response varies widely depending on the degree of automation attained by individual grantees. Grantees also vary according to the numbers of individuals served in each program year. If the grantee has a fully-developed and automated MIS, the response time is limited to one-time programming plus processing time for each response. It is the Department's desire to see as many WIA section 166 grantees as possible become computerized, so that response time for reporting will eventually sift down to an irreducible minimum with an absolute minimum of human intervention.

Estimated Total Burden Hours: 13,340 (minimum)—1,590 total responses. (FSR: 1,060 responses times 7.75 hours = 8,215 burden hours). (PCR: 530 responses times 9.67 hours = 5,125 burden hours). The total of these two estimates yields a total estimate of at least 13,340 total burden hours per response cycle (one program year). The use of the term ''minimum'' refers to the fact that an individual grantee must continue to report on expenditures by year of appropriation until those funds are completely expended, or ''zeroed out''. Thus, if more that one year's appropriation is expended in a given quarter, two (or more) FSRs must be submitted for that period, corresponding to the fund source(s) utilized.

Total Burden Cost (capital/startup): $-0-.

Total Burden Cost (operating/maintaining): $200,100 (13,340 total hours per response cycle times an estimated average wage of $15.00 per grantee staff hour). As noted, these costs will vary widely among grantees, from nearly no additional cost to some higher figure, depending on the state of automation attained by each grantee and the wages paid to the staff actually completing the various forms. All costs associated with the submission of these forms are allowable grant expenses.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 17th day of May, 2000.

Thomas M. Dowd,

Acting Director, Office of National Programs.

[FR Doc. 00–12936 Filed 5–22–00; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10624, et al.]

Proposed Exemptions; The Banc Funds Company, LLC (TBFC)

AGENCY: Pension and Welfare Benefits 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 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Banc Funds Company, LLC (TBFC), Located in Chicago, IL

[Application No. D–10624]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act 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.)[1]

Section I. Covered Transactions

If the exemption is granted, the restrictions of sections 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)(A) through (D) of the Code, shall not apply to (1) the purchase or redemption of interests in the Banc Fund V, L.P. (the Partnership) by employee benefit plans (the Plans) investing in the Banc Fund V Group Trust (the BF V Group Trust), where TBFC, a party in interest with respect to the Plans, is the general partner of MidBanc V, L.P. (MidBanc V), which is, in turn, the general partner (the General Partner) of the Partnership; (2) the sale,

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

for cash or other consideration, by the Partnership of certain securities that are held as Partnership assets to a party in interest with respect to a Plan participating in the Partnership through the BF V Group Trust, where the party in interest proposes to acquire or merge with the portfolio company (the Portfolio Company) that issued such securities; and (3) the payment to the General Partner, by Plans participating in the Partnership through the BF V Group Trust, of an incentive fee (the Performance Fee) which is intended to reward the General Partner for the superior performance of investments in the Partnership.

This proposed exemption is subject to the following conditions as set forth below in Section II.

Section II. General Conditions

(a) Prior to a Plan's investment in the BF V Group Trust and the Partnership, a Plan fiduciary which is independent of TBFC and its affiliates (the Independent Fiduciary) approves such investments on behalf of the Plan.

(b) Each Plan investing in the BF V Group Trust and the Partnership has total assets that are in excess of $50 million.

(c) No Plan may invest more than 10 percent of its assets in the BF V Group Trust, and the interests held by the Plan may not exceed 25 percent of the assets of the BF V Group Trust.

(d) No Plan may invest more than 25 percent of its assets in investment vehicles (*i.e.,* collective investment funds or separate accounts) managed or sponsored by TBFC and/or its affiliates.

(e) Prior to investing in the BF V Group Trust and the Partnership, each Independent Fiduciary contemplating investing therein receives a Private Placement Memorandum and its supplement containing descriptions of all material facts concerning the purpose, structure and the operation of the BF V Group Trust and the Partnership.

(f) An Independent Fiduciary which expresses further interest in the BF V Group Trust and Partnership receives —

(1) A copy of the BF V Group Trust Agreement outlining the organizational principles, investment objectives and administration of the BF V Group Trust, the manner in which shares in the Group Trust may be redeemed, the duties of the parties retained to administer the BF V Group Trust and the manner in which BF V Group Trust shares are to be valued; and

(2) A copy of the Partnership Agreement describing the organizational principles, investment objective and administration of the Partnership, the manner in which the Partnership interests may be redeemed, the manner in which Partnership assets are to be valued, the duties and responsibilities of the General Partner, the rate of remuneration of the General Partner, and the conditions under which the General Partner may be removed.

(g) If accepted as an investor in the BF V Group Trust and the Partnership, the Independent Fiduciary is—

(1) Furnished with the names and addresses of all other participating Plan and non-Plan investors in the Partnership;

(2) Required to acknowledge, in writing, prior to purchasing a beneficial interest in the BF V Group Trust (and a corresponding limited partnership interest in the Partnership) that such Independent Fiduciary has received copies of such documents; and

(3) Required to acknowledge, in writing, to the General Partner that such fiduciary is independent of TBFC and its affiliates, capable of making an independent decision regarding the investment of Plan assets, knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the BF V Group Trust and the Partnership.

(h) Each Plan, including the trustee (the Trustee) of the BF V Group Trust, receives the following written disclosures from the General Partner with respect to its ongoing participation in the BF V Group Trust and the Partnership:

(1) Within 90 days after the end of each fiscal year of the BF V Group Trust as well as at the time of termination, an annual financial report containing a balance sheet for the BF V Group Trust and the Partnership as of the end of such fiscal year and a statement of changes in the financial position for the fiscal year, as audited and reported upon by independent, certified public accountants. The annual reports will also disclose the remuneration that has accrued or is paid to the General Partner.

(2) Within 60 days after the end of each quarter (except in the last quarter) of each fiscal year of the Partnership and the BF V Group Trust, an unaudited quarterly financial report consisting of at least a balance sheet for the Partnership and the BF V Group Trust as of the end of such quarter and a profit and loss statement for such quarter. The quarterly report will also specify the remuneration that is actually paid or accrued to the General Partner.

(3) Such other written information as may be needed by the Plans (including copies of the proposed exemption and grant notice describing the exemptive relief provided herein).

(i) At least annually, the General Partner will hold a meeting of the Partnership, at which time, the Independent Fiduciaries of the participating Plans will have the opportunity to decide on whether the Partnership, the BF V Group Trust, the Trustee or the General Partner should be terminated as well discuss any aspect of the Partnership, the BF V Group Trust and the agreements promulgated thereunder with the General Partner.

(j) During each year of the BF V Group Trust and the Partnership, representatives of the General Partner will be available to confer by telephone or in person with independent Plan fiduciaries to discuss matters concerning the BF V Group Trust or the Partnership.

(k) The terms of all transactions that are entered into on behalf of the Partnership remain at least as favorable to a Plan investing in the BF V Group Trust as those obtainable in arm's length transactions with unrelated parties. In this regard, the valuation of assets in the Partnership that is done in connection with the distribution of any part of the General Partner's Performance Fee will be based upon independent market quotations or (where the same are unavailable) determinations made by an independent appraiser (the Independent Appraiser).

(l) In the case of the sale by the Partnership of Portfolio Company securities to a party in interest with respect to a participating Plan that occurs in connection with the acquisition of a Portfolio Company represented in the Partnership's portfolio (the Portfolio), the party in interest may not be the General Partner, TBFC, any employer of a participating Plan, or any affiliated thereof, and the Partnership receives the same terms as is offered to other shareholders of a Portfolio Company.

(m) As to each Plan, the total fees paid to the General Partner and its affiliates constitute no more than ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(n) Any increase in the General Partner's Performance Fee is based upon a predetermined percentage of net realized gains minus net unrealized losses determined annually between the date the first contribution is made to the Partnership until the time the Partnership disposes of its last investment. In this regard—

(1) Except as provided below in Section II(o), no part of the General Partner's Performance Fee may be

withdrawn before December 31, 2006, which represents the end of the Acquisition Phase (the Acquisition Phase) for the Partnership, and not until the BF V Group Trust has received distributions equal to 100 percent of its capital contributions made to the Partnership.

(2) Prior to the termination of the Partnership, no more than 75 percent of the Performance Fee credited to the General Partner may be withdrawn by the Partnership.

(3) The debit account established for the General Partner to calculate the Performance Fee (the Performance Fee Account) is credited annually with a predetermined percentage of net realized gains minus net unrealized losses, minus Performance Fee distributions.

(4) No portion of the Performance Fee may be withdrawn if the Performance Fee Account is in a deficit position.

(5) The General Partner repays all deficits in its Performance Fee Account and it maintains a 25 percent cushion in such account prior to receiving any further distribution.

(o) During the Acquisition Phase of the Partnership only,

(1) The General Partner is entitled to take distributions with respect to the Performance Fee in the amount of any income tax liability it or its affiliates become subject to with respect to net capital gains of the Partnership, provided such gains are based upon the sale of Portfolio Company securities that is initiated by a third party in connection with a merger, tender offer or acquisition, and does not involve the exercise of discretion by the General Partner.

(2) The tax distributions are deducted from the Performance Fee.

(3) The General Partner repays to the Partnership any tax refund received to the extent a distribution has been made to such General Partner.

(4) The General Partner provides the Trustee and the Plans with an annual report and accounting of all distributions and repayments attributable to income taxation of the General Partner and its affiliates, including written evidence that the distributions have been utilized exclusively to pay the income tax liability.

(p) The General Partner maintains, for a period of six years, the records necessary to enable the persons described in paragraph (q) of this Section II 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 General Partner, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the General Partner 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 (q) below.

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

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

(B) Any Independent Fiduciary of a participating Plan or any duly authorized representative of such Independent Fiduciary;

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

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

(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph shall be authorized to examine the trade secrets of the General Partner or TBFC or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption,

(a) The term ''TBFC'' means The Banc Funds Company and any affiliate of TBFC as defined in paragraph (b) of Section III.

(b) An ''affiliate'' of TBFC includes—

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

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

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(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) An ''Independent Fiduciary'' is a Plan fiduciary which is independent of TBFC and its affiliates and is either a Plan administrator, trustee, named fiduciary, as the recordholder of beneficial Interests in the BF V Group Trust or an investment manager.

(e) The term ''Portfolio Companies'' include commercial banks and other depository institutions such as savings banks, savings and loan associations, holding companies controlling those entities (together, the Bank Companies), and companies providing financial services in the United States, which include, but are not limited to, consumer finance companies and demutualizing life insurance companies (together, the Financial Services Companies).

(f) The term ''net realized gains'' refers to the excess of realized gains over realized losses.

(g) The term ''net realized losses'' refers to the excess of realized losses over realized gains.

(h) The term ''net unrealized losses'' refer to the excess of unrealized losses over unrealized gains.

(i) The term ''net unrealized gains'' refers to the excess of unrealized gains over unrealized losses. For a gain or loss to be ''realized,'' an asset of the Partnership must be sold for more than or less than its acquisition price. For a gain or loss to be ''unrealized,'' the Partnership asset must increase or decrease in value but not be sold.

Preamble

On September 22, 1993, the Department granted PTE 93–63 (58 FR 49322), a temporary exemption which is effective for a period of eight years from the date of the grant. PTE 93–63 permits a series of transactions relating to the (a) sale by the Bank Fund III Group Trust (the BF III Group Trust) in which Plans invest, of certain securities which have been issued by Bank Companies and are held in the BF III Group Trust's portfolio, to a party in interest with respect to a Plan, where the party in interest proposes to acquire or merge with the Bank Company that issued such securities. In addition, PTE 93–63 permits the BF III Group Trust to purchase Bank Company securities from the Midwest Bank Fund I Limited Partnership (MBF I LP) and the Midwest Bank Fund II, Limited Partnership (MBF II LP), two entities organized by The Chicago Corporation (TCC), the company from which TBFC was spun off. Further, PTE 93–63, allows Plans investing in the BF III Group Trust to pay a performance fee to TCC.

On March 5, 1997, the Department granted PTE 97–15 at 62 FR 10078. PTE 97–15 permits Midwest Banc Fund IV Group Trust (the BF IV Group Trust) in which Plans invest, to sell certain securities that are held in the BF IV Group Trust Portfolio to a party in interest with respect to a participating Plan, where the party in interest proposes to acquire or merge with a bank company or a financial services company. In addition, PTE 97–15 permits TCC to receive a Performance Fee from Plans investing in the BF IV Group Trust.[2]

The pooled investment vehicle that is described herein is similar to four investment funds that were organized by TCC in 1986, 1989, 1993 and 1996 and described in PTEs 93–63 and 97–17. These four vehicles have been operated by TCC, and since April 30, 1997, the date TBFC was spun-off from TCC, by TBFC.

Summary of Facts and Representations

1. TBFC is a Chicago, Illinois-based investment advisory firm founded in 1997 as a spin-off from, and by the individuals who managed the financial services company advisory division of TCC.[3] TBFC is a registered investment adviser under the Investment Advisers Act of 1940, as amended, and it has a single line of business. TBFC currently provides institutional investors with investment management services through BF III and BF IV and it acts as a fiduciary with respect to these clients. TBFC currently manages $81 million in assets of plans that are covered under the Act, $129 million in the assets of governmental plans and $65 million in non-Plan assets.

TBFC's relevant specialty is its expertise in the banking industry. In this regard, TBFC employees provide management, investment and capital formation services to collective investment vehicles which invest in commercial banks and other financial institutions and expend significant resources to research specific financial institutions.

As described below, TBFC requests an administrative exemption from the Department with respect to the purchase or redemption of interests in the Partnership by Plans investing in the BF V Group Trust, where TBFC, a party in interest with respect to such Plans, is the general partner of MidBanc V, which is, in turn, the General Partner of the Partnership. In addition, TBFC requests exemptive relief to permit the sale, for cash or other consideration, by the Partnership of certain securities that are held as Partnership assets to a party in interest with respect to a Plan participating in the Partnership through the BF V Group Trust, where the party in interest proposes to acquire or merge with the Portfolio Company that issued such securities. Further, TBFC requests that the exemption apply to the General Partner's receipt of a Performance Fee from the Partnership that is based upon a debit account structure (*i.e.,* the Performance Fee Account) which will keep track of the General Partner's compensation for managing the Partnership but will not represent actual dollars that are reserved or set aside for the General Partner.

The BF V Group Trust is intended to be a ''pooled fund'' as that term is defined in 29 CFR 2570.31(g) and a ''group trust'' as that term is defined in Rev. Rul. 81–100, 1981–1 C.B. 326. All investors that are beneficiaries of the BF V Group Trust must evidence the following characteristics in order to acquire beneficial interests: (a) Each investor must commit to making at least $1 million in initial capital contributions; (b) each investor must be a Plan; (c) each Plan must have at least $50 million in assets; (d) each Plan must agree to incorporate the terms of the Group Trust Agreement into its own trust agreement; (e) no Plan may invest more than 10 percent of its assets in interests in the BF V Group Trust and such interests held by a Plan may not exceed 25 percent of the BF V Group Trust; and (f) no Plan may subscribe for beneficial interests which, when aggregated with all other Plan assets that are subject to investment funds or separate accounts managed by TBFC and/or its affiliates, is valued in excess of 25 percent of such Plan's net assets. The BF V Group Trust will not be organized unless $25 million in capital contribution commitments are subscribed for by investors in such Group Trust and the Partnership described below.

3. The trustee (the Trustee) of the BF V Group Trust will be Citibank, F.S.B. Although TBFC may have and may have had business relationships with the Trustee, there will be no control relationship or ownership affiliation between TBFC and the Trustee. The Trustee will be responsible for monitoring the Trust's investment in the Partnership and for policing TBFC's adherence to the provisions of the Partnership Agreement. In addition, the Trustee will serve as custodian for the Partnership.

For services rendered, the Partnership will pay the Trustee (a) an annual base fee of $1,500; (b) a custodial fee based upon the market value of the Partnership at the beginning of each quarter (*e.g.,* 0.02 percent annually of the first $100 million, 0.01 percent annually of any amount over $100 million, and 0.005 percent annually of any amount over $200 million); (c) a transaction fee of $12 per purchase or sale and (d) a disbursement fee of $8 per payment of funds. No charges will be levied for income collection, item storage, statement preparation or other transactions.

In accordance with the provisions of the Trust Agreement, the Trustee may be removed by a vote of Plans holding a majority of beneficial interests in the BF V Group Trust, provided such Plans give the Trustee 30 days' advance written notice of their intent to terminate the Trustee. The Trustee may resign at any time by giving 30 days prior written notice to TBFC for transmittal to the Plans.

4. Approximately 5–10 Plans may invest in the BF V Group Trust. However, no Plan may invest more than 25 percent of its assets in the BF V Group Trust and every other pooled investment vehicle sponsored by TBFC, as measured on the date of such investment.[4] Each Participating Plan must invest a minimum of $1 million in the BF V Group Trust. Further, no Plan benefitting employees of TBFC or the Trustee will be permitted to invest in the BF V Group Trust.[5]

[2] In 1986, TCC organized the MBF I LP. The general partners of MBF I LP were two partnerships (MidBanc I and MidBanc II), whose general partners were corporate affiliates of TCC and whose limited partners were members of TCC's staff. Less than 25 percent of the assets of MBF I LP were provided by Plans. On December 31, 1994, MBF I LP was liquidated.

In 1989, TCC organized the MBF II LP. This partnership had the same general partners as MBF I LP. Also, less than 25 percent of the assets of MBF II LP were provided by Plans. On December 31, 1997, MBF II LP was liquidated.

Finally, in 1993, TCC completed the organization of BF III which was structured as both a limited partnership (the BF III Partnership) and a group trust (the BF III Group Trust).

In 1996, TCC organized BF IV as a limited partnership (the BF IV Limited Partnership) and as a group trust (the BF IV Group Trust). Each entity has or had investment policies and strategies similar to the proposed investment vehicle (*i.e.,* the Partnership).

[3] During 1997, TCC's parent was acquired by ABN AMRO North America, Inc., a subsidiary of ABN AMRO Bank N.V., a global bank headquartered in the Netherlands. The acquisition did not involve the purchase of the assets of TCC's parent and TCC retains its separate corporate identity.

[4] The Department is not proposing, nor is TBFC requesting, exemptive relief for the purchase and sale of beneficial interests in the BF V Group Trust between the investing Plans and the Trustee beyond that provided under section 408(b)(8) of the Act.

[5] Although TBFC and the Trustee will not be affiliated with, or under the control of, or controlling, any participating Plan, it is likely that certain Plans will have a preexisting relationship with TBFC in the form of an investment in MBF I, MBF II, BF III or BF IV, investment vehicles managed by TBFC, and it is possible that a participating Plan may utilize the services of the

Continued

5. Pooled investments for Plans investing in the BF V Group Trust will be made through the Partnership. The maximum capital contribution commitment of the Partnership will be $300 million. The primary purpose of the Partnership is to engage in the business of providing capital to, acquiring equity and debt interests in, and making available consultative services to Portfolio Companies such as Bank Companies and Financial Services Companies having assets under $7 billion. The Partnership may also invest in insurance contracts, short term investments, derivatives (for hedging purposes only) and covered put and call options. Further, the Partnership may make loans of securities. In short, it is anticipated that the Partnership will share the same basic investment strategy as was held by MBF I, MBF II, BF III and BF IV, and in many ways, the operations and fee structures of these entities.[6]

6. The General Partner of the Partnership will be MidBank V, LP. The general partner of MidBank V, LP will be TBFC and individuals employed by TBFC. The General Partner will acquire a one percent interest in the Partnership, for cash. The General Partner will also serve as the Administrator of the BF V Group Trust but it will not receive any fees from such entity. As described later in this proposed exemption, all fees that are paid to the General Partner and/or its affiliates will be paid by the Partnership and not by the BF V Group Trust.

The principal place of business of the Partnership will be 208 LaSalle Street, Chicago, Illinois or at such other location as the General Partner may select. The Partnership is expected to terminate on December 31, 2007, unless terminated sooner.

7. The Limited Partners of the Partnership will generally consist of non-Plan investors, which will acquire, by making capital contributions in cash directly to the Partnership, a Limited Partner's interest in such Partnership. However, as noted above, another Limited Partner in the Partnership will be the BF V Group Trust, the beneficiaries of which will be Plans covered under the provisions of the Act, and governmental plans. These Plans will acquire, for cash, both a beneficial interest in the BF V Group Trust and a Limited Partner's interest in the Partnership. It is expected that upon the creation of this structure, the BF V Group Trust will own 65.6 percent of the equity interests in the Partnership. Because none of the exceptions to the plan asset regulations will apply, the assets of the BF V Group Trust as well as the assets of the Partnership will constitute plan assets.[7]

Neither the General Partner nor the Trustee will have any control over the decision to cause any Plan to invest in the Partnership through the Group Trust. Under these circumstances, the decision to participate in the BF V Group Trust or the Partnership will be made by a Plan fiduciary which is independent of the Trustee and the General Partner. In each instance, even though the Trustee or the General Partner may present a Plan fiduciary with information concerning investment in the Group Trust and in the Partnership, the Plan fiduciary who makes the investment decision will agree not to rely on either the advice of the Trustee or the General Partner as the primary basis for a Plan's investment and the Independent Fiduciary will be specifically required to do so in every instance.[8] The General Partner assumes that a Plan will invest in the BF V Group Trust only if the fiduciaries of the Plan determine that investment performance is anticipated to be superior.[9]

8. The contribution provisions for the BF V Group Trust and the Partnership will be identical. For example, capital calls for Plans participating in the BF V Group Trust will be concurrent and in the same proportional amount as are capital calls by the Partnership from Limited Partners that are not Plans.[10] In pertinent part, the BF V Group Trust Agreement provides that each Plan's commitment to contribute will be divided into 20 equal segments. The General Partner, in its capacity as Administrator of the BF V Group Trust, may call any amount of these installments, upon 10 days' advance written notice, when cash is needed to fund the acquisition of Portfolio Company securities by the Partnership. However, there are two limitations upon the General Partner's power to call contributions. First, no more than 50 percent of the contribution commitment may be called in any twelve month period. Second, the General Partner cannot call any contributions after the sixth anniversary date of the inception of the BF V Group Trust (the period running from the date on which initial capital contributions are made to such sixth anniversary date being referred to as ''the Acquisition Phase'').

If an investing Plan cannot or does not meet a capital call, the Partnership Agreement and the BF V Group Trust Agreement provide that ten days after the investor receives notice of default on a capital call, the General Partner/

Trustee with respect to plan assets other than those invested through the Trust. In this regard, TBFC is not requesting, nor is the Department providing, exemptive relief with respect therefor.

[6] According to TBFC, there are circumstances militating against investments by the Partnership in either BF III or BF IV. First, the Partnership will be structured as a separate investment entity apart from BF III and BF IV. BF III, BF IV and BF V (collectively, the Funds) will all have somewhat different charters with respect to what investments each can make. Second, many companies in which BF III, BF IV and BF V invest are (or will be acquired) by larger banks within three years of the particular Fund making an investment. Therefore, something acquired by an earlier Fund is unlikely to be acquired by a later Fund. Third, the Partnership will not come into existence until BF II and BF IV are fully invested, so concurrent purchases are deemed impossible. Fourth, BF IV may complete its wind-up and termination before the Partnership becomes invested. Fifth, there is an outright prohibition against the Partnership buying investments in BF III and BF IV and also against investing directly in BF III and BF IV. Sixth, the Partnership will invest in an area in which the availability of Portfolio Company securities will be extremely limited. For the Partnership to invest in any of the same investment vehicles as BF III and BF IV, it would mean that none of the investment circumstances described above would apply.

[7] See 29 CFR 2510.3–101(a)(2)(ii) and (f).

[8] The Department notes that the general standards of fiduciary conduct promulgated under the Act would apply to the participation in the BF V Group Trust and the Partnership by an Independent Fiduciary. Section 404 of the Act requires that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, an Independent Fiduciary must act prudently with respect to the decision to invest in the BF V Group Trust and the Partnership. The Department expects that an Independent Fiduciary, prior to investing in the BF V Group Trust and the Partnership, to fully understand all aspects of such investments following disclosure by the General Partner of all relevant information.

[9] The Department is not expressing an opinion on whether the Trustee or the General Partner would be deemed to be fiduciaries under section 3(21)(A)(ii) of the Act with respect to a Plan's investment in the BF V Group Trust or the Partnership. The Department is also not proposing relief for the rendering of investment advice in connection with the acquisition of interests in either BF V Group Trust or the Partnership.

[10] Because of the multi-tiered structure (*i.e.,* investing Plan to BF V Group Trust to Partnership), it is represented that capital calls will be handled as follows:

On the same day, the General Partner will notify the Limited Partners, including Plans investing in the BF V Group Trust that capital is being called. All investors will have 10 days to forward the appropriate amount of cash.

As a matter of practice, all Limited Partners will wire their contributions to the Trustee on the same day (the Trustee will serve as the custodian for the Partnership's assets).

Plan investors' contributions will be credited to a separate Trust account and the non-Plan investors' contributions will be credited to the Partnership's Capital Account.

On the same day, the Trustee transfers the funds from the Trust account to the Partnership's Capital Account.

The General Partner will then instruct the Trustee to utilize the Partnership's Capital Account to acquire the appropriate securities until the Partnership account is exhausted, at which time, another capital call will be made.

Administrator may (a) permit the investor's continued participation in the Partnership (or BF V Group Trust) with a commensurate reduction in both the investor's proportionate interest in such Partnership (or BF V Group Trust) and aggregate size of the Partnership (or BF V Group Trust); [11] (b) declare the investor's entire capital commitment due and pursue collection of the same; or (c) expel, at fair market value, the defaulting investor and offer its interest in the Partnership (or BF V Group Trust) first to the non-defaulting investors and then to non-investors who are qualified to invest in such Partnership (or BF V Group Trust). In making the choice between these alternatives, it is represented that the General Partner/Administrator will be guided by then-current investment strategies and the best interest of the non-defaulting investors.

9. The terms of the Partnership control the duties and authority of the General Partner. For example, the General Partner, at its own expense, will provide the Partnership and the BF V Group Trust with personnel who are able to undertake the investment strategies for these entities as well as perform their clerical, bookkeeping and administrative functions. In addition, the General Partner, at its own expense, will provide the Partnership and the BF V Group Trust with office space, telephones, copying machines, postage and all other necessary items of office services. Further, the General Partner will control proxy voting on all portfolio securities.[12] The Partnership Agreement permits the General Partner to allocate securities transactions to broker-dealers of its choice.

The General Partner will prepare, or cause to be prepared on behalf of the Partnership, the following reports: (a) annual audited financial statements; and (b) quarterly unaudited financial statements. In addition, the General Partner will keep the accounts of the Partnership in its capacity as Administrator of the Trust.[13]

10. Under the Partnership Agreement, two types of fees will be payable to the General Partner by the Partnership. These fees are a management fee (the Management Fee) and the Performance Fee, the components of which are described below.

The General Partner's Management Fee is payable as a percentage of the aggregate capital contributions to the Partnership. The fee will be equal to 5 percent of the first $20 million in capital contributions, 1.74 percent of the next $230 million of capital contributions and 2 percent on amounts in excess of $250 million. On average, the fee will not exceed 2 percent of committed capital when all capital is contributed, even if the Partnership is capitalized at less than $250 million.[14]

Although Limited Partners will receive distributions from the Partnership throughout its duration, if, as a result of distributions to the Limited Partners, paid-in capital contributions are reduced to 50 percent or less of the original aggregate capital contributions to the Partnership after December 31, 2006, the Management Fee will be reduced to 70 percent of the amount otherwise payable, effective for fiscal years subsequent to the year in which said reduction was achieved. Upon the return to the Limited Partners of capital contributions so as to reduce their capital contributions to 25 percent or less of the total capital contributions paid-in, the Management Fee will be reduced to 50 percent of the amount otherwise payable, effective for fiscal years subsequent to the year in which said reduction was achieved.

11. In addition to the Management Fee, the General Partner [15] will be entitled to receive the Performance Fee, which will accrue annually in a debit account (*i.e.,* the Performance Fee Account) between the date the first contribution is made to the Partnership until the time the Partnership disposes of its last investment. As noted above, the Performance Fee Account will provide a mechanism for measuring the General Partner's compensation for managing the Partnership. Such account will be a ''moving'' balance that will reflect the activity of the Partnership instead of actual dollars that are reserved or set aside for the General Partner. Until distributions from the Performance Fee Account are made, funds that the debit account credits represent will be invested for the benefit of the Limited Partners.

The Performance Fee will be paid during the final two years of the Partnership. Simply stated, the Performance Fee will equal 20 percent of the excess of net realized gains minus net unrealized losses of the Partnership, minus allowed distributions determined annually between the date of the first contribution to the Partnership until the disposition of the last Partnership asset.

In addition, the General Partner's Performance Fee will subject to the following terms and conditions:

(a) *Fee Base.* As noted above, the amount credited to the General Partner as the Performance Fee will be equal to a percentage of net realized gains minus net unrealized losses. The fee will be annually credited to the General Partner.[16]

(b) *Reduced Availability.* Prior to the termination of the Partnership, only 75 percent of the General Partner's Performance Fee may be drawn from the Partnership. (This limit will also apply to special income tax draws as described in Representation 13.)

(c) *Limited Deferral/Return of Capital.* Again, with the exception of the General Partner's income tax liabilities that are described in Representation 13,

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[11] Reductions in a Limited Partner's participations are based upon the relative amount of capital contributions that are omitted. For example, if a Limited Partner subscribes for a 10 percent interest in the Partnership and neglects to honor 25 percent of its commitment, the Limited Partner will only have a 7.5 percent interest in the Partnership if it is permitted to continue its investment.

[12] The Department is not providing exemptive relief herein for any prohibited transactions that may arise as a result of proxy voting on the part of the General Partner. The Department also notes that the general standards of fiduciary conduct promulgated under the Act would apply to such voting practices.

[13] Some examples of the types of accounts that will be maintained by the Partnership for each Limited Partner are (a) the Capital Account, which reflects the original capital paid into the Partnership by the Limited Partner and any adjustments thereto; (b) the Income Account, to which will be credited income, interest, dividends, fees for services (*i.e.,* consulting services provided by the Partnership to financial institutions) and any other income items (other than gains or losses on the sale or other disposition of securities or other assets and other than income from high yield investments) and to which will be debited any expenses of the Partnership other than those which are to be taken into account to determine gains and losses; and (c) the Gain Account, to which will be credited or debited gains or losses after expenses of sale, when and as realized from the sale or other disposition by the Partnership of securities or other assets, whether or not any such gain or loss is recognized or constitutes long-term or short-term capital gain or loss or ordinary income or loss for Federal income tax purposes.

[14] It is represented that the Management Fee is covered by the statutory exemptive relief available under section 408(b)(2) of the Act. However, the Department expresses no opinion herein on whether the General Partner's receipt of the Management Fee will satisfy the terms and conditions of section 408(b)(2) of the Act.

[15] As briefly alluded to in Representation 1, certain employees of TBFC, generally those who take an active part in the management of the Partnership, are limited partners in MidBanc V, the General Partner of the Partnership. MidBanc V will be entitled to receive the Performance Fee to the extent that it is earned. MidBanc V will then allocate the Performance Fee among TBFC and the employees of TBFC who are limited partners in MidBanc V.

[16] Any payments of the Performance Fee will reflect realized gains inuring to the Partnership. For the Partnership to make a Performance Fee payment to the General Partner, it must sell a Partnership investment for a price exceeding the purchase price for such investment. Therefore, the proceeds of the sale will reflect the source of Performance Fee payments.

After the Partnership has invested its capital, it will have two sources of cash. One is income received from its investments, such as dividends or interest. The other is money received when it sells an investment.

distributions of the Performance Fee cannot be made until January 1, 2007, which is after the completion of the Partnership's Acquisition Phase. Withdrawals with respect to the Performance Fee cannot be paid until investors have received distributions equal to 100 percent of their capital contributions.[17]

(d) *Debits.* The General Partner's Performance Fee Account is debited for the appropriate percentage of realized losses and net unrealized losses and distributions pursuant to the formula. The Performance Fee cannot be drawn when the Performance Fee Account is in a deficit position. Thus, if a gain is realized when the Performance Fee Account is in a deficit position, no Performance Fee can be paid to the General Partner and accrue in the Performance Fee Account. Sufficient gains must be realized to restore the deficit, restore the 25 percent cushion and generate surplus before any part of the Performance Feet can eventually be drawn down.

(e) *Unrealized Gains.* Although net unrealized losses are subtracted from net realized gains before the Performance Fee is calculated, net unrealized gains are excluded from the calculation of the General Partner's Performance Fee. In essence, the exclusion of net unrealized gains serves as an additional reserve ensuring that the General Partner will not be permitted withdrawals based on early gains that are subject to offset by later losses. The exclusion of net unrealized gains and the inclusion of net unrealized losses in the Performance Fee calculation operate to create a moving threshold or hurdle. If the General Partner draws on its Performance Fee Account and the Partnership experiences a later loss, the General Partner cannot take another fee until that loss is made up.

(f) *Distribution Repayment.* The General Partner must prepay any deficit in the Performance Fee Account such that if the Partnership were to terminate at any time, the General Partner would not have received a Performance Fee in excess of that which reflects the Partnership's performance to that date.

12. The following examples illustrate the calculation of the General Partner's Performance Fee. Although the Performance Fee may be drawn annually for the specific purpose of satisfying the General Partner's tax liabilities under certain limited circumstances (see Section II(o) and Representation 13), generally the Performance Fee can only be drawn during 2007 and 2008, the final two years of the Partnership's anticipated term. However, for purposes of illustration, four draw years have been assumed in the examples.

EXAMPLE #1

Year	Cumulative net position	Performance fee account	Maximum draw	Draw or refund
1	$800	$160	$120	$120
2	200	40	30	(90)
3	1,000	200	150	120
4	700	140	105	(45)

Year 1 Assume that when the Performance Fee first becomes drawable in 2007 the Partnership's Cumulative Net Position is $800. The General Partner's Performance Fee is 20% of $200 or $160. The General Partner may draw 75% of the $160 or $120.[18]

Year 2 The Partnership's Cumulative Net Position at the end of Year 2 is $200. The General Partner's Performance Fee is 20% of $200 or $40. The General Partner is entitled to draw $30, but since it has previously drawn $120, it must refund $90.

Year 3 The Partnership now has a Cumulative Net Position of $1,000. The General Partner's Performance Fee is $200 with a permitted draw of $150. Because the General Partner has previously drawn a net amount of $30 at the end of Year 2 (*i.e.,* $120 − $90), it may now draw an additional $120.

Year 4 The Partnership's Cumulative Net Position falls to $700 and the General Partner's Performance Fee falls to $140. The 75% draw equals $105, but the General Partner has previously drawn a total of $150 (*i.e.,* $120 − $90 + $120). Therefore, the General Partner must make a refund to the Partnership of $45.

EXAMPLE #2

Year	Cumulative net position	Performance fee account	Maximum draw	Draw or refund
1	$2,000	$400	$300	$300
2	1,000	200	150	(150)
3	500	100	75	(75)
4	900	180	135	60

Year 1 Assume that when the General Partner's Performance Fee first becomes drawable in 2007, the Cumulative Net Position for the Partnership is $2,000. The General Partner's Performance Fee is 20% of

[17] Where a partnership, such as the Partnership described herein, makes a distribution to the Limited Partners, that distribution can include any of the following: income, realized gains, and/or return of capital. Income and gains can arise at any time during the partnership's life. Although income and gains occur after the initial investment phase of a partnership, in the case of the Funds, such distributions have occurred during the Acquisition Phase. However generally, the contributed capital that gives rise to a gain attributed to the Partnership during the Acquisition Phase will be reinvested by the General Partner. Conversely, the contributed capital that gives rise to a gain attributed to the Partnership after the Acquisition Phase has been completed, will be distributed to a Limited Partner if the gain is realized after the Acquisition Phase expires.

[18] The assumption is, for purposes of this example, that all Limited Partners investing in the Partnership have received a 100 percent return of their capital contributions.

$2,000 or $400. The General Partner may draw 75% of the $400 fee or $300. $100 or 25% of the draw amount must be left in the Partnership as a cushion.[19]

Year 2 The Cumulative Net Position for the Partnership at the end of Year 2 has fallen to $1,000. The General Partner's Performance Fee is 20% of $1,000 or $200. TCC is entitled to draw $150, but since it has previously drawn $300, it must refund $150.

Year 3 The Cumulative Net Position for the General Partner has fallen to $500. The General Partner's Performance Fee now falls to $100 (*i.e.,* 20% of $500) with a permitted draw of $75 and a cushion of $25. Because the General Partner has previously drawn $150 ($300 − $150), it must make a refund to the Partnership of $75.

Year 4 The Cumulative Net Position for the Partnership is $900 at the end of Year 4. The General Partner's Performance Fee is 20% of $900 or $180. The General Partner's 75% draw on the Performance Fee equals $135. However, since the General Partner has previously drawn a total of $75 ($300 − $150 − $75), it may now draw a Performance Fee of $60.

13. The General Partner has been informed by its counsel that gains realized by the Partnership will, to the extent that they are allocable to the General Partner's Performance Fee Account, be taxable to the General Partner in the year gains are realized by the Partnership, even though the distribution of gains attributable to the General Partner will be deferred. Therefore, to enable the individual owners of the General Partner or its affiliates (collectively, referred to as the General Partner) to discharge their obligations to state or federal taxing authorities, it is proposed that an amount sufficient to pay taxes (representing approximately 5 percent of the gains of the Partnership) be distributed to the General Partner solely during the Partnership's Acquisition Phase. The sale of the Portfolio Company securities that gives rise to the early distribution of such gains may only occur in connection with a third party merger, acquisition or tender offer and not through an exercise of discretion by the General Partner.

Such distributions will be charged against the General Partner's Performance Fee Account and will reduce the balance that is used to calculate the 25 percent cushion required before actual distributions can be made to the General Partner.[20] In the event the General Partner receives a tax refund, the amount will be repaid by the General Partner to the Partnership to the extent a distribution has been made to such General Partner.

To ensure that tax refunds are repaid, the General Partner will retain an independent accounting firm to calculate the tax liabilities and credits. If a tax payment is owed by the General Partner, it will appear as an asset (*i.e.,* a receivable) on the Partnership's financial reports that are given to the Limited Partners.

In addition, the tax distributions will be in the exact amount of the General Partner's tax liability. All funds received in the distribution will be forwarded to the Service and no portion will be retained by either the General Partner or the Limited Partners. Therefore, there will be no gain by the General Partner.

Finally, TBFC notes that all of the Limited Partners were made aware of the tax distribution feature of the Partnership. TBFC states that this disclosure was made before the Limited Partners determined to commit capital to the Partnership.

14. The Partnership will terminate upon the earliest to occur of (a) the complete distribution of its assets, (b) a vote in favor of termination by 75 percent of the Limited Partners,[21] or (c) December 31, 2008. If it would be to the financial benefit of the Limited Partners to extend the term of the Partnership beyond 2008, extensions of up to two years may be initiated by the General Partner. Any further extension must be approved by the Limited Partners holding a majority of the Limited Partnership interests. Neither the General Partner nor the Partnership may acquire additional Partnership investments at the time of an extension. The purpose of the extension will be to allow the General Partner to liquidate the Partnership's existing investments, distribute the cash proceeds received from the liquidation to the Limited Partners, and terminate the Partnership.

Upon termination of the Partnership, all portfolio positions will be liquidated, Partnership expenses will be paid and distributions will be made (including any remaining portion of the General Partner's Performance Fee). If all assets cannot be converted into cash or if it would be disadvantageous to liquidate every asset, remaining assets may be distributed in-kind, at the discretion of the General Partner. The General Partner will then receive a fractional portion of its fee, in-kind. To ensure that the General Partner will not select higher income-generating Partnership assets for itself, each Limited Partner, as well as the General Partner, will receive a proportionate share of each Portfolio Company security that is distributed in-kind.

15. The following example illustrates the manner in which in-kind distributions will be made by the General Partner:

Assume that there are only two Limited Partners investing in the Partnership and that each has received a full return of capital. Non-Plan A investor has a Partnership interest worth $60 and the BF V Group Trust has a Partnership interest worth $40.

The Partnership holds 100 shares of Bank X stock which it acquired for $5 per share. Upon termination of the Partnership, Bank X stock is worth $7 per share.

The total unrealized gain attributable to Bank X stock is ($7 − $5) × 100 = $200.

The General Partner's Performance Fee is equal to $200 × 20% = $40.

The General Partner receives $40 ÷ $7 = 5.7 shares of Bank X stock.

The non-Plan investor receives 60% × 94.3 = 56.6 shares of Bank X stock.

The BF V Group Trust receives 40% × 94.3 = 37.7 shares of Bank X stock. Therefore, the Plans investing in the BF V Group Trust share proportionately in the 37.7 shares of Bank X stock.

16. In general, Partnership interests will not be assignable, and no Limited Partner may assign or otherwise transfer, pledge or otherwise encumber any or all of its interest in the Partnership without the prior consent of the General Partner. However, a Limited Partner may transfer its interest only after extending to the Partnership and

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[19] The assumption is again, for purposes of this example, that all Plans investing in the BF V Group Trust have received a 100 percent return of their capital contributions.

[20] With the exception of the General Partner, all Limited Partners will receive distributions of gains when they are realized. (As noted previously, this could occur prior to the ending of the Acquisition Phase for the Partnership.) For example, if at any time during the Partnership's existence, a Portfolio Company security is purchased for $1 million and sold by the General Partner for $3 million, a $2 million gain will be realized by the Partnership. The Limited Partners will own $1.6 million of the gain while the General Partner will own $400,000 of the gain (*i.e.,* 20 percent of the Performance Fee). Both Plan and non-Plan Limited Partners will receive an aggregate distribution of $1.6 million which will be allocated among such Limited Partners. Depending on whether the Limited Partner receiving a portion of the $1.6 million gain is a taxable or non-taxable entity, the amount allocated to the Limited Partner will be taxed. Although the $400,000 gain attributable to the General Partner will be deferred, the Service will view the General Partner as having received taxable income of $400,000. If the tax rate is 25 percent, the General Partner will owe the Service $100,000. It is the $100,000 that the General Partner seeks to obtain as a tax distribution. The General Partner's remaining Performance Fee amount of $300,000 will stay in the Partnership even though the Limited Partners will receive their proportionate share of the $1.6 million.

[21] A vote of 75 percent of the Limited Partners to remove the General Partner will also result in the termination of the Partnership.

the other Limited Partners the right of ''first offer.''

In addition, because the BF V Group Trust's investment philosophy is inconsistent with at-will withdrawals, redemptions of Partnership interests are limited to situations where (a) a replacement Plan is available from either current Plans investing in the BF V Group Trust or there are new, qualified investors;

(b) a Plan submits to the General Partner and the Trustee, a written opinion of counsel to the effect that the Plan's continued participation in the BF V Group Trust would violate the Act and that relief from the violation cannot be obtained;

(c) the Plan loses its tax-exempt status and that loss threatens the tax-exempt status of the BF V Group Trust; and (d) the BF V Group Trust loses its tax-exempt status or fails to obtain the exemptive relief proposed herein for the necessary operation of such Group Trust. This information will be disclosed to investors.

17. The BF V Group Trust Agreement requires that the General Partner, as Administrator of the BF V Group Trust, provide the Independent Fiduciary of each Plan proposing to invest in the BF V Group Trust with a copy of the Private Placement Memorandum by the General Partner. The Private Placement Memorandum describes all material facts concerning the purpose, structure and operation of the BF V Group Trust.

If the Independent Fiduciary expresses further interest in participating in the BF V Group Trust, such Independent Fiduciary will be provided with copies of the BF V Group Trust Agreement outlining the organizational principles, investment objectives and administration of the BF V Group Trust, the manner in which Trust shares could be redeemed, the duties of the parties retained to administer the BF V Group Trust and the manner in which Group Trust assets would be valued. The Independent Fiduciary will also be provided with a copy of the Partnership Agreement which describes the organizational principles, investment objectives and administration of the Partnership, the manner in which Partnership assets will be valued, the duties and responsibilities of the General Partner, the rate of remuneration that the General Partner will be paid and the conditions under which the General Partner may be removed. Once the Independent Fiduciary has made a decision to invest in the BF V Group Trust, the General Partner will provide such Independent Fiduciary with the names and addresses of all other participating Plans as well as non-Plan investors.

18. The Independent Fiduciary will be required to acknowledge, in writing, prior to purchasing a beneficial interest in the BF V Group Trust that such fiduciary has received copies of the foregoing documents. The Independent Fiduciary will also be required to acknowledge, in writing, to the General Partner that such fiduciary is independent of the General Partner and its affiliates, capable of making an independent decision regarding the investment of Plan assets, knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the BF V Group Trust.

With respect to its ongoing participation in the BF V Group Trust, each Plan and the Trustee will receive the following written disclosures from the General Partner, as the Administrator of the BF V Group Trust:

(a) Within 90 days after the end of each fiscal year of the BF V Group Trust as well as at the time of termination, an annual financial report containing a balance sheet for the BF V Group Trust and the Partnership as of the end of such fiscal year and a statement of the changes in the financial position for the fiscal year, as audited and reported upon by independent, certified public accountants. The annual report will also disclose the remuneration actually paid or accrued to the General Partner.

(b) Within 60 days after the end of each quarter (except in the last quarter) of each fiscal year of the BF V Group Trust and the Partnership, an unaudited quarterly financial report consisting of at least a balance sheet for the BF V Group Trust and the Partnership as of the end of such quarter and a profit and loss statement for such quarter. The quarterly report will also specify the remuneration that is actually paid or accrued to the General Partner.

In addition to the foregoing reports, the General Partner will prepare and distribute to the BF V Group Trust and each Plan such other information as may be reasonably requested by the Plans to comply with the reporting requirements of the Act or Code (including copies of the proposed exemption and grant notice with respect to the exemptive relief granted herein).

At least annually, the General Partner will hold a meeting of the Partnership, at which time, the Independent Fiduciaries of participating Plans will have the opportunity to decide on whether the Partnership, the BF V Group Trust, the Trustee or the General Partner should be terminated as well as discuss any aspect of the Partnership and Group Trust and the Agreements promulgated thereunder. Finally, during each year of the BF V Group Trust, representatives of the General Partner will be available to confer by telephone or in person with Independent Fiduciaries on matters concerning the BF V Group Trust or the Partnership.

19. The terms of all transactions that are entered into on behalf of the Partnership by the General Partner will be at least as favorable to an investing Plan as those obtainable in arm's length transactions with unrelated parties. In this regard, valuations of (and for) the Partnership will be needed for general accounting purposes, to determine the value of the Partnership's assets for reports to the Limited Partners, for distributions of securities and to calculate the General Partner's Performance Fee when the General Partner seeks to draw upon it. The General Partner, subject to the review and approval of the Valuation Committee, will determine the fair market value of the assets and liabilities of the Partnership as of each fiscal date.[22] The Valuation Committee, which is the same advisory committee that served MBF I and II and currently serves BF III and IV, will also serve as the Independent Appraiser. The Valuation Committee is composed of three members who are experienced in valuing the securities of Portfolio Companies. None of the members of the Valuation Committee has an ownership or creditor relationship with the General Partner.

As the Independent Appraiser, each member of the Valuation Committee must not be controlled by (or control) TBFC or the Partnership and must not receive more than 5 percent of their lowest annual income from the General Partner or the Partnership, either during the term of the Partnership or in the three years preceding its creation. Individual members of the Valuation Committee or the entire committee may be removed by the General Partner only for cause and with or without cause by Limited Partners holding a majority of the Limited Partnership interests. A

[22] It is represented that the General Partner will gather all requisite information to produce the valuation. This information may include pricing information on any exchange-traded securities plus more voluminous operating and financial data on the companies for whose securities there is a thinner market. The General Partner will then compile this information into a report which is submitted to the Valuation Committee. After reviewing the submitted information, the Committee will meet with the staff of the General Partner to discuss the valuation materials. At the end of this meeting, the Valuation Committee will set the valuation for all portfolio hedgings. Thus, from both a legal and operative standpoints, the Partnership Agreement will control the valuation process and the Valuation Committee will value the Fund.

majority of the Limited Partners must approve a replacement Independent Appraiser. If the Limited Partners and the General Partner cannot agree upon a replacement Independent Appraiser, the firm of KPMG Peat Marwick LLP will be appointed.

Although the General Partner will nominate the Independent Appraiser, the Limited Partners will be given the option of either approving or disapproving the nominee. The Independent Appraiser will not be appointed absent the affirmative written approval of a majority of the Limited Partners. However, the Limited Partners will have no veto power over the General Partner's decision that an Independent Appraiser is required.

If applicable, the Independent Appraiser will use the principles set forth in Revenue Ruling 59–60 and the Department's proposed ''Adequate Consideration'' regulations (53 FR 17632, May 17, 1988) to determine fair market value. The valuations made by the Independent Appraiser will be binding upon the General Partner. In addition, the Independent Appraiser will issue a report to the General Partner which sets forth the Independent Appraiser's pricing methodology and rationale for securities it has been asked to value. Such report will be issued after each required valuation and will comply with the aforementioned regulations.

With respect to securities for which a market exists, the Independent Appraiser will determine their value according to the following principles:

(a) *National Securities Exchange.* Any security which is listed on a national securities exchange generally will be valued based on its last sales price on the national securities exchange on which the security is principally traded on the valuation date.[23] If no sale of a listed Security occurred on the valuation date, the value will be based on the last bid price.

(b) *No Listing.* Any security which is not listed on a national securities exchange will be valued upon the last publicly available bid price.[24]

(c) *Discount for Illiquidity.* Anything herein to the contrary notwithstanding, the Independent Appraiser in its discretion may apply a discount for illiquidity, on the valuation of securities that have a thin public market.

In the event that there is no independent market for a security or the security is not listed on a national securities exchange, the Independent Appraiser will be required to value such securities. Under such circumstances, the securities will be valued at the time of acquisition at their cost. The Independent Appraiser will continue valuing the securities at their cost until a determination is made that a different valuation level is indicated by the occurrence of (a) a significant change in book value, (b) a significant change in a Portfolio Company's business, (c) a significant third-party transaction, or (d) any other significant change in the Financial Company, its industry or the general market.

20. With respect to transactions that may arise during the existence of the Partnership and which involve parties in interest with respect to participating Plans, the General Partner requests exemptive relief from the provisions of section 406(a) of the Act. Specifically, TBFC requests exemptive relief where the Partnership sells securities in the Partnership Portfolio for cash or other securities to a party in interest with respect to a participating Plan in the context of an acquisition or merger by the party in interest, provided the party in interest is not an affiliate of the General Partner. TBFC represents that the Partnership will receive the same offer that other shareholders of Portfolio Companies will receive. Because the Partnership will always be a minority shareholder in such situation, TBFC states that the Partnership will be in the position of a beneficiary of the acquisition offer and it will not be in the position off an active player in the merger or acquisition transactions.

21. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The participation by a Plan in the BF V Group Trust and in the Partnership will be approved by an Independent Fiduciary.

(b) Each Plan investing in the Partnership through the BF V Group Trust will have assets that are in excess of $50 million.

(c) No Plan will invest more than 10 percent of its assets in the Partnership through the BF V Group Trust and a Plan's respective interests in both entities will not represent more than 25 percent of the assets of either the BF V Group Trust or the Partnership.

(d) No Plan will invest more than 25 percent of its assets in investment funds and separate accounts managed or sponsored by TBFC and/or its affiliates.

(e) Prior to making an investment in the BF V Group Trust and the Partnership, each Independent Fiduciary contemplating investing therein will receive offering materials which disclose all material facts concerning the purpose, structure and operation of the BF V Group Trust, the Partnership and the fees paid to the Trustee and the General Partner.

(f) Each Plan investing in the BF V Group Trust and the Partnership will be required to acknowledge, in writing, prior to purchasing interests that such fiduciary has received copies of such documents and to acknowledge, in writing, to the General Partner that such fiduciary is (1) independent of the General Partner and its affiliates, (2) capable of making an independent decision regarding the investment of Plan assets and (3) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the BF V Group Trust.

(g) The General Partner will make quarterly and annual written disclosures to participating Plans with respect to the financial condition of the Partnership and the total fees that it will receive for services rendered to such Partnership.

(h) The General Partner will hold annual meetings and conduct periodic discussions with Independent Fiduciaries to address matters pertaining to the BF V Group Trust or the Partnership.

(i) The terms of all transactions that are entered into on behalf of the Partnership by the General Partner shall remain at least as favorable to an investing Plan as those obtainable in arm's length transactions with unrelated parties. In this regard, the valuation of assets of the Partnership will be based upon independent market quotations or determinations made by an Independent Appraiser.

(j) As to each Plan, the total fees paid to the General Partner and its affiliates will constitute no more than reasonable compensation.

(k) Any increase in the General Partner's Performance Fee will be based upon a predetermined percentage of net realized gains minus net unrealized

[23] TBFC explains that the phrase ''principally traded'' means that if a security is traded on more than one exchange and if the trade prices differ between exchanges, the value will be taken from the exchange on which the largest volume of that security has traded.

[24] TBFC explains that the most recent trade price is not used to value a security in this instance because it may be too dated to provide an accurate estimate of value. Instead, TBFC considers the bid price to be indicative of the current value at which someone would be willing to acquire a security on the valuation date. TBFC further notes that the use of the bid price rather than the previous trading or closing price in valuing a Security provides a conservative valuation approach which will result, in most instances, in a lower Performance Fee paid to the General Partner. The Department assumes that the bid price described herein represents active bids and is a true indicator of market prices.

losses. In this regard, (1) Except as described in item (1) below, no part of the General Partner's Performance Fee may be withdrawn before December 31, 2006, which represents the completion of the Acquisition Phase of the Partnership and not until the Limited Partners have received distributions equal to 100 percent of their capital contributions to the Partnership.

(2) Prior to the termination of the Partnership, no more than 75 percent of the Performance Fee credited to the General Partner may be withdrawn from the Partnership.

(3) The Performance Fee Account established for the General Partner will be credited with net realized gains and charged for net unrealized losses and Performance Fee distributions.

(4) The General Partner will repay all deficits in its Performance Fee Account and it will maintain a 25 percent cushion in such account before receiving any further distribution.

(1) The General Partner will be entitled to take distributions with respect to its Performance Fee in the amount of any income tax liability it or its affiliates become subject to with respect to net capital gains of the Partnership (i) only during the Partnership's Acquisition Phase and (ii) provided such gains are based on the sale of Portfolio Company securities that is initiated by a third party in connection with a merger, tender offer or acquisition.

(m) The General Partner will be obligated to repay to the Partnership any tax refund received to the extent a distribution have been made to such General Partner.

Notice to Interested Persons

Notice of the proposed exemption will be given to Plans intending to invest in the Partnership through the BF V Group Trust within 3 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing. Comments and hearing requests with respect to the proposed exemption are due 33 days after the date of publication of the proposed exemption in the **Federal Register**.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Standard Insurance Company (Standard) Located in Portland, OR

[Application No. D–10705]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[25]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective April 21, 1999, to (1) the receipt of common stock (the Stock) of the StanCorp Financial Group, Inc. (the Holding Company), the parent of Standard, or (2) the receipt of cash (Cash) or policy credits (Policy Credits), by or on behalf of any eligible policyholder (the Eligible Member) of Standard which is an employee benefit plan (the Plan), including the Standard Group Life, Supplemental Life and AD&D Plan for Employees and Agents (the Standard Group Life Plan) and the Standard Group Term and Short Term Disability Employees Plan (the Standard Disability Plan; together, the Standard Welfare Plans), in exchange for such Eligible Member's interest in Standard, in accordance with the terms of a plan of demutualization (the Plan of Demutualization or Demutualization Plan) adopted by Standard and implemented pursuant to Section 732 of the Oregon Revised Statutes.[26]

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply, effective April 21, 1999, to the receipt or holding, by the Standard Welfare Plans, of employer securities in the form of excess Holding Company Stock, in accordance with the terms of the Demutualization Plan.

The proposed exemptions described above are subject to the following conditions:

(a) The Plan of Demutualization was implemented in accordance with procedural and substantive safeguards that were imposed under Oregon Insurance Law and was subject to review and supervision by the Director of the Department of Consumer and Business Services of the State of Oregon (the Director).

(b) The Director reviewed the terms of the options that were provided to Eligible Members of Standard, which included, but were not limited to the subject Plans, as part of his review of the Demutualization Plan, and only approved such Demutualization Plan following a determination that the Plan was fair and equitable to all Eligible Members and was not detrimental to the public.

(c) Each Eligible Member had an opportunity to vote to approve the Plan of Demutualization after full written disclosure was given to the Eligible Member by Standard.

(d) One or more independent fiduciaries of a Plan that was an Eligible Member received Holding Company Stock, Cash or Policy Credits, pursuant to the terms of the Demutualization Plan, and neither Standard nor any of its affiliates exercised any discretion or provided ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c), with respect to such acquisition.

(e) With respect to the Standard Welfare Plans and other Plans sponsored by Standard and its affiliates (collectively, the Standard Plans), where the consideration was in the form of Holding Company Stock, Northwestern Trust and Advisory Company (Northwestern Trust), the independent Plan fiduciary appointed to represent the interests of each of the Standard Plans,

(1) Exercised its authority and responsibility to vote on behalf of the Standard Plans at the special meeting of Eligible Members on the proposal to approve the Demutualization Plan;

(2) Monitored the Holding Company Stock received by a Standard Plan; and

(3) Provided instructions with respect to the voting, the continued holding and the disposition of Holding Company Stock held by all of the Standard Plans.

(f) After each Eligible Member was allocated at least 52 shares of Holding Company Stock, additional consideration was allocated to Eligible Members who owned participating policies based on actuarial formulas that took into account each participating policy's contribution to the surplus of Standard which formulas have been approved by the Director.

(g) All Eligible Members that were Plans participated in the transactions on the same basis within their class groupings as other Eligible Members that were not Plans.

(h) No Eligible Member paid any brokerage commissions or fees in

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

[26] Unless otherwise noted, the client Plans and the Standard Plans are collectively referred to as the Plans.

connection with the receipt of Holding Company Stock, nor has (or will) such Eligible Member pay any brokerage commissions or fees in connection with the implementation of the commission-free sales and purchase program (the Program).

(i) All of Standard's policyholder obligations will remain in force and will not be affected by the Plan of Demutualization.

Section II. Definitions

For purposes of this proposed exemption:

(a) The term ''Standard'' means The Standard Insurance Company and any affiliate of Standard as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Standard includes—

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

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

(c) The term ''Eligible Member'' means a policyholder who is eligible to vote and to receive consideration under Standard's Demutualization Plan. Such Eligible Member must have been a policyholder of Standard on December 17, 1997, the date the Plan of Demutualization was adopted by the Board of Directors of Standard.

(d) The term ''policy credit'' means an increase in the accumulation account value [27] (to which no surrender or similar charges are applied) in the general account or an increase in a dividend accumulation on a policy.

Effective Date: If granted, this proposed exemption will be effective as of April 21, 1999.

Summary of Facts and Representations

1. Standard was formerly a mutual life insurance company chartered under the laws of the State of Oregon. It was originally chartered in 1906 as a stock company and was subsequently ''mutualized'' in 1929 under Oregon law. Standard is authorized to transact life, health and annuity business in all 50 states (reinsurance only in New York), the District of Columbia and the U.S. Territory of Guam. As of December 31, 1998, Standard had admitted assets (on a statutory basis) in excess of $4.9 billion and generated $890.9 million in annualized premium and annuity consideration.

Standard's home office is located at 1100 S.W. Sixth Avenue, Portland, Oregon. As of December 31, 1998, Standard was rated A (Excellent) by A.M. Best, A+ (Good) by Standard and Poor's, AA (Very High Claims Paying Ability) by Duff & Phelps and A2 (Good) by Moody's.

As a mutual life insurance company, Standard had no stockholders. Instead, its policyholders were members of the company and were entitled to vote to elect its directors and would be entitled to share in its assets upon its liquidation.

Standard provides a variety of fiduciary and other services, including plan administration, investment management and related services, to Plans policyholders that are covered under the applicable provisions of the Act and/or the Code. As a result, Standard may be considered a party in interest or a disqualified person with respect to such Plans under section 3(14)(A) and (B) of the Act as well as the related ''derivative'' provisions of section 3(14) of the Act.

Standard has actively marketed its products to Plans. As of December 31, 1997, Standard had approximately 30,800 outstanding policies and contracts issued in connection with Plan policyholders that were pension or welfare plans subject to the Act. Of these policies, approximately 5,200 contracts were issued to defined benefit or defined contribution pension plans (including section 401(k) plans) and over 25,600 contracts were issued to welfare plans to provide group life, short-term and long-term disability, accidental death and dismemberment, and group health and dental coverage.

2. Standard Management, Inc. (Standard Management) is a holding company that is organized under Oregon law and formerly wholly owned by Standard. On April 21, 1999, the effective date of the demutualization, Standard Management became a wholly owned subsidiary of StanCorp Financial Group, Inc. (*i.e.,* the Holding Company), which also became the parent of Standard. The Holding Company is also organized under Oregon law.

3. Standard has also created two limited liability companies under Oregon law. They are Standard Mortgage Investors, LLC (Standard Mortgage), which manages Standard's mortgage loan portfolio and markets its expertise to other investors and Standard Real Estate Investors, LLC (Standard Real Estate Investors), which is engaged in the business of real estate management, primarily with respect to real estate owned by Standard. Currently, the assets of Standard Mortgage and Standard Real Estate Investors are owned completely by Standard through Standard Management.

In addition to these companies, Standard has formed Stan-West Equities, Inc. (Stan-West), a licensed broker-dealer, 400 Health Club, Inc. (400 Health Club), a corporate shell that does not conduct business of any kind, and Standard Assigned Benefits, Inc. (Standard Assigned Benefits), an entity which was formerly in the business of funding structured litigation settlements but which is not transacting business at the present time. Through its sister, Standard Management, Standard owns 100 percent of the assets of these entities.

4. Standard and its affiliates also sponsor a number of retirement and welfare plans for their agents and employees that participated in the demutualization transaction described herein. The affected Standard Plans, their total number of participants and assets are shown as follows as of December 31, 1997, which is the most recent date this information is available:

Standard plans	Number of participants as of 12/97	Total assets as of 12/97
Group Life, Supplemental Life and AD&D Employees and Agents	2,837	[1] $431,985
Group Long Term and Short Term Disability-Employees	1,771	[1] 802,820
Defined Benefit Plan-Employees	1,419	64,754,363
Defined Benefit Plan-Agents	85	13,442,533
Defined Contribution Plan-Employees	1,405	55,397,674
Defined Contribution Plan-Agents	119	16,200,232

[1] Expressed as an annualized premium.

5. In 1997, Standard's Board of Directors authorized its management to develop a plan of demutualization

[27] In general, a policy's accumulation account value is expressed in dollar terms and reflects contributions and interest credited under the policy, less expenses and withdrawals. Accumulation values may be applied for the purchase of annuity benefits, or depending on the provisions of the contract, withdrawn by the policyholder in a lump sum or installments. Under Standard's Plan of Demutualization, where a policy eligible for distributions under such Plan has an accumulation value, the policy's accumulation value will be increased by an amount equal to the distribution the policyholder is entitled to under the Plan.

whereby Standard would be converted from a mutual life insurance company to a stock life insurance company. In response, Standard began developing the Plan of Demutualization which was formally adopted by the Board of Directors on September 28, 1998. The principal purposes for the demutualization were to (a) enhance Standard's strategic and financial flexibility by creating a corporate structure that would provide opportunities for obtaining additional capital from sources that are unavailable to Standard in its current form as a mutual insurer; (b) allow Standard to use stock options or other equity-based compensation arrangements to attract and retain talented employees; (c) facilitate acquisitions, which Standard's management viewed as an important element of future growth; and (d) provide Eligible Members with an opportunity to convert their illiquid interests as members of Standard into shares of Stock of the Holding Company or Cash or Policy Credits. The demutualization would not, in any way, change premiums or reduce policy benefits, values, guarantees or other policy obligations of Standard to its policyholders. Policy dividends would continue to be paid as declared, although they may vary from year to year. In effect, insurance policies would remain in force and policyholders would be entitled to receive the benefits under their policies and contracts to which they would have been entitled if the Demutualization Plan had not been adopted.

6. Therefore, Standard has requested an individual exemption from the Department that would apply, effective April 21, 1999, to the receipt of Holding Company Stock, Cash or Policy Credits by Eligible Members that were Plans in exchange for their existing membership interests in Standard because it believes the transaction could be viewed as a prohibited sale or exchange of property between a plan and a party in interest in violation of section 406(a)(1)(A) and (D) of the Act. Standard also has requested exemptive relief, effective April 21, 1999, with respect to distributions of Holding Company Stock to the Standard Welfare Plans, because it believes the receipt of Holding Company Stock by these Standard Plans violated section 406(a)(1)(E) and (a)(2) of the Act and section 407(a)(2) of the Act, in addition to section 406(a)(1)(A) and (D) of the Act.[28] Standard represents that although the Holding Company Stock would constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act, such stock would represent 100 percent of the assets of the Standard Welfare Plans, in violation of section 407(a)(2) of the Act. Standard also asserts that the statutory exemptive relief contained in section 408(e) of the Act would not apply to the acquisition and holding of Holding Company Stock by the Standard Welfare Plans.[29]

Standard further notes that the holding of Holding Company Stock by the Standard Welfare Plans would not violate section 407(f) of the Act because neither Plan would own more than 25 percent of the outstanding shares of Holding Company Stock, and at least 50 percent of the outstanding shares would be owned by persons who were independent of the issuer.

Standard represents that statutory exemptive relief from section 408(e) of the Act would apply to distributions of Holding Company Stock to its defined benefit plans (*i.e.,* the Defined Benefit Retirement Plan-Employees and the Defined Benefit Retirement Plan-Agents) (together, the Standard Defined Benefit Plans) because the fair market value of the Stock would not exceed 10 percent of the assets of these Plans. Therefore, Standard has not requested that the exemption apply to the Standard Defined Benefit Plans.

Similarly, Standard represents that section 408(e) would be applicable to distributions of Holding Company Stock to its two defined contribution plans (*i.e.,* the Defined Contribution Plan-Employees and the Defined Contribution Plan-Agents) (together, the Standard Defined Contribution Plans).[30] Therefore, Standard has not requested that the exemption apply to the Standard Defined Contribution Plans.

7. Standard's Plan of Demutualization was approved by the Director in January 1999. Subsequently, the following steps were taken to implement the Demutualization Plan:

(a) *Demutualization under Oregon Law.* Standard converted from a mutual life insurance company to a stock life insurance company on April 21, 1999 in accordance with the requirements of Sections 732.600 to 732.630 of the Oregon Revised Statutes as well as under the provisions of its Plan of Demutualization. Each policyholder's membership interest in Standard was terminated. As compensation for their membership interests, Eligible Members received Holding Company Stock, Cash or Policy Credits as compensation for the termination of their interests.

As a result of the demutualization, Standard became a stock company and a wholly owned subsidiary of the Holding Company. Standard also distributed its real estate management and mortgage subsidiaries (*i.e.,* Standard Mortgage and Standard Real Estate Investors) and certain other non-insurance subsidiaries (*i.e.,* Stan-West Equities, 400 Health Club and Standard Assigned Benefits) to the Holding Company. As a result, these companies became direct or indirect subsidiaries of the Holding Company.

(b) *The Initial Public Offering (the IPO).* The Holding Company sold 15,209,400 shares of Holding Company Stock in an underwritten IPO in conjunction with the demutualization. The Holding Company also arranged for the listing of Holding Company Stock on the NYSE.

(c) *Contribution to the Capital of Standard.* Following the transactions described above, the Holding Company contributed $267.9 million raised in the IPO (after the payment of transaction expenses) to Standard to pay Cash consideration to certain Eligible Members and to fund Policy Credits for other Eligible Members as required under the Plan of Demutualization.

8. Standard represents that Sections 732.600 to 732.630 (Section 732) of the Oregon Revised Statutes establish an approval process for the demutualization of a life insurance company organized under Oregon law.

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[28] Section 406(a)(1)(E) of the Act prohibits the acquisition by a Plan of any employer security that violates section 407(a) of the Act. Section 406(a)(2) of the Act states that no fiduciary who has authority or discretion to control the assets of a plan shall permit the plan to hold any employer security if he [or she] knows that holding such security would violate section 407(a) of the Act. Section 407(a)(1)(A) of the Act states that, except otherwise provided, a plan may not hold any employer security which is not a qualifying employer security. Section 407(a)(2) of the Act prohibits the acquisition by a plan of any qualifying employer security if immediately after such acquisition, the aggregate fair market value of such securities exceeds 10 percent of the fair market value of the plan's assets.

[29] Northwestern Trust, which was retained by Standard as the independent fiduciary for all of the Standard Plans, subsequently determined (see Representation 11) that the only Standard Plan affected by the "excess holding problem" was the Standard Group Life Plan. Although Northwestern Trust expressed no opinion on the Standard Disability Plan, Standard believes that Northwestern Trust may have concluded that the Holding Company Stock received in connection with the demutualization was not a "plan asset" and was thus allocable to Standard. Nevertheless, to remove any doubt, Standard has requested that the exemption apply to both of the Standard Welfare Plans. However, the Department is not expressing an opinion herein on whether the Standard Disability Plan is entitled to any of the consideration received as a result of the demutualization.

[30] The Department expresses no opinion herein on whether the Holding Company Stock constitutes qualifying employer securities and whether such distributions satisfied the terms and conditions of section 408(e) of the Act.

Specifically, Section 732 requires that a plan of demutualization be approved by both the Director and a vote of the policyholders. The Director may hold a hearing for the purpose of receiving comments on whether a plan should be approved and on any other matter relating to the demutualization. After the hearing, the Director will approve the demutualization plan if he or she finds all of the following: [31]

(a) The applicable provisions of ORS 732.600 to 732.630, and other applicable provisions of the law, have been fully met.

(b) The plan protects the rights of policyholders.

(c) The plan will be fair and equitable to the members, and the plan will not prejudice the interests of the members.

(d) The allocation of consideration among the Eligible Members is fair and equitable.

(e) The converted stock insurer will have capital or surplus, or any combination thereof, that is required of a domestic stock insurer on initial authorization to transact like kinds of insurance, and otherwise will be able to satisfy the requirements of this state for transacting its insurance business.

(f) The plan will not substantially reduce the security of the policyholders and the service to be rendered to the policyholders.

(g) If a stock holding or mutual holding company is organized, the financial condition of the stock holding company, the mutual holding company or any subsidiary thereof will not jeopardize the financial stability of the converted stock insurer.

(h) The financial condition of the converting mutual insurer will not be jeopardized by the conversion or reorganization, and the conversion or reorganization will not jeopardize the financial stability of the stock holding company, the mutual holding company or any subsidiary thereof.

(i) The competence, experience and integrity of those persons who will control the operation of the converted stock insurer are not contrary to the interests of policyholders of the converted stock insurer and of the public in allowing the plan to proceed.

(j) Implementation of the plan will protect the interests of the insurance-buying public.

(k) The activity is not subject to other material and reasonable objections.

(l) All modifications required by the Director have been made.

Section 732 authorizes the Director to employ staff personnel and to engage outside consultants to assist the Commissioner in determining whether a demutualization plan meets the requirements of Section 732. (In the case of the Standard demutualization, the Director retained Ernst & Young to provide actuarial services, Sidley & Austin to provide legal services and Merrill Lynch & Co. to provide investment banking services.) The decision by the Director to approve a demutualization plan under Section 732 is subject to judicial review in the Oregon courts.

9. In addition to being approved by the Director, Standard represents that its Demutualization Plan had to be approved by its policyholders. In this regard, Section 732 requires that the policyholders be provided with notice of a meeting convened for the purpose of voting on whether to approve the demutualization plan.[32] Moreover, the demutalization plan must be approved by a vote of not less than a majority of the votes of the insurer's policyholders voting thereon in person, by proxy or by mail.

With respect to Standard, approximately 114,000 Eligible Members were eligible to vote on the Demutualization Plan which occurred at a special meeting on March 19, 1999. Each Eligible Member was entitled to one vote. Of the Eligible Members, 35,569 or 32.4 percent voted and 32,598 or 91.7 percent of the votes cast were in favor of the demutualization.

10. Standard's Demutualization Plan provided for Eligible Members to receive Holding Company Stock, Cash or Policy Credits as consideration for the termination of their membership interests in the mutual company. (Combinations of different forms of consideration were not permitted.) For purposes of the demutualization, an Eligible Member is any owner of one or more policies of insurance, if the policy was in force as of December 17, 1998, the record date for the plan of conversion. This was the date that Standard's Board of Directors adopted the Demutualization Plan.

Solely for purposes of calculating the amount of consideration, each Eligible Member was allocated (but not necessarily issued) a minimum of 52 shares of Holding Company Stock as soon as reasonably practicable after April 21, 1999, the effective date of the demutualization. Any remaining Holding Company Stock was allocated substantially on the basis of the contributions to surplus made by each Eligible Member's in-force policies.[33] In this regard, under Section 732, the Director was required to make a finding that the allocation methodology was fair and equitable.

Certain Eligible Members received Cash or Policy Credits in lieu of Holding Company Stock, which Cash or Policy Credits had a value equal to the Holding Company Stock the policyholders would otherwise have received, based on the price per share of the Holding Company Stock in the IPO. Specifically, an Eligible Member received Cash in lieu of allocable Holding Company Stock (a) if the owner of the policy was known to Standard to be subject to a bankruptcy proceeding, or (b) where the Eligible Member's address for mailing purposes, as shown on the records of Standard, was located outside the United States of America or was shown on Standard's records to be an address at which mail to such Eligible Member is undeliverable, or (c) where an Eligible Member, who had been allocated 99 shares or less of Holding Company Stock, made an affirmative election, on a form provided to such Eligible Member by Standard, to receive Cash instead of Holding Company Stock.

An Eligible Member received Policy Credits in lieu of Holding Company Stock with respect any policy that was (a) an individual retirement annuity contract within the meaning of section 408 of the Code, (b) a tax sheltered annuity contract within the meaning of section 403(b) of the Code, (c) an individual annuity contract that had been issued pursuant to a plan qualified under section 401(a) of the Code directly to the plan participant, or (d) an individual life insurance policy that had been issued pursuant to a plan qualified under section 401(a) of the Code directly to the plan participant.

The decision to receive Holding Company Stock, Cash or Policy Credits by a Plan was made by one or more fiduciaries of such Plan which was independent of Standard and its affiliates. In addition, neither Standard nor any of its affiliates exercised discretion or provided ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c), with respect to each such acquisition.[34] Further, no Eligible

[31] The Director held a public hearing regarding Standard's demutualization on January 27, 1999 and approved the Demutualization Plan by order issued on February 12, 1999.

[32] Under Oregon law, the notice of the policyholder meeting must be mailed within 45 days of the Director's order and at least 30 days prior to the meeting. Eligible Members must receive two notices. The first notice pertains to the public hearing and includes a summary of the plan of demutualization and provides information regarding the right of the Eligible Member to comment, either in person or in writing, on the plan. The second notice relates to the meeting to vote on the plan of demutualization and includes a full copy of the plan, a detailed explanation of the plan and its consequences, and an explanation of the voting procedure.

[33] As noted above, Standard's IPO resulted in the sale of 15,290,400 shares of Holding Company Stock. An additional 18,310,836 shares were also allocated by Standard to Eligible Members.

[34] Consistent with section 732.600 to 732.630 of Oregon Insurance Law, the Demutualization Plan generally provides that the policyholder eligible to participate in the distribution of stock, cash or policy credits resulting from the Demutualization

Continued

Member will pay any brokerage commissions or fees in connection with the receipt of stock.

11. Standard's Demutualization Plan provided for the Holding Company to establish a commission-free sales and purchase program. The Program commenced on February 24, 2000 and it will continue until May 31, 2000. The Program may be extended if the Board of Directors of the Holding Company determines that the extension is appropriate and in the best interest of the Holding Company and its shareholders.

Under the Program, each Eligible Member who received 99 or fewer shares of Holding Company Stock has been given the opportunity to sell, at prevailing market prices, all shares of such stock. Moreover, an Eligible Member who received 99 or fewer shares of Holding Company Stock is permitted to purchase, at prevailing market prices, additional shares of Holding Company Stock required to round-up the total number of shares to 100. Under either the sales or purchase components of the Program, the Eligible Member is not required to pay any brokerage commissions or similar fees. Also, Standard and its affiliates have not provided (and will not provide) ''investment advice,'' as defined in 29 CFR 2510.3–21(c).

12. Northwestern Trust was appointed by Standard to serve as the independent fiduciary and, in so doing, to represent the interests of the Standard Plans that are identified in Representation 4. Northwestern Trust is a privately-owned trust company chartered by the State of Washington and regulated by the State of Washington Department of Financial Institutions. As of May 31, 1999, Northwestern Trust had assets under administration exceeding $3.5 billion. A majority of those assets consisted of retirement plan assets. Northwestern Trust's professional staff manages ERISA programs and its ERISA clients are located in 15 states across the United States. Northwestern Trust provides fiduciary services to a variety of pension and welfare plans and it is experienced in connection with the acquisition, retention and disposition of employer securities. In addition, Northwestern Trust is extensively involved with non-qualified deferred compensation arrangements. To assist Northwestern Trust in carrying out its independent fiduciary duties, it retained Dorsey & Whitney LLP as independent legal counsel.

Northwestern Trust represents that it is completely unrelated to Standard and its affiliates. In this regard, Northwestern Trust states that both it and Standard have no common officers or directors nor does it have an ownership interest in Standard or vice versa.

Northwestern Trust also represents that although it had no voting or dispositive power over shares of Holding Company Stock other than pursuant to its Independent Fiduciary Agreement with Standard, it acted as a directed trustee or custodian to various retirement or welfare plans that were not sponsored by Standard or its affiliates. On a *de minimus basis*, Northwestern Trust explains that it made investments on behalf of these plans in contracts issued by Standard. However, Northwestern Trust states that it received no revenues from these investments other than a trustee or custodial fee from the investing plan.

As the independent fiduciary for the Standard Plans, Northwestern Trust explains that it understood and acknowledged the duties, responsibilities and liabilities in acting as a fiduciary for such Plans. In this respect, Northwestern Trust states that in accordance with the terms of its Independent Fiduciary Agreement, it (a) exercised its authority and responsibility to vote on behalf of the Standard Plans at the special meeting of Eligible Members on the proposal to approve the Demutualization Plan; (b) monitored, on behalf of the Standard Plans, the holding of the Holding Company Stock; and (c) provided instructions with respect to the voting, the continued holding and the disposition of Holding Company Stock held by all of the Standard Plans. Finally, Northwestern Trust asserts that it would take all actions that were necessary and appropriate to safeguard the interests of the Standard Plans.

Northwestern Trust notes that the Standard Plans were entitled to receive consideration in the form of Holding Company Stock because each of these Plans was allocated more than 99 shares. Thus, Northwestern Trust states that it was not required to make an ''election'' with respect to the form of consideration that was to be received by the Standard Plans.[35] Northwestern Trust also states that it advised Standard that the only Standard Plan for which a distribution of Holding Company Stock would exceed the 10 percent limitation imposed by section 407(a)(2) of the Act was Standard's Group Life Plan which had no other assets.

Northwestern Trust represents that the transactions were prudent and in the best interests of the Standard Plans and their participants and beneficiaries because the consummation of the transactions was conditioned upon approval of Standard's Eligible Members, an overwhelming majority of whom approved the Demutualization Plan on March 19, 1999, as well as other conditions set forth in the Demutualization Plan. In addition, Northwestern Trust states that its determination that the transactions were appropriate for the Standard Plans was based upon its review of all of the facts and circumstances surrounding the transactions, including documentation and records prepared in connection with the transactions. Based upon this information, Northwestern Trust determined that approval of the Demutualization Plan would be in the best interests of all of the Standard Plans and their participants and beneficiaries. Accordingly, Northwestern Trust explains that it voted in favor of the Demutualization Plan and directed the appropriate fiduciaries of the Standard Plans to receive and hold title to the Holding Company Stock when issued.

13. In connection with the disposition of Holding Company Stock that was held by the Standard Plans, Northwestern Trust directed that such shares be repurchased by the Holding Company as follows:

(a) *The Standard Defined Contribution Plans.* The Standard Defined Contribution Plan-Employees and the Standard Defined Contribution Plan-Agents received a total of 44,610 shares of Holding Company Stock as a result of the demutualization. The

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Plan is the ''Owner'' of the policy and that ''The Owner of a Policy shall be shown on the Company's records.'' Standard further represents that an insurance or annuity policy that provides benefits under an employee benefit plan, typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the owner of the policy. In regard to insurance or annuity policies that designate the employer or trustee as owner of the policy, Standard represents that it was required under the foregoing provisions of Oregon Law and the Demutualization Plan to make distributions resulting from such Plan to the employer or trustee as owner of the policy, except as provided below.

In general, it is the Department's view that, if an insurance policy (including an annuity contract) is purchased with assets of an employee benefit plan, including participant contributions, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3–3) at the time when Standard incurred the obligation to distribute Holding Company Stock, Cash or policy credits, then such consideration would constitute an asset of such plan. Under these circumstances, the appropriate plan fiduciaries must take all necessary steps to safeguard the assets of the plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

[35] Indeed, the Independent Fiduciary Agreement requires that Northwestern Trust make an election available under the Demutualization Plan with respect to the form of consideration that is to be received by each of the Standard Plans.

Holding Company Stock held by these Standard Plans was repurchased by the Holding Company for cash in four equal weekly installments occurring on November 4, 1999, November 10, 1999, November 18, 1999 and November 24, 1999 at the closing market prices on those dates. In this regard, on November 4, 1999, the Standard Defined Contribution Plans sold 11,152 shares of Holding Company Stock to the Holding Company for a closing price of $24.625 per share. On November 10, 1999, the Standard Defined Contribution Plans sold another 11,152 shares of Holding Company Stock to the Holding Company for a closing price of $23.625 per share. On November 18, 1999, the Standard Defined Contribution Plans sold 11,153 shares of Holding Company Stock to the Holding Company at a closing price of $25.50 per share. Finally, on November 24, 1999, the Standard Defined Contribution Plans sold 11,153 shares of Holding Company Stock to the Holding Company at the closing price of $28.188 per share.

(b) *The Standard Defined Benefit Plans.* The Standard Defined Benefit Plan-Employees and the Standard Defined Benefit-Agents received 26,127 shares and 4,389 shares, respectively, as a result of the demutualization. These shares were repurchased by the Holding Company on November 4, 1999 at the closing market price per share of $24.625.

(c) *The Standard Group Life Plan.* In Standard's demutualization, the Standard Group Life Plan received 29,562 shares of Holding Company Stock.[36] On November 4, 1999, 23,490 shares of Holding Company Stock that were held by the Standard Group Life Plan were repurchased by the Holding Company at the closing market price of $24.625 per share. On November 11, 1999, the remaining 5,632 shares of Holding Company Stock that were held by the Standard Group Life Plan and which had been transferred to a voluntary beneficiary employee association, were sold to the Holding Company at the closing price of $23.562 per share.

No commissions or other fees were charged to the Standard Plans with respect to each repurchase transaction. Proceeds from the sale were deposited with each Standard Plan and distributed or allocated by Northwestern Trust.

Standard represents that statutory exemptive relief under section 408(e) of the Act will cover the repurchase of shares of Holding Company Stock by each of the Standard Plans. Therefore, it has not requested administrative exemptive relief from the Department.[37]

14. In summary, it is represented that the transactions satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan of Demutualization, which was being implemented pursuant to stringent procedural and substantive safeguards imposed under Oregon law and supervised by the Director, will not require any ongoing involvement by the Department.

(b) One or more independent Plan fiduciaries had an opportunity to determine whether or not to vote to approve the terms of the Demutualization Plan and was solely responsible for all such decisions.

(c) The exemption allowed Eligible Members that were Plans to acquire Holding Company Stock, Cash or Policy Credits in exchange for their membership interests in Standard and neither Standard nor its affiliates exercised any discretion nor provided ''investment advice'' within the meaning of 29 CFR 2510.3–21(c) with respect to such acquisitions.

(d) No Eligible Member paid any brokerage commissions or fees in connection with such Eligible Member's receipt of Holding Company Stock, nor did (or will) an Eligible Member pay any brokerage commissions or fees with respect to the implementation of the Program.

(e) Each Eligible Member that was a Plan had an opportunity to comment on the Demutualization Plan and to vote to approve such Plan after receiving full and complete disclosure of its terms.

(f) The Director made an independent determination that the Demutualization Plan was in the interest of all of Standard's policyholders, including Plans.

(g) The Plan of Demutualization did not change and will not change premiums or reduce policy benefits, values, guarantees or other policy obligations of Standard to its policyholders or contractholders.

Notice to Interested Persons

Standard will provide notice of the proposed exemption to Eligible Members which are Plans within 14 days of the publication of the notice of pendency in the **Federal Register**. Such notice will be provided to interested persons by first class mail and will include a copy of the notice of proposed exemption as published in the **Federal Register** as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2) which shall inform interested persons of their right to comment on the proposed exemption. Comments with respect to the notice of proposed exemption are due within 44 days after the date of publication of this pendency notice in the **Federal Register**.

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 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

[36] As noted previously, it is believed that shares of Holding Company Stock attributed to the Standard Disability Plan were determined not to be ''plan assets'' and thus, were distributed to Standard.

[37] The Department again expresses no opinion on whether the sale of Holding Company Stock by any of the Standard Plans described above satisfied the terms and conditions of section 408(e) of the Act.

that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th; day of May, 2000.

Ivan Strasfeld,

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

[FR Doc. 00–12948 Filed 5–22–00; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2000–21; Exemption Application No. D–10777, et al.]

Grant of individual exemptions; Texas Iron Workers and Employers Apprenticeship Training and Journeyman Upgrading Fund (the Plan)

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, D.C. 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, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

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

(a) The 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.

Texas Iron Workers and Employers Apprenticeship Training and Journeyman Upgrading Fund (the Plan), Located in San Antonio, Texas

[Prohibited Transaction Exemption 2000–21; Exemption Application No. D–10777]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the purchase of a classroom/office building and a shop building (together, the Buildings) and an adjacent lot (the Adjacent Lot) by the Plan from Local Union No. 66 of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, for $63,000, provided that: (a) The purchase is a one-time transaction for cash, and no commissions are paid by the Plan with respect to the transaction; (b) the Plan pays a price for the Buildings and the Adjacent Lot (collectively, the Properties) that is no more than the fair market value of the Properties at the time of the transaction, as determined by a qualified, independent appraiser; (c) the Plan's independent fiduciary has determined that the transaction is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries; and (d) the Plan's independent fiduciary monitors the purchase of the Properties by the Plan and takes whatever action is necessary to safeguard the interests of the Plan and its participants and beneficiaries.

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 March 22, 2000 at 65 FR 15367.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Bankers Trust Company (BTC), Located in New York, New York

[Prohibited Transaction Exemption 2000–22; Application No. D–10838]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The granting to BTC (a) by the Cheslock-Bakker Opportunity Fund, L.P. (the LP) of security interests in (i) the capital commitments and capital contributions (Capital Contributions) of certain employee benefit plans (the Plans) investing in the LP and (ii) a borrower collateral account to which all Capital Contributions will be deposited when paid and (b) by the LP and by its general partner, CBA Real Estate Partners, LLC, a Delaware limited liability company, of the right to make calls for cash contributions (Contribution Calls) under the Cheslock-Bakker Opportunity Fund, L.P. Limited Partnership Agreement, where BTC is the representative of certain lenders (the Lenders) that will fund a so-called ''credit facility'' providing credit to the LP, and where the Lenders are parties in interest with respect to the Plans; and (2) the execution of a partner agreement and estoppel (the Estoppel) under which the Plans agree to honor the Contribution Calls; provided that (a) the grants and Estoppels are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; (b) the decisions on behalf of each Plan to invest in the LP and to execute such Estoppels in favor of BTC are made by a fiduciary which is not included among, and is independent of and unaffiliated with, the Lenders and BTC; (c) with respect to Plans that have invested or may invest in the LP in the future, such Plans have or will have assets of not less than $100 million and not more than 5% of the assets of any such Plan are or will be invested in the LP. For purposes of this condition (c), in the case of multiple plans maintained by a single employer or single controlled group of employers, the assets of which are invested on a commingled basis, (*e.g.,* through a master trust), this $100 million threshold will be applied to the aggregate assets of all such plans; and (d) the general partner of the LP must be