

**II. Desired Focus of Comments**

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**III. Current Action**

The BLS has taken steps to reduce employer reporting burden by developing a standardized format for employers to use to send these data to the States in an electronic medium. The BLS also established an Electronic Data Interchange (EDI) Collection Center to improve and expedite the Multiple Worksite Report collection process. Employers who complete the Multiple Worksite Report for multi-location businesses now can submit employment and wages information on any electronic medium (tape, cartridge, diskette, or computer-to-computer) directly to the data collection center, rather than to each State separately. The data collection center then distributes the appropriate data to the respective States. The BLS also has been working very closely with firms providing payroll and tax filing services for employers as well as developers of payroll and tax filing software to include this electronic reporting as either a service for their clients or a new feature of their system. In addition, the

BLS is developing a web-based system to collect these data from businesses of small to medium size.

The confidentiality statement used on the MWR survey form is as follows:

The information collected on this form by the BLS and the State agencies cooperating in its statistical programs will be used for statistical and Unemployment Insurance program purposes, and other purposes in accordance with law.

*Type of Review:* Revision.

*Agency:* Bureau of Labor Statistics.

*Title:* Multiple Worksite Report (MWR) and the Report of Federal Employment and Wages (RFEW).

*OMB Number:* 1220-0134.

*Frequency:* Quarterly.

*Affected Public:* Business or other for-profit institutions, not for-profit institutions, Federal Government, and State, local or tribal government.

*Number of Respondents:* 114,767.

*Estimated Time Per Response:* 22.2 Minutes.

*Total Burden Hours:* 169,855 Hours.

Form No.	Total respondents	Respondent	Total responses	Average time per response (in minutes)	Total burden (hours)
BLS 3020 (MWR) .....	112,783	Non-Federal .....	451,132	22.2	166,919
BLS 3021 (RFEW) .....	1,984	Federal .....	7,936	22.2	2,936
Totals .....	114,767	.....	459,068	.....	169,855

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

*Total Burden Cost (operating/maintenance):* \$0.

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

Signed at Washington, DC, this 12th day of September 2000.

**W. Stuart Rust, Jr.,**

*Chief, Division of Management Systems,  
Bureau of Labor Statistics.*

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**BILLING CODE 4510-24-M**

**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration**

**[Prohibited Transaction Exemption 2000-46; Exemption Application No. D-10590, et al.]**

**Grant of Individual Exemptions; Bank of Oklahoma (the Bank)**

**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.

## Bank of Oklahoma (the Bank), Located in Tulsa, OK

[Prohibited Transaction Exemption 2000-46; Exemption Application No. D-10590]

## Exemption

### Section I. Covered Transactions

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 the purchase or redemption of shares by an employee benefit plan (the Plan), in certain mutual funds that are either affiliated with the Bank (the Affiliated Funds) or are unaffiliated with the Bank (the Third Party Funds),<sup>1</sup> in connection with the participation by the Plan in the Bank-sponsored Foundations Program (the Foundations Program).

In addition, the restrictions of section 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)(E) and (F) of the Code, shall not apply to the provision, by the Bank, of asset allocation services to an independent fiduciary of a participating Plan (the Primary Independent Fiduciary) or to a participant (the Directing Independent Fiduciary) of a Plan that provides for participant investment direction (the Participant-Directed Plan), which may result in the selection of portfolios in the Foundations Program for the investment of Plan assets, by the Primary Independent Fiduciary or the Directing Independent Fiduciary, and the receipt of fees by the Bank and/or its affiliates.

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

### Section II. General Conditions

(a) The participation by a Plan in the Foundations Program is approved by a Primary Independent Fiduciary or a

Directing Independent Fiduciary, in the case of a Participant-Directed Plan, and, no Plan covering employees of the Bank or any of its affiliates is eligible to participate in the Foundations Program.

(b) As to each Plan, the total fees that are paid to the Bank and its affiliates constitute no more than reasonable compensation for the services provided.

(c) With the exception of distribution-related fees that are paid to the Bank pursuant to Rule 12b-1 (the Rule 12b-1 Fees) of the Investment Company Act of 1940 (the Investment Company Act) which are offset, no Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Funds.

(d) The terms of each purchase or redemption of shares in the Funds remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) The Bank provides written documentation to each Plan's Primary Independent Fiduciary or Directing Independent Fiduciary of its recommendations, as well as on the design and parameters with respect to an asset allocation model (the Asset Allocation Model) based upon objective criteria that are uniformly applied.

(f) Any recommendation or evaluation made by the Bank to a Primary Independent Fiduciary or a Directing Independent Fiduciary is implemented only at the express direction of such fiduciary.

(g) The Bank retains an independent financial analyst (the Independent Financial Analyst) to—

(1) Review the investments of Plan assets in a Third Party Fund for purposes of satisfying Representation 13 of the notice of proposed exemption (65 FR 42248, 42255 and 42256, July 7, 2000);

(2) Review determinations by the Bank to add a Third Party Fund or replace an Affiliated Fund with a Third Party Fund; and

(3) Ensure that only one Fund fits an asset segment (the Asset Segment) such that there is no overlap between a Third Party Fund and an Affiliated Fund.

Further, such Independent Financial Analyst may not derive more than 5 percent of its total annual revenues from the Bank and/or its affiliates.

(h) The quarterly fee that is paid by a Plan to the Bank and its affiliates for asset allocation and related services (the Wrap Fee) rendered to such Plan under the Foundations Program is offset by—

(1) All investment management fees (the Advisory Fees) that are paid to it and/or its affiliates by the Affiliated Funds;

(2) All non-advisory fees, including custodial fees, Rule 12b-1 Fees or subadministration fees (collectively, the Administrative Fees) that are paid to the Bank and/or its affiliates by the Affiliated Funds; and

(3) All Administrative Fees which include, but are not limited to, Rule 12b-1 Fees and sub-transfer agency fees, that are paid to the Bank and/or its affiliates by the Third Party Funds, such that the sum of the offset and the net Wrap Fee will always equal the aggregate Wrap Fee, thereby making the Bank's selection of Affiliated Funds or Third Party Funds for the Asset Allocation Models a "fee-neutral" decision.

(i) The Plan is automatically rebalanced on a quarterly basis (using net asset values of the affected Funds as of the close of business) on a pre-established date to the Asset Allocation Model previously prescribed by such fiduciary if authorized in writing by the Primary Independent Fiduciary, and if one or more Fund allocations deviates from the Asset Allocation Model prescribed by such fiduciary because—

(1) At least one transaction required to rebalance the Plan among the Funds involves a purchase or redemption of securities valued at \$100 or more; and

(2) The net asset value of the Fund affected would be more than 5 percent of the Plan's investment in such Fund.

(j) The Bank may make adjustments to the composition of the Asset Allocation Model (the Model Adjustments) unilaterally only within certain authorized parameters approved by the Primary Independent Fiduciary, or upon the consent of the Primary Independent Fiduciary, if the Bank proposes to exceed the parameters.

(1) If the Model Adjustment is made unilaterally pursuant to Section II(j) above, the Bank may only deviate from the Normal Position of a given Asset Allocation Model within a specified range, not to exceed 15 percent (above and below) the Normal Position under Section III(l), which is applied to the Asset Allocation Model's entire allocation.

(2) With respect to a Model Adjustment requiring independent fiduciary consent, the Bank may not change the asset mix outside the limits authorized by the Primary Independent Fiduciary unless it provides the Primary Independent Fiduciary and the Directing Independent Fiduciary, upon the request of the Primary Independent Fiduciary, 30 days' advance written notice of the impending change.

(k) The notice referred to above in Section II(j) includes a termination

<sup>1</sup> The Affiliated Funds and the Third Party Funds are collectively referred to herein as the Funds.

advisory form (the Termination Advisory) which—

(1) Advises the Primary Independent Fiduciary of the right to withdraw from the Foundations Program or, in the case of the Directing Independent Fiduciary, of the right to transfer to a different Asset Allocation Model without penalty; and

(2) States that absent any affirmative action by the Primary Independent Fiduciary or the Directing Independent Fiduciary, the Plan will be reallocated within the revised Normal Positions for the Asset Allocation Model, effective as of a given date.

(l) The Bank provides the Termination Advisory to the Primary Independent Fiduciary and, if applicable, the Directing Independent Fiduciary, at least annually; and provides the Termination Advisory in all cases whenever the Bank —

(1) Makes a Model Adjustment where fiduciary consent is needed;

(2) Adds a new Fund to an Allocation Model;

(3) Removes an existing Fund within an Allocation Model; or

(4) Increases its Wrap Fee.

Under such circumstances, the notice and Termination Advisory are provided at least 30 days prior to the implementation of the change.<sup>2</sup>

(m) With respect to its participation in the Foundations Program, prior to purchasing shares in the Affiliated Funds and the Third Party Funds, each Primary Independent Fiduciary, and, if applicable, each Directing Independent Fiduciary, receives the following written or oral disclosures from the Bank:

(1) A brochure describing the Foundations Program;

(2) A Foundations Program Asset Allocation Account Application;

(3) A Foundations Program Asset Allocation Account Purchase Order;

(4) A Foundations Program Account Agreement (the Account Agreement) providing detailed information on the Foundations Program; the fee structure of the Foundations Program; procedures and limitations imposed on the Bank with respect to Model Adjustments;

rebalancing of a participating Plan investor's account; and the Bank's affiliation or non-affiliation with the Funds, including a copy of the executed Account Agreement between the Plan and the Bank, to the Primary Independent Fiduciary rather than to the Directing Independent Fiduciary;

(5) The Bank's Form ADV—Part II which contains a description of the Bank's affiliation, if any, with the sponsors, distributors, administrators, investment advisers, sub-advisers, custodians and transfer agents of each Affiliated Fund and Third Party Fund; and

(6) Copies of the proposed and final exemptions with respect to the exemptive relief described herein. (In the case of a Participant-Directed Plan, this information may be provided directly by the Bank to the Primary Independent Fiduciary for distribution to the Directing Independent Fiduciaries.)

(n) Having acknowledged receipt of the documents described in paragraph (m) of Section II, the Primary Independent Fiduciary submits a completed Account Agreement to the Bank and represents in writing to the Bank that such fiduciary is—

(1) Independent of the Bank and its affiliates;

(2) Knowledgeable with respect to the Plan in administrative matters;

(3) Able to make an informed decision concerning the Plan's participation in the Foundations Program; and

(4) Knowledgeable with respect to funding matters related to the Plan.

(o) In addition to the initial disclosures described above in paragraph (m) of this Section II, prior to investment in an Asset Allocation Model, the Primary Independent Fiduciary or, if applicable, the Directing Independent Fiduciary—

(1) Receives a written analysis from the Bank based on the fiduciary's Investor Profile as well as a description of the Asset Allocation Model recommended by a Bank's investment counselor which includes a description of the actual fee structure and the actual basis points to be rebated to such Plan fiduciary;

(2) Receives a prospectus for each Affiliated Fund and Third Party Fund in which the Plan may be invested and, upon such fiduciary's request, is provided a Statement of Additional Information which supplements the prospectus; and

(3) Acknowledges receipt of the foregoing documents in writing to the Bank.

(p) With respect to their ongoing participation in the Foundations

Program, each Primary Independent Fiduciary and/or Directing Independent Fiduciary receives the following continuing disclosures from the Bank:

(1) Copies of applicable prospectuses;

(2) Written confirmations of each purchase or redemption of shares of an Affiliated Fund or a Third Party Fund, including transactions implemented as a result of a realignment of the Asset Allocation Model's investment mix or from the rebalancing of a Plan's investments in conformity with the selected Asset Allocation Model;

(3) Telephone quotations of such Plan's balance (or if relevant, individual account balances of Directing Independent Fiduciaries) under the Foundations Program;

(4) Periodic, but at least quarterly, account statements showing the Plan's value (or if relevant, individual account balances of Directing Independent Fiduciaries), a summary of purchase, sale and exchange activity and dividends received or reinvested and a summary of cumulative realized gain and/or loss;

(5) Semiannual or annual reports that include financial statements for the Funds as well as a description of the fees paid to the Bank and its affiliates;

(6) At least annually, a written or oral inquiry from the Bank to ascertain whether the information provided on the Investor Profile is still accurate and to determine if such information should be updated;

(7) A Termination Advisory provided on an annual basis as well as at other times noted in paragraph (l) of this Section II; and

(8) The Bank's investment advisory and other agreements with any Affiliated Fund as well as its distribution agreement pertaining to the Third Party Funds, upon request of the Primary Independent Fiduciary.

(Communications received from the Funds (e.g., prospectuses, annual reports, quarterly reports, notices regarding changes in Fund managers, proxy mailings, etc.) will be distributed to the Primary Independent Fiduciary, who may elect to pass them through to the Directing Independent Fiduciaries.)

(q) The Bank maintains, for a period of six years, the records necessary to enable the persons described in paragraph (r) 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 Bank and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

<sup>2</sup> For an annual mailing of the Termination Advisory or in the event the Bank makes a Model Adjustment that is outside of current parameters or a Fund is added or substituted, the Termination Advisory will include language similar to that contained in Section II(k)(1) and (2). In the event the Bank proposes an increase in its Wrap Fee, the Termination Advisory will also include language similar to that contained in Section II(k)(1). However, under such circumstances, Section II(k)(2) will be modified state that absent any affirmative action by the Primary Independent Fiduciary or the Directing Independent Fiduciary, the revised Wrap Fee will be effective as of a specified date.

(2) No party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (r) of this Section II below.

(r)(1) Except as provided in section (r)(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 (q) of this Section II are unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any fiduciary of a participating Plan or any duly authorized representative of such 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.

(r)(2) None of the persons described above in paragraphs (r)(1)(B)–(r)(1)(D) of this paragraph (r) are authorized to examine the trade secrets of the Bank or commercial or financial information which is privileged or confidential.

### Section III. Definitions

For purposes of this exemption:

(a) The term “Bank” means the Bank of Oklahoma, N.A., a subsidiary of BOK Financial Corporation and any affiliate of the Bank, as defined in paragraph (b) of this Section III.

(b) An “affiliate” of the Bank includes—

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

(2) Any individual who is an officer, director or partner in the Bank or a person described in subparagraph (b)(1) of this Section III, and

(3) Any corporation or partnership of which the Bank or an affiliate or person described in subparagraphs (b)(1) or (b)(2) of this Section III, is a 10 percent or more 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) The term “officer” means a president, any vice president in charge

of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(e) The term “Plan” refers to an employee benefit plan which is eligible to participate under the Foundations Program. Such Plans are qualified under sections 401(a) and 501(a) of the Code and include Keogh plans; individual retirement accounts; simplified employee pension plans; Salary Reduction Simplified Employee Pensions (SARSEPs), provided that the SARSEP was established prior to January 1, 1996, the date as of which the Code provision authorizing such plans was repealed; and savings incentive match plans for employees; and, in the case of a Participant-Directed Plan, the individual account of a Directing Independent Fiduciary.

(f) The term “Directing Independent Fiduciary” means, as to a participating Plan, a participant in a Participant-Directed Plan that is authorized to direct the investment of his or her account balance.

(g) The “Administrative Fees” refer to custodial, Rule 12b–1 Fees, and sub-administration fees that are paid to the Bank or its affiliates from or on behalf of the Affiliated Funds on account of the Bank’s services to the Affiliated Funds, as well as Rule 12b–1 Fees, sub-transfer agency fees and other fees that may be paid to the Bank or its affiliates on account of the investment of participating Plans in the Third Party Funds.

(h) The “Advisory Fees” refer to investment advisory fees that are paid by the Affiliated Funds to the Bank and its affiliates.

(i) The term “Affiliated Fund” means a portfolio of an investment company registered under the Investment Company Act for which the Bank or an affiliate of the Bank acts as the investment adviser, and may also serve as custodian or sub-administrator.

(j) The term “Asset Segment” refers to a subdivision of each asset class (the Asset Class) into which the Asset Allocation Model is divided (e.g., international equities is an Asset Segment under the Asset Class “stocks”). Asset Segments are determined by the Bank with reference to recognized investment objectives and styles established by independent mutual fund analysts such as Morningstar, Inc. and Lipper Analytical Services, Inc.

(k) The “Investment Management Group” refers to a committee comprised of the Bank’s senior investment professionals.

(l) The term “Model Adjustment” means an adjustment to the Normal Position of an Asset Allocation Model (i.e., a change in the Asset Allocation Model among the three Asset Classes, the division of the Asset Class into Asset Segments, and the identity of the Funds which represent the various Asset Segments).

(m) The “Normal Position” refers to the initial allocation of each Asset Allocation Model among the various Asset Classes, Asset Segments and Funds.

(n) The “Offset Fees” refer to the Advisory Fees and Administrative Fees that are paid by, or on behalf of, the Funds to the Bank and/or its affiliates and which are offset against the Wrap Fee.

(o) The term “Participant-Directed Plan” refers to a qualified Plan under which participants direct the investments of their individual accounts.

(p) The term “Primary Independent Fiduciary” refers to a plan fiduciary within the meaning of section 3(21)(A) of the Act who has (1) investment discretion and authority over the Plan’s assets and (2) is not an affiliate of the Bank. Typically, the Primary Independent Fiduciary will be the plan administrator, the employer which sponsors the Plan, an investment committee appointed under the Plan document or an IRA account holder.

(q) The term “Termination Advisory” refers to the notice advising the Primary Independent Fiduciary or the Directing Independent Fiduciary of the right to withdraw from the Foundations Program without penalty. The Termination Advisory, which will contain instructions on its use, will be provided to such participants on an annual basis, or whenever the Bank makes a Model Adjustment that is outside of a current Allocation Model, in the event a new Fund is added to an Allocation Model or an existing Fund is removed from an Allocation Model, or the Bank’s Wrap Fee is increased. Depending on the circumstances precipitating its distribution, the Termination Advisory will include a provision advising the Primary Independent Fiduciary or the Directing Independent Fiduciary that absent any affirmative action by the Primary Independent Fiduciary or the Directing Independent Fiduciary, the authorization of the Plan’s participation in the Foundations Program will continue, or the participating Plan will be reallocated in accordance with the revised Normal Position for the Asset Allocation Model in which the Plan’s assets are invested, or the Bank’s Wrap

Fee will be increased. The Bank will provide the Termination Advisory to the Primary Independent Fiduciary and/or the Directing Independent Fiduciary at least 30 days prior to the implementation of the proposed change.

(r) A "Third Party Fund" is a portfolio of an investment company that is registered under the Investment Company Act for which neither the Bank nor any affiliate of the Bank acts as investment adviser, custodian and/or sub-administrator.

(s) The term "Wrap Fee" refers to the Plan or account-level fee the Bank, BOSCO, Inc. (BOSCO) and/or their affiliates charge each Plan for the asset allocation, custodial and related services under the Foundations Program.

(t) The term "Independent Financial Analyst" means an independent third party which has entered into a written contract with the Bank to (1) review the investment of Plan assets in a Third Party Fund, (2) review the Funds each time the Bank determines to add a Third Party Fund or replace an Affiliated Fund with a Third Party Fund, and (3) determine that only one Fund fits an Asset Segment such that there is no overlap between a Third Party Fund and an Affiliated Fund. The Independent Financial Analyst may not derive more than 5 percent of its total annual revenues from the Bank or its affiliates, including its fee for serving as the Independent Financial Analyst.

As for minimum credentials, the Independent Financial Analyst will be a Chartered Financial Analyst and will be employed by a firm which has at least a regional presence in the investment products and services industry. In addition, the individual assigned the duties of the Independent Financial Analyst must alone, or with his or her employer, have a certain minimum number of years experience in the investment products and services industry and must not be affiliated with the Bank, BOSCO or BISYS Fund Services, Inc. Should the Bank replace the Independent Financial Analyst, that entity must meet the same requirements applicable to the current Independent Financial Analyst. In addition, the Bank will be required to provide the Department with advance written notification of the change in Independent Financial Analysts and the qualifications of the successor. Unless the Department objects to the change, the Foundations Program will operate with the new Independent Financial Analyst.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed

exemption published on July 7, 2000 at 65 FR 42248.

#### *Written Comments*

The Department received two written comments with respect to the proposed exemption and no requests for a public hearing. The first comment was submitted by the Bank. The second comment was submitted by the Securities Industry Association (the SIA). Following is a discussion of each comment and the responses made by either the Department or the Bank.

#### *The Bank's Comment*

In its comment, the Bank requested modification of Section II(g)(1) of the proposed exemption in order to track the role of the Independent Financial Analyst to Representation 13 of the Summary of Facts and Representations. Section II(g)(1) of the proposed exemption states that the Independent Financial Analyst will review the investments of Plan assets in a Third Party Fund for purposes of "performance and suitability." However, the Bank suggested that Section II(g)(1) be revised to read as follows:

(1) Review the investments of Plan assets in a Third Party Fund for purposes of satisfying Representation 13 of the notice of proposed exemption (65 FR 42248, 42255 and 42256, July 7, 2000);

In response to the Bank's comment, the Department has made the requested change to the operative language of the proposed exemption.

#### *The SIA's Comment*

In its comment, the SIA requested that the Department reconsider a number of conditions contained in the notice of proposed exemption. In response to the SIA's comment letter, the Bank indicated that it was not interested in any of the recommendations expressed therein. Accordingly, the Bank urged the Department to grant the requested exemption as proposed, subject to the modification discussed above.

For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-10590) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N-5638, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the comment letters, the Department has decided to grant the exemption subject to the modification described above.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### **Goldman, Sachs & Co., Located in New York, New York**

[Prohibited Transaction Exemption 2000-47; Exemption Application No. D-10758]

#### **Exemption**

##### *Section I—Transactions*

A. The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective April 15, 1999, to any purchase or sale of securities between certain affiliates of Goldman, Sachs & Co. (Goldman) which are foreign broker-dealers or banks (the Foreign Affiliates, as defined below) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are parties in interest, including options written by a Plan, Goldman, or a Foreign Affiliate, provided that the following conditions, and the General Conditions of Section II, are satisfied:

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

(2) The terms of any transaction are at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party; and

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

B. The restrictions of sections 406(a)(1) (A) through (D) and 406(b)(2)

of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply, effective April 15, 1999, to any extension of credit to the Plans by the Foreign Affiliates to permit the settlement of securities transactions, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts, provided that the following conditions, and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate is not a fiduciary with respect to the Plan assets involved in the transaction, unless no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with such extension of credit; and

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

C. The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply, effective April 15, 1999, to the lending of securities to the Foreign Affiliates by the Plans, provided that the following conditions, and the General Conditions of Section II, are satisfied:

(1) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets;

(2) The Plan receives from the Foreign Affiliate (by physical delivery, by book entry in a securities depository, wire transfer, or similar means) by the close of business on the day the loaned securities are delivered to the Foreign Affiliate, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral shall be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and shall be held in the United States;

(3) The collateral has, as of the close of business on the preceding business day, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of

letters of credit, a stated amount equal to same);

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

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

(6) The Plan receives at least the equivalent of all distributions on the borrowed securities made during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of applicable tax withholdings)<sup>3</sup> had it remained the record owner of such securities;

(7) If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate delivers additional collateral, by the close of business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent;

(8) Before entering into a Loan Agreement, the Foreign Affiliate furnishes to the independent Plan fiduciary (a) the most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement),

<sup>3</sup> The Department notes the applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that the Foreign Affiliate will always put the Plan back in at least as good a position as it would have been in had it not loaned the securities.

and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change;

(9) The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least, or, alternatively, such period as permitted by Prohibited Transaction Class Exemption (PTE) 81-6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987), as it may be amended or superseded;<sup>4</sup>

(10) In the event that the loan is terminated and the Foreign Affiliate fails to return the borrowed securities, or the equivalent thereof, within the time described in paragraph 9, the Plan may purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with the sale and/or purchase. The Foreign Affiliate is obligated to pay, under the terms of the Loan Agreement, and does pay, to the Plan the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary; and

<sup>4</sup> PTE 81-6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the 1934 Act (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

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

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

#### *Section II—General Conditions*

A. The Foreign Affiliate is a registered broker-dealer or bank subject to regulation by a governmental agency, as described in Section III.B, and is in compliance with all applicable rules and regulations thereof in connection with any transactions covered by this exemption;

B. The Foreign Affiliate, in connection with any transactions covered by this exemption, is in compliance with the requirements of Rule 15a-6 (17 CFR 240.15a-6) of the 1934 Act, and Securities and Exchange Commission (SEC) interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements;

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

D. The Foreign Affiliate maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction such records as are necessary to enable the persons described in paragraph E. to determine whether the conditions of the exemption have been met, except that—

(1) a party in interest with respect to a Plan, other than the Foreign Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the

taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by paragraph E; and

(2) a prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the Foreign Affiliate's control, such records are lost or destroyed prior to the end of the six year period; and

E. Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the Foreign Affiliate makes the records referred to in paragraph D. unconditionally available during normal business hours at their customary location to the following persons or a duly authorized representative thereof: (1) the Department, the Internal Revenue Service, or the SEC; (2) any fiduciary of a Plan; (3) any contributing employer to a Plan; (4) any employee organization any of whose members are covered by a Plan; and (5) any participant or beneficiary of a Plan. However, none of the persons described in (2) through (5) of this subsection are authorized to examine the trade secrets of the Foreign Affiliate or commercial or financial information which is privileged or confidential.

#### **Section III—Definitions**

A. The term "affiliate" of another person shall include: (1) any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (2) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (3) any corporation or partnership of which such other person is an officer, director or partner. For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

B. The term "Foreign Affiliate" shall mean an affiliate of Goldman, Sachs & Co. that is subject to regulation as a broker-dealer or bank by (1) the Ontario Securities Commission and the Investment Dealers Association in Canada; (2) the Securities and Futures Authority in the United Kingdom; (3) the Deutsche Bundesbank and the Federal Banking Supervisory Authority, *i.e.*, der Bundesaufsichtsamt fuer das Kreditwesen (the BAK) in Germany; (4) the Ministry of Finance and the Tokyo Stock Exchange in Japan; (5) the Australian Securities & Investments Commission (the ASIC) in Australia; or (6) the Swiss Federal Banking Commission in Switzerland.

C. The term "security" shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term "security" does not include swap agreements or other notional principal contracts.

**EFFECTIVE DATE:** This exemption is effective as of April 15, 1999.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 13, 2000 at 65 FR 37175.

#### *Written Comments*

The Department received one written comment with respect to the notice of proposed exemption (the Notice). The comment was submitted by the applicant. The applicant requested certain clarifying modifications and additions to the proposed operative language and to the Summary of Facts and Representations (the Summary) contained in the Notice (see 65 FR 37175). These modifications and additions, discussed below, are consistent with other recent similar exemptions granted by the Department.<sup>5</sup>

1. First, the applicant requested that the following footnote be added to the end of the first paragraph under the heading "Proposed Exemption" (65 FR at 37176, column 1):

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

2. Second, the applicant requested that, because the settlement period for securities transactions in the various jurisdictions covered by the exemption may be more than three days, the first sentence in Item 7 of the Summary (65 FR 37180, center column) be revised to read as follows:

Goldman represents that a normal part of the execution of securities transactions by broker-dealers on behalf of clients, including employee benefit plans, is the extension of credit to clients so as to permit the settlement of transactions in the customary [delete "three-day"] settlement period.

3. Finally, the applicant requested that Footnote 6 of the Summary (65 FR

<sup>5</sup> See *e.g.*, Prohibited Transaction Exemption (PTE) 97-08 (62 FR 4811, January 31, 1997) for Morgan Stanley & Co.; PTE 97-57 (62 FR 56203, October 29, 1997) for NatWest Securities Corp.; PTE 98-62 (63 FR 71307, December 24, 1998) for Barclays Bank PLC; PTE 99-4 (64 FR 4127, January 27, 1999) for Salomon Smith Barney Inc.; and PTE 99-45 (64 FR 61138, November 9, 1999) for Donaldson, Lufkin & Jenrette Securities Corporation.



at 37180, center column) be revised by adding the following italicized language:

Goldman represents that *currently* all such requirements *under Rule 15a-6* relating to record-keeping of principal transactions would be applicable [delete "to"] in respect of any Foreign Affiliate in a *principal* transaction that would be covered by this proposed exemption.

The applicant noted that the revisions, above, are consistent with the language of PTE 99-4 (64 FR 4127, January 27, 1999) for Salomon Smith Barney Inc., in Footnote 4 of the notice of proposed exemption relating thereto (see 63 FR 53703, 53707).

The Department acknowledges the applicant's requested modifications to the language of the Notice and concurs in these changes. Accordingly, based upon the information contained in the entire record, the Department has determined to grant the proposed exemption as modified herein.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karin Weng of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

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

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and

representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 11th day of September, 2000.

**Ivan Strasfeld,**

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

[FR Doc. 00-23823 Filed 9-15-00; 8:45 am]

**BILLING CODE 4510-29-P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before November 2, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records

Administration (NARA), 8601 Adelphi Road, College Park, MD 20740-6001. Requests also may be transmitted by FAX to 301-713-6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

#### FOR FURTHER INFORMATION CONTACT:

Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Telephone: (301)713-7110. E-mail: records.mgt@arch2.nara.gov.

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records.

Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records