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Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 16, 1998.

Donna R. Koehnke,

Secretary.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98-60; Exemption Application No. D-10352, et al.]

Grant of Individual Exemptions; Citizens Bank New Hampshire

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the

Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

- (a) The exemptions are administratively feasible;
- (b) They are in the interests of the plans and their participants and beneficiaries; and
- (c) They are protective of the rights of the participants and beneficiaries of the plans.

Citizens Bank New Hampshire, Located in Manchester, New Hampshire

[Prohibited Transaction Exemption 98-60; Exemption Application No. D-10352]

Section I—Exemption for In-Kind Transfers of CIF Assets

The restrictions of sections 406(a) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, effective October 11, 1996, to the past in-kind transfer of assets of employee benefit plans (the Client Plans) for which Citizens Bank New Hampshire (the Bank) serves as fiduciary, other than plans established and maintained by the Bank, that were held in a portfolio of a collective investment fund maintained by the Bank (the CIF), in exchange for shares of the Berger/BIAM International Institutional Fund (the B/B Fund), an open-end investment company registered under the Investment Company Act of 1940 (the 1940 Act),¹ the investment adviser and investment sub-adviser of which were BBOI

¹ In this regard, the Bank represents that any further in-kind transfers of CIF assets to the B/B Fund will comply with the conditions of Prohibited Transaction Exemption (PTE) 97-41 (62 FR 42830, August 8, 1997). PTE 97-41 permits the purchase by employee benefit plans (i.e. the Client Plans) of shares of one or more open-ended management investment companies (i.e. mutual funds) registered under the 1940 Act in exchange for assets of the Client Plans transferred in-kind to the mutual fund from a collective investment fund (i.e. the CIF) maintained by a bank or a plan adviser, where the bank or plan adviser is the investment adviser to the mutual fund and also a fiduciary to the Client Plans, if the conditions of the exemption are met. However, as noted further below, the Bank distributed written confirmation to the Client Plans regarding the in-kind transfer of CIF assets made to the Funds within 150 days, rather than within the 105-day period required by Section I(g) of PTE 97-41. Thus, an individual exemption to cover these specific CIF conversions is necessary to provide the appropriate retroactive relief.

Worldwide LLC (BBOI) and Bank of Ireland Asset Management Limited (BIAM), respectively, which are related to the Bank; provided the following conditions and the general conditions of Section III below are met:

(A) No sales commissions or other fees were paid by the Client Plans in connection with the purchase of B/B Fund shares through the in-kind transfer of CIF assets and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the B/B Fund;

(B) The transferred assets constituted the Client Plans' pro rata portion of all assets that were held by the CIF immediately prior to the transfer;

(C) Each Client Plan received shares of the B/B Fund which had a total net asset value that is equal to the value of the Client Plans' pro rata share of the assets of the CIF on the date of the transfer, as determined in a single valuation performed in the same manner at the close of the same business day, using an independent source in accordance with Rule 17a-7(b) issued by the Securities and Exchange Commission under the 1940 Act and the procedures established by the B/B Fund pursuant to Rule 17a-7(b) for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on the current market value of the assets of the CIF, as objectively determined by an independent principal pricing service (the Principal Pricing Service);

(D) A second fiduciary who is independent of and unrelated to the Bank (the Second Fiduciary) received advance written notice of the in-kind transfer of assets of the CIF and full written disclosure of information concerning the B/B Fund and, on the basis of such information, authorized in writing the in-kind transfer of the Client Plan's CIF assets to the B/B Fund in exchange for shares of the B/B Fund. The full written disclosure referred to in this paragraph (D) of Section I included the following information:

(1) A current prospectus for the B/B Fund;

(2) A description of the fees for investment advisory or similar services that are to be paid (directly or indirectly) by the B/B Fund to BBOI and BIAM, the fees paid to the Bank for Secondary Services, as defined in Section IV below, and all other fees to be charged to or paid by the Client Plan and the B/B Fund directly or indirectly to BBOI, BIAM, the Bank, or unrelated

third parties, including the nature and extent of any differential between the rates of the fees;

(3) The reasons for the Bank's determination that the Client Plan's investment in the B/B Fund is appropriate;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of the Client Plan may be invested in the B/B Fund and, if so, the nature of such limitations;

(E) On the basis of the information described in paragraph (D) of this Section III, the Second Fiduciary authorized in writing the investment of assets of the Client Plans in shares of the Fund and the fees received by BBOI, BIAM or the Bank in connection with their services to the B/B Fund. Such authorization by the Second Fiduciary is consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(F) The Bank sent by regular mail to the Second Fiduciary no later than 150 days² after the completion of the transfer a written confirmation that contained the following information:

(a) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a-7(b)(4);

(b) The price of each such security involved in the transaction;

(c) The identity of the pricing service consulted in determining the value of such securities;

(d) The number of CIF units held by the Client Plan immediately before the transfer, the related per-unit value, and the total dollar amount of such CIF units; and

(e) The numbers of shares in the B/B Fund that are held by the Client Plan following the transfer, the related per-share net asset value, and the total dollar amount of such shares;

(G) The Bank did not and will not receive any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with the transactions;

(H) On an ongoing basis, for the duration of a Client Plan's investment in the B/B Fund, the Bank provides the Second Fiduciary with the following information:

(1) At least annually, a copy of an updated prospectus of the B/B Fund; and

(2) Upon request, a report or statement containing a description of all fees paid to the Bank, BBOI, BIAM, and their affiliates by the B/B Fund and the Berger/BIAM International Portfolio, the master fund with respect to the B/B

Fund pursuant to a "master/feeder" structure;

(I) Neither the Bank, BBOI, BIAM nor any affiliate thereof, including any officer or director thereof, purchases shares of the B/B Fund from any of the Client Plans for its own account or sells shares of the B/B Fund to any of the Client Plans from its own account; and

(J) The requirements of Section II of this exemption are met with respect to all arrangements under which investment advisory fees are paid by Client Plans to the Bank and any other party in interest with respect to the Client Plans in connection with Client Plan assets invested in the B/B Fund.

Section II—Exemption for Receipt of Fees From Funds

The restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) through (F) of the Code, shall not apply, effective October 11, 1996, to the receipt of fees from the B/B Fund and/or the B/B Portfolio by the Bank, BBOI Worldwide LLC (BBOI) and Bank of Ireland Asset Management (U.S.) Limited (BIAM; collectively, the Advisers) for acting as the investment adviser, as well as for acting as a subadviser, custodian, subadministrator, or provider of other services which are not investment advisory services (Secondary Services), for the B/B Fund in connection with the investment in the B/B Fund by employee benefit plans (the Client Plans) for which the Bank acts as a fiduciary, provided the following conditions and the general conditions of Section III below are met:

(A) No sales commissions are paid by the Client Plans in connection with purchases or sales of shares of the B/B Fund and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the B/B Fund;

(B) The price paid or received by the Client Plans for shares in the B/B Fund is the net asset value per share, as defined in paragraph (E) of Section IV, at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time;

(C) Neither the Advisers nor the Bank nor an affiliate thereof, including any officer or director thereof, purchases from or sells to any of the Client Plans shares of the B/B Fund or the B/B Portfolio;

(D) As to each individual Plan, the combined total of all fees received by the Advisers for the provision of services to the Plan, and in connection with the provision of services to the B/

B Fund and the B/B Portfolio with respect to the Plan's investment in the B/B Fund, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act;

(E) The Advisers do not receive any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with the transactions;

(F) The Client Plans are not sponsored by the Advisers;

(G) A Second Fiduciary who is acting on behalf of each Plan and who is independent of and unrelated to the Advisers, as defined in paragraph (H) of Section IV below, receives in advance of the investment by the Plan in the B/B Fund a full and detailed written disclosure of information concerning the B/B Fund (including, but not limited to, a current prospectus for the B/B Fund in which such Plan's assets will be invested and a statement describing the fee structure and, upon request by the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, once such documents become available);

(H) On the basis of the information described in paragraph (G) of this Section II, the Second Fiduciary authorizes in writing the investment of assets of the Client Plans in shares of the Fund and the fees received by the Advisers in connection with their services to the B/B Fund. Such authorization by the Second Fiduciary will be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(I) The authorization described in paragraph (H) of this Section II is terminable at will by the Second Fiduciary of a Plan, without penalty to such Plan. Such termination will be effected within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption;

(J) Client Plans do not pay any Plan-level investment management fees, investment advisory fees, or similar fees to the Bank with respect to any of the assets of such Client Plans which are invested in shares of the B/B Fund. This condition does not preclude the payment of investment advisory fees or similar fees by the B/B Fund or the B/B Portfolio to the Advisers under the terms of an investment advisory agreement adopted in accordance with

² See Footnote 1 Above.

section 15 of the 1940 Act or other agreement between the Advisers and the B/B Fund or the B/B Portfolio;

(K) In the event of an increase in the rate of any fees paid by the B/B Fund or the B/B Portfolio to any of the Advisers regarding any investment management services, investment advisory services, or fees for other services that any of the Advisers provide to the B/B Fund or the B/B Portfolio over an existing rate for such services that had been authorized by a Second Fiduciary, in accordance with paragraph (H) of this Section II, the Second Fiduciary is provided, at least 30 days in advance of the implementation of such increase, a written notice (which may take the form of a proxy statement, letter or similar communication that is separate from the prospectus of the B/B Fund and which explains the nature and amount of the increase in fees), and approves in writing the continued holding of B/B Fund shares acquired prior to such change. Such approval may be limited solely to the investment advisory and other fees paid by the B/B Fund in relation to the fees paid by the plan and need not relate to any other aspects of such investment;

(L) With respect to the B/B Fund, the Bank will provide the Second Fiduciary of each Plan:

(a) At least annually with a copy of an updated prospectus of the B/B Fund and the B/B Portfolio; and

(b) Upon the request of such Second Fiduciary, with a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the B/B Fund and the B/B Portfolio to the Advisers;

(M) All dealings between the Client Plans and the B/B Fund are on a basis no less favorable to such Client Plans than dealings between the Funds and other shareholders holding the same class of shares as the Client Plans.

Section III—General Conditions

(A) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (B) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of

the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (B) below.

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

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

(ii) Any fiduciary of a Client Plan who has authority to acquire or dispose of shares of the B/B Fund owned by the Client Plan, or any duly authorized employee or representative of such fiduciary, and

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

(2) None of the persons described in paragraph (B)(1)(ii) and (iii) shall be authorized to examine trade secrets of the Advisers, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this exemption:

(A)(1) The term “Bank” means

Citizens Bank New Hampshire;

(2) The term “BIAM” means Bank of Ireland Asset Management;

(3) The term “BBOI” means BBOI Worldwide LLC;

(B) An “affiliate” of a person includes:

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

(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)(1) The terms “Fund” and “B/B Fund” mean the Berger/BIAM International Institutional Fund, an open-end investment company registered under the 1940 Act, one of a series of investment portfolios which are distinct investment vehicles referred to as “feeder” funds, with respect to which BBOI and BIAM may provide Secondary Services; and

(2) The terms “Portfolio” and “B/B Portfolio” mean the Berger/BIAM

International Portfolio, an open-end investment company registered under the 1940 Act, the master fund with respect to the B/B Fund pursuant to a “master/feeder” arrangement, with respect to which BBOI and BIAM serve as investment adviser and investment sub-adviser, respectively.

(E) The term “net asset value” means the amount for purposes of pricing all purchases, sales and redemptions of shares of the Berger/BIAM International Institutional Fund (the B/B Fund) calculated by dividing the total value of such Fund’s assets, determined by a method set forth in the B/B Fund’s prospectus and statement of additional information, less the liabilities chargeable to the B/B Fund, by the number of outstanding shares.

(F) The term “Principal Pricing Service” means an independent, recognized pricing service that has determined the aggregate dollar value of marketable securities involved in the transfer of CIF assets.

(G) The term “relative” means a “relative” as that term is defined in section 3(15) of the Act (or a “member of the family” as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(H) The term “Second Fiduciary” means a fiduciary of a Plan who is independent of and unrelated to the Bank, BIAM and BBOI. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank, BIAM and BBOI if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank, BIAM or BBOI;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary, is an officer, director, partner or employee of the Bank, BIAM or BBOI (or is a relative of such persons); or

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner or employee of the Bank, BIAM or BBOI (or relative of such persons) is a director of such Second Fiduciary, and if he or she abstains from participation in the choice of a Plan’s investment adviser, the approval of any such purchase or sale between a Plan and the B/B Fund, the approval of any change of fees charged to or paid by the Plan, the B/B Fund or the B/B Portfolio, and the transactions described in Sections I and

II above, then paragraph (H)(2) of this section shall not apply.

(I) The term "Secondary Service" means a service, other than investment advisory or similar service, which is provided by the Bank, BIAM or BBOI to the B/B Fund.

EFFECTIVE DATE: This exemption is effective as of October 11, 1996.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on October 6, 1998, at 63 FR 53709.

Modifications: The Department, with the consent of the applicant's representative, has made certain modifications to the conditions contained in Section I of the Notice.

First, a new condition (B) has been added to Section I of this exemption which requires that the transferred assets must have constituted the Client Plan's pro rata portion of all assets that were held by the CIF immediately prior to the transfer.

Second, a footnote has been added to the operative language in Section I to clarify that any future in-kind transfers of CIF assets to the Funds will comply with the conditions of PTE 97-41 (62 FR 42830, August 8, 1997), a class exemption granted by the Department which covers such transactions if the conditions of the exemption are met.

No other written comments, and no requests for a hearing, were received by the Department.

Accordingly, the Department has determined to grant the proposed exemption, as modified herein.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Motta of the Department, telephone (202) 219-8883 (This is not a toll-free number).

John Hancock Mutual Life Insurance Company (JHMLIC), Located in Boston, Massachusetts

[Prohibited Transaction Exemption 98-61; Application No. D-10484]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the proposed purchases and sales of Timber Assets between various Accounts that are managed by Hancock Natural Resource Group, Inc. (HNRG), John Hancock Timber Resource Corporation (JHTRC), or another Affiliate of JHMLIC.

Conditions and Definitions

This exemption is subject to the following conditions:

1. ERISA-Covered Plans may participate in the proposed transactions

only if they have total assets in excess of \$100 million.

2. At least 30 days prior to the proposed transaction, each affected Customer invested in the Accounts participating in the transaction will be provided with information regarding the Timber Assets involved and the terms of the transaction, including the purchase price and how the transaction would meet the goals and investment policies of the Customer. Notice of any change in the purchase price will be provided to the Customer at least 30 days prior to the consummation of the transaction.

3. An Independent Fiduciary will be appointed by JHMLIC or an Affiliate as follows:

(a) Where the proposed transaction involves an ERISA-Covered Plan (including a Pooled Separate Account or other Account holding "plan assets" subject to the Act)³ and a Non-ERISA Plan or other Non-ERISA Customer, an Independent Fiduciary will be appointed to represent the Account in which the ERISA-Covered Plan is invested, whether that Account is the buyer or the seller of the Timber Assets in the proposed transaction;

(b) Where the proposed transaction involves two ERISA-Covered Plans (or Pooled Separate Accounts or other Accounts holding "plan assets" subject to the Act) and the decision to liquidate the Timber Asset is the result of one or more "triggering events" described below, an Independent Fiduciary will be appointed by JHMLIC or an Affiliate to represent the purchasing plan (or Pooled Separate Account or other Account holding "plan assets")—i.e. the Buying Account. A "triggering event" will exist whenever:

(i) JHMLIC or an Affiliate receives a direction from the Customer to liquidate all of the Customer's Account or interest in an Account, and the decision to select any particular Timber Asset to be sold is outside of the control of JHMLIC and its Affiliates;

(ii) JHMLIC or an Affiliate receives a request by the Customer to liquidate a specified timber property held in the Customer's Account, and the decision to liquidate the Timber Asset is outside of the control of JHMLIC and its Affiliates; or

(iii) a liquidation of all of the assets held in the Selling Account, or a particular property held by such Account, is required under the terms of the investment contract, insurance contract or investment guidelines governing the Account, and the decision

to select any particular Timber Asset to be sold is outside of the control of JHMLIC and its Affiliates; and

(c) Where the proposed transaction involves two ERISA-Covered Plans (or Pooled Separate Accounts or other Accounts holding "plan assets" subject to the Act) and there is no "triggering event" as described above in Condition 3(b), or where a Pooled Separate Account in which a Hancock Plan participates is the Selling Account, an Independent Fiduciary will be appointed by JHMLIC or an Affiliate for each Account involved in the transaction.

4. With respect to each transaction requiring the participation of an Independent Fiduciary (as described in Condition 3 above), the purchase and sale of a Timber Asset shall not be consummated unless the Independent Fiduciary determines that the transaction, including the price to be paid or received for the property, would be in the best interest of the particular Account involved based on the investment policies and objectives of such Account.

5. Each Account which buys or sells a particular Timber Asset pays no more than or receives no less than the fair market value of the Timber Asset at the time of the transaction, as determined by a qualified independent real estate appraiser experienced with the valuation of timber properties similar to the type involved in the transaction.

6. Each purchase or sale of a Timber Asset between Accounts is a one-time cash transaction.

7. Each Account involved in the purchase or sale of a Timber Asset pays no real estate commissions or brokerage fees relating to the transaction.

8. JHMLIC or an Affiliate acts as a discretionary investment manager for the assets of the Accounts involved in each transaction, provided that this condition will not fail to have been met solely because the Customer retains the right to veto or approve the purchase or sale of Timber Assets.

9. An Account does not participate in a covered transaction if the assets of any Hancock Plan(s) in the Account exceed 20 percent of the total assets of the Account.

10. No purchase or sale transaction is designed to benefit the interests of one particular Account over another.

11. For purposes of this exemption:

(a) "Account" means a Separate Account as defined below, including a "Non-Pooled Separate Account" or a "Pooled Separate Account," as well as a limited partnership or limited liability company for which JHMLIC or an

³ See 29 CFR 2510.3-101 for the Department's definition of "plan assets" relating to plan investments.

Affiliate serves as general partner, investment manager or adviser.

(b) "Timber Asset" means a fee simple in timberland (and appurtenant rights), as well as a timber lease or timber deed, provided that, with respect to any timber lease or timber deed: (i) the underlying fee simple is owned by a person other than JHMLIC, its Affiliates, or any Account at the time of sale; and (ii) the entire deed or lease originally acquired by the Selling Account is sold to the Buying Account.

(c) "ERISA-Covered Plan" is an employee benefit plan as defined under section 3(3) of the Act;

(d) "Non-ERISA Plan" or "Non-ERISA Customer" means an entity or investor not covered by the provisions of Title I of the Act, such as a governmental plan, a university endowment fund, a charitable foundation fund or other institutional investor, whose assets are managed in an Account for which JHMLIC or an Affiliate acts as investment manager;

(e) "Affiliate" means any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with JHMLIC;

(f) "Buying Account" means the Account which seeks to purchase Timber Assets from another Account;

(g) "Selling Account" means the Account which seeks to sell Timber Assets to another Account;

(h) "Independent Fiduciary" means a person or entity with authority to both review the appropriateness of the proposed transaction for an Account, that is considered to hold "plan assets" subject to the fiduciary responsibility provisions of the Act, based on the investment policy established for that Account, and to negotiate the terms of the transaction, including the price to be paid for the Timber Asset. An individual or firm selected to serve as an Independent Fiduciary shall meet the following criteria:

(1) The individual or firm may have no current employment relationship with JHMLIC or an Affiliate, although a prior employment relationship would not disqualify the individual or firm;

(2) No individual or firm may serve as an Independent Fiduciary during any year in which gross receipts received from business with JHMLIC and its Affiliates for that year exceed five (5) percent of such individual's or firm's gross receipts from all sources for the prior year;

(3) The individual or firm must be an expert with respect to timberland valuations;

(4) The individual or firm must have the ability to access (itself or through

persons engaged by it) appropriate timberland sales comparison data and make appropriate adjustments to the subject property; and

(5) The individual or firm must not have a criminal record involving fraud, fiduciary standards, or securities laws violations;

(i) "Separate Account" means a segregated asset Account which receives premiums or contributions from customers, including employee benefit plans subject to the Act, in connection with group annuity contracts and funding agreements, with investments held in the name of JHMLIC, but where the value of the contract or agreement to the Customer (contractholder) fluctuates with the value of the investment associated with such Account;

(j) "Non-Pooled Separate Account" or "Non-Pooled Account" means a Separate Account established to back a single contract issued to one Customer, which may be an employee benefit plan subject to the Act;

(k) "Pooled Separate Account" or "Pooled Account" means a Separate Account established to back a group of substantially identical contracts issued to a number of unrelated Customers, including employee benefits plans subject to the Act; and

(l) "Customer" means a person or entity that acts as the authorized representative for the investor in an Account involved in a proposed purchase or sale of Timber Assets, that is independent of JHMLIC and its Affiliates, provided, however, that for any Hancock Plan (as defined in Paragraph 11(m) below), a "Customer" shall mean the Plan Investment Advisory Committee of JHMLIC.

(m) "Hancock Plan" means an employee benefit plan sponsored by JHMLIC or an Affiliate which invests in an Account.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 29, 1998, at 63 FR 35284.

WRITTEN COMMENTS: The applicant (i.e. JHMLIC) submitted a number of comments on the notice of proposed exemption (the Notice). These comments, and the modifications to the Notice made by the Department in response thereto, are discussed below.

First, with respect to the scope of the exemption, JHMLIC requests that the term "Account," as defined in Paragraph 10 of the Notice, be expanded to include limited liability companies (LLCs). JHMLIC represents that LLCs offer several advantages over limited partnerships, which make LLCs an

increasingly popular form of ownership of investment property. These advantages include more flexibility in the management of the business than exists with partnerships and more liquidity in the transferability of an interest in an LLC than in a limited partnership. JHMLIC states that LLCs would be subject to the same conditions and safeguards in the requested exemption as partnerships. For example, the role of the Independent Fiduciary of the LLC would be the same as its role with respect to a partnership.

Thus, JHMLIC proposes that the Department redefine the term "Account" in Paragraph 10(a) of the Notice to include both limited partnerships and LLCs, and to delete the separate definition of the term "Partnership" contained in Paragraph 10(b) of the Notice.

The Department has modified the definition of the term "Account" (see Paragraph 11(a) of this exemption) to reflect the changes requested by JHMLIC.

Second, with respect to the use of the term "timber property" in the operative language and conditions contained in the Notice, JHMLIC requests that the relief provided by the exemption cover purchases and sales of "Timber Assets" and that such term should be separately defined to include both fee simple interests in timber properties and timber-related assets, such as timber leases and timber deeds.

JHMLIC represents that timber investments often involve the acquisition and holding of property rights other than fees simple. For example, timber portfolios routinely include such valuable assets as timber leases and timber deeds. A timber lease is a contract between a landowner (the lessor) and another party (the lessee) under which the lessee is granted the right to use the land for the production of timber for a specified period of time. Timber leases typically specify how the land is to be managed and the condition in which the land must be returned to the lessor at the end of the lease. Timber lessees have significant rights, including the right to plant, grow and harvest timber. A timber deed is a contract under which the landowner grants to a third party the right to harvest existing timber. Typically, the deed holder is not required to harvest all or any portion of the timber and its right to do so will be forfeited after a specified period of time. Timber deeds do not generally involve replanting by the deed holder either for the benefit of the landowner or the deed holder.

JHMLIC states that timber leases and timber deeds may be bought and sold

independently of the underlying fee simple. For example, while an Account may not own a fee simple on a particular timber property it may have the contractual right to harvest the timber on that property. The management and valuation of timber deeds and leases are the province of the same managers and appraisers who manage and value timberland fees simple. JHMLIC represents that when an Account invests in timber leases or deeds, the fee simple interest is held by an unrelated party, not by another Account or by JHMLIC or an Affiliate. Thus, where an Account owns the underlying fee simple in a timber property, rather than a timber lease or timber deed, it retains the right to harvest the timber and does not assign that right to any other party, including another Account. In addition, JHMLIC states that if a timber deed or timber lease is owned by an Account as a Timber Asset, and that deed or lease is sold to another Account under the conditions of this exemption, the entire deed or lease originally acquired by the Selling Account will be sold to the Buying Account. This condition will prevent these timber deeds and leases from being "parcelized" between the various Accounts.

JHMLIC states further that other property rights, including mineral rights, easements and recreational leases, are rights that are appurtenant to the fee simple interest in a timber property. Such rights are bought and sold, and appraised, as part of the fee. These rights are currently contemplated by use of the term "timber property" in the Notice. JHMLIC states that it is not seeking to have the exemption cover the transfer of these rights apart from the underlying fee simple.

Thus, JHMLIC proposes to add the term "Timber Asset" to the exemption and to define such term to mean a fee simple in timberland (and appurtenant rights), as well as a timber lease or timber deed, provided that, with respect to any timber lease or timber deed: (i) the underlying fee simple is owned by a person other than JHMLIC, its Affiliates, or any Account at the time of sale; and (ii) the entire deed or lease originally acquired by the Selling Account is sold to the Buying Account.

The Department has modified the definitions contained in the exemption by adding the term "Timber Asset" to such definitions, which is included as the new Paragraph 11(b) above.

Third, with respect to the definition of the term "Customer" in Paragraph 10(l) of the Notice, JHMLIC states that plans sponsored by JHMLIC and its affiliates (i.e., Hancock Plans) also

invest in Timber Assets through Pooled Separate Accounts maintained by HNRG, JHTRC or another Affiliate of JHMLIC. Currently, the John Hancock Pension Plan has interests in three pooled accounts. These interests constitute 15.6%, 10% and 9.9%, respectively, of these Accounts.

JHMLIC states that the Notice, as drafted, would make the exemption unavailable to these Pooled Separate Accounts merely because a Hancock Plan has an interest in them. This result occurs because the term "Customer" in Paragraph 10(l) of the Notice requires that disclosures regarding a covered transaction be provided to a person that is independent of JHMLIC and its Affiliates. In this regard, JHMLIC states that it is not appropriate to deny an entire Pooled Separate Account access to the cost savings associated with the covered transactions merely because a Hancock Plan participates in the Account. JHMLIC states that the terms and conditions of the exemption, including the requirements for either a "triggering event" (as described in Condition 3(b) above) or an Independent Fiduciary to act on behalf of the Account, will address potential conflicts of interest that could be deemed to exist by virtue of the participation of the Hancock Plans as investors in such Accounts.

Thus, JHMLIC proposes to redefine the term "Customer" to permit that term to include the Plan Investment Advisory Committee of JHMLIC for purposes of interests held in an Account by a Hancock Plan. In this regard, JHMLIC represents that the interests of any Hancock Plan(s) in such Accounts will not exceed 20 percent of that Account.

As a further safeguard to avoid potential conflicts of interest in transactions between an Account in which a Hancock Plan participates and other Accounts, JHMLIC proposes that Paragraph 3(c) of the exemption require that an Independent Fiduciary be appointed to represent any Selling Account in which a Hancock Plan participates, whether or not there exists a "triggering event" for the sale of the Timber Asset by that Account.

Therefore, the Department has modified the definition of the term "Customer" (see Paragraph 11(l) above) to allow the Plan Investment Advisory Committee of JHMLIC to come within the meaning of that term for purposes of the exemption. In addition, the Department has added "Hancock Plan" as a new term which is defined in Paragraph 11(m) above. The Department has also added a new Paragraph 9 to the exemption (as discussed further below) which requires that any Hancock Plan

covered under the exemption must be an investor which has interests in an Account which, when combined with the interests of any other Hancock Plan, do not exceed 20 percent of that Account. Finally, the Department has modified the conditions relating to the appointment of an Independent Fiduciary, as stated in Paragraph 3, to require that an Independent Fiduciary represent any Selling Account in which a Hancock Plan participates regardless of whether the sale of a Timber Asset by that Account results from a "triggering event".

Fourth, with respect to the role of an Independent Fiduciary, JHMLIC represents that in Paragraph 3 of the Notice, the flush language suggests that in all cases when an Independent Fiduciary is appointed, the Independent Fiduciary will represent the interests of the ERISA-Covered Plans. JHMLIC wishes to clarify that in the case of a Pooled Separate Account the Independent Fiduciary will represent the interests of the Account, and therefore all of its participating plans—whether ERISA-Covered Plans or other types of plans. In this regard, the Department also received two comment letters from the Fire and Police Pension Association of Colorado, a client of HTRG, requesting that the role of the Independent Fiduciary for such an Account be clarified in order to refer to non-ERISA plans.

Thus, JHMLIC proposes that the phrase "* * *" to represent the interests of the ERISA-Covered Plans" be deleted from the flush language of Paragraph 3 of the exemption, noting that the remaining language, plus subparagraphs (a), (b) and (c) of Paragraph 3, would then adequately address the role of the Independent Fiduciary for all investors in an Account.

The Department has modified the language of Paragraph 3 of the exemption by making the deletion requested by JHMLIC.

Fifth, with respect to an independent appraisal of a timber property to establish its fair market value, Paragraph 5 of the Notice requires that the price used for a covered transaction be established by an "independent real estate appraiser." In this regard, JHMLIC proposes that the qualifications for the Independent Fiduciary, as stated in Paragraph 10(h) of the Notice, be modified so that the Independent Fiduciary is not required to be a qualified appraiser. JHMLIC states that while the Independent Fiduciary selected may perform appraisals in the ordinary course of its business, JHMLIC would like to have the flexibility to engage a fiduciary who is not

necessarily a qualified appraiser of timber assets. In such instances, the appraisal required by the exemption (see Paragraph 5 above) would be obtained by the Independent Fiduciary from another person who is an independent qualified appraiser.

Thus, JHMLIC proposes that modifications to the definition of the term "Independent Fiduciary" be made to recognize that although the fiduciary chosen for an Account will be an expert in timberland valuations (e.g., a forestry consultant), the person chosen may not be a qualified independent timberland appraiser.

The Department has modified the definition of "Independent Fiduciary" in the exemption in response to JHMLIC's comments. Under the new definition, the language that was contained in Paragraph 10(h)(3) and (4) of the Notice has been changed to require that an Independent Fiduciary be an expert in timberland valuations, and have the ability to access (itself or through persons engaged by it) appropriate timberland sales comparison data. In addition, the requirements relating to an Independent Fiduciary being a qualified independent real estate appraiser who is proficient in timberland appraisal work (as described in Paragraph 10(h)(3) thru (5) of the Notice) have been deleted.

In response to further discussions with and comments from JHMLIC, the Department has also modified the criteria for an individual or firm to serve as an Independent Fiduciary when that individual or firm receives a significant amount of compensation from JHMLIC and its Affiliates for business with those entities during the current calendar year. Paragraph 10(h)(2) of the Notice stated that the individual or firm must not have received more than five (5) percent of its annual gross receipts during the preceding calendar year from business with JHMLIC and its Affiliates. Under the new definition of "Independent Fiduciary" in Paragraph 11(h)(2) of this exemption, no individual or firm may serve as an Independent Fiduciary during any year in which gross receipts received from business with JHMLIC and its Affiliates for that year exceed five (5) percent of such individual's or firm's gross receipts from all sources for the prior year.

Sixth, Paragraph 8 of the Notice limits the relief that would be provided under the exemption to those Accounts over which JHMLIC or an Affiliate is a "discretionary investment manager." JHMLIC states that in a few situations involving timber assets managed through entities other than Separate Accounts, JHMLIC or an Affiliate has

discretion to perform day-to-day management of the assets held in an Account but must obtain the Customer's approval for the purchase and sale of timber assets. JHMLIC notes that if the relief requested under the exemption is limited to Accounts over which JHMLIC has discretionary management authority, it will not be clear whether the exemption would cover purchases or sales of Timber Assets held in an Account for which JHMLIC must obtain the Customer's approval for such transactions.

In response to this comment, the Department has modified Paragraph 8 of the exemption as follows:

* * * JHMLIC or an Affiliate acts as a discretionary investment manager for the assets of the Accounts involved in each transaction, *provided that this condition will not fail to have been met solely because the Customer retains the right to veto or approve the purchase or sale of Timber Assets.* [emphasis added]

No other comments, and no requests for a hearing, were received by the Department.

Accordingly, the Department has determined to grant the exemption as modified herein.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

Barclays Bank PLC (Barclays) Located in London, England

[Prohibited Transaction Exemption 98-62; Exemption Application No. D-10486]

Exemption

Section I. Covered Transactions

A. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective July 31, 1997, to any purchase or sale of a security between Barclays or any affiliate of Barclays which is a bank or a broker-dealer subject to British law (the Foreign Affiliate), and employee benefit plans (the Plans) with respect to which Barclays or the Foreign Affiliate is a party in interest, including options on securities written by the Plan, Barclays or the Foreign Affiliate, provided that the following conditions and the General Conditions of Section II, are satisfied:

(1) Barclays or the Foreign Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank.

(2) The terms of any transaction are at least as favorable to the Plan as those

which the Plan could obtain in a comparable arm's length transaction with an unrelated party.

(3) Neither Barclays, the Foreign Affiliate, nor any of their affiliates thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice [within the meaning of 29 CFR 2510.3-21(c)] with respect to those assets, and Barclays or the Foreign Affiliate is a party in interest or disqualified person with respect to the Plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, Barclays or the Foreign Affiliate shall not be deemed to be a fiduciary with respect to Plan assets solely by reason of providing securities custodial services for a Plan.

B. The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective July 31, 1997, to any extension of credit to a Plan by Barclays or the Foreign Affiliate to permit the settlement of securities transactions or in connection with the writing of options contracts or the purchase or sale of securities, provided that the following conditions and the General Conditions of Section II are satisfied:

(1) Barclays or the Foreign Affiliate is not a fiduciary with respect to the Plan assets involved in the transaction, or no interest or other consideration is received by Barclays, the Foreign Affiliate, or any of their affiliates in connection with such extension of credit.

(2) Any extension of credit would be lawful under the Securities Exchange Act of 1934 (the 1934 Act) and any rules or regulations thereunder if such Act, rules or regulations were applicable and would be lawful under applicable foreign law.

C. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective July 31, 1997, to the lending of securities that are assets of a Plan to Barclays or the Foreign Affiliate, provided that the following conditions and the General Conditions of Section II are satisfied:

(1) Neither Barclays, the Foreign Affiliate nor any of their affiliates thereof has discretionary authority or

control with respect to the investment of Plan assets involved in the transaction, or renders investment advice [within the meaning of 29 CFR 2510.3-21(c)] with respect to those assets.

(2) The Plan receives from Barclays or the Foreign Affiliate, either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means, by the close of business on the day on which the securities lent are delivered to Barclays or the Foreign Affiliate, collateral consisting of U.S. currency, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by persons other than Barclays or the Foreign Affiliate (or any of their affiliates), or any combination thereof, having, as of the close of business on the preceding business day, a market value (or, in the case of letters of credit, a stated amount) equal to not less than 100 percent of the then market value of the securities lent. (The collateral referred to in this Section I(c)(2) must be in U.S. dollars or dollar-denominated securities or United States bank letters of credit and must be held in the United States.)

(3) The loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains terms at least as favorable to the Plan as those the Plan could obtain in an arm's length transaction with an unrelated party.

(4) In return for lending securities, the Plan either (i) receives a reasonable fee which is related to the value of the borrowed securities and the duration of the loan, or (ii) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to Barclays or the Foreign Affiliate, if such fee is not greater than the Plan would pay an unrelated party in a comparable arm's length transaction with an unrelated party.

(5) The Plan receives at least the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities that the Plan would have received (net of tax withholdings)⁴ had it remained the record owner of such securities.

(6) If the market value of the collateral on the close of trading on a business day falls below 100 percent of the market value of the borrowed securities at the close of trading on that day, Barclays or the Foreign Affiliate delivers additional collateral, by the close of business on the following business day, to bring the level of the collateral back to at least 100 percent of the market value of all the borrowed securities as of such preceding day. Notwithstanding the foregoing, part of the collateral may be returned to Barclays or the Foreign Affiliate if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities.

(7) Prior to the making of any securities loan, Barclays or the Foreign Affiliate furnishes to the independent fiduciary for the Plan who is making decisions on behalf of the Plan with respect to the lending of securities: (i) the most recently available audited and unaudited statements of its financial condition; and (ii) a representation by Barclays or the Foreign Affiliate that, as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished financial statement that has not been disclosed to the Plan fiduciary.

(8) The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon Barclays or the Foreign Affiliate delivers certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Plan within (i) the customary delivery period for such securities; (ii) five business days; or (iii) the time negotiated for such delivery by the Plan and Barclays (or the Plan and the Foreign Affiliate), whichever is lesser, or, alternatively such period as permitted by Prohibited Transaction Exemption (PTE) 81-6 (43 FR 7527, January 23, 1981) as it may be amended.

(9) In the event that the loan is terminated and Barclays or the Foreign Affiliate fails to return the borrowed securities or the equivalent thereof within the time described in paragraph (8) above, then the Plan may purchase

distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that Barclays or the Foreign Affiliate will always put the Plan back in at least as good a position as it would have been in had it not lent the securities.

securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of Barclays or the Foreign Affiliate under the Loan Agreement, and any expenses associated with the sale and/or purchase. Barclays or the Foreign Affiliate shall indemnify the Plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date the loan is declared in default, together with expenses not covered by the collateral plus applicable interest at a reasonable rate. Notwithstanding the foregoing, Barclays or the Foreign Affiliate may, in the event they fail to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then-current market value of the collateral, provided that such replacement is approved by the independent plan fiduciary.

(10) The Plan maintains the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)-1. However, Barclays or the Foreign Affiliate shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the Plan fails to comply with the requirements of 29 CFR 2550.404(b)-1.

If Barclays or the Foreign Affiliate fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the Plan fiduciary which caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the failure on the part of Barclays or the Foreign Affiliate to comply with the conditions of the exemption.

Section II. General Conditions

(a) Barclays is subject to regulation by the Bank of England.

(b) The Foreign Affiliate—

(1) Is subject to regulation by the Bank of England, or

(2) Is a registered broker-dealer subject to regulation by the Securities and Futures Authority of the United Kingdom (the UK SFA) and is in compliance with all applicable rules and regulations thereof.

(c) Barclays and the Foreign Affiliate are in compliance with all requirements of Rule 15a-6 (17 CFR 240.15a-6), which provides foreign broker-dealers a

⁴ The Department notes the applicant's representation that dividends and other

limited exemption from U.S. broker-dealer registration requirements, and Securities and Exchange Commission (the SEC) interpretations and amendments thereof to Rule 15a-6 under the 1934 Act, to the extent applicable.

(d) Prior to the transaction, Barclays or the Foreign Affiliate enters into a written agreement with the Plan in which Barclays or the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions.

(e) Barclays or the Foreign Affiliate maintains, or causes to be maintained, within the United States for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (f) of this Section II to determine whether the conditions of this exemption have been met except that—

(1) A party in interest with respect to a Plan, other than Barclays or the Foreign Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) or (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph (e) of this Section II; and

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of Barclays or the Foreign Affiliate, such records are lost or destroyed prior to the end of such six year period.

(f) Notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, Barclays or the Foreign Affiliate makes the records referred to above in paragraph (e) of this Section II, unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(1) The Department, the Internal Revenue Service or the SEC;

(2) Any fiduciary of a participating Plan;

(3) Any contributing employer to a Plan;

(4) Any employee organization any of whose members are covered by a Plan; and

(5) Any participant or beneficiary of a Plan.

However, none of the persons described above in paragraphs (f)(2)–(f)(5) of this Section II shall be authorized to examine trade secrets of Barclays or the Foreign Affiliate, or any commercial or financial information which is privileged or confidential.

(g) Upon request, notice of the proposed exemption and the final exemption, when available, is provided to any Plan which proposes to engage in transactions to which the exemptive relief described herein would apply.

Section III. Definitions

For purposes of this exemption,

(a) The term “Barclays,” means “Barclays Bank PLC” which is subject to regulation by the Bank of England.

(b) The term “Foreign Affiliate” means any affiliate of Barclays which is subject to regulation by the Bank of England or the UK SFA.

(c) The term “affiliate” of another person shall include:

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

(2) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner. (For purposes of this definition, 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 “security” includes equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term “security” does not include swap agreements or other notional principal contracts.

EFFECTIVE DATE: This exemption is effective as of July 31, 1997.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption (the Notice) published on October 6, 1998 at 63 FR 53714.

Written Comments

The Department received one written comment with respect to the Notice. The comment, which was submitted by Barclays suggested modifications to the conditional language of the Notice as well as to the Summary of Facts and Representations (the Summary). These changes are discussed below.

Consistency With Recent Securities Lending Exemptions

1. *Section I.C., Condition (9).* In Section I.C. of the Notice, Condition (9) (at 53716) provides that if a securities loan is terminated and Barclays or the

Foreign Affiliate fails to return such securities or the equivalent thereof, then the Plan may purchase securities that are identical to the borrowed securities. In addition, Barclays or the Foreign Affiliate is required to indemnify the Plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date the loan is declared in default, together with expenses not covered by the collateral plus applicable interest at a reasonable rate.

To make the provisions of Condition (9) consistent with the securities lending exemptions granted to Morgan Stanley & Co., (PTE 97–08, 62 FR 4811, January 31, 1997) and to NatWest Securities Corporation (PTE 97–57, 62 FR 56203, October 29, 1997), Barclays suggests that the following sentence be inserted at the end of Condition (9) of Section I.C.:

Notwithstanding the foregoing, Barclays or the Foreign Affiliate may, in the event they fail to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then-current market value of the collateral, provided that such replacement is approved by the independent plan fiduciary.

Barclays notes that the foregoing provision appears in PTE 97–08 at 4812 and in PTE 97–57 at 56204.

2. *Representation 10.* The third sentence in Representation 10 of the Summary (at 53718) states that Barclays or the Foreign Affiliate will be a party in interest with respect to a Plan involved in a principal transaction by reason of providing services to the Plan or by reason of a relationship to such service provider. To make this sentence consistent with PTE 97–8 (at 4811) and PTE 97–57 (at 56204) Barclays requests that the Department delete this sentence and replace it with the following:

Further, Barclays represents that it or the Foreign Affiliate will be a party in interest or disqualified person with respect to the plan involved in the principal transaction solely by reason of section (3)(14)(B) of the Act or section 4975(e)(2)(B) of the Code (i.e., a service provider to the Plan) or by reason of a relationship to a person described in such sections.

Barclays notes that this change is consistent with PTEs 97–08 (at 4811) and PTE 97–57 (at 56204) and Section I.A., Condition (3) of the Notice (at 53715).

3. *Section II(g).* Section II(g) of the Notice (at 53716) requires that prior to any Plan's approval of any transaction, the Plan will be provided with copies of the Notice as proposed and as adopted in final form. However, Barclays states that neither PTE 97–08 nor PTE 97–57

contain a similar provision. Therefore, Barclays represents that it wishes to provide such communications upon request. Accordingly, Barclays proposes that Section II(g) be deleted and replaced with the following language:

Upon request, notice of the proposed exemption and the final exemption, when available, is provided to any Plan which proposes to engage in transactions to which the exemptive relief described herein would apply.

Other Clarifications

In addition to the foregoing changes, Barclays requests the following clarifications to the Notice and the Summary:

1. *Section I.A., Condition (1).* In Section I.A. of the Notice, Condition (1) (at 53715) states that Barclays or the Foreign Affiliate customarily purchases or sells securities in the ordinary course of its business as a "broker-dealer." Because it is a "bank," Barclays has requested that the phrase "or bank" be inserted at the end of Condition (1). In addition, Barclays notes that this change is consistent with Representation 8 of the Summary (at 53718).

2. *Section I.B., Condition (1).* In Section I.B. of the Notice, Condition (1) (at 53715) requires that Barclays or the Foreign Affiliate not be a fiduciary with respect to any Plan assets, unless no interest or other consideration is received by Barclays, the Foreign Affiliate, or any of their affiliates in connection with such extension of credit.

Barclays requests that this condition be replaced with the following language which will make it consistent with Representation 12 of the Summary (at 53718):

Barclays or the Foreign Affiliate is not a fiduciary with respect to the Plan assets involved in the transaction, or no interest or other consideration is received by Barclays, the Foreign Affiliate or any of their affiliates in connection with such extension of credit.

3. *Section I.C., Condition (2).* In Section I.C. of the Notice Condition (2) (at 53715) describes the collateralization requirements with respect to securities loans that are made by a Plan to Barclays or the Foreign Affiliate. In pertinent part, the condition states that the Plan may receive securities loan collateral from Barclays or the Foreign Affiliate, either by physical delivery or by book entry in a securities depository located in the United States. To make this language consistent with Representation 17 of the Summary (at 53719), Barclays requests that the Department revise the language at the beginning of Condition (2) to read as follows:

The Plan receives from Barclays or the Foreign Affiliate, either by physical delivery, book entry in a securities depository located in the United States, wire transfer or similar means * * *.

4. *Representation 3.* The second sentence of representation 3 of the Summary (at 53717) discusses principal and extension of credit transactions engaged in by Barclays and the Foreign Affiliate. It states that "such transactions are currently being executed between a Plan and Barclays or a Plan and a Foreign Affiliate in transactions which generally meet the applicable requirements of PTE 75-1, Part II (Involving Principal Transactions) and Part V (involving Extensions of Credit (40 FR 50845, October 31, 1975))."

To avoid ambiguity, Barclays proposes that this sentence be deleted and replaced with the following language:

Barclays and the Foreign Affiliate currently engage in the purchase or sale of securities and extensions of credit in connection with such purchases and sales of securities in the normal course of their business as broker-dealers or banks.

5. *Representation 6.* Representation 6 of the Summary (at 53717-18) describes Rule 15a-6 of the 1934 Act and its applicability to and compliance by Barclays and the Foreign Affiliate with the Rule's requirements. Barclays requests that references to the term "U.S. major institutional investor" and references to the term "major institutional investor" be changed to "major U.S. institutional investor" in order to be consistent with Rule 15a-6.

In addition, for purposes of clarification, Barclays requests that the following sentence be inserted at the beginning of Footnote 15 of the Summary (at 53717):

Note that the categories of entities that qualify as "major U.S. institutional investors" has been expanded by a Securities and Exchange Commission No-Action letter.

Further, to avoid ambiguity, Barclays proposes that the reference to "paragraphs (a) and (b)" above referred to in Footnote 16 of the Summary (at 53718) be changed to read "subparagraphs (a) and (b) of Representation 6."

The Department concurs with the modifications and clarifications to the Notice that have been suggested by Barclays and has, therefore, made all of the requested changes. For further information regarding Barclays's comment or other matters discussed herein, interested persons are encouraged to obtain copies of the

exemption application file (Exemption Application No. D-10486) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N-5638, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the written comment provided by the Barclays, the Department has made the aforementioned changes to the Notice and has decided to grant the exemption subject to the modifications or clarifications described above.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (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 to which the exemptions 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 21st day of December, 1998.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.*

[FR Doc. 98-34109 Filed 12-23-98; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98-169)]

NASA Advisory Council (NAC), Aeronautics and Space Transportation Technology Advisory Committee (ASTTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee.

DATES: Thursday, January 21, 1999, 9:00 a.m. to 5:00 p.m.; and Friday, January 22, 1999, 8:00 a.m. to 12:00 noon.

ADDRESSES: National Aeronautics and Space Administration, Room 7H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aeronautics and Space Transportation Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/358-4729).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Aeronautics and Space Transportation Technology Overview
- NASA's Aviation Environmental Compatibility Research
- University Strategy Recommendations
- Subcommittee Reports
- FAA/NASA Partnership Agreement
- FAA/NASA Executive Committee Activities

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: December 18, 1998.

Matthew M. Crouch,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 98-34069 Filed 12-23-98; 8:45 am]

BILLING CODE 7510-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98-168]

NASA Advisory Council (NAC), Aeronautics and Space Transportation Technology Advisory Committee (ASTTAC); Information Technology Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Information Technology Subcommittee.

DATES: Wednesday, January 27, 1999, 8:30 a.m. to 5:00 p.m. and Thursday, January 28, 1999, 8:30 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 258, Room 221, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene L. Tu, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604-4486.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Information Technology Overview
- Analysis Tools and Environments for Design
- Numerical Propulsion System Simulator
- Surface Measurements, Aeroacoustics, and Flow Quality
- Discussions

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: December 18, 1998.

Matthew M. Crouch,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 98-34143 Filed 12-23-98; 8:45 am]

BILLING CODE 7516-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE (98-170)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Associated Technical Management Corporation of Texarkana, Arkansas, has applied for an exclusive license to practice the invention described and claimed in a pending U.S. patent application entitled "Multi Spectral Imaging System," NASA Case No. SSC-00048 which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Kennedy Space Center.

DATE: Responses to this Notice must be received February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Beth A. Vrioni, Patent Counsel, John F. Kennedy Space Center, Mail Code MM-E, Kennedy Space Center, FL 32899, telephone (407) 867-6225.

Dated: December 18, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98-34154 Filed 12-23-98; 8:45 am]

BILLING CODE 7510-01-U

NATIONAL BIPARTISAN COMMISSION ON THE FUTURE OF MEDICARE

Public Meeting

Establishment of the Medicare Commission included in Chapter 3, Section 4021 of the Balanced Budget Act of 1997 Conference Report. The Medicare Commission is charged with holding public meetings and publicizing the date, time and location in the **Federal Register**.

The National Bipartisan Commission on the Future of Medicare will hold a public meeting on Tuesday, January 6, 1999 at the Dirksen Senate Office Building, Room 106, Washington, DC. Please check the Commission's web site for additional information: <http://Medicare.Commission.Gov>

Tuesday, January 5, 1999: 1:30 p.m.-5 p.m.

Tentative Agenda: Members of the Commission to discuss pending issues.

The Medicare Commission will continue its meeting on January 6th, convening at 9 a.m. in the Dirksen Senate Office Building, Room 106.

If you have any questions, please contact the Bipartisan Commission, ph: 202-252-3380.