemptive relief. While the Department recognized that credit rating agencies other than Standard & Poor's Corporation (currently, Standard & Poor's Rating Services, a division of The McGraw Hill Companies, Inc.), Moody's Investor Services, Inc. and Duff & Phelps Inc. qualified as NRSROs, the Department determined that only these three entities should qualify as Rating Agencies under the Underwriter Exemptions, based on their respective experience in rating certain types of mortgage-backed securities or asset-backed securities (MBS or ABS, respectively). Fitch Inc. was later specifically named as an additional Rating Agency for purposes of the Underwriter Exemptions beginning in 1989.

On November 23, 1999, the Department amended PTEs 89–88, 89–89, and 89–90 at 55 FR 48939 to include Fitch Inc. as an acceptable credit rating agency for the rating of certificates

[14] PTE 97–34 made the following modifications to the relief previously provided in the Underwriter Exemptions: (i) Modified the definition of ''Trust'' to include a ''pre-funding account'' (PFA) and a ''capitalized interest account'' as part of the corpus of the trust; (ii) provided retroactive relief for transactions involving asset pool investment trusts containing PFAs which have occurred on or after January 1, 1992; (iii) included in the definition of ''Certificate'' a debt instrument that represents an interest in a Financial Asset Securitization Investment Trust; and (iv) made certain changes to the Underwriter Exemptions that reflected the Department's current interpretation of the Underwriter Exemptions.

[15] PTE 2000–58 made the following modifications to the relief previously provided in the Underwriter Exemptions: (i) The rights and interest evidenced by securities acquired by plans in the Designated Transactions (as described in footnote 6, below) described in that application may be subordinated to the rights and interests evidenced by other securities of the same issuer as defined in the Underwriter Exemptions (Issuer); (ii) securities acquired by a plan in a Designated Transaction may receive a rating from a credit rating agency as defined in the Underwriter Exemptions (Rating Agency) at the time of such acquisition that is in one of the four highest generic categories; (iii) the corpus of the Issuer in residential and home equity Designated Transactions may include mortgage loans with loan-to-value property ratios in excess of 100%; (iv) eligible interest rate swaps (both ratings dependent and non-ratings dependent) and yield supplement arrangements with notional principal amounts may be included; (v) the securitizations vehicle can also be an owner trust, special purpose corporation, limited partnership or limited liability company; and (vi) the security may be either an equity or debt interest issued by any permissible type of Issuer .

[16] PTE 2007–05 modified Section III.X. of the Underwriter Exemptions to add Dominion Bond Rating Service Limited and Dominion Bond Rating Service, Inc. to the definition of ''Rating Agency.''

[17] Section 102 of Reorganization Plan No. 4 of 1978 (5 USC app. at 672 (2006)), effective December 31, 1978, generally transferred the authority of the Secretary of the Treasury to issue exemptions and rulings under section 4975(c)(2) of the Code to the Secretary of Labor.

[18] ''Designated Transaction'' means a securitization transaction in which the assets of the Issuer (see below) consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein.

described in the exemptions, and the Department subsequently granted several other Underwriter Exemptions that included Fitch Inc. as an acceptable credit rating agency. Most recently, the Department amended the Underwriter Exemptions in PTE 2007–05 to add DBRS Limited and DBRS, Inc. to the definition of ''Rating Agency'' as set forth in Section III.X of the Underwriter Exemptions. When approving the application to add DBRS Limited and DBRS, Inc. to the group of Rating Agencies permitted to rate Underwriter Exemption-eligible securities, the Department found it would benefit Plan investors in several ways, including: (i) Investors would have access to additional information and additional opinions about the creditworthiness of issuers and securities; (ii) competition among credit rating agencies would result in improved accuracy and timeliness of ratings, thereby allowing investors to assess risk with greater certainty; and (iii) competition among credit rating agencies would encourage different methods of analyzing credit risk.

Currently, Section III.X of the Underwriter Exemptions defines the term ''Rating Agency'' as ''Standard & Poor's Rating Services, a division of the McGraw-Hill Companies, Inc., Moody's Investors Services, Inc., Fitch Inc., DBRS Limited, DBRS, Inc., or any successors thereto.''

Regulation of Credit Rating Agencies

3. On September 29, 2006, the President signed into law the Credit Rating Agency Reform Act of 2006 (CRARA), which was introduced as a bill in Congress to improve ratings quality for the protection of investors by fostering accountability, transparency, and competition in the credit rating agency industry. A credit rating agency can obtain the NRSRO designation under CRARA through an application process unless the SEC determines that the agency lacks adequate financial and managerial resources to consistently produce credit ratings with integrity and to comply with its stated methodologies and procedures.[19] CRARA included requirements that NRSROs provide annual reports regarding their ratings performance on the SEC Form NRSRO and make their methodologies public.[20]

On July 21, 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), which included new regulatory requirements for NRSROs through amendments of Section 15E of the Exchange Act. Under the Dodd-Frank Act, in order for the SEC to recognize a credit rating agency as an NRSRO, the credit rating agency must satisfy certain established criteria, including that it is accepted as an issuer of credible and reliable ratings by qualified institutional buyers of the securities it rates. Further, under the Dodd-Frank Act, NRSROs have become subject to a more rigorous regulatory regime, which requires annual examinations by the SEC that include a review of (i) whether the NRSRO conducts business in accordance with the policies, procedures, and rating methodologies of the NRSRO; (ii) the management of conflicts of interest by the NRSRO; (iii) the implementation of ethics policies by the NRSRO; (iv) the internal supervisory controls of the NRSRO; (v) the governance of the NRSRO; (vi) the activities of the NRSRO's designated compliance officer; (vii) the processing of complaints by the NRSRO; and (viii) the policies of the NRSRO governing the post-employment activities of former staff of the NRSRO.[21] The evaluation of internal controls includes an examination of whether the NRSRO has sufficiently qualified staff and resources dedicated to rating the types of securities it is registered to rate. These issues are annually revisited through the SEC annual examination process and through the annual reporting required through the SEC Form NRSRO.[22]

Proposed Amendment

4. On September 29, 2011, in a letter to the Department, the American Securitization Forum (the ASF) encouraged the Department to take action to further revise the Rating Agency definition under the Underwriter Exemptions by including other NRSROs in order to ''bring greater choice to investors in asset-backed securities.'' The ASF noted that diversity and competition among credit rating agencies ''increases the choices available to investors, which in turn, can promote greater accountability of rating agencies to investors.'' The ASF encouraged the Department to consider, ''among all of the other appropriate factors, the positive effects of increasing the number of NRSROs qualified to provide ratings on transactions that rely on the Underwriter Exemption [*sic*].'' This need for greater investor choice was echoed in letters to the Department by banks active in the issuance and underwriting of asset-backed securities.

In light of the regulatory developments cited above, the Department is considering amending the definition of ''Rating Agency'' under Section III.X of the Underwriter Exemptions. If adopted, the amendment would eliminate specific references to named credit rating agencies. Instead, the term ''Rating Agency'' would be defined using a general framework of self-executing criteria based on based on both (i) SEC rules applicable to NRSROs and (ii) the Department's own ''seasoning'' requirement for credit rating agencies. In this regard, if the proposed amendment is adopted, Section III.X would be defined as follows:

> ''Rating Agency'' means a credit rating agency that: (i) Is currently recognized by the U.S. Securities and Exchange Commission (SEC) as a nationally recognized statistical ratings organization (NRSRO); (ii) has indicated on its most recently filed SEC Form NRSRO that it rates ''issuers of asset-backed securities''; and (iii) has had, within a period not exceeding 12 months prior to the closing of the current transaction, at least three (3) ''qualified ratings engagements. A ''qualified ratings engagement'' is one (i) requested by an issuer or underwriter of securities in connection with the initial offering of the securities; (ii) for which the credit rating agency is compensated for providing ratings; (iii) which is a public rating; and (iv) which involves the offering of securities of the type that would be granted relief by the Underwriter Exemptions.

If so amended, the definition of ''Rating Agency'' would require that a ''credit rating agency'' be an NRSRO that is registered by the SEC to rate issuers of ABS, thereby exhibiting adequate qualifications to rate ABS and MBS that are subject to periodic examination by the SEC. In addition, the NRSRO must demonstrate that it has been selected to rate at least three similar transactions during the preceding 12 months.[23]

Merits of Proposed Amendment

5. The Department believes that this proposed amendment is administratively feasible since the requirements for an entity to meet the definition of ''Rating Agency,'' as set forth herein, generally mirror those deemed administratively feasible in the

[19] See section 15E(a)(1)(C) of the Securities Exchange Act of 1934, as amended (the Exchange Act).

[20] See section 15E(b) of the Exchange Act.

[21] See section 15(p)(3)(B) of the Exchange Act.

[22] See section 15E(b) and p(3) of the Exchange Act.

[23] The Department notes that Plan fiduciaries are responsible for confirming that any rating given for a certificate acquired pursuant to an Underwriter Exemption was issued by a credit rating agency that has met the Rating Agency criteria set forth herein. In that regard, Plan fiduciaries may demonstrate that they have fulfilled their fiduciary responsibilities to the plan by accepting representations from credit rating agencies that the foregoing criteria have been met.

previously granted Underwriter Exemptions, as well as certain Dodd-Frank and SEC requirements concerning NRSROs. Further, the NRSROs' status as such and the number of transactions each has rated is a matter of public record. No further action would be required by the Department and the proposed amendment is self-executing. In addition, the Department tentatively believes that the proposed amendment is in the interest of the Plans and their participants and beneficiaries because it increases the number of available investment options, enhances diversification and liquidity and promotes a greater ability to assess credit risk and the rating process. Further, the Department believes that the proposed amendment would be protective of the rights of the Plans and their participants and beneficiaries because, as noted above, the credit rating agency will be a registered NRSRO that exhibits adequate qualifications to rate ABS and MBS, and that will be subject to periodic examination by the SEC, and must demonstrate that it has been selected to rate at least three similar transactions during the preceding 12 months.

Prospective Relief

6. Relief, if adopted, will apply prospectively with respect to any asset-backed security that was rated in one of the three (or four in the case of a Designated Transaction) highest generic credit ratings categories by a credit rating agency that qualifies as a Rating Agency under the Underwriter Exemptions, as proposed to be amended herein, even if such rating occurred before the later of: the date that the final amendment is published in the **Federal Register** and the date that the credit rating agency qualifies as a Rating Agency under the Underwriter Exemption. Thus, if, for example, after the date that the final amendment is published in the **Federal Register**, a credit rating agency qualifies as a Rating Agency under the Underwriter Exemptions, and, if prior to such date (or any date prior to so qualifying as a Rating Agency), such credit rating agency rated an asset-backed security in one of the three (or four in the case of a Designated Transaction) highest generic credit ratings categories (and assuming that there has been no downgrade), Plans will be able to rely on the amended Underwriter Exemptions for the purchase certificates in the secondary market (to the extent all relevant conditions have been met), even though the certificates were originally issued prior to the date the final amendment is published in the **Federal Register** (or, if later, prior to the date that the credit rating agency qualified as a Rating Agency).

Opting Out of Proposed Amendment by Underwriter Exemption Grantees

7. The Department attempted to inform each grantee of an existing Underwriter Exemption or recipient of a FAN (described and identified above), via email, that the Department was considering amending the definition of ''Rating Agency'' set forth in such Underwriter Exemption. In this regard, at the request of the Department, the ASF sent an email notice on July 2, 2012 intended to reach a broad spectrum of its membership interested in developments relating to asset-back securitizations. The email indicated that existing grantees of Underwriter Exemptions and recipients of FANs could opt out of the proposed change by notifying the Department in writing. To date, the Department has not received any requests to opt out; however, the Department notes that such a grantee or recipient should notify the Department in writing during the comment period described herein if they do not want the proposed amendment to apply to their exemption.

It is the understanding of the Department that credit rating agencies that are specifically identified in the Underwriter Exemptions will meet the revised definition of ''Rating Agency'' set forth herein.

Written Comments and Hearing Requests

All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (Attention: D–11718). Interested persons are invited to submit comments and/or hearing requests to the Department by February 11, 2013, by U.S. mail, facsimile to (202) 219–0204 or electronic mail to *vaughan.anna@dol.gov.* The application pertaining to the proposed amendment (the Application) and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW., Washington, DC 20210.

For Further Information Contact: Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

The Mo-Kan Teamsters Apprenticeship and Training Fund (the Fund) Located in Kansas City, Missouri

[Application No. L–11720]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a)(1)(A) and (D) of the Act shall not apply to the purchase (Purchase) by the Fund of certain real property located in Kansas City, Missouri (the Property) from Jim Kidwell Construction, a party in interest with respect to the Fund; provided that the following conditions are satisfied:

(a) The terms and conditions of the Purchase are at least as favorable to the Fund as those obtainable in an arm's length transaction with an unrelated party;

(b) The Purchase is a one-time transaction for cash;

(c) The Fund pays the lesser of $1,500,000 or the fair market value of the Property, as of the date of the Purchase, as determined by a qualified, independent appraiser (the Appraiser);

(d) The Fund's fiduciaries review and approve the methodology used by the Appraiser, ensure that such methodology is properly applied in determining the fair market value of the Property, and determine whether it is prudent to go forward with the proposed transaction; and

(e) The Fund pays only reasonable closing costs with respect to the Purchase that a similarly situated buyer would customarily pay in a similar transaction.

Summary of Facts and Representations

The Parties

1. The Building, Material, Excavation, Heavy Haulers, Drivers, Warehouse & Helpers Local Union No. 541 (the Union) is located in Kansas City, Missouri and represents certain workers in the construction and warehouse industries.

2. Members of the Union are eligible to participate in the Fund. The Fund is a multiemployer apprenticeship and training plan that was established as a Taft-Hartley Trust pursuant to a collective bargaining agreement. As of March 2, 2012, the Fund covered approximately 1,015 participants, who receive training in the fields of construction driving, mechanics and warehouse work. As of December 31,

2011, the Fund had net assets of $1,802,909.

3. The members of the Board of Trustees (the Board) serve as the Fund's sponsor, plan administrator and fiduciaries. The Board consists of four trustees (the Trustees), who represent the Union and the contributing employers. Board Chairman Jed L. Cope and Ronald L. Johnson are the Union trustees. Board Secretary Florian Rothbrust and Member Jeff Shoemaker are the employer trustees. None of the Trustees have an interest in Jim Kidwell Construction (the Seller).

4. The proposed transaction described herein involves the purchase of certain property by the Fund from the Seller. The Seller is owned and operated by Jim Kidwell, who is not a fiduciary with respect to the Fund. The Seller, which was established in 1965, is a construction company conducting commercial building excavation and grading located in Greenwood, Missouri. The Seller is a contributing employer to the Fund and, as such, is required under the terms of a collective bargaining agreement to make monthly contributions on behalf of its covered employees for all hours worked in covered employment.

5. Currently, the Fund does not have its own training facility and has an arrangement to use the property of the Metropolitan Community Colleges (the Colleges), an unrelated party, that is located in Jackson County, Missouri. The Fund uses land owned by the Colleges to provide truck-related training.

6. Beginning in 2008, the Board began to consider purchasing approximately 30 to 50 acres of real property. The Trustees represent that the purchase of the Property would allow the Fund to construct a future training facility for training apprentices in the operation of trucks and heavy equipment. The facility would also be used for the Fund's offices and provide classroom space, testing facilities and equipment storage. According to the Trustees, by owning the Property, the Fund would be able to make changes or additions to meet its future training requirements without the consent of a landlord. Further, the Fund would be assured of the continued availability of the facility.

The Property

7. In 2009, the Board hired the Grubb Ellis/The Winbury Group (the Winbury Group), an unrelated realtor, to locate several vacant land sites for the Fund. The Trustees considered several locations in the Kansas City area, but found them to be too large and/or too costly. In 2010, Mr. Kidwell approached Mr. Cope and offered to sell certain real property, located at 8616 E. Winner Road, Kansas City, Missouri, to the Fund for $2,000,000. The Property was not one of sites identified by the Winbury Group.

The Property consists of 40 acres of undeveloped land that is irregular in shape and has a rolling surface topography except for a fairly steep drop off at the northeastern side. Located beneath the surface tract is an old limestone mine (Mine) that extends past the surface tract boundaries. The Mine is used by the Seller for storage and maintenance.

The Proposed Transaction

8. After investigation of the Property and review of the Due Diligence Report—Wilson Road Mine (the Report) prepared by the URS Corporation, of Overland Park, Kansas, which was included in the Appraisal described herein, the Trustees determined that the Property had advantages over the other sites picked by the Winbury Group. The Trustees represent that the Property was the best site and tract of real property given the resources of the Fund. The Property's surface has both flat areas and moderate elevation areas which are beneficial to the Fund's training program use. The Property also has areas that would provide bays for all-weather storage and work areas making the cost of a warehouse building unnecessary. The current improvements on the site are likely to have sufficient capacity to support the Fund's use so that site work costs for utility extension would not be incurred despite the costs to monitor underground electrical systems, ground water levels and maintain sump pumps, the Mine has benefits for the Fund.

The Trustees represent that the Fund's proposed purchase of the Property has the support of the public officials in both Kansas City, Missouri and Independence, Missouri for the Fund's proposed use of the Property. The Trustees also represent that this cooperation was a factor in selecting the Property. The Trustees further represent that based on all the facts and circumstances, having the Fund purchase the Property is in the interests of the Fund and its participants and its beneficiaries.

9. On January 9, 2012, the Fund executed a sales contract (the Contract) with the Seller prior to the Appraisal. Under the terms of the Contract, the Fund would purchase the Property for $1,500,000 and it has placed a $50,000 deposit in escrow on the signing date. This price is less than the $2,000,000 price at which the Property was originally offered by the Seller and the Appraised value, as discussed below. The Fund will pay the balance of the purchase price with the proceeds of a loan and cash on the closing date. Accordingly, the purchase price of the Property represents 83% of the Fund's assets ($1,500,000/$1,802,909).

10. The Fund will finance part of the purchase with Lead Bank (the Bank) of Lee's Summitt, Missouri, which does not currently have a party-in-interest relationship to the Fund. The Fund will borrow $500,000 from the Bank in a balloon loan, carrying an interest rate of 3.75% and having a term of 24 months. The Fund will pay the remaining $1,000,000 in cash. The Bank will hold a security interest in the Fund account that the Fund will open at the Bank and require that the Fund maintain insured bank certificates with a 10% margin as compared to its loan balance at all times during the loan. The Fund will not face any prepayment penalties.

11. Under the Contract and the financing arrangement, the Fund will pay for certain items. The Contract requires that the Fund pay for its pro rata share of taxes based on the Purchase Date. The Trustees represents that the precise allocation will not be known until the closing date and that it will receive a credit from the Seller for the Seller's share of the accrued but unpaid real estate tax. The Fund will also pay approximately $100 in recording charges and $300 in escrow fees charged by the title company, Chicago Title Insurance.

12. The Fund is responsible for the lender's title policy and endorsements. According to the Bank's Term Sheet, the Fund will pay to the Bank $1,000 in fees due at closing and, with respect to the loan, an additional document fee of $300.00. In no event, however, will any Bank fees exceed $3,000.

13. The Trustees represent that the fees for title, escrow, recordation and the loan are estimated at $1,700, and are not expected to be greater than $3,400. According to the Trustees, a similarly situated buyer would find such fees reasonable, customary and de minimus in connection with the Purchase.

The Appraised Value of the Property

14. The Fund retained Peter D. Burgess of Burgess-Johnson and Associates to serve as the Appraiser and to prepare the Appraisal of the Property in a report dated February 14, 2012. The Appraiser has 25 years of appraisal experience, including performing mine appraisals, and is a State Certified Real Estate Instructor in Kansas and Missouri and a State Certified General Real Estate

Appraiser in Kansas (#G8) and Missouri (#RA1285).

15. The Appraiser represents that his gross income for this assignment was $2,500 or approximately 3.31% of his actual gross revenue in 2011 ($2,500/$75,427). The Appraiser represents that the Appraisal took three weeks to complete and was a complex undertaking. In this regard, in addition to valuing the surface land, the Appraiser represents that the assignment involved, among other things, the valuation of an extremely irregular and dysfunctional underground limestone mine that was created during the World War II period when underground mines did not have secondary uses. Accordingly, the Appraiser states that these complications explain why his fee for this assignment exceeded 2% of his prior year's income.

16. The Appraiser represents that the surface tract (the Surface Tract) meets all zoning requirements for surface uses and that underground storage is grandfathered as a legal nonconforming use. The utility services are sufficient to support permitted uses and the property taxes are in line with comparable Jackson County properties.

17. The Appraiser used the Sales Comparison Approach to value the Property, but applied separate values to the Surface Tract and the Mine. With respect to the Surface Tract, the Appraiser reviewed six sale transactions in the Kansas Metropolitan Area from August 2007 to July 2010 between 800,000 and 4,000,000 square feet (SF) as there were no comparable tract sales reported in 2011 and 2012 at the time of the Appraisal. The Appraiser represents that he took the location, size and shape, and certain site characteristics into account. After reviewing these factors, the Appraiser determined that the Surface Tract is larger than most urban land sales in Kansas City Metro Area and falls in the category of large tracts that sell far below premium prices per square foot and below good second tier locations in urban retail or in expanding suburban residential communities. The Appraiser then reviewed three tracts of land sales that were the most instructive and determined that the mean rate of $.72 per SF (PSF) applied to the Surface Tract was 1,742,400 SF (40 acres × 43,560 SF). As of February 2, 2012, the Appraiser determined that the Surface Tract had a fair market value of $1,255,000 rounded ($.72 PSF × 1,742,400 SF = $1,254,528).[24]

18. The Appraiser also valued the Mine's usable portion which is approximately 20 acres. The Appraiser noted that the Mine is suited for storage and underground industrial uses. The Appraiser reviewed nine limestone mine sales in the Kansas City Metropolitan area and determined that the Mine's value for raw space was $217,800.00 ($.25 per acre × 20 acres or 43,560 PSF). After taking into account the depreciated value of the Mine's improvements such as walls, false pillars, concrete floors and asphalt paving worth $296,000, the Appraiser determined that the Mine's value was $513,000. Thus, the Appraiser determined that the fair market value of the 40 acre Surface Tract and the Mine totaled $1,770,000 rounded ($1,255,000 + 513,000 = $1,768,000), as of February 2, 2012.

Due Diligence Report on the Mine

19. Mr. Cope has toured the Mine and the Trustees represent that it has been developed for office space and has adequate areas and bays for storage and maintaining equipment. The Trustees have also reviewed the Report prepared for the Seller in September 2011. With respect to the Mine and its potential hazards, the Report discusses a number of observations and action items. The Report states that ''considering the mining era and limited maintenance, the Mine appears to be in relatively good condition with the exception of known instabilities and areas that have closely spaced open joints.'' The Trustees represent that they acknowledged the Report's findings and will take certain specified actions as noted in the Report which include:

- Investigating alternatives for long-term access to the Mine because the only Mine entrance is located near an unstable portion of the Mine.
- Taking remedial action in order to improve known instabilities in the Mine space to ensure long-term performance.
- Requiring, in order to maintain the Mine, regular inspections, groundwater control, and roof repairs to use the Mine or the ground above it.
- Taking steps to halt any lateral propagation of unstable areas in the Mine to maintain the integrity of the stable mine space. In the areas where domeouts (mine instabilities) have occurred, the Trustees have been advised that backfilling of the Mine space will be necessary. Accordingly, the Trustees will have semi-annual inspections performed on the mine space beneath the Property for purposes of evaluating the Mine and any changes in its condition and assessing the need for corrective measures.
- Having a geotechnical study conducted for the purpose of defining the subsurface soil and bedrock condition above the Mine space in the event a training facility is constructed over the Mine space. This study would also consider the long-term stability of the Mine and how it would interact with an actual training facility.

The Holding Costs of the Property

20. The Trustees represents that it also considered the costs to hold the Property and use it to train apprentices and estimates these costs to be $46,100 annually. These costs include taxes ($5,500), utilities ($12,000), insurance ($4,850), Mine maintenance ($5,000), and finance payments ($18,750). The Trustees represent that the Board has discussed the Fund's ability to meet these operating costs with the current monthly contributions allocated to the Fund and other investment income generated by those contributions. In 2011, the Fund had revenue of $390,301 and expenses of $98,394. The Trustees represent that the Fund has adequate reserves to cover the acquisition and maintenance costs regarding the Purchase, and that it has considered its fiduciary responsibility to the Fund, and to the Fund's participants and beneficiaries.

Reasons in Support of the Proposed Transaction

21. Absent an administrative exemption, the proposed transaction would violate sections 406(a)(1)(A) and (D) of the Act. The Trustees represent that the Board does not have an interest in the Seller, who is a party in interest solely by reason of being an employer of employees participating in the Fund. The Trustees state that the proposed transaction is administratively feasible because it is a one-time transaction for cash.

The Trustees state that the proposed transaction would also be protective of the rights of the Fund and its participants and beneficiaries because the terms and conditions of the proposed transaction would be no less favorable to the Fund than those which the Fund would receive in an arm's length transaction with an unrelated party. Additionally, the Trustees anticipate that the Fund will pay routine closing costs of only $1,700.00, and at the most only $3,400, for title, escrow, recording and Bank financing fees. The Trustees represent that these

[24] The Appraiser stated that no survey measurement and environmental testing were reported to him. Therefore, he cautioned, that the site value is subject to the assumption that there are no adverse environmental factors on the Surface Tract.

routine closing costs are reasonable and de minimus in connection with purchase price of $1,500,000.

The Trustees state that the proposed transactions would also be in the interests of the Fund and its participants and beneficiaries because the Fund will pay a purchase price of $1,500,000 instead of the Property's appraised value of $1,770,000.

The Trustees note that the Property is a large piece of real property suitable for Fund purposes. The use of Property has the support of public officials in both Kansas City, Missouri and Independence, Missouri which was a factor in selecting the Property. The Property has all-weather storage and work areas that make the cost of a warehouse building unnecessary. Additionally, the Property has sufficient utility services so that site work costs for utility extension would not be incurred. The Property has 40 acres of both flat and elevated areas that can be used to train truck drivers. Finally, the Trustees represent that if the Fund is unable to complete the proposed transaction, it will have to purchase another comparably-sized property at a significantly higher price.

Summary

22. In summary, the Trustees represent that the proposed transaction will satisfy the statutory requirements for an exemption under section 408(a) of the Act because:

(a) The terms and conditions of the Purchase will be least as favorable to the Fund as those obtainable in an arm's length transaction with an unrelated party;

(b) The Purchase will be a one-time transaction for cash;

(c) The Fund will pay the lesser of $1,500,000 or the fair market value of the Property as of the date of the Purchase, as determined by the Appraiser;

(d) The Fund's fiduciaries will review and approve the methodology used by the Appraiser, ensure that such methodology is properly applied in determining the fair market value of the Property, and also determine whether it is prudent to go forward with the proposed transaction; and

(e) The Fund will pay only reasonable closing costs with respect to the Purchase that a similarly situated buyer customarily would pay in a similar transaction.

Notice to Interested Parties

Notice of the proposed exemption will be given to interested persons within 14 days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will be given to interested persons by first class mail and posted in both the Union Hall and the Fund's Web site. 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 44 days of the publication of the notice of proposed exemption in the **Federal Register**.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

For Further Information Contact: Mr. Anh-Viet Ly of the Department, telephone (202) 693–8648 (This is not a toll-free number.)

The Coca-Cola Company (TCCC) and Red Re, Inc. (Red Re)(together, the Applicants) Located in Atlanta, Georgia and Charleston, SC, respectively

[Application No. L–11738]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).

Section I. Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D) and 406(b)of the Act shall not apply to:

(a) The reinsurance of risks and the receipt of premiums therefrom by Red Re, an affiliate of TCCC, as the term ''affiliate'' is defined in Section III(a)(1) below, in connection with group term life insurance sold by Metropolitan Life Insurance Company or any successor insurance company (a Fronting Insurer) to The Coca-Cola Company Health and Welfare Benefits Plan (the Actives Plan) to pay for group term life insurance benefits under such Actives Plan; and

(b) the reinsurance of risks and the receipt of premiums therefrom by Red Re in connection with accidental death and disability insurance (AD&D) sold by a Fronting Insurer to The Coca-Cola Company Retiree Benefits Plan (the Retiree Plan) to pay for AD&D benefits under the Retiree Plan; provided the conditions set forth in Section II, below, are satisfied.[25]

Section II. Conditions

The relief provided in this proposed exemption is conditioned upon adherence to the material facts and representations described herein, and as set forth in the application file, and upon compliance with the following conditions:

(a) Red Re—

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

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

(3) Has obtained a Certificate of Authority from the Director of the Department of Insurance of its domiciliary state (South Carolina), which has neither been revoked nor suspended;

(4)(A) Has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction covered by this proposed exemption, if granted; or

(B) Has undergone a financial examination (within the meaning of the law of South Carolina) by the Director of the South Carolina Department of Insurance (SCDI) within five (5) years prior to the end of the year preceding the year in which such reinsurance transaction has occurred; and

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

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

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

(d) In the initial year of every contract involving Red Re and a Fronting Insurer, there will be an immediate and objectively determined benefit to participants and beneficiaries of the Plans in the form of increased benefits, and such benefits will continue in all

[25] The Actives Plan and the Retiree Plan are, herein, collectively referred to as the ''Plans.''

subsequent years of each contract and in every renewal of each contract;

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

(f) The Fronting Insurer has a financial strength rating of ''A'' or better from A. M. Best Company (A. M. Best). The reinsurance arrangement between the Fronting Insurer and Red Re will be indemnity insurance only, (*i.e.,* the Fronting Insurer will not be relieved of liability to the Plans should Red Re be unable or unwilling to cover any liability arising from the reinsurance arrangement);

(g) The Plans retain an independent, qualified fiduciary or successor to such fiduciary, as defined in Section III(c), below, (the I/F) to analyze the transactions and to render an opinion that the requirements of Section II(a) through (f) and (h) of this proposed exemption have been satisfied;

(h) Participants and beneficiaries in the Plans will receive in subsequent years of every contract of reinsurance involving Red Re and the Fronting Insurer no less than the immediate and objectively determined increased benefits such participant and beneficiary received in the initial year of each such contract involving Red Re and the Fronting Insurer;

(i) The I/F will: monitor the transactions proposed herein on behalf of the Plans on a continuing basis to ensure such transactions remain in the interest of the Plans; take all appropriate actions to safeguard the interests of the Plans; and enforce compliance with all conditions and obligations imposed on any party dealing with the Plans; and

(j) At the conclusion of the five-year period (the 5-Year Period), from January 1, 2013 to December 31, 2017, in which MetLife has provided a rate guarantee in connection with the provision to participants in the Plans of the group term life insurance and the AD&D coverage which is reinsured by Red Re, the I/F will review any renewal of the reinsurance of risks and the receipt of premiums therefrom by Red Re and must determine that the requirements of this proposed exemption and the terms of the benefit enhancements continue to be satisfied.

Section III. Definitions

(a) The term ''affiliate'' of a person includes:

(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 in any such person; and

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

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

(c) For purposes of the proposed exemption, an I/F is a person, or a successor to such person, who is not an affiliate of TCCC and:

(1) Does not have an ownership interest in TCCC, in Red Re, or in an affiliate of either;

(2) Is not a fiduciary with respect to the Plans prior to its appointment to serve as the I/F;

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

(4) Has appropriate training, experience, and facilities to act on behalf of the Plans regarding the subject transactions in accordance with the fiduciary duties and responsibilities prescribed by the Act.

For purposes of this definition of an ''I/F,'' no organization or individual may serve as an I/F for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) for that fiscal year exceeds two percent (2%) of that organization's or individual's annual gross income from all sources for the prior fiscal year from TCCC or from Red Re, or from an affiliate of either (including amounts received for services as I/F under any prohibited transaction exemption granted by the Department).

In addition, no organization or individual who is an I/F, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from TCCC or from Red Re, or from any affiliate of either during the period that such organization or individual serves as an I/F, and continuing for a period of six (6) months after such organization or individual ceases to be the I/F, or negotiates any such transaction during the period that such organization or individual serves as the I/F.

In the event a successor I/F is appointed to represent the interests of the Plans with respect to the subject transactions, there should be no lapse in time between the resignation or termination of the former I/F and the appointment of the successor I/F.

Effective Date: This proposed exemption, if granted, will be effective on January 1, 2013.

Summary of Facts and Representations

1. TCCC, headquartered in Atlanta, Georgia, is the world's largest beverage company. TCCC markets four (4) of the world's top five (5) non-alcoholic sparkling brands: Coca-Cola, Diet Coke, Sprite, and Fanta. In 2011, TCCC employed 146,200 associates worldwide with approximately 67,400 associates in the United States. TCCC reported revenue of approximately $46.5 billion in 2011. TCCC is a party in interest with respect to the Plans, pursuant to section 3(14)(C) of the Act, as an employer any of whose employees are covered by the Plans.

2. Red Re is an insurance company more than 50 percent (50%) owned by Coca-Cola Oasis, Inc., a consolidated entity of TCCC. Red Re was established on March 14, 2006, and commenced operations in Charleston, South Carolina, effective May 1, 2006. Red Re is a party in interest with respect to the Plans, pursuant to section 3(14)(G) of the Act, because it is a corporation of which 50 percent (50%) or more of the combined voting power of all classes of stock entitled to vote is owned directly or indirectly held by TCCC, an employer any of whose employees are covered by the Plans, as described in section 3(14)(C) of the Act. Further, if the subject transactions are entered into, Red Re will become a party in interest with respect to the Plans, as a service provider, under section 3(14)(B) of the Act.

3. Red Re currently provides deductible reimbursement policies to TCCC for selected automobile liability, product liability, premises liability, general liability, workers compensation, and terrorism risks. In addition, TCCC's international employee benefits for selected countries are reinsured with Red Re. Red Re is subject to regulation by the SCDI and is required to maintain $15 million dollars of capital and

surplus. On April 25, 2006, Red Re was issued a Certificate of Authority by the SCDI permitting Red Re to transact the business of a captive insurance company by the State of South Carolina. For the fiscal years ending December 31, 2010, and December 31, 2011, Red Re had total shareholder's equity of $32 million and $20.7 million, respectively. It is further represented that Red Re had gross written premiums of $114 million, as of December 31, 2011.

4. The Actives Plan is a welfare benefit plan that provides basic and supplemental group term life insurance and supplemental AD&D coverage for full-time non-union active employees or regular part-time employees working a minimum of thirty (30) hours a week (excluding interns, temporary, seasonal, co-op, and leased employees) of TCCC and participating affiliates in the United States and Puerto Rico. These employees automatically receive the basic coverage and are eligible to participate in the supplemental coverage, regardless of age, sex, salary range, or position. The Actives Plan had approximately 9,245 participants, as of July 16, 2012. The Actives Plan is funded through insurance and the general assets of TCCC, and as such the Actives Plan has no assets set aside for the payment of benefits.

5. Under the current terms of the Actives Plan, basic group term life insurance is available to active employees in multiples of a ''basic life amount,'' which varies depending on an employee's annual earnings. In this regard, the Actives Plan provides basic group term life insurance paid for by TCCC equal to one (1) times an employee's annual earnings rounded up to the next $25,000 of ''basic life amount'' coverage, with a maximum of $300,000 of coverage. For example, according to the Summary Plan Description for the group term life insurance, effective January 1, 2012, an employee earning less than $25,000 per year would have a ''basic life amount'' coverage of $25,000, an employee earning between $25,000 and $49,999 per year would have ''basic life amount'' coverage of $50,000, and so forth up to the maximum of $300,000. As an option, active employees concerned with the federal law that places an imputed income on employer-provided life insurance in excess of $50,000 may elect to have their ''basic life amount'' coverage reduced to a flat $50,000.

6. The Retiree Plan is a welfare benefit plan that, as described below, provides supplemental group term life insurance and supplemental AD&D coverage to retirees of TCCC. The Retiree Plan had approximately 5,260 participants as of July 16, 2012. The Retiree Plan is funded through insurance and the general assets of TCCC, and as such the Retiree Plan has no assets set aside for the payment of benefits. Certain retirees with five (5) years of service who retire on or before December 31, 2012, (the Eligible Retiree(s)) may elect basic group term life insurance with the premium paid for by TCCC. Such Eligible Retirees may continue supplemental group term life insurance until age 70 by paying the required premium on an after-tax basis. After age 70 the basic group term life insurance paid for by TCCC is reduced to a flat amount depending on the number of years of service of such Eligible Retiree. An Eligible Retiree may supplement the group term life insurance at age 70 by converting to an individual policy within sixty (60) days of the month when coverage ends.

For those who retired on or after January 1, 1990, a retiree has the opportunity: (i) To waive AD&D coverage, (ii) to elect ''retiree only'' supplemental AD&D coverage of $50,000 or $100,000, or (iii) to elect family supplemental AD&D coverage in amounts based on varying percentages of such retiree's individual AD&D coverage. If a retiree elects supplemental AD&D coverage, such retiree may continue such AD&D coverage until reaching the age of 75 by paying the required premiums on an after-tax basis. At age 75, all AD&D coverage ends. AD&D coverage cannot be converted to an individual policy.

7. Life Insurance Company of America (LINA) is the current direct insurer for the Plans' group term life insurance and AD&D coverage. The premiums paid for the group term life insurance in the Actives Plan for basic coverage and supplemental coverage in 2011 was approximately $565,000 and $2,030,000, respectively. The premiums paid for the group term life insurance coverage in the Retiree Plan for basic coverage and supplemental coverage in 2011 was approximately $2,145,000 and $816,000, respectively.

8. TCCC and Red Re (the Applicants) represent that TCCC has reached an agreement with MetLife for MetLife, rather than LINA, to serve as the direct insurer for the Plans. The Applicants state that this agreement is for a five year period, beginning on January 1, 2013, during which MetLife has provided a rate guarantee (the 5-Year Period). The Applicants represent that MetLife is a leading global provider of insurance, annuities, and employee benefit programs. MetLife is headquartered in New York, New York, and is subject to the approval of the New York State Insurance Department (NYSID).

9. The Applicants state that, beginning on January 1, 2013, MetLife will provide direct insurance for the group term life insurance and AD&D coverage offered under the Plans. In this regard, TCCC intends to insure the basic and supplemental group term life insurance and AD&D coverage offered to the Plans with MetLife. MetLife has agreed to a rate guarantee for the 5-Year Period from January 1, 2013 through December 31, 2017. The Applicants represent that the proposed change in insurance carriers from LINA to MetLife will reduce the employees' overall costs for the supplemental benefits by $932,000. In this regard, compared with the approximately $3 million in premiums paid by participants in 2011 for supplemental coverage, the $932,000 premium reduction will result in a 31% decrease in participant-paid premiums for supplemental coverage. According to the Applicants, under the proposed arrangement with MetLife and Red Re, TCCC's premium for basic group term life insurance would be reduced by $46,000.

10. If this proposed exemption is granted, MetLife will contract with Red Re to reinsure 90 percent (90%) of the risks associated with such coverage (or 100 percent (100%) of such risks if approved by the NYSID).[26] The Applicants state that MetLife's reinsurance agreement with Red Re (the Reinsurance Agreement) will be ''indemnity only''—-that is, MetLife will not be relieved of its liability for benefits under the Plans, if Red Re is unable or unwilling to satisfy the liabilities arising from the reinsurance arrangement.

11. As Red Re is a party in interest with respect to the Plans, the reinsurance of the risks associated with the group term life insurance and AD&D coverage offered to the Plans by MetLife would result in the indirect transfer to Red Re of the Plans' premium payments, which are plan assets. Section 406(a)(1)(D) of the Act prohibits the transfer to, or use by or for the benefit of, a party in interest, of any assets of a plan. Accordingly, this proposed exemption, if granted, would provide relief from the prohibition set forth in section 406(a)(1)(D) of the Act for the reinsurance of risks, and the receipt of premiums therefrom by Red Re, in connection with group term life

[26] It is represented that New York law requires insurers to retain 10 percent (10%) of the risk in a reinsurance transaction, but MetLife will seek approval from the Commissioner of Insurance for New York to reinsure 100 percent (100%) of this risk.

insurance and AD&D coverage. In addition, because the reinsurance by Red Re of the group term life insurance and the AD&D coverage is contemplated by TCCC at the time that the Plans are obtaining insurance coverage from MetLife, such transactions could constitute violations by TCCC of sections 406(b) of the Act. In this regard, section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account, 406(b)(2) of the Act prohibits a fiduciary from acting in a transaction involving plan assets on behalf of a party whose interests are adverse to those of the plan, and section 406(b)(3) of the Act prohibits a fiduciary from receiving any consideration for his own personal account from any party dealing with a plan in connection with a transaction involving plan assets.

12. The Applicants represent that if Red Re enters into the Reinsurance Agreement, all eligible non-union active employee participants (employees) in the Actives Plan will receive an enhancement in their basic group term life insurance. In this regard, the ''basic life amount'' under the group term life insurance will increase to an amount equal to such employee's basic annual earnings rounded up to the next higher $1,000 multiplied by 1.5 times, up to a maximum benefit of $2,000,000. TCCC has further committed that employees with basic annual earnings below $25,000 will receive group term life insurance with a minimum ''basic life amount'' of $30,000, and that employees with basic annual earnings of $25,000 to $39,999 will receive group term life insurance with a ''basic life amount'' of $60,000. An employee will receive group term life insurance in the amount of his or her current ''basic life amount'' times 1.2. As such, it is represented that, if this proposed exemption is granted, all employees will receive an increase in their employer-paid group term life insurance ''basic life amount'' of coverage.

13. The Applicants represent further that if Red Re enters into the Reinsurance Agreement, TCCC will provide Eligible Retirees in the Retiree Plan employer-paid $10,000 AD&D coverage. In this regard, at the present time, Eligible Retirees are offered AD&D coverage at their own expense. The Applicants note that group term life insurance coverage currently provided to Eligible Retirees will not change under the proposed arrangement.

14. The Applicants state that the two enhancements described above (the Two Enhancements) will impose a financial burden on the sponsor of the Actives Plan and the Retiree Plan. In this regard, TCCC will bear the entire cost of these enhancements, which will benefit all active employees currently covered by the Actives Plan (with regard to the increased group term life insurance) and will benefit all Eligible Retirees currently covered by the Retiree Plan (with regard to the employer-paid AD&D coverage in the amount of $10,000). The incremental annual premium on the coverage under the group term life insurance is estimated to cost TCCC an additional $212,000 annually (from $518,000 to $730,000), and providing Eligible Retirees with the additional AD&D coverage will entail a $23,000 annual premium cost for TCCC.

15. The Applicants note that certain additional benefits will be provided by MetLife in anticipation of a receipt of the exemptive relief described herein. Specifically, effective January 1, 2012, MetLife will provide the following additional benefits to any participant, active or retired, who elects to purchase supplemental coverage:[27] The supplemental group term life insurance will include a free in-person will preparation and probate service through Hyatt Legal; the supplemental group term life insurance and the AD&D coverage will be expanded and the maximum overall coverage level (basic plus supplemental) will increase to $2 million; and the following benefits would be included in the voluntary supplemental AD&D coverage provided by MetLife:

- *Seat belt benefit*-10 percent (10%) of full amount (minimum $1,000-maximum $25,000).
- *Air bag use benefit*-5 percent (5%) of the full amount (minimum $1,000-maximum $10,000).
- *Child care benefit*-actual charges up to $5,000 annually for four (4) consecutive years (maximum 5 percent (5%) of full amount)
- *Child education benefit*-actual charges $10,000 annually for four (4) consecutive years (maximum 20 percent (20%) of full amount).
- *Spouse education benefit*—actual charges up to $10,000 annually for three (3) consecutive years (maximum 5 percent (5%) of full amount).
- *Common carrier benefit*—100 percent (100%) of the full amount.
- *Therapeutic counseling benefit*-10 percent (10%) of the full amount (maximum $10,000).
- *Reparation of remains benefit*-actual charges up to $5,000.

According to the Applicants, while these additional benefits will be available on January 1, 2013, Coca Cola has retained the right to discontinue such benefits at any time if this proposed exemption is not granted.

16. In connection with this exemption request, Evercore Trust Company (Evercore) has been engaged to act as the independent fiduciary (the I/F) on behalf of the Plans for the purpose of evaluating, and if appropriate, approving the subject transactions. In this regard, Evercore is responsible for conducting a due diligence review and analysis of the proposed transactions and for providing a written opinion as to whether the arrangement complies with the Department's requirements for an administrative exemption. Evercore certifies that it is qualified to serve as the I/F in that, among other things, Evercore has served as an independent fiduciary for employee benefit plans in connection with numerous requests for exemptions over the past three (3) years. Additionally, the personnel who comprise Evercore have served (under the auspices of U.S. Trust Company, N.A.) as an independent fiduciary for employee benefit plans in connection with numerous requests for exemptions over the past twenty (20) years. Evercore represents that it is independent in that it does not have and has not previously had, any relationship with any party in interest (including any affiliates thereof) engaging in the proposed transactions.

17. In connection with the transactions that are the subject of this proposed exemption, Evercore, among other things: reviewed a draft of TCCC and Red Re's request for an administrative exemption from the Department; conferred with TCCC's outside counsel, the Groom Law Group, to discuss the proposed transactions and the Plans; conducted such other due diligence reviews as were deemed necessary. In addition, Evercore retained Robert L. Northrop (Mr. Northrop) of Northrop Consulting Services, LLC, an experienced insurance consultant, to review the proposed transactions and provide a written report of his determinations (the Report). Evercore and Mr. Northrop considered the premiums to be paid by the Plans for the proposed coverage, and determined that this premium is comparable to the premiums that would have been charged by an insurer of its competitors, with the same of better rating, providing similar coverage under comparable programs. The premium rate agreed to with MetLife includes a percentage allocation for non-claims

[27] According to the Applicants, all eligible active participants in the Actives Plan will have the opportunity to purchase supplemental coverage, and all Eligible Retirees in the Retiree Plan may continue to participate in the supplemental coverage by paying the required premium until age seventy (70).

expenses, which expenses here include fronting fees and expenses and taxes. Mr. Northrop examined these expenses, and determined that the expenses are within an expected range. In particular, Mr. Northrop determined that 5.36% of premiums will be retained by MetLife to cover MetLife's and Red Re's expenses and profit. Mr. Northrop opined that a reasonable net administrative expense (excluding taxes) would be between 5 percent (5%) and 8 percent (8%) of premiums. Because the premium was agreed to as a result of a competitive bidding process, and the expenses and profits paid by the Plans are within the expected range, Mr. Northrop determined and Evercore concurred that the Plans will pay no more than adequate consideration for the insurance. Mr. Northrop advised that no commission be paid by the Plans in connection with the subject transactions. As of the date of Mr. Northrop's Report, A.M. Best Company rated MetLife A+ (Excellent), and Standard and Poor's rated MetLife AA− (Stable).

19. Evercore has determined that the enhancements described above will result in an immediate and quantifiable substantial increase in benefits to all participants of the Plans, and an immediate and substantial decrease in premiums to the participants and beneficiaries of the Plans. Evercore opines that the enhancements will be useful to the participants in the Actives Plan and the Retirees Plan, even if participants do not get sick, become disabled, or die, because such programs provide security to participants and their families (*i.e.,* beneficiaries) against such contingencies that could have a devastating impact on such participants and beneficiaries were such contingencies to arise. In addition, in the opinion of Evercore, the enhancements will be in the interest of the participants in the Actives Plan and in the Retiree Plan, because the enhancements will provide additional benefits at no incremental cost to participants. It is Evercore's further view that the proposed transactions are: protective of the Plans, by adding a layer of insurance guarantee through the reinsurance arrangement with Red Re; and meet the requirements of obtaining an administrative exemption from the Department.

20. The Applicants represent that the proposed exemption is administratively feasible because the reinsurance of the Plans' risks under the terms of the group term life insurance and AD&D coverage will be, among other things, subject to review by an I/F, which can be audited. TCCC has and will bear the cost of the exemption application and of notifying the interested persons. Further, the proposed exemption will not require continued monitoring or other involvement by the Department. 21. The Applicants also represent that the proposed transactions are in the interest of the Plans. In this regard, the Actives Plan and the Retiree Plan will incur no cost for the benefit enhancements, as TCC will pay 100% of the premiums for basic group term life insurance under the Actives Plan and will pay 100% of the premiums for the $10,000 AD&D coverage under the Retiree Plan. Further, the Plans will pay no more than adequate consideration for the insurance contracts with MetLife, and the proposed change in insurance carriers from LINA to MetLife will reduce the employees' overall costs for the supplemental benefits by $932,000. Compared with the approximately $3 million in premiums paid by participants in 2011 for supplemental coverage, the $932,000 premium reduction will result in a 31% decrease in participant-paid premiums for supplemental coverage.

22. The Applicants represent that the proposed exemption is protective of the rights of the participants and beneficiaries of the Plans, because the exemption will require the review and approval of an I/F, at TCCC's expense. Specifically, the proposed exemption, if granted, will require that the I/F analyze the subject transactions and render an opinion regarding whether certain of the conditions of the exemption were satisfied, including that: the Plans pay no more than adequate consideration for the insurance contracts; the Plans pay no commissions with respect to the direct sale of such contracts or the reinsurance thereof; in the initial year of every contract involving Red Re and a Fronting Insurer, there is an immediate and objectively determined benefit to participants and beneficiaries of the Plans in the form of increased benefits, and such benefits will continue in all subsequent years of each contract and in every renewal of each contract; in the initial year and in subsequent years of coverage provided by a Fronting Insurer, the formula used by the Fronting Insurer to calculate premiums is similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the Fronting Insurer and its competitors with the same or a better rating providing the same coverage under comparable programs. The Applicants state that if exemptive relief is granted any Fronting Insurer have a financial strength rating of ''A'' or better from A. M. Best Company (A. M. Best), and the reinsurance arrangement between the Fronting Insurer and Red Re will be indemnity insurance only. Finally the Applicants note that participants and beneficiaries in the Plans will receive in subsequent years of every contract of reinsurance involving Red Re and the Fronting Insurer no less than the immediate and objectively determined increased benefits such participant and beneficiary received in the initial year of each such contract involving Red Re and the Fronting Insurer.

23. In summary, the Applicants represent that the proposed reinsurance transactions will meet the criteria of section 408(a) of the Act since, among other things:

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

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

(c) In the initial year of every contract involving Red Re and a Fronting Insurer, there will be an immediate and objectively determined benefit to participants and beneficiaries of the Plans in the form of increased benefits, and such benefits will continue in all subsequent years of each contract and in every renewal of each contract;

(d) In the initial year and in subsequent years of coverage provided by a Fronting Insurer, the formula used by the Fronting Insurer to calculate premiums will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the Fronting Insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(e) The Fronting Insurer has a financial strength rating of ''A'' or better from A. M. Best Company (A. M. Best). The reinsurance arrangement between the Fronting Insurer and Red Re will be indemnity insurance only, (*i.e.,* the Fronting Insurer will not be relieved of liability to the Plans should Red Re be unable or unwilling to cover any liability arising from the reinsurance arrangement);

(f) The Plans retain an independent, qualified fiduciary or successor to such fiduciary, as defined in Section III (c), below, (the I/F) to analyze the transactions and to render an opinion that certain relevant requirements of the proposed exemption, if granted, have been satisfied;

(g) Participants and beneficiaries in the Plans will receive in subsequent years of every contract of reinsurance involving Red Re and the Fronting Insurer no less than the immediate and objectively determined increased benefits such participant and beneficiary received in the initial year of each such contract involving Red Re and the Fronting Insurer;

(h) The I/F will: monitor the transactions proposed herein on behalf of the Plans on a continuing basis to ensure such transactions remain in the interest of the Plans; take all appropriate actions to safeguard the interests of the Plans; and enforce compliance with all conditions and obligations imposed on any party dealing with the Plans; and

(i) At the conclusion of the 5-Year Period from January 1, 2013 to December 31, 2017, the I/F will review any renewal of the reinsurance of risks and the receipt of premiums therefrom by Red Re and will determine whether the requirements of this proposed exemption and the terms of the benefit enhancements, as described herein, continue to be satisfied.

Notice to Interested Persons

It is represented that TCCC shall provide notification of the publication of the Notice of Proposed Exemption (the Notice) in the **Federal Register** to all interested persons via first class mail to each such interested person's most recent address maintained in the records of the administrator of the Plans. Such notification 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(a)(2) which will advise all interested persons of their right to comment and to request a hearing. TCCC will provide such notification to all such interested persons within five (5) business days of the date of publication of the Notice in the **Federal Register**. All written comments and/or requests for a hearing must be received by the Department from interested person no later than 35 days after publication of the Notice in the **Federal Register**.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 693–8551 (This is not a toll-free number.)

Silchester International Investors LLP (Silchester or the Applicant) Located in London, England

[Application Number D–11671]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[28]

Section I. Proposed Transactions

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A), 406(a)(1)(D), and section 406(b)(2) of ERISA, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and section 4975(c)(1)(D) of the Code, shall not apply to the cross trading of securities (the cross trades, or the transactions) between various Accounts managed by Silchester, where at least one of the Accounts involved in the cross trade is an ERISA Account, if the conditions set forth in section II have been met:

Section II. Conditions

(a) Each cross trade is a purchase or sale of securities by an ERISA Account for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available.

(b) A cross trade may only be effected on the first business date of the month.

(c) Each cross trade is effected at a price equal to the security's "independent current market price" (within the meaning of section 270.17a-7(b) of Title 17, Code of Federal Regulations) on the business date that immediately precedes the first business date of the month on which the cross trade occurs.

(d) No brokerage commission, fees or other remuneration is paid in connection with a cross trade involving an ERISA Account. Notwithstanding the above, customary transfer fees or brokerage fees dictated by local market restrictions may be applicable, the fact of which is disclosed in advance to an Independent Fiduciary. In the event local market restrictions require the use of a broker-dealer, and only in such event, broker-dealers that are not Affiliates of Silchester or the trustee of any Account that is a commingled fund will be used to execute the transaction, and no more than reasonable compensation will be paid to such unaffiliated broker-dealer to execute the cross trade. In any event, neither Silchester nor the trustee of any ERISA Account will receive a commission, fee, or other remuneration directly or indirectly from an ERISA Account in connection with a cross trade involving an ERISA Account (provided that the trustee of an Account may be expected to receive remuneration on foreign exchange transactions in the ordinary course that would be received irrespective of whether the trade was a cross trade or if the securities were sold in the market).

(e) Prior to engaging in any cross trade for an ERISA Account or at the inception of any new relationship between Silchester and a Plan, Silchester shall deliver to the Independent Fiduciary (i) a written disclosure regarding the conditions under which cross trades may take place (which disclosure will be separate from any other agreement or disclosure in respect of the ERISA Account, including the Policies and Procedures); (ii) a written copy of the Policies and Procedures; and (iii) written instructions (via email correspondence or otherwise) directing the Independent Fiduciary to give appropriate consideration to: (A) The responsibilities, obligations and duties imposed upon fiduciaries by Part 4 of Title I of the Act, (B) whether the terms of the cross trades are fair to the Plan and its participants and beneficiaries, and to the ERISA Account, and are comparable to, and no less favorable than, terms obtainable at arm's-length between unaffiliated parties, and (C) whether the cross trades are in the best interest of the Plan and its participants and beneficiaries and of the ERISA Account. The receipt of the instructions described in clause (iii) must be acknowledged in writing (via email correspondence or otherwise) by the Independent Fiduciary.

(f) Prior to engaging in any cross trade for an ERISA Account, Silchester must receive authorization from the Independent Fiduciary of such ERISA Account to engage in cross trades involving the ERISA Account at Silchester's discretion, which

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

authorization must be provided in a written document in advance of any such cross trades, and must be separate from any other written agreement or disclosure between Silchester and the ERISA Account or Plan, as applicable. Such authorization will only be effective if the Independent Fiduciary has already received the disclosures described in paragraph (e) above.

(g) The Independent Fiduciary shall represent, in its authorization of participation for an ERISA Account, that it has the requisite knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of investing in the ERISA Account and to be capable of protecting the Plan's interests in connection with the investment or that it has obtained expert advice that allows it to adequately evaluate its investment in the ERISA Account. If such Independent Fiduciary cannot make the foregoing representations, then the authorization described herein will not be effective.

(h) Both on an annual basis and each time Silchester provides notice to the Independent Fiduciary in writing that a new fund or new Separately Managed Account may engage in cross trades, a designated representative of Silchester will advise each such Independent Fiduciary in writing that it can revoke the authorization described in paragraph (f) at any time in writing by withdrawing from the ERISA Account (or in the case of an ERISA Account that is a Separately Managed Account, by written notice to the Applicant).

(i) On a quarterly basis, Silchester will provide (or cause to be provided) to each Independent Fiduciary a written report detailing all cross trades in which the ERISA Account participated during such quarter, including the following information, as applicable: (i) The identity of each security bought or sold; (ii) the number of shares or units traded; (iii) the Accounts involved in the cross trade; and (iv) the trade price and the total U.S. dollar value of each security involved in the cross trade and the method used to establish the trade price. The quarterly report will be provided to the Independent Fiduciary prior to the end of the next following quarter.

(j) Silchester will not base its fee schedule on a Plan's consent to cross trading, nor is any other service (other than the investment opportunities and cost savings available through a cross trade) conditioned on the Plan's consent.

(k) Silchester adopts, and cross trades will be effected in accordance with, the Policies and Procedures, which will be made further available to an Independent Fiduciary upon request.

(l) A member of Silchester's compliance group reviews cross trades within 10 business days of the cross trades to confirm compliance with the Policies and Procedures and report to the compliance group regarding such member's findings, and Silchester designates an individual member of its compliance group to be responsible for annually reviewing a sampling of each ERISA Account's cross trades that is sufficient in size and nature to determine compliance with the Policies and Procedures described herein with respect to each such ERISA Account and, following such review, such individual shall issue an annual written report no later than 90 calendar days following the end of the ERISA Account's fiscal year to which it relates, signed under penalty of perjury, to each Independent Fiduciary describing the actions performed during the course of the review, the level of such compliance, and any specific instances of non-compliance.

(m) An Independent Auditor conducts an Exemption Audit on an annual basis, the audit period for which will be the ERISA Account's fiscal year. Following completion of the Exemption Audit, the Independent Auditor shall issue a written report to Silchester (with copies thereof delivered to each Independent Fiduciary) presenting its specific findings regarding the level of compliance with: (1) the Policies and Procedures and (2) the objective requirements of the proposed exemption, if granted. The written report shall also contain the Independent Auditor's overall opinion regarding whether Silchester's program complied with: (1) the Policies and Procedures and (2) the objective requirements of the proposed exemption, if granted. The Exemption Audit and the written report must be completed within six months following the end of the fiscal year to which the Exemption Audit relates.

(n) The ERISA Account has at least U.S. $100 million in assets.

(o) Each underlying investor in a commingled fund ERISA Account and each ERISA Account that is a Separately Managed Account shall represent in writing (which representation is deemed to be repeated upon each subsequent investment in such ERISA Account) that it is a ''qualified purchaser,'' as that term is defined in section 2(a)(51)(A) of the Investment Company Act of 1940, as amended.

(p) Silchester will conduct cross trades involving an ERISA Account only when triggered by contributions or withdrawals initiated by investors in such ERISA Account where:

(1) Contributions from one Account can be matched against withdrawals from another Account and the confirmed net contributions/withdrawals (as the case may be) from the ERISA Account exceed U.S. $10 million or 10 basis points or 0.1% of the value of the ERISA Account (whichever is less); and

(2) The ERISA Account's forecasted residual cash balance when adjusted for month-end cash flows after the cross trade will be within 50 basis points or 0.5% of the cash weightings of each such other Account.

(q) Silchester will not include an ERISA Account in a cross trade during any period in which the weightings of 14 or more securities in the ERISA Account individually differ by more than 50 basis points from the weightings of the same securities in the other Accounts; and none of the circumstances under which different weightings across the funds may arise or increase will be the result of any discretionary or opportunistic actions by Silchester.

(r) The U.S. dollar amount determined for the cross trade will be prorated across all of the securities eligible for the cross trade in each of the Accounts, based on each Account's relative weighting of each security included in the cross trade, subject to the restrictions and/or exclusions set forth in the Policies and Procedures.

(s) No cross trades will be conducted between an ERISA Account and any Account in which Silchester and/or its Affiliates (together or separately) own 10% or more of the outstanding units in such Account in the aggregate.

(t) Silchester maintains or causes to be maintained for a period of six years from the date of any cross trade such records as are necessary to enable the persons described in paragraph (u)(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 Silchester, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than Silchester shall be subject to a civil penalty that may be assessed 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 (u)(i) below.

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

(A) Any duly authorized employee or representative of the Department,

(B) Any Independent Fiduciary, Plan investing in an Account, or such Plan's designated representative, and

(C) The Independent Auditor; and

(ii) None of the persons described above in paragraphs (u)(i)(B)–(C) shall be authorized to examine trade secrets of Silchester, or commercial or financial information which is privileged or confidential, and should Silchester refuse to disclose information on the basis that such information is exempt from disclosure, Silchester 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 III. Definitions

(a) The term ''Account'' is a group trust, a commingled fund, or a Separately Managed Account, holding assets over which the Applicant has discretion.

(b) The term ''Affiliate'' of a person includes:

(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 the person; or

(3) Any corporation or partnership of which such person is an officer.

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

(d) The term ''ERISA Account'' means an Account the assets of which are ''plan assets'' within the meaning of section 3(42) of the Act and 29 CFR 2510.3–101, as amended.

(e) The term ''Exemption Audit'' means an engagement with an Independent Auditor that consists of the following:

(1) A review of the Policies and Procedures for consistency with each of the objective requirements of this proposed exemption, if granted;

(2) A test of a sample of the ERISA Account's cross trades during the audit period that is sufficient in size and nature to afford the Independent Auditor a reasonable basis:

(A) To make specific findings regarding whether the ERISA Account's cross trades are in compliance with: (i) the Policies and Procedures; and (ii) the objective requirements of this proposed exemption, if granted. The findings will specifically address the pro rata calculation for a cross trade and will ensure that the exclusions set forth in the Policies and Procedures have been applied on a reasonable and consistent basis; and

(B) To render an overall opinion regarding the level of compliance with the Policies and Procedures and the objective requirements of the proposed exemption, if granted.

(3) Issuance of a written report describing the actions performed by the Independent Auditor during the course of its review in connection with the Exemption Audit and the Independent Auditor's findings with respect thereto.

(f) The term ''Independent Auditor'' means an auditor with appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions, capable of issuing the written report required in connection with the Exemption Audit, that derives less than 5% of its annual gross revenue from Silchester, and so represents the foregoing in writing.

(g) The term ''Independent Fiduciary'' means a plan fiduciary for each Plan investor in a commingled fund ERISA Account or, in the case of an ERISA Account that is a Separately Managed Account, the plan fiduciary for such Separately Managed Account, provided that in either case such plan fiduciary is not Silchester or any Affiliate of Silchester and has no interest in the subject transactions beyond the interest of such Plan.

(h) The term ''Plan'' means an employee benefit plan described in section 3(3) of the Act or a plan described in section 4975(e)(1) of the Code.

(i) The term ''Policies and Procedures'' means written cross trading policies and procedures adopted by Silchester that are designed to assure compliance with the conditions for the proposed exemption, if granted, and provide clear guidelines regarding how and under what circumstances cross trades will be effected by Silchester on behalf of an ERISA Account, including (but not limited to) descriptions of (i) triggering transactions for identifying when a cross trade is available, (ii) cross trade procedures that must be followed when implementing a cross trade, (iii) pricing of securities included in a cross trade, (iv) reporting of cross trade transactions and related information, and the (v) Exemption Audit.

(j) The term ''Separately Managed Account'' means a separately managed account over which the Applicant has discretion and either: (1) such separately managed account is not subject to Title I of the Act or section 4975 of the Code or (2) the Plan whose assets are held in the separately managed account has assets of at least U.S. $100 million, provided that if the assets of a Plan whose assets are held in the separately managed account are invested in a master trust containing the assets of Plans maintained by employers in the same controlled group, then such master trust has assets of at least U.S. $100 million.

Summary of Facts and Representations

Background

1. Silchester International Investors LLP (the Applicant or Silchester) is a private investment management group established in 1994, specializing in international investment, primarily on behalf of investors based in the United States. The Applicant is registered as an investment adviser with the U.S. Securities and Exchange Commission (SEC) and is authorized and regulated by the Financial Services Authority (FSA) in the United Kingdom. The Applicant states that Silchester invests client assets primarily in publicly traded non-U.S. equity securities and benchmarks its client portfolios against the MSCI EAFE (Europe, Australasia, Far East) Index, inclusive of income and net of foreign withholding taxes (the MSCI EAFE Index). The Applicant represents that Silchester had approximately $22.5 billion of discretionary client assets under its management, as of May 31, 2012.

2. According to the Applicant, Silchester has one primary investment program, International Value Equity, and Silchester currently offers its international investment program through five privately offered commingled funds (referred to generally as the funds or the commingled funds).[29] The Applicant states that the governing documents for the commingled funds do not allow them to borrow, open a margin account, engage in securities lending, or engage in short sales. Furthermore, the Applicant notes that it does not charge incentive or performance fees in connection with its management of the commingled funds.

[29] The Applicant states that Silchester has managed the commingled funds since November 1, 2010 and, prior to that, Silchester International Investors Limited (SII Limited) managed the commingled funds. The Applicant states that SII Limited, which was renamed Silchester Partners Limited subsequent to the filing of the exemption application, currently owns 96.35% of the capital of the Applicant and is expected to own in excess of 90% of the Applicant's capital in future years.

The Applicant describes these commingled funds in more detail as follows:

A. The Silchester International Investors International Value Equity Group Trust (the Group Trust), a commingled fund established to qualify as a ''group trust'' under applicable Internal Revenue Service rules and regulations. The Group Trust was established to provide for the collective investment and reinvestment of certain assets of employee benefit plans described in section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act), or plans described in section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the Code) (Plans, or individually, a Plan) and other entities eligible to invest in a group trust under Internal Revenue Service Revenue Ruling 81–100,[30] as may be amended, supplemented or modified from time to time. The Group Trust is currently the only commingled fund the assets of which constitute ''Plan Assets'' within the meaning of Section 3(42) of the Act and 29 CFR 2510.3–101, as amended. As of May 31, 2012, the Group Trust held net assets worth approximately $5.86 billion.

B. The Silchester International Investors International Value Equity Trust (the Business Trust), a commingled fund generally for U.S., non-ERISA tax-exempt investors. The Business Trust is currently structured as a Delaware Statutory Trust. Plans are permitted to invest in the Business Trust (but generally have not invested in the Business Trust). The assets of the Business Trust do not currently constitute Plan Assets, and the Applicant currently does not expect that the assets of the Business Trust will become Plan Assets. As of May 31, 2012, the Business Trust held net assets worth approximately $10.83 billion.

C. The Silchester International Investors Tobacco Free International Value Equity Trust (the Tobacco Free Trust), a commingled fund for U.S. tobacco adverse investors. The Tobacco Free Trust is currently structured as a Delaware Statutory Trust. Although Plans are permitted to invest in the Tobacco Free Trust (and have invested in this fund), the assets of the Tobacco Free Trust do not currently constitute Plan Assets, and the Applicant currently does not expect that the assets of the Tobacco Free Trust will become Plan Assets. As of May 31, 2012, the Tobacco Free Trust held net assets worth approximately $1.49 billion.

D. The Silchester International Investors International Value Equity Taxable Trust (the Taxable Trust), a commingled fund for U.S. taxable investors. The Taxable Trust is currently structured as a Delaware Statutory Trust. Plans are permitted to invest in the Taxable Trust (but generally have not invested in Taxable Trust). The assets of the Taxable Trust do not currently constitute Plan Assets and the Applicant currently does not expect that the assets of the Taxable Trust will become Plan Assets. As of May 31, 2012, the Taxable Trust held net assets worth approximately $2.92 billion.

E. The Calleva Trust (the Calleva Trust), a regulated commingled fund for non-U.S. investors. The Calleva Trust is domiciled outside of the U.S. and U.S. investors are not currently permitted to invest directly in the Calleva Trust. The assets of the Calleva Trust do not constitute Plan Assets and the Applicant currently does not expect that the assets of the Calleva Trust will become Plan Assets. As of May 31, 2012, the Calleva Trust held net assets worth approximately $1.45 billion.

3. According to the Applicant, (a) certain of Silchester's ''Affiliates,'' as such term is used in the proposed exemption, (b) several entities in which Silchester Partners Limited maintains a minority ownership interest, (the Associates),[31] and (c) the Associates' Affiliates, have invested (or may invest) in the Taxable Trust, Tobacco Free Trust, and the Calleva Trust and could invest in other commingled funds as well. Furthermore, the Applicant states that a wholly owned subsidiary of Silchester has invested in the Business Trust, Tobacco Free Trust, and the Taxable Trust in order to act as a ''tax matters partner'' of these funds.

4. The Applicant states that the commingled funds currently own primarily non-U.S. publicly traded equity securities and, additionally, cash and cash equivalents. However, the commingled funds may occasionally own U.S. equity securities (or the investment guidelines governing the commingled funds and Separately Managed Accounts[32] may, in the future, permit investment in U.S. securities). For example, a non-U.S. company could spin off and publicly list a subsidiary as a U.S. security, but this has historically occurred very infrequently for the commingled funds. If the U.S. shares issued in such a spin-off are publicly traded, then these shares could be included in any cross trade. The commingled funds may also hold American Depositary Receipts (ADRs) and enter into forward currency contracts or other foreign exchange transactions with unrelated parties.[33]

5. A trustee (the Trustee), which is independent from the Applicant and its Associates, acts as the custodial trustee of the Group Trust and as the custodian and fund administrator for the Group Trust and each of the other commingled funds.[34] As such, the Trustee maintains the primary books and records of the Group Trust and the other commingled funds. The Trustee, in addition to its other fund administration duties, sends client statements and transaction confirmations directly to the investors in the Group Trust and each of the commingled funds. The Applicant does not hold or receive any client assets, or subscription or withdrawal proceeds.

Description of the Requested Relief

6. The Applicant seeks relief for the purchase and sale of securities between a group trust, a commingled fund, or a Separately Managed Account, holding assets over which the Applicant has discretion (an Account) and the Applicant's other Accounts (the cross trades, or the transactions), where at least one of the Accounts involved in the cross trade holds ''plan assets'' within the meaning of section 3(42) of ERISA and 29 CFR 2510.3–101, as amended (an ERISA Account). The Applicant represents that cross trades are customary in the institutional investment management industry, and the Applicant currently effects cross

[30] 26 CFR 1.501(a)–1 (March 30, 1981).

[31] Silchester Partners Limited, in addition to the partnership interest it has in the Applicant, currently owns significant minority interests in each of Sanderson Asset Management, Colchester Global Investors, Heronbridge Investment Management, through a participation in Heronbridge Limited, Highclere International Investors, through a participation in Highclere Investment Management Limited, Nippon Value Investors, Edgbaston Investment Partners and Kiltearn Partners, through a participation in Kiltearn Limited.

[32] The Applicant states that, for purposes of the proposed exemption, a ''Separately Managed Account'' is a separately managed account over which the Applicant has discretion and either: (1) such separately managed account is not subject to Title I of the Act or section 4975 of the Code or (2) the Plan whose assets are held in the separately managed account has assets of at least U.S. $100 million, provided that, if the assets of a Plan whose assets are held in the separately managed account are invested in a master trust containing the assets of Plans maintained by employers in the same controlled group, then such master trust has assets of at least U.S. $100 million.

[33] However, as noted below, relief under this proposed exemption, if granted, does not extend to cross trades involving forward contacts or foreign exchange transactions.

[34] Under the Amended and Restated Declaration of Trust governing the Group Trust, the Trustee has responsibility for maintaining the custody of the assets of the Group Trust as required by Section 404(b) of the Act and the regulations issued thereunder.

trades among its non-ERISA commingled funds. Further, the Applicant notes that it has been effecting cross trades for over 10 years and has developed a significant working knowledge of cross trades and their benefit to the commingled funds that participate.

7. According to the Applicant, the cross trades which are the subject of this proposed exemption would constitute prohibited transactions in violation of sections 406(a)(1)(A) and (D) of the Act. Furthermore, the Applicant states that the cross trades may violate section 406(b)(2) of the Act, because a cross trade would cause the Applicant to act in a transaction involving a Plan on behalf of a party whose interests are adverse to the interests of the Plan. Moreover, the Applicant represents that the cross trades do not qualify for exemptive relief under the statutory exemption for cross trades set forth in section 408(b)(19) of the Act.

Section 408(b)(19)(E) requires in relevant part, as a condition for relief, that ''each plan participating in the transaction has assets of at least $100,000,000 * * *.'' According to the Applicant, as of September 30, 2011, the Group Trust had 108 investors, of which it is estimated that 15 investors had less than $100 million of investable assets.[35] Therefore, the Applicant explains, section 408(b)(19) of the Act is not currently available to Silchester because certain of the Plans invested in the Group Trust do not have assets of at least $100 million. Accordingly, the Applicant seeks relief from sections 406(a)(1)(A) and (D), and section 406(b)(2) of the Act for cross trades involving Plans.

8. Each underlying investor in a commingled fund ERISA Account and each ERISA Account that is a Separately Managed Account would be required to be a ''qualified purchaser,'' as that term is defined in Section 2(a)(51)(A) of the Investment Company Act of 1940, as amended (the Investment Company Act),[36] determined, in the case of a commingled fund, on the date of the investor's initial investment in the commingled fund ERISA Account. Each independent plan fiduciary for each Plan investor in a commingled fund ERISA Account or, in the case of an ERISA Account that is a Separately Managed Account, the independent plan fiduciary for such Separately Managed Account (each such person, an Independent Fiduciary)[37] would represent to the Applicant (which representation is deemed to be repeated upon each subsequent investment in an ERISA Account) that it will remain a ''qualified purchaser'' for so long as it maintains an investment in the ERISA Account. The Applicant proposes further that, in order to engage in the covered transactions, any ERISA Account would need to have at least U.S. $100 million in assets.

9. In addition, the Applicant represents that no cross trades will be conducted between an ERISA Account and any Account in which the Applicant, its Associates, and/or their respective Affiliates own 10% or more of the outstanding units in such Account in the aggregate. Furthermore, the Applicant states that cross trades between an ERISA Account and any Accounts managed by any Associates, directed by either the Applicant or an Associate, will not be allowed.

10. The Applicant observes that it may in the future establish other commingled funds. According to the Applicant, if any such new fund constituted an ERISA Account, the Applicant would engage in cross trades involving that fund in reliance on the relief described in the proposed exemption only if the conditions of such relief were met. Furthermore, while the Applicant currently offers its international investment program only through the commingled funds, the Applicant may in the future also have discretion over certain Separately Managed Accounts that it may wish to have engage in cross trades in accordance with the proposed exemption, if granted. The Applicant represents that no such Separately Managed Account shall engage in a cross trade in reliance on the proposed exemption, if granted, unless either (a) the assets of such Separately Managed Account do not constitute Plan Assets or (b) the Plan whose assets are held in the Separately Managed Account has assets of at least U.S. $100 million, provided that if the assets of a Plan whose assets are held in the separately managed account are invested in a master trust containing the assets of Plans maintained by employers in the same controlled group, then such master trust has assets of at least U.S. $100 million.

11. In addition, the Applicant states that, in the event that the Applicant in the future (a) establishes a new commingled fund (other than those identified herein) which it wishes to have engage in cross trades in reliance on the proposed exemption, if granted, or (b) wishes to have a new Separately Managed Account engage in cross trades in reliance on the proposed exemption, if granted, the Applicant shall notify each Independent Fiduciary of an ERISA Account involved in cross trades in writing that a new fund or new Separately Managed Account may engage in cross trades under the conditions of the proposed exemption, if granted, prior to such cross trades taking place.[38] Furthermore, along with such notification, a designated representative of Silchester will advise each such Independent Fiduciary in writing that it can revoke its authorization allowing Silchester to engage the ERISA Account in cross trades, at any time in writing by withdrawing from the ERISA Account (or in the case of an ERISA Account that is a Separately Managed Account, by written notice to the Applicant).

The procedures applicable when a Plan invested in the Group Trust does not wish to authorize cross-trading are delineated in the Group Trust Agreement, and are described in more detail in the Representations below. Further, the Applicant states that when an Independent Fiduciary of a Separately Managed Account does not authorize cross trading, Silchester will not cause that Separately Managed Account to participate in cross trades.

Policies and Procedures for Entering Into Cross Trades

12. According to the Applicant, Silchester will adopt, and cross trades will be effected in accordance with, written cross trading policies and procedures adopted by Silchester (the Policies and Procedures), which will provide strict guidelines for when and

[35] The Applicant states that these 15 investors represented approximately 1% of all of the Group Trust's assets and less than 1% of the Applicant's total assets under management.

[36] Section 2(a)(51)(A) of the Investment Company Act provides that the term ''qualified purchaser'' is generally: (i) any natural person who owns not less than $5,000,000 in investments; (ii) any company that owns not less than $5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons; (iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (i), (ii), or (iv); or (iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than $25,000,000 in investments.

[37] In either case such plan fiduciary shall not be Silchester or any Affiliate of Silchester.

[38] The Applicant notes that the written notice shall not be required to provide identifying information regarding any investors in the new fund or identification of the client for the new Separately Managed Account.

how cross trades will be used. The Applicant states that the Policies and Procedures will describe (i) triggering transactions for identifying when a cross trade is available to an ERISA Account, (ii) cross trade procedures that must be followed when implementing a cross trade involving an ERISA Account, (iii) pricing of securities included in a cross trade involving an ERISA Account, (iv) reporting of cross trade transactions and related information to each Independent Fiduciary, and (v) the independent audit which includes a review of the Policies and Procedures, a test sampling of the cross trades conducted under this proposed exemption, if granted, to determine compliance with the requirements thereunder, and the Policies and Procedures, and the issuance of a written report in connection with the foregoing (the Exemption Audit).

The Policies and Procedures will be disclosed to the Independent Fiduciary prior to engaging in cross trades for an ERISA Account or at the inception of any new relationship between Silchester and a Plan and will be made further available to the Independent Fiduciary on request. The Policies and Procedures are described in more detail in the following paragraphs.

13. The Applicant represents that cross trades covered by the proposed exemption, if granted, will occur only to the extent that such cross trades are triggered by contributions or withdrawals to or from an ERISA Account.[39] For example, where contributions to an ERISA Account can be matched against a withdrawal from another Account, consideration will be given to a cross trade between those Accounts. Specifically, the Applicant is proposing that the ERISA Account would be eligible for inclusion in such cross trade if, among other things: The confirmed net contributions/withdrawals (as the case may be) to or from the ERISA Account exceed $10 million or 10 basis points or 0.1% of the value of the ERISA Account (whichever is less); and the ERISA Account's forecasted residual cash balance when adjusted for month-end cash flows after the cross trade would be within 50 basis points or 0.5% of the cash weightings of each such other Account.[40]

Furthermore, the Applicant notes that although cross trading opportunities may arise, Silchester may decide, in its sole discretion, not to enter into a cross trade if Silchester believes that the cross trade is not in the best interests of the ERISA Account given the prevailing (external) conditions and circumstances at the time of the cross trade.

14. The Applicant represents that there will be a record of triggering events, based on investor-initiated contributions or withdrawals, that the Independent Auditor can verify. Furthermore, the Applicant states that, as described in the Group Trust's Confidential Private Offering Memorandum, all contributions and withdrawals are made by a written request/notice made to Silchester by the Independent Fiduciary. Thus, according to the Applicant, the combination of the written record of the Plan-initiated contributions and withdrawals, as well as the 10 basis point numerical threshold outlined in the application, will allow the Independent Auditor to verify the occurrence of the triggering events.

15. The Applicant states that, at least two business days before a cross trade, a designated representative of the Applicant will determine whether an ERISA Account will participate in a cross trade based on the triggering criteria set out above. The U.S. dollar amount available to be crossed will also be determined. In addition, the Applicant states that, at least two business days before a cross trade, a list of securities that will form part of the cross trade will be prepared. Subject to investment guideline restrictions, and certain restrictions/exclusions described below (which will be set out in the Policies and Procedures), all securities held within an ERISA Account (assuming the ERISA Account was the selling account) or all securities held by the selling Account (assuming the ERISA Account was the purchasing account) would be included in the cross trade.

16. The Applicant states that cross trades will be effected on a pro rata basis. In this regard, the Applicant explains that the U.S. dollar amount determined for the cross trade will be prorated across all of the securities eligible for the cross trade in each of the Accounts, based on each Account's relative weighting of each security included in the cross trade, subject to the restrictions and/or exclusions described below and set forth in the Policies and Procedures. The Applicant states further that securities will also be allocated on a pro rata basis in the event multiple Accounts participate in a cross trade (i.e., as buyers or sellers).

17. The Applicant describes the following investment restrictions/exclusions under which securities would be excluded from a cross trade: Legal or compliance restrictions, such as a security being subject to an insider trading restriction or approval being required before the Accounts can exceed certain percentage thresholds; unfavorable tax treatment, such as triggering an adverse capital gains tax liability in one of the Accounts; regulatory or stock exchange restrictions, such as the underlying stock exchange suspending the trading of a security; minimum lot trading sizes, such as minimum lot sizes imposed by stock exchanges (e.g., Japan); ''sell to zero'' tickets (e.g., securities that Silchester reasonably expects will no longer be held within the ERISA Account or the other Accounts within ten business days); securities that cannot be sold due to proxy voting limits (in some circumstances, a stock exchange may impose ''black out'' periods during the period before an annual general meeting or extraordinary general meeting of a company/security); forfeiture of additional dividend or proxy voting rights that are periodically made available to longer term holders of certain European equities; circumstances in which the value of securities purchased or the value of securities sold is *de minimis* (i.e., less than U.S. $5,000) and therefore would result in the ERISA Account incurring unnecessary costs; closure of a stock exchange for a market holiday or closure due to an exceptional circumstance (such as political unrest in a country resulting in the stock exchange being closed and all trading suspended); when the ERISA Account or other commingled fund does not already hold the security before the cross trade (no security can be purchased by the ERISA Account in a cross trade unless the security is already held by the ERISA Account prior to the cross trade); and when a market quotation for a security is not readily available.

The Applicant states that where any of the above circumstances exist, the affected security or securities will be excluded from the cross trade.[41] The

[39] The Applicant notes that contributions and withdrawals from an Account will in all circumstances be initiated by the Independent Fiduciaries of such Accounts (including the Independent Fiduciary of any Separately Managed Accounts), and not by Silchester. As such, cross-trading for the Group Trust or a Separately Managed Account would be triggered only by a Plan's contributions or withdrawals.

[40] The Applicant states that contributions and withdrawals in any of the commingled funds are generally only made effective on the first business day of each month, except for the Calleva Trust where, under Irish UCITS rules, a mid-month dealing day must be offered in addition to the first business day of each month.

[41] The Applicant represents that, based on the Silchester's experience with cross trading in respect of the non-ERISA Accounts, the number of exclusions varies among cross trades. Currently, on average, between three (3) and twelve (12) securities

Continued

cross trade will be prorated across all of the remaining securities in the Accounts eligible for the cross trade.

18. Furthermore, the Applicant states that the Accounts currently have approximately the same portfolio weighting, as a percentage of assets, in equity securities and cash or cash equivalents, and the Applicant expects that, over time, dispersion among all of the Accounts weightings will be minimal. According to the Applicant, none of the circumstances under which dispersion may arise or increase are the result of any discretionary or opportunistic actions by Silchester. Furthermore, the Applicant notes that Silchester prefers to have little or no dispersion to allow for efficiencies across the administration of the commingled funds.

The Applicant states that if dispersion in holdings of different stocks in the various Accounts increases materially, the Applicant will stop cross trading for an ERISA Account until such time as the dispersion in holdings has been reduced. The Applicant represents that Silchester will not include an ERISA Account in a cross trade during any period in which the weightings of 14 or more securities in the ERISA Account individually differ by more than 50 basis points from the weightings of the same securities in the other Accounts.

19. The Applicant also proposes that each covered cross trade be a purchase or sale of securities by an ERISA Account for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and are widely recognized as accurate and reliable sources for such information.

20. Further, the Applicant is proposing that each covered cross trade: (a) only take place on the first business day of a month; and (b) be effected at the independent current market price of the security (within the meaning of section 270.17a–7(b) of Title 17, Code of Federal Regulations) [42] on the business date that immediately precedes the first business date of the month on which the cross trade occurs. In connection with the foregoing, the Applicant states that the commingled funds are generally valued on a monthly basis using closing prices and exchange rates as of the last business day of a month. Nevertheless, the Applicant notes that, in special limited circumstances (e.g., the introduction of the Euro), the commingled funds may be valued on a date other than the last business day of a month.[43] However, the Applicant states that, under no circumstance will cross trades be executed with an ERISA Account on a date other than the first business day of a month.

21. The Applicant notes that the prices used for cross trades are the same as the prices used by the Trustee to value the commingled funds at month's end. According to the Applicant, these prices will ordinarily be determined within three (3) hours of the close of the relevant market. The Applicant represents further that these prices meet the definition of an independent ''current market price'' of a security within the meaning of Section 270.17a–7(b) of Title 17, Code of Federal Regulations and SEC no-action and interpretative letters thereunder, and Silchester's settlement team verifies the closing prices on the following morning.

22. The Applicant represents that if the proposed exemption is granted, no brokerage commission, fees or other remuneration will be paid in connection with a cross trade involving an ERISA Account, except for customary transfer fees or brokerage fees dictated by local market restrictions, the fact of which is disclosed in advance to each Independent Fiduciary. Additionally, the Applicant states that Silchester will not base its fee schedule on a Plan's consent to cross trading, nor is any other service (other than the investment opportunities and cost savings available through a cross trade) conditioned on the Plan's consent.

23. Notwithstanding the above, in the event local market restrictions require the use of a broker-dealer, and only in such event, broker-dealers that are not Affiliates of Silchester or the Trustee will be used to execute the transaction and no more than reasonable compensation will be paid to such an unaffiliated broker-dealer to execute the cross trade. Furthermore, the Applicant notes that the Trustee may be expected to receive remuneration on foreign exchange transactions in the ordinary course that would be received regardless of whether the trade was a cross trade or if the securities were sold in the market. The Applicant explains that Silchester engages in foreign exchange transactions for the Group Trust in different ways, including (a) under a guaranteed rate agreement with the Trustee, (b) pursuant to negotiated transactions between Silchester and the Trustee and (c) in the case of restricted currencies only, by the Trustee directly pursuant to a standing instruction. The Applicant states that, when applicable, Silchester principally relies on the statutory exemption for foreign exchange transactions under section 408(b)(18) of the Act and/or Prohibited Transaction Exemption (PTE) 84–14 involving qualified professional asset managers (QPAM) for the Group Trust's foreign exchange transactions.[44] However, the Applicant confirms that the Group Trust does not engage in any foreign exchange or ADR transactions with any party related to Silchester.

In any event, notwithstanding the above, the Applicant represents that neither Silchester nor the Trustee will receive a commission, fee or other remuneration, directly or indirectly, from an ERISA Account in connection with a cross trade involving an ERISA Account.

24. Prior to engaging in any cross trade for an ERISA Account or at the inception of any new relationship between Silchester and a Plan, Silchester shall deliver to the Independent Fiduciary (i) a written

are excluded from each cross trade. Recently, the primary reason for securities being excluded from a cross trade are restrictions on emerging market securities because emerging markets commonly require all purchases and sales to occur ''on exchange.'' In that case, Silchester is not able to engage in the cross trades in those securities for any of the Accounts.

[42] Section 270.17a–7 of Title 17, Code of Federal Regulations, provides an exemption from the provisions of section 17(a) of the Investment Company Act, which prohibits, among other things, transactions between an investment company and its investment adviser or affiliates of its investment adviser, subject to the condition, among others, that the transaction is effected at the ''independent current market price.'' Under section 270.17a–7(b), the ''current market price'' is generally:

(1) If the security is reported security, the last sale price with respect to such security reported in the consolidated transaction reporting system (consolidated system) or the average of the highest current independent bid and lowest current independent offer for such security if there are no reported transactions in the consolidated system that day; or

(2) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange or the average of the highest current independent bid and lowest current independent offer on such exchange if there are no reported transactions on such exchange that day; or

(3) If the security is not a reported security and is quoted in the NASDAQ System, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ; or

(4) For all other securities, the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry.

[43] In this regard, the Applicant notes that the Calleva Trust is required under Irish regulations to have two valuation dates each month.

[44] The Department is offering no view herein regarding the Applicant's reliance on such exemptions in connection with the Group Trust's foreign exchange transactions.

disclosure regarding the conditions under which cross trades may take place (which disclosure will be separate from any other agreement or disclosure in respect of the ERISA Account, including the Policies and Procedures); (ii) a written copy of the Policies and Procedures; and (iii) written instructions (via email correspondence or otherwise) directing the Independent Fiduciary to give appropriate consideration to: (A) the responsibilities, obligations and duties imposed upon fiduciaries by Part 4 of Title I of the Act, (B) whether the terms of the cross trades are fair to the Plan and its participants and beneficiaries, and to the ERISA Account, and are comparable to, and no less favorable than, terms obtainable at arm's-length between unaffiliated parties, and (C) whether the cross trades are in the best interest of the Plan and its participants and beneficiaries and of the ERISA Account. The Applicant states that the receipt of the instructions described in clause (iii) above will be acknowledged in writing (via email correspondence or otherwise) by the Independent Fiduciary.

25. Prior to engaging in any cross trade for an ERISA Account, Silchester must receive authorization from the Independent Fiduciary of such ERISA Account to engage in cross trades involving the ERISA Account at Silchester's discretion, which authorization must be provided in a written document in advance of any such cross trades, and must be separate from any other written agreement or disclosure between Silchester and the ERISA Account or Plan, as applicable. Such authorization will only be effective if the Independent Fiduciary has already received the disclosures described above.

26. The Applicant states further that the Independent Fiduciary, as part of the authorization described above, shall represent that it has the requisite knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of investing in the ERISA Account and to be capable of protecting the Plan's interests in connection with the investment or that it has obtained expert advice that allows it to adequately evaluate its investment in the ERISA Account. Finally, the Applicant notes that it will also seek representations from each Independent Fiduciary regarding the Independent Fiduciary's satisfaction of the above-described actions in connection the establishment of a Plan's investment in the ERISA Account.

27. Both on an annual basis and each time the Applicant provides notice to the Independent Fiduciary in writing that a new fund or new Separately Managed Account may engage in cross trades, a designated representative of Silchester will advise each such Independent Fiduciary in writing that it can revoke the authorization described above at any time in writing by withdrawing from the ERISA Account (or in the case of an ERISA Account that is a Separately Managed Account, by written notice to the Applicant).

28. The Applicant notes that the Group Trust's withdrawal provisions are described in the Group Trust's Confidential Private Offering Memorandum and delineated in the Group Trust Agreement. In this regard, the Group Trust Agreement provides that a Plan may withdraw all or part of its units in the Group Trust on the first business day of each calendar month (referred to as a dealing day) upon six business days' prior written notice. The Applicant states that withdrawals are generally made in cash, although redemptions in kind may be used on occasions when net redemptions from the Group Trust are significant (typically more than 0.5% of the Group Trust).

The Applicant explains that cash withdrawals are funded first by netting any contributions to be made as of that same dealing day. According to the Applicant, for example, if withdrawals of $100x are to be made as of the same dealing day that contributions of $100x are also to be made, those amounts would be ''netted.'' The Applicant states that this net cash withdrawal would then be subject to the transaction costs applicable to liquidating assets to cash to fund the withdrawal. For withdrawals made in kind, the amount withdrawn would be subject to any stamp duty, market related charges and other transfer fees required by a foreign jurisdiction or stock exchange. All transaction costs would be reimbursed to the Group Trust and not paid to Silchester or its Associates.[45] Plans receive reporting on applicable transaction costs incurred on their behalf. The Applicant represents that no further transaction costs would be assessed by the Group Trust.

29. According to the Applicant, if the Independent Fiduciary of a Separately Managed Account were to elect not to authorize cross trading, Silchester will not cause that Separately Managed Account to participate in cross trades.[46]

30. The Applicant states that, according to the pricing policy under the Policies and Procedures, the Trustee, in its capacity as fund administrator, is responsible for independently valuing the Group Trust's assets on a monthly basis, and equity securities are typically valued using the closing price reported by their primary stock exchange and translated into U.S. dollars using exchange rates provided by WM Reuters.[47] Accordingly, these are the same prices and exchange rates currently used by major market indices such as MSCI for valuing (among others) the MSCI EAFE Index. Dividend and withholding tax accruals are valued at fair market value in accordance with U.S. Generally Accepted Accounting Principles.[48] The Applicant represents further that prices of securities included in a cross trade will be identical to those used by the Trustee to value the Group Trust and the other commingled funds on the immediately preceding valuation date.

31. The Applicant represents that, in accordance with reporting requirements under the Policies and Procedures, Silchester will provide (or cause to be provided) to each Independent Fiduciary a quarterly report detailing all cross trades in which the ERISA Account participated during such quarter, including the following information, as applicable: (a) The identity of each security bought or sold; (b) the number of shares or units traded; (c) the Accounts involved in the cross trade; and (d) the trade price and the total U.S. dollar value of each security involved in the cross trade and the method used to establish the trade price. According to the Applicant, the quarterly report will be provided to the Independent Fiduciary in writing prior to the end of the next following quarter.

32. The Applicant represents that a member of the Applicant's compliance

[45] The Applicant notes that this is the same withdrawal process used for all withdrawals made from the Group Trust.

[46] The Applicant notes that Silchester does not currently manage any Separately Managed Accounts, but may do so in the future.

[47] See section 270.17a–7(b) of Title 17, Code of Federal Regulations.

[48] The Applicant states that Silchester reconciles, but cannot arbitrarily override, the Trustee's valuations. If the Applicant believes that the Trustee has mis-valued a given security, the Trustee requires the Applicant to follow an established ''challenge procedure.'' Under this procedure, Silchester provides a written letter advising the Trustee of the discrepancy and support for its market price/exchange rate, and the Trustee considers the challenge over the subsequent 24 hour period. If the challenge is valid, the Trustee changes the market price/exchange rate used in the valuation; if not, the Trustee's valuation stands. Because of the nature of the commingled funds' investments (publicly traded equities), pricing challenges have historically been infrequent.

group will review cross trades within 10 business days of the cross trades to confirm compliance with the Policies and Procedures.[49] In addition, the Applicant states that Silchester will designate a member of its Compliance Group responsible for periodically reviewing a sampling of the ERISA Account's cross trades sufficient in size and nature to ensure compliance with the Policies and Procedures and, following such review, such individual shall issue an annual written report no later than 90 calendar days following the end of the fiscal year of the ERISA Account (the fiscal year-end of the Group Trust is currently December 31) to which it relates, signed under penalty of perjury, to each Independent Fiduciary, and describing the steps performed during the course of the review, the level of compliance and any specific instances of non-compliance.

33. Finally, the Applicant represents that the Policies and Procedures will provide for an Exemption Audit to be conducted on an annual basis, by an ''Independent Auditor'' with appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions and so represents in writing. Further, the Independent Auditor will derive less than 5% of its annual gross revenue from Silchester on an annual basis. The Exemption Audit will consist of a review of the Policies and Procedures for consistency with each of the objective requirements of the proposed exemption, if granted. The Exemption Audit will include a test of a sample of each ERISA Account's cross trades during the audit period that is sufficient in size and nature to afford the Independent Auditor a reasonable basis to (a) make specific findings regarding whether the ERISA Account's cross trades are in compliance with the Policies and Procedures and the objective requirements of the proposed exemption, if granted, and (b) render an overall opinion regarding the level of compliance with the Policies and Procedures and the objective requirements of the proposed exemption, if granted. The Applicant notes that the findings will specifically address the pro rata calculation for a cross trade and ensure that the restrictions/exclusions described in the Policies and Procedures have been applied on a reasonable basis.

34. Following completion of the Exemption Audit, the Independent Auditor shall issue a written report to Silchester (with copies thereof delivered to each Independent Fiduciary) presenting its specific findings regarding the level of compliance with: (1) The Policies and Procedures and (2) the objective requirements of the proposed exemption, if granted. The written report shall also contain the Independent Auditor's overall opinion regarding whether Silchester's program complied with: (1) The Policies and Procedures and (2) the objective requirements of the proposed exemption, if granted. The Applicant represents that the Exemption Audit and the written report will be completed within six months following the end of the fiscal year to which the Exemption Audit relates.

Merits of the Transactions

35. The Applicant represents that the proposed exemption is administratively feasible since, among other things, Silchester will follow the Policies and Procedures, which provide concrete guidelines for when and how cross trades will be effected. The Applicant states that the Policies and Procedures also serve to facilitate the audit of the proposed exemption, if granted. In this regard, the requirements contained therein will be independently audited on an annual basis as described herein, consistent with procedures that the Department has already established in the amendment to prohibited transaction exemption (PTE) 96–23, the exemption for in-house asset managers, at 61 FR 15975 (April 10, 1996), as amended at 76 FR 18255 (April 1, 2011).

36. The Applicant states the proposed exemption is in the interest of Plans and their participants and beneficiaries. In this regard, cross trades of portfolio securities involving an ERISA Account can result in significant savings to the ERISA Account, primarily in the form of transaction cost savings and the avoidance of market impact.[50] The Applicant represents that these savings can be up to 75 basis points on contributions and 50 basis points on redemptions.[51] In addition, in the Applicant's experience, it is easier to mitigate the effect of bid-ask spreads and market impact charges in a cross trade.

The Applicant also represents that cost savings include the costs of converting cash contributions into securities (and securities into cash to meet client redemption requests), such as brokerage commissions (averaging 5 to 35 basis points depending on the market), foreign exchange costs, bid-offer spreads and market impact charges. The Applicant notes that these savings are more critical for international funds than domestic funds because of the higher costs of trading overseas. Further, mitigating these costs appropriately protects long-term investors in the Group Trust from bearing the costs of other investors either acquiring new interests in the Group Trust or rebalancing part of their moneys.

In addition, the Applicant states that Plans may wish to be invested in the Group Trust or another commingled fund that is a group trust because a group trust is generally the most tax efficient commingled fund for Plans. The Applicant explains that a group trust is able to reclaim a greater level of withholding taxes on dividends it receives due to broad exemptions available to a group trust from foreign capital gains taxes on the sale of securities and due to the favorable treatment afforded group trusts under various tax treaties that the U.S. has in place with other foreign governments. The Applicant represents that it considered maintaining just one fund which would eliminate all cross trading, however this would not provide ERISA investors and certain other tax-exempt investors the opportunity to benefit from significant foreign tax withholding savings that are only available to ERISA investors and tax-exempt investors which would not be available if all investors invested only through a single Account which also has taxable investors.

The Applicant maintains that, if the proposed exemption is not granted, the Applicant may consider relying on the statutory exemption provided in section 408(b)(19) of the Act, which would require any Plans that do not meet the U.S. $100 million requirement to redeem from the Group Trust and invest in another of the Accounts (which do not enjoy the same favourable tax benefits described above).

37. Finally, the Applicant states that the proposed transactions are protective of the interests of plans and their participants and beneficiaries. In this regard, the Applicant represents that cross trades entered into by an ERISA

[49] The Applicant notes that, in the event of non-compliance with the Policies and Procedures, Silchester would review the event of non-compliance and address the non-compliance by seeking to correct the non-compliance and reporting any non-exempt prohibited transaction resulting from such non-compliance on IRS Form 5330 and, if appropriate, by adopting or revising supplemental procedures.

[50] The Applicant notes that in the event that the proposed exemption is granted, ERISA Accounts will be able to benefit from cross trades in a manner already available to non-ERISA Accounts.

[51] According to the Applicant, the difference between charges on contributions and redemptions primarily relates to stamp duty—in Ireland and the UK, stamp duty charges of 100 basis points and 50 basis points, respectively, are currently charged on purchases only.

Account will comply with the Policies and Procedures, described above, which will be fair and equitable to all Accounts participating in the cross trading program. Further, the Applicant represents that the Policies and Procedures will comply with Silchester's fiduciary responsibilities to Plans invested in the ERISA Accounts and investors in the other Accounts. According to the Applicant, the Policies and Procedures will include full descriptions of Silchester's policies and procedures for pricing and Silchester's policies and procedures for allocating cross trades in an objective manner among the Funds participating in the cross trading program, so that Plans participating in the cross trading program are well informed of their rights thereunder.

Summary

38. In summary, the Applicant represents that the covered transactions satisfy the statutory requirements for an exemption under section 408(a) of the Act because, among other things:

(a) Each cross trade will be a purchase or sale of securities by an ERISA Account for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available;

(b) A cross trade will only be effected on the first business date of the month, at a price equal to the security's ''independent current market price'' (within the meaning of section 270.17a–7(b) of Title 17, Code of Federal Regulations) on the business date that immediately precedes the first business date of the month on which the cross trade occurs;

(c) No brokerage commission, fees or other remuneration will be paid in connection with a cross trade involving an ERISA Account (except for customary transfer fees or brokerage fees paid to unaffiliated broker-dealers dictated by local market restrictions, the fact of which is disclosed in advance to the Independent Fiduciary);

(d) Prior to engaging in any cross trade for an ERISA Account or at the inception of any new relationship between Silchester and a Plan, the Applicant will deliver to the Independent Fiduciary (i) a written disclosure regarding the conditions under which cross trades may take place; (ii) a written copy of the Policies and Procedures; and (iii) written instructions (via email correspondence or otherwise) to give appropriate consideration to: (A) the responsibilities, obligations and duties imposed upon fiduciaries by Part 4 of Title I of the Act, (B) whether the terms of the cross trades are fair to the Plan and its participants and beneficiaries, and to the ERISA Account, and are comparable to, and no less favorable than, terms obtainable at arm's-length between unaffiliated parties, and (C) whether the cross trades are in the best interest of the Plan and its participants and beneficiaries and of the ERISA Account. The receipt of such instruction will also be acknowledged in writing (via email correspondence or otherwise) by the Independent Fiduciary;

(e) Prior to engaging in any cross trade for an ERISA Account, Silchester must receive authorization from the Independent Fiduciary which must be provided in a written document in advance of any such cross trades, and will only be effective if the Independent Fiduciary has already received the disclosures described in paragraph (d) above;

(f) The Independent Fiduciary will represent, in its authorization of participation for an ERISA Account, that it has the requisite knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of investing in the ERISA Account and to be capable of protecting the Plan's interests in connection with the investment or that it has obtained expert advice that allows it to adequately evaluate its investment in the ERISA Account, and if the Independent Fiduciary cannot make the foregoing representations, then the authorization described herein will not be effective;

(g) Both on an annual basis and each time the Applicant provides notice to the Independent Fiduciary in writing that a new fund or new Separately Managed Account may engage in cross trades, a designated representative of Silchester will advise each such Independent Fiduciary in writing that it can revoke the authorization described in this paragraph at any time in writing by withdrawing from the ERISA Account (or in the case of an ERISA Account that is a Separately Managed Account, by written notice to the Applicant);

(h) Silchester will provide (or cause to be provided) to each Independent Fiduciary a quarterly report detailing all cross trades in which the ERISA Account participated during such quarter, including the following information, as applicable: (i) the identity of each security bought or sold; (ii) the number of shares or units traded; (iii) the Accounts involved in the cross trade; and (iv) the trade price and the total U.S. dollar value of each security involved in the cross trade and the method used to establish the trade price;

(i) Silchester will not base its fee schedule on a Plan's consent to cross trading, nor is any other service conditioned on the Plan's consent;

(j) Silchester adopts, and cross trades will be effected in accordance with, the Policies and Procedures, which will be made further available to an Independent Fiduciary upon request;

(k) A member of Silchester's compliance group will review cross trades within 10 business days of the cross trades to confirm compliance with the Policies and Procedures and report to the compliance group regarding such member's findings, and Silchester will designate an individual member of its compliance group responsible for periodically reviewing a sampling of the ERISA Account's cross trades that is sufficient in size and nature to ensure compliance with the Policies and Procedures described herein and, following such review, such individual shall issue an annual written report to each Independent Fiduciary describing the actions performed during the course of the review, the level of compliance, and any specific instances of non-compliance;

(l) An Independent Auditor will conduct an Exemption Audit on an annual basis and will issue a written report to Silchester (with copies thereof delivered to each Independent Fiduciary) presenting its specific findings regarding the level of compliance with: (1) the Policies and Procedures and (2) the objective requirements of the proposed exemption, if granted. The written report shall also contain the Independent Auditor's overall opinion regarding whether Silchester's program complied with: (1) the Policies and Procedures and (2) the objective requirements of the proposed exemption, if granted. The Exemption Audit and the written report must be completed within six months following the end of the fiscal year to which the Exemption Audit relates;

(m) The ERISA Account will have at least $100 million in assets, and each underlying investor in a commingled fund ERISA Account and each ERISA Account that is a Separately Managed Account will be required to represent that it is a ''qualified purchaser,'' as that term is defined in section 2(a)(51)(A) of the Investment Company Act;

(n) Silchester will only conduct cross trades involving an ERISA Account when triggered by contributions or withdrawals initiated by investors in such ERISA Account where:

(1) Contributions from one Account can be matched against withdrawals from another Account and the

confirmed net contributions/withdrawals (as the case may be) from the ERISA Account exceed U.S. $10 million or 10 basis points or 0.1% of the value of the ERISA Account (whichever is less), and

(2) The ERISA Account's forecasted residual cash balance when adjusted for month-end cash flows after the cross trade will be within 50 basis points or 0.5% of the cash weightings of each such other Account;

(o) Silchester will not include an ERISA Account in a cross trade during any period in which the weightings of 14 or more securities in the ERISA Account individually differ by more than 50 basis points from the weightings of the same securities in the other Accounts, and none of the circumstances under which different weightings across the funds may arise or increase will be the result of any discretionary or opportunistic actions by Silchester;

(p) The U.S. dollar amount determined for the cross trade will be prorated across all of the securities eligible for the cross trade in each of the Accounts, based on each Account's relative weighting of each security included in the cross trade, subject to the restrictions and/or exclusions set forth in the Policies and Procedures;

(q) No cross trades will be conducted between an ERISA Account and any Account in which Silchester and/or its Affiliates (together or separately) own 10% or more of the outstanding units in such Account in the aggregate; and

(r) Silchester 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 each Independent Fiduciary by electronic mail within 10 days of the publication of the notice of proposed exemption in the **Federal Register**. 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 to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 40 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.)

General Information

The attention of interested persons is directed to the following:

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

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of December, 2012.

Lyssa E. Hall,

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

[FR Doc. 2012–31166 Filed 12–27–12; 8:45 am]

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