

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

[Application No. D-10770, et al.]

Proposed Exemptions; Deutsche Bank AG and its Affiliates (Collectively, Deutsche Bank or the Applicants)**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.

Deutsche Bank AG and its Affiliates (Collectively, Deutsche Bank or the Applicants) Located in Frankfurt, Germany

[Application No. D-10770]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act, section 4975(c)(2) of the Code, and section 8477(c)(3) of FERSA, in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Retroactive Exemption for the Acquisition, Holding and Disposition of Deutsche Bank AG Stock

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply, as of June 4, 1999 until the date this proposed exemption is granted, to the acquisition, holding and disposition of the common stock of Deutsche Bank AG (the Deutsche Bank AG Stock) by Index and Model-Driven Funds managed by Deutsche Bank, provided that the following conditions and the general conditions in Section III are met:

(a) The acquisition or disposition of the Deutsche Bank AG Stock is for the

sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Deutsche Bank AG Stock which is intended to benefit Deutsche Bank or any party in which Deutsche Bank may have an interest.

(b) All aggregate daily purchases of Deutsche Bank AG Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for the Deutsche Bank AG Stock occurring on the applicable exchange and automated trading system (as described in paragraph (c) below) for the previous five (5) business days, or

(2) 15 percent of the trading volume for Deutsche Bank AG Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades occurring on that date.

(c) All purchases and sales of Deutsche Bank AG Stock occur either (i) on a recognized securities exchange as defined in Section IV(k) below, (ii) through an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Deutsche Bank that is subject to regulation and supervision by the Deutsche Bundesbank and the Bundesaufsichtsamt fuer das Kreditwesen (the BAK), the Bundesaufsichtsamt fuer den Wertpapierhandel (the BAWe), or another applicable regulatory authority (pursuant to the applicable securities laws) that provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) in a direct, arms-length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Deutsche Bank and is either registered under the Securities Exchange Act of 1934 (the '34 Act), and thereby subject to regulation by the U.S. Securities and Exchange Commission (SEC), or subject to regulation and supervision by the BAK, the BAWe, or another applicable regulatory authority.

(d) No transactions by a Fund involve purchases from, or sales to, Deutsche Bank (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(e) No more than five (5) percent of the total amount of Deutsche Bank AG Stock issued and outstanding at any time is held in the aggregate by Index and Model-Driven Funds managed by Deutsche Bank.

(f) Deutsche Bank AG Stock constitutes no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(g) A plan fiduciary independent of Deutsche Bank authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Deutsche Bank AG Stock, pursuant to the procedures described in this notice of proposed exemption, other than in the case of an employee benefit plan sponsored or maintained by Deutsche Bank and/or an Affiliate for its own employees (a Deutsche Bank Plan).

(h) A fiduciary independent of Deutsche Bank directs the voting of the Deutsche Bank AG Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Deutsche Bank AG Stock are required or permitted to vote.

(i) No more than ten (10) percent of the assets of any Fund that acquires and holds Deutsche Bank AG Stock is comprised of assets of any Deutsche Bank Plan(s) for which Deutsche Bank exercises investment discretion.

Section II—Prospective Exemption for the Acquisition, Holding and Disposition of Deutsche Bank Stock

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, section 8477(c)(2)(A) and (B) of FERSA, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding and disposition of Deutsche Bank AG Stock or the common stock of an affiliate of Deutsche Bank AG (Deutsche Bank Affiliate Stock) by Index and Model-Driven Funds managed by Deutsche Bank, provided that the following conditions and the general conditions in Section II are met:

(a) The acquisition or disposition of Deutsche Bank AG Stock or Deutsche Bank Affiliate Stock (collectively, Deutsche Bank Stock) is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Deutsche Bank Stock which is intended to benefit Deutsche Bank or any party in

which Deutsche Bank may have an interest.

(b) Whenever Deutsche Bank Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of Deutsche Bank Stock necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous five (5) business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of Deutsche Bank Stock occur either (i) on a recognized securities exchange (as defined in Section IV(k) below), (ii) through an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Deutsche Bank that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the BAK, the BAWe, or another applicable regulatory authority, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(j) below) that is operated by a recognized securities exchange (as defined in Section IV(k) below), pursuant to the applicable securities laws, and provides a mechanism for

customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of Deutsche Bank Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Deutsche Bank Stock, Deutsche Bank appoints a fiduciary which is independent of Deutsche Bank to design acquisition procedures and monitor Deutsche Bank's compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of Deutsche Bank Stock to its specified weighting in the index or model pursuant to the restrictions described in paragraph (b) above, all aggregate daily purchases of Deutsche Bank Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for the Deutsche Bank Stock occurring on the applicable exchange and automated trading system (as defined below) for the previous five (5) business days, or

(2) 15 percent of the trading volume for Deutsche Bank Stock occurring on the applicable exchange and automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in Deutsche Bank Stock not otherwise described in paragraph (b) above are either: (i) Entered into on a principal basis in a direct, arms-length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Deutsche Bank and is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the BAK, the BAWe, or another applicable regulatory authority, (ii) effected on an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Deutsche Bank that is subject to regulation by either the SEC, the BAK, the BAWe, or another applicable regulatory authority, or an automated trading system operated by a recognized securities exchange (as defined in Section IV(k) below) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized securities exchange (as defined in Section IV(k) below) so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, Deutsche

Bank (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(f) No more than five (5) percent of the total amount of either Deutsche Bank AG Stock or any Deutsche Bank Affiliate Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by Deutsche Bank.

(g) Deutsche Bank Stock constitutes no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A plan fiduciary independent of Deutsche Bank authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Deutsche Bank Stock, pursuant to the procedures described herein, other than with respect to a Deutsche Bank Plan.

(i) A fiduciary independent of Deutsche Bank directs the voting of the Deutsche Bank Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Deutsche Bank Stock are required or permitted to vote.

(j) No more than ten (10) percent of the assets of any Fund that acquires and holds Deutsche Bank Stock is comprised of assets of Deutsche Bank Plan(s) for which Deutsche Bank exercises investment discretion.

Section III—General Conditions

(a) Deutsche Bank maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section 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 Deutsche Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Deutsche Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are unconditionally available at their

customary location for examination during normal business hours by—

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

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (b) shall be authorized to examine trade secrets of Deutsche Bank or commercial or financial information which is considered confidential.

Section IV—Definitions

(a) The term “Index Fund” means any investment fund, account or portfolio sponsored, maintained, trustee, or managed by Deutsche Bank, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities Index, as described in Section IV(c) below, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which Deutsche Bank does not use its discretion, or data within their control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains “plan assets” subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of “plan assets”—plan investments); and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit Deutsche Bank or any party in which Deutsche Bank may have an interest.

(b) The term “Model-Driven Fund” means any investment fund, account or portfolio sponsored, maintained, trustee, or managed by Deutsche Bank, in which one or more investors invest, and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party

data, not within the control of Deutsche Bank, to transform an independently maintained Index, as described in Section IV(c) below;

(2) Which contains “plan assets” subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of “plan assets”—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit Deutsche Bank or any party in which Deutsche Bank may have an interest.

(c) The term “Index” means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(A) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) a publisher of financial news or information, or

(C) a public stock exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of Deutsche Bank; and,

(3) The index is a generally accepted standardized index of securities which is not specifically tailored for the use of Deutsche Bank.

(d) The term “opening date” means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term “Buy-up” means an acquisition of Deutsche Bank Stock by an Index or Model-Driven Fund in connection with the initial addition of such Stock to an independently maintained index upon which the Fund is based or the initial investment of a Fund in such Stock.

(f) The term “Deutsche Bank” refers to Deutsche Bank AG or an Affiliate, as defined below in paragraph (g)

(g) The term “Affiliate” means, with respect to Deutsche Bank AG, an entity which, directly or indirectly, through one or more intermediaries, is controlled by Deutsche Bank AG.

(h) An “affiliate” of Deutsche Bank includes:

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

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

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

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

(j) The term "automated trading system" means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an "alternative trading system" within the meaning of the SEC's Reg. ATS [17 CFR Part 242.300], as such definition may be amended from time to time, or an "automated quotation system" as described in Section 3(a)(51)(A)(ii) of the '34 Act [15 U.S.C. 78c(a)(51)(A)(ii)].

(k) The term "recognized securities exchange" means a U.S. securities exchange that is registered as a "national securities exchange" under Section 6 of the '34 Act (15 U.S.C. 78f), or a designated offshore securities market, as defined in Regulation S of the SEC [17 CFR Part 230.902(b)], as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (e.g., 17 CFR Part 240.3b-16).

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of June 4, 1999, for those transactions described in Section I above, and as of the date the final grant is published in the **Federal Register** for those transactions described in Section II above.

Summary of Facts and Representations

1. Deutsche Bank AG is a bank organized under the laws of Germany and is the largest bank in the world in terms of assets. Bankers Trust Company, its wholly-owned subsidiary, is a New York banking corporation and a leading commercial bank, providing a wide range of banking, fiduciary, custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors worldwide. Deutsche Bank indirectly owns all of the equity interest of Bankers Trust Company, a New York banking corporation and a member bank of the Federal Reserve system. Bankers Trust Company is one of the largest trustees of ERISA plans and a large manager of passively-managed funds. Other Deutsche Bank asset managers (together with Bankers Trust Company,

"DB Asset Managers") may also manage ERISA assets in passively-managed styles in the future. As of June 30, 1999, Deutsche Bank AG and its Affiliates had consolidated assets of \$847,658,000,000 and total stockholders' equity of \$33.9 billion.

2. The DB Asset Managers manage different collective investment funds in various ways to enable plan assets to be diversified to reduce risk and to be invested in the types of investments that an independent fiduciary believes is appropriate at a particular time. Index Funds and Model-Driven Funds (the "Funds" or the "Indexed Accounts") are two examples of the Affiliates' collective investment funds which include plan investors.

An Index Fund, as defined supra, may be a separately managed account or a collective investment fund, the objective of which is the replication of the performance of an independently maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. Index Funds are passively managed, in that the choice of stocks or bonds purchased and sold, and the volume purchased and sold, are made according to predetermined third party indices rather than according to active evaluation of the investments.

A Model-Driven Fund, as defined supra, may be a separately managed account or a collective investment fund, the performance of which is based on computer models using prescribed objective criteria to transform an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The portfolio of a Model-Driven Fund is determined by the details of the computer model, which examines structural aspects of the stock or bond market rather than the underlying values of such securities. An example of a Model-Driven Fund would include a fund which "transforms" an index, making investments according to a computer model which uses such data as earnings, dividends and price-earning ratios for common stocks included in the index.

The process for the establishment and operation of all Indexed Accounts that are model-driven is disciplined. Objective rules are established for each model. Since the Model-Driven Funds operate pursuant to pre-specified computer programs, the rules and programs are changed only infrequently. In this regard, there have been three (3) Funds holding ERISA assets that, since June 4, 1999, have acquired, held and/

or disposed of Deutsche Bank AG Stock.¹

The Applicants request that the exemption proposed herein be retroactively effective as of June 4, 1999, to permit such transactions by these Funds. The Applicants are not requesting any retroactive relief for the acquisition, holding or disposition of the common stock of any Affiliates of Deutsche Bank (*i.e.*, Deutsche Bank Affiliate Stock). The Applicants represent that no Index or Model-Driven Funds containing "plan assets" covered by the Act have held such Stock.² The Applicants also request that any exemptive relief for cross-trades of securities by Index and Model-Driven Funds maintained by DB Asset Managers be considered separately.³

3. The Applicants represent that they provide investment advisory and management services to ERISA-covered plans through separately managed accounts and through collective investment vehicles. The Applicants' investment management services include indexed, quantitative, and structured investment strategies. In addition to ERISA-covered plans, the Applicants' clients include retirement plans with non-U.S. participants, governmental entities, governmental plans, church plans, mutual funds, and other institutional investors.

4. In their capacity as fiduciary of an employee benefit plan, the Applicants may be directed by an independent plan fiduciary or a plan participant that has the ability to direct investments for his/her plan account under the plan document. Alternatively, in those cases in which the Applicants manage investments made for the plan, the Applicants represent that their discretionary authority over whether the plan invests in particular Funds is restricted by an independent plan fiduciary.

5. The Applicants request that Index and Model-Driven Funds be permitted to invest in Deutsche Bank Stock if such

¹ The Applicants state that acquisitions of Deutsche Bank AG Stock have been made only by Funds that already held such Stock in their portfolios as of June 4, 1999. Thus, there have been no new acquisitions of Deutsche Bank AG Stock by any Funds as a result of an initial addition of such Stock to their portfolios since that time. Such initial additions of Deutsche Bank AG Stock will only be made by a Fund once this proposed exemption is granted, under the conditions required herein for a "Buy-up" period.

² See 29 CFR 2510.3-101; Definition of "plan assets"-plan investments.

³ In this regard, the Department directs interested persons to the Proposed Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (the Cross-Trading Proposal) which was published in the **Federal Register** on December 15, 1999 (64 FR 70057).

Stock is included among the securities listed in the index utilized by the Fund. The Applicants have identified over forty-two (42) indices that currently include either Deutsche Bank AG Stock or Deutsche Bank Affiliate Stock. Among the Indexes which include Deutsche Bank Stock are the DAX Index,⁴ the FT-SE Eurotop 100 Index, the MSCI Euro Index,⁵ the FTSE Eurotop 300 Index, the FTSE E300 Financial Index, and the Bloomberg Europe Index. These indexes are compiled by financial information agencies, such as Standard & Poor's, Financial Times Ltd., and Morgan Stanley & Company International. These agencies are engaged in the provision of financial information or securities brokerage services to institutional investors and/or are publishers of financial information. In each instance, the indexes are compiled by organizations that are independent of Deutsche Bank and are generally accepted standardized indices of securities that are not tailored for the use of Deutsche Bank. While many of these indexes are not currently utilized by DB Asset Managers for their Index and Model-Driven Funds, there is a possibility that Funds holding assets of ERISA-covered plans will be established in the future that are based on these indexes. However, since June 4, 1999, DB Asset Managers have excluded Deutsche Bank Stock from the portfolios of any new Index and Model-Driven Funds even though such Stock is included in independently maintained indexes upon which such Funds are based. For those Index Funds whose goal is to replicate the rate of return of the index by tracking the capitalization-weighted or other specified composition of securities listed in the index, such exclusions of Deutsche Bank Stock create tracking errors which must be accounted for by re-weighting other securities in the index. For Model-Driven Funds that transform an index in a model-prescribed way, such exclusions of Deutsche Bank Stock create operational inefficiencies and strategic uncertainties that affect the criteria and data necessary to achieve the desired rates of return.

6. The Applicants state that the proposed exemption is necessary to allow Funds holding "plan assets" to purchase and hold Deutsche Bank Stock in order to replicate the capitalization-weighted or other specified composition

of Deutsche Bank Stock in an independently maintained third party index used by an Index Fund or to achieve the desired transformation of an index used to create a portfolio for a Model-Driven Fund.⁶

In addition, the Applicants represent that there will be instances, once this proposed exemption is granted, when Deutsche Bank Stock will be added to an index on which a Fund is based or will be added to the portfolio of a Fund which seeks to track an index that includes such Stock. These instances will be referred to hereafter as a "Buy-up".⁷ In such instances, acquisitions of Deutsche Bank Stock will be necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the index, as determined by the independent organization maintaining such index, or to the correct weighting for such Stock as determined by the computer model which has been used to transform the index. If the Index or Model-Driven Fund holds "plan assets," the Applicants represent that all acquisitions of Deutsche Bank Stock by such Fund will comply with the "Buy-up" conditions of this proposed exemption. These conditions are as follows:

(A) Purchases will be from or through only one broker or dealer on a single trading day;

(B) Based on the best available information, purchases will not be the opening transaction for the trading day;

(C) Purchases will not be effected in the last half hour before the scheduled close of the trading day;

(D) Purchases will be at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(E) Purchases will not exceed 15 percent of the daily trading volume for

the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous five (5) business days, both based on the best information reasonably available at the time of the transaction;

(F) All purchases and sales of Deutsche Bank Stock will occur either (i) on a recognized securities exchange (as defined in Section IV(k)), (ii) through an automated trading system (as defined in Section IV(j)) operated by a broker-dealer that is either registered under the Securities Exchange Act of 1934 (the '34 Act) and thereby subject to regulation by the SEC, or subject to regulation and supervision by the BAK, the BAWe, or another applicable regulatory authority, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(j) above) that is operated by a recognized securities exchange (as defined in Section IV(k)), pursuant to the applicable securities laws which provide a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(G) If the necessary number of shares of Deutsche Bank Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Deutsche Bank Stock, Deutsche Bank will appoint a fiduciary which is independent of Deutsche Bank to design acquisition procedures and monitor DB Asset Managers' compliance with such procedures.⁸

The independent fiduciary and its principals will be completely independent from the Applicants. The independent fiduciary will also be experienced in developing and operating investment strategies for individual and collective investment vehicles that track third-party indices.

⁸ In this regard, all Funds holding Deutsche Bank AG Stock as of June 4, 1999, which have continued to acquire, hold and dispose of Deutsche Bank AG Stock in order to track indexes including Deutsche Bank AG Stock will not need to have daily transactions involving such Stock directed by an independent fiduciary. Deutsche Bank states that the amount of Deutsche Bank AG Stock involved in such transactions has been and continues to be determined by the independent organization which created and maintains the relevant index, and all other conditions required under this proposed exemption have been met.

⁴ The DAX (Deutsche Aktienindex) is maintained by the Deutsche Bourse, a German stock exchange.

⁵ Morgan Stanley maintains the MSCI (*i.e.*, Morgan Stanley Composite Index), which contains various indices of foreign securities.

⁶ The Applicants are not requesting any relief from sections 406 or 407(a) of the Act in connection with the acquisition and holding of Deutsche Bank Stock by the Deutsche Bank Plans which invest in the Applicants' Index Funds. In this regard, such transactions may be covered by the statutory exemption under section 408(e) of the Act, if the conditions of that exemption are met. However, the Department is not providing an opinion in this proposed exemption as to whether the conditions of section 408(e) of the Act are met.

⁷ The Applicants anticipate that generally acquisitions of Deutsche Bank Stock by an Index or Model-Driven Fund in a "Buy-up" will occur within 10 business days from the date of the event which causes the particular Fund to require Deutsche Bank Stock. Deutsche Bank does not anticipate that the amounts of Deutsche Bank Stock acquired by any Fund in a "Buy-up" will be significant. In this regard, the Department notes that the conditions required herein are designed to minimize the market impact of purchases made by the Funds in any "Buy-up" of Deutsche Bank Stock.

Furthermore, the independent fiduciary will not act as the broker for any purchases or sales of Deutsche Bank Stock and will not receive any commissions as a result of this initial acquisition program.

The independent fiduciary will have as its primary goal the development of trading procedures that minimize the market impact of purchases made pursuant to the initial acquisition program by the Funds. The Applicants would expect that, under the trading procedures established by the independent fiduciary, the trading activities will be conducted in a low-profile, mechanical, non-discretionary manner and would involve a number of small purchases over the course of each day, randomly timed. The Applicants further expect that such a program will allow the Applicants to acquire the necessary shares of Deutsche Bank Stock for the Funds with minimum impact on the market and in a manner that will be in the best interests of any employee benefit plans that participate in such Funds.

The independent fiduciary will also be required to monitor the Applicants' compliance with the trading program and procedures developed for the initial acquisition of Deutsche Bank Stock. During the course of any initial acquisition program, the independent fiduciary will be required to review the activities weekly to determine compliance with the trading procedures and notify the Applicants should any non-compliance be detected. Should the trading procedures need modifications due to unforeseen events or consequences, the independent fiduciary will be required to consult with the Applicants and must approve in advance any alteration of the trading procedures.

7. Subsequent to initial acquisitions necessary to bring a Fund's holdings of Deutsche Bank Stock to its specified weighting in the index or model pursuant to the restrictions described above, all aggregate daily purchases of Deutsche Bank Stock by the Funds will not exceed on any particular day the greater of:

(i) 15 percent of the average daily trading volume for the Deutsche Bank Stock occurring on the applicable exchange and automated trading system (as described herein) for the previous five (5) business days, or

(ii) 15 percent of the trading volume for Deutsche Bank Stock occurring on the applicable exchange and automated trading system (as described herein) on the date of the transaction, as determined by the best available

information for the trades that occurred on such date.

8. Deutsche Bank represents that as of June 4, 1999 until the date this proposed exemption is granted, all purchases and sales of Deutsche Bank Stock by the Funds have occurred and will continue to occur in one of the following ways:

(i) through the Frankfurt Stock Exchange, a recognized securities exchange as defined in Section IV(k) above; (ii) through an automated trading system (as defined in Section IV(j) above) operated by a broker-dealer that is subject to regulation by the BAK, the BAWe, or another applicable regulatory authority (pursuant to the applicable securities laws), that provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; or (iii) through a direct, arms-length transaction entered into on a principal basis with a broker-dealer that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the BAK, the BAWe, or another applicable regulatory authority.⁹

In addition, Deutsche Bank states that as of the date this proposed exemption is granted, all future transactions by the Funds involving Deutsche Bank Stock which do not occur in connection with a Buy-up of such Stock by a Fund, as described above, will be either: (i) Entered into on a principal basis with a broker-dealer that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the BAK, the BAWe, or another applicable regulatory authority; (ii) effected on an automated trading system (as defined in Section IV(j) above) operated by a broker-dealer subject to regulation by either the SEC, the BAK, the BAWe, or another applicable regulatory authority, or on an automated trading system operated by a recognized securities exchange (as defined in Section IV(k) above) which, in either case, provides a

⁹The Department notes that no relief is being provided herein for purchases and sales of securities between a Fund and a broker-dealer, acting as a principal, which may be considered prohibited transactions as a result of such broker-dealer being a party in interest, under section 3(14) of the Act, with respect to any plans that are investors in the Fund. However, such transactions may be covered by one or more of the Department's existing class exemptions. For example, PTE 84-14 (49 FR 9497, March 13, 1984) permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are invested in an investment fund managed by a "qualified professional asset manager" (QPAM) who is independent of the parties in interest (with certain limited exceptions) and meets specified financial standards.

mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; or (iii) effected through a recognized securities exchange (as defined in Section IV(k) above) so long as the broker is acting on an agency basis.

9. With respect to all acquisitions and dispositions of Deutsche Bank AG Stock by the Funds since June 4, 1999, the Applicants state that no such transactions have involved purchases from or sales to Deutsche Bank (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund. The Applicants represent that all future acquisitions and dispositions of either Deutsche Bank AG Stock or Deutsche Bank Affiliate Stock by any Index or Model-Driven Funds maintained by Deutsche Bank will also not involve any purchases from or sales to Deutsche Bank (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).¹⁰

10. The Applicants state that no more than five (5) percent of the total amount of either Deutsche Bank AG Stock or Deutsche Bank Affiliate Stock, that is issued and outstanding at any time, will be held in the aggregate by Index and Model-Driven Funds managed by DB Asset Managers.

For purposes of the acquisition and holding of Deutsche Bank AG Stock by all of the Funds from June 4, 1999 until the date this proposed exemption is granted, such Stock will constitute no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based. For example, Deutsche Bank AG Stock currently represents only .937% of the FTSE 100 Index, 1.382% of the MSCI EURO Index and .703% of the FTSE Eurotop 300 Index. Although some indexes include Deutsche Bank Stock in percentages that exceed three (3) percent of the index, Deutsche Bank does not currently utilize such indices for its Index and Model-Driven Funds with "plan assets" subject to the Act.

For purposes of future acquisitions and holdings of Deutsche Bank Stock by such Funds once this proposed exemption is granted, neither the

¹⁰In this regard, the Department is providing no opinion herein as to whether such principal transactions would be covered by any existing exemption.

Deutsche Bank AG Stock nor the Deutsche Bank Affiliate Stock will constitute more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based. In this regard, the Applicants have identified at least seven (7) indexes which include Deutsche Bank Stock where the current approximate capitalization weight of the index represented by Deutsche Bank Stock exceeds three (3) percent. The Applicants request that the proposed exemption allow Deutsche Bank to design a passive investment strategy for an Index or Model-Driven Fund which seeks to track an index that contains Deutsche Bank Stock, or which transforms such an index in a model-prescribed way, as long as the Deutsche Bank Stock does not constitute more than five (5) percent of the index.¹¹

With respect to an index's specified composition of particular stocks in its portfolio, the Applicants state that future Funds may track an index where the appropriate weighting for stocks listed in the index is not capitalization-weighted. However, the Applicants state that Funds maintained by DB Asset Managers and other Affiliates of Deutsche Bank may track indexes where the selection of a particular stock by the index, and the amount of stock to be included in the index, is not established based on the market capitalization of the corporation issuing such stock. Therefore, since an independent organization may choose to create an index where there are other index weightings for stocks composing the index, the Applicants request that the proposed exemption allow for Deutsche Bank Stock to be acquired by a Fund in the amounts which are specified by the particular index, subject to the other restrictions imposed under this proposed exemption. The Applicants represent that, in all instances, acquisitions or dispositions of Deutsche Bank Stock by a Fund will be for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Fund is based or, in the case of a Model-Driven Fund, a modified version of such an index as created by a computer model based on prescribed objective criteria and third-party data.

¹¹ The Applicants have identified certain independent third party indexes where the current approximate capitalization weight of the index represented by Deutsche Bank Stock exceeds five (5) percent. However, the Applicants have agreed to limit the prospective relief that would be provided by this proposed exemption to Index and Model-Driven Funds which track indexes where the specified composition of Deutsche Bank Stock in the index does not exceed five (5) percent of such index.

11. The Applicants state that plan fiduciaries independent of Deutsche Bank have authorized and will continue to authorize the investment of any plan's assets in an Index or Model-Driven Fund which purchases and/or holds Deutsche Bank Stock, other than in the case of a Deutsche Bank Plan. The Applicants represent that no more than ten (10) percent of the assets of any Fund that acquires and holds Deutsche Bank Stock will be comprised of assets of any Deutsche Bank Plan for which Deutsche Bank exercises investment discretion.

12. The Applicants will appoint an independent fiduciary which will direct the voting of Deutsche Bank Stock held by the Funds. Currently, the independent fiduciary that directs the voting of Deutsche Bank Stock held by the Funds is Institutional Shareholders Services, Inc.

Deutsche Bank states that in all instances the independent fiduciary chosen to vote Deutsche Bank Stock for the Funds will be a consulting firm specializing in corporate governance issues and proxy voting on behalf of institutional investors with large equity portfolios. The fiduciary will develop and follow standard guidelines and procedures for the voting of proxies by institutional fiduciaries. The Applicants will provide the independent fiduciary with all necessary information regarding the Funds that hold Deutsche Bank Stock, the amount of Deutsche Bank Stock held by the Funds on the record date for shareholder meetings of the Applicants, and all proxy and consent materials with respect to Deutsche Bank Stock. The independent fiduciary will maintain records with respect to its activities as an independent fiduciary on behalf of the Funds, including the number of shares of Deutsche Bank Stock voted, the manner in which they were voted, and the rationale for the vote if the vote was not consistent with the independent fiduciary's procedures and current voting guidelines in effect at the time of the vote. The independent fiduciary will supply the Applicants with such information after each shareholder meeting. The independent fiduciary will be required to acknowledge that it will be acting as a fiduciary with respect to the plans which invest in the Funds which own Deutsche Bank Stock, when voting such stock.

13. In summary, with respect to all acquisitions, holdings, and dispositions of Deutsche Bank AG Stock by the Funds since June 4, 1999, the Applicants represent that such transactions meet the criteria of section

408(a) of the Act for the following reasons:

(a) Each Index or Model-Driven Fund involved is based on an Index, as defined in Section IV(c) above;

(b) The acquisition, holding and disposition of the Deutsche Bank AG Stock by the Index or Model-Driven Fund is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Deutsche Bank Stock which is intended to benefit Deutsche Bank or any party in which Deutsche Bank may have an interest;

(c) All aggregate daily purchases of Deutsche Bank AG Stock by the Funds do not exceed, on any particular day, the greater of: (i) 15 percent of the average daily trading volume for such Stock occurring on the applicable exchange and automated trading system for the previous five (5) business days, or (ii) 15 percent of the average daily trading volume for such Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades occurring on that date;

(d) All purchases and sales of Deutsche Bank AG Stock occur either (i) on the Frankfurt Stock Exchange, a recognized securities exchange as defined herein, (ii) through an automated trading system (as defined herein) operated by a broker-dealer that is subject to regulation by the BAK, the BAWe, or another applicable regulatory authority (pursuant to the applicable securities laws), that provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) in a direct, arms-length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Deutsche Bank and is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the BAK, the BAWe, or another applicable regulatory authority;

(e) No transactions by a Fund involve purchases from or sales to Deutsche Bank (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption);

(f) No more than five (5) percent of the total amount of Deutsche Bank AG Stock issued and outstanding at any time is held in the aggregate by Index and Model-Driven Funds managed by DB Asset Managers;

(g) Deutsche Bank AG Stock constitutes no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based;

(h) A plan fiduciary independent of Deutsche Bank authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Deutsche Bank AG Stock, other than with respect to plans maintained by Applicants and their affiliates; and

(i) A fiduciary independent of Deutsche Bank (e.g., Institutional Shareholders Services, Inc.) directs the voting of the Deutsche Bank AG Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Deutsche Bank Stock are required or permitted to vote.

With respect to all acquisitions, holdings, and dispositions of Deutsche Bank AG Stock or Deutsche Bank Affiliate Stock by the Funds after this proposed exemption is granted, the Applicants represent that such transactions will meet the criteria of section 408(a) of the Act for the following reasons:

(a) Each Index or Model-Driven Fund involved will be based on an Index, as defined in Section IV(c) above;

(b) The acquisition or disposition of Deutsche Bank Stock will be for the sole purpose of maintaining strict quantitative conformity with the relevant Index upon which the Index or Model-Driven Fund is based, and will not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Deutsche Bank Stock which is intended to benefit Deutsche Bank or any party in which Deutsche Bank may have an interest;

(c) Whenever Deutsche Bank Stock is initially added to an index on which a Fund is based, or initially added to the portfolio of a Fund (i.e., a Buy-up), all acquisitions of Deutsche Bank Stock necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the computer model which has been used to transform the index, will be restricted by conditions which are designed to prevent possible market price manipulations;

(d) Subsequent to acquisitions necessary to bring a Fund's holdings of Deutsche Bank Stock to its specified weighting in the index or model, pursuant to the restrictions noted in paragraph (c) above, all aggregate daily purchases of Deutsche Bank Stock by the Funds will not exceed, on any particular day, the greater of: (i) 15 percent of the average daily trading volume for such Stock occurring on the applicable exchange and automated trading system for the previous five (5) business days, or (ii) 15 percent of the average daily trading volume for such Stock occurring on the applicable exchange and automated trading system, as determined by the best available information for the trades that occurred on such date;

(e) All transactions in Deutsche Bank Stock, other than acquisitions of such Stock in a Buy-up described in paragraph (c) above, will be either: (i) entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Deutsche Bank and is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the BAK, the BAWe, or another applicable regulatory authority, (ii) effected on an automated trading system operated by a broker-dealer subject to regulation by either the SEC, BAK, the BAWe, another applicable regulatory authority or by a recognized securities exchange which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized securities exchange (as defined herein) so long as the broker is acting on an agency basis.

(f) No transactions by a Fund will involve purchases from or sales to Deutsche Bank (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption);

(g) No more than five (5) percent of the total amount of either Deutsche Bank AG Stock or Deutsche Bank Affiliate Stock, that is issued and outstanding at any time, will be held in the aggregate by Index and Model-Driven Funds managed by DB Asset Managers;

(h) Deutsche Bank Stock will constitute no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based;

(i) A plan fiduciary independent of Deutsche Bank will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Deutsche Bank Stock pursuant to the procedures described herein, other than in the case of a Deutsche Bank Plan; and

(j) A fiduciary independent of Deutsche Bank will direct the voting of the Deutsche Bank Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Deutsche Bank Stock are required or permitted to vote.

Notice to Interested Persons: Notice of the proposed exemption should be mailed by first class mail to interested persons, including the appropriate fiduciaries for employee benefit plans currently invested in the Index and/or Model-Driven Funds that acquire and hold Deutsche Bank Stock. The notice should contain a copy of the proposed exemption as published in the **Federal Register** and an explanation of the rights of interested parties to comment on or request a hearing regarding the proposed exemption. All notices should be sent to interested persons within 15 days of the publication of this proposed exemption in the **Federal Register**. Any written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

In addition, Deutsche Bank shall provide a copy of the proposed exemption and, if granted, a copy of the final exemption upon request to all ERISA-covered plans that invest in any Index or Model-Driven Fund that will include Deutsche Bank AG Stock or Deutsche Bank Affiliate Stock in its portfolio after the date the final exemption is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

American Express Financial Corporation Located in Minneapolis, Minnesota

[Application No. D-10855]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act, section 4975(c)(2) of the Code, and section 8477(c)(3) of the Federal Employees Retirement System Act of 1986 (FERSA), and in accordance with the procedures set forth in 29 CFR Part

2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Exemption for the Acquisition, Holding and Disposition of American Express Company Stock

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, section 8477(c)(2)(A) and (B) of FERSA, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding and disposition of the common stock of American Express Company or its current and future affiliates (AE Stock) by Index and Model-Driven Funds managed by American Express Financial Corporation (AEFC), provided that the following conditions and the general conditions in Section II are met:

(a) The acquisition or disposition of AE Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the AE Stock which is intended to benefit AEFC or any party in which AEFC may have an interest.

(b) Whenever AE Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of AE Stock necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security

occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous five (5) business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of AE Stock occur either (i) on a recognized U.S. securities exchange (as defined in section III(k) below), (ii) through an automated trading system (as defined in section III(j) below) operated by a broker-dealer independent of AEFC that is registered under the Securities Exchange Act of 1934 (the '34 Act), and thereby subject to regulation by the Securities and Exchange Commission (SEC), which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in section III(j) below) that is operated by a recognized U.S. securities exchange (as defined in section III(k) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of AE Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require AE Stock, AEFC appoints a fiduciary which is independent of AEFC to design acquisition procedures and monitor compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of AE Stock to its specified weighting in the index or model pursuant to the restrictions described in paragraph (b) above, all aggregate daily purchases of AE Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for the AE Stock occurring on the applicable exchange and automated trading system (as defined below) for the previous five (5) business days, or

(2) 15 percent of the trading volume for AE Stock occurring on the applicable exchange and automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in AE Stock not otherwise described in paragraph (b) above are either: (i) entered into on a principal basis in a direct, arms-length

transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of AEFC and is registered under the '34 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system (as defined in section III(j) below) operated by a broker-dealer independent of AEFC that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system operated by a recognized U.S. securities exchange (as defined in section III(k) below) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized U.S. securities exchange (as defined in section III(k) below) so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, AEFC (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(f) No more than five (5) percent of the total amount of AE Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by AEFC.

(g) AE Stock constitutes no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A plan fiduciary independent of AEFC authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds AE Stock (other than in the case of an employee benefit plan sponsored or maintained by AEFC for its own employees (an AEFC Plan)), pursuant to the procedures described herein.

(i) A fiduciary independent of the AEFC directs the voting of the AE Stock held by an Index or Model-Driven Fund on any matter in which shareholders of AE Stock are required or permitted to vote.

(j) No more than ten (10) percent of the assets of any Fund that acquires and holds AE Stock is comprised of any AEFC Plan(s) for which AEFC exercises investment discretion.

Section II—General Conditions

(a) AEFC maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section 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 AEFC, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than AEFC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

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

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

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (b) shall be authorized to examine trade secrets of AEFC or commercial or financial information which is considered confidential.

Section III—Definitions

(a) The term “Index Fund” means any investment fund, account or portfolio sponsored, maintained, trustee, or managed by AEFC, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities Index, as described in Section III(c) below, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which AEFC does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains “plan assets” subject to the Act, pursuant to the Department’s regulations (see 29 CFR 2510.3–101, Definition of “plan assets”—plan investments); and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit AEFC or any party in which AEFC may have an interest.

(b) The term “Model-Driven Fund” means any investment fund, account or portfolio sponsored, maintained, trustee, or managed by AEFC, in which one or more investors invest, and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of AEFC, to transform an independently maintained Index, as described in Section III(c) below;

(2) Which contains “plan assets” subject to the Act, pursuant to the Department’s regulations (see 29 CFR 2510.3–101, Definition of “plan assets”—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit AEFC or any party in which AEFC may have an interest.

(c) The term “Index” means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States, but only if—

(1) The organization creating and maintaining the index is—

(A) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) a publisher of financial news or information, or

(C) a public stock exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of AEFC; and,

(3) the index is a generally accepted standardized index of securities which is not specifically tailored for the use of AEFC.

(d) The term “opening date” means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term “Buy-up” means an acquisition of AE Stock by an Index or Model-Driven Fund in connection with the initial addition of such Stock to an

independently maintained index upon which the Fund is based or the initial investment of a Fund in such Stock.

(f) The term “AEFC” refers to American Express Financial Corporation and its Affiliates, as defined below in paragraph (g).

(g) The term “Affiliate” means, with respect to AEFC, an entity which, directly or indirectly, through one or more intermediaries, is controlled by AEFC;

(h) An “affiliate” of AEFC includes:

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

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

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

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

(j) The term “automated trading system” means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an “alternative trading system” within the meaning of the SEC’s Reg. ATS [17 CFR Part 242.300], as such definition may be amended from time to time, or an “automated quotation system” as described in Section 3(a)(51)(A)(ii) of the ‘34 Act [15 U.S.C. 78c(a)(51)(A)(ii)].

(k) The term “recognized U.S. securities exchange” means a U.S. securities exchange that is registered as a “national securities exchange” under Section 6 of the ‘34 Act (15 U.S.C. 78f), as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (e.g., 17 CFR Part 240.3b–16).

Summary of Facts and Representations

1. American Express Financial Corporation (the Applicant), a Delaware corporation, together with its subsidiaries is a financial advisor and provides a wide range of fiduciary, record keeping, custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors.

The Applicant is wholly-owned by American Express Company. As of

December 31, 1998, American Express Company and its Affiliates had consolidated assets of \$126.9 billion and total stockholders' equity of \$9.698 billion. The Applicant is an investment manager of various portfolios subject to ERISA that are invested in a strategy that tracks or transforms an index maintained by a third party that includes the stock of American Express Company (*i.e.* AE Stock). The Applicant seeks exemptive relief to permit it and its Affiliates to maintain individual or collective investment funds that will acquire and hold any AE Stock issued by American Express Company or an Affiliate, if the conditions of the exemption are met. For the purposes of this proposed exemption, the Applicant requests that the relief apply to American Express Financial Corporation, American Express Company, and their respective current or future Affiliates (collectively referred to herein as "AEFC").

2. AEFC acts as investment manager of institutional accounts, including employee benefit plans, with assets totaling approximately \$38.3 million. AEFC also provides directed trust or investment management services to various employee benefit plans. AEFC is, to the extent of the provision of investment management services, a fiduciary of these plans.

As a fiduciary, AEFC may be either directed by an independent plan fiduciary or plan participants that have the ability, under the plan document, to direct investments for their own plan accounts. Alternatively, in those cases in which AEFC manages the investments, the Applicant represents that AEFC does not exercise any discretionary authority over whether an employee benefit plan (other than an AEFC Plan) invests in particular Index or Model-Driven Funds.

The Applicant represents that no Index or Model-Driven Funds containing "plan assets" covered by the Act¹² have held such Stock. The Applicant also states that any exemptive relief for cross-trades of securities, including AE Stock, by Index and Model-Driven Funds maintained by AEFC should be considered separately.¹³

3. AEFC manages different collective investment funds in various ways to enable plan assets to be diversified to reduce risk and to be invested in types

of investments that a particular manager for a plan may determine is appropriate at a particular time. Index Funds and Model-Driven Funds (*i.e.*, the Funds) are two examples of AEFC's collective investment funds which include plan investors.

4. An Index Fund may be a separately managed account or a collective investment fund, the objective of which is to track the rate of return, risk profile and other characteristics of an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The Index Funds are passively managed, in that the choice of stocks or bonds purchased and sold, and the volume purchased and sold, are made according to predetermined third party indices rather than according to active evaluation of the investments by the manager.

5. A Model-Driven Fund may be a separately managed account or a collective investment fund, the performance of which is based on computer models using prescribed objective criteria to transform an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The portfolio of a Model-Driven Fund is determined by the details of the computer model, which examines structural aspects of the stock or bond market rather than the underlying values of such securities.

6. The Applicant represents that the process for the establishment and operation of all Funds which are model-driven is very disciplined. Objective rules are established for each model. Such Funds operate pursuant to pre-specified computer programs and the rules and programs are changed only infrequently.

7. The Applicant currently offers more than 10 collective investment funds that are invested according to the criteria of various third-party indexes or are model-driven based on such indexes. For example, some Funds track the Russell 2000 Index,¹⁴ while other Funds track the Standard & Poor's 500 Composite Stock Price Index (the S&P 500 Index).¹⁵ Most of the Funds track

stock indexes, although some Funds track indexes of debt securities, such as the Lehman Brothers Bond Indices.¹⁶

8. In addition to Funds that are collective investment funds, AEFC may have investment responsibility for individual investment funds which are separate portfolios for various client accounts, including employee benefit plans, where the portfolio is invested in accordance with a third-party index. The Applicant represents that the ability of all Funds to invest in the AE Stock would improve the tracking of such indexes.

9. The Applicant states that the proposed exemption is necessary to allow Funds holding "plan assets" to purchase and hold AE Stock in order to replicate the capitalization-weighted or other specified composition of AE Stock in an independently maintained third party index used by an Index Fund or to achieve the desired transformation of an index used to create a portfolio for a Model-Driven Fund.¹⁷

The Applicant represents that when the AE Stock is added to an index on which a Fund is based, or are added to the portfolio of a Fund which tracks an index that includes the AE Stock, all acquisitions necessary, as an initial matter, to bring the Fund's holdings of the AE Stock to its capitalization or other specified weighting in the applicable Index, will comply with conditions (see Section I(b)(1)-(7) above) which are designed to prevent possible market price manipulation and are based, in part, on the restrictions of SEC Rule 10b-18.¹⁸

Such acquisitions of AE Stock by a Fund are referred to herein as a "Buy-

NASDAQ National Market System. The S&P 500 is a market value-weighted index (*i.e.* shares outstanding times stock price) in which each company's influence on the Index's performance is directly proportional to its market value.

¹⁶ The indexes of debt securities used for the Funds, such as the Lehman Brothers Bond Index, consist primarily of high-quality fixed-income securities representing the U.S. government, corporate, and mortgage-backed securities sectors of the bond market in the U.S. The Applicant currently has two debt based Funds.

¹⁷ The Applicant is not requesting any relief from sections 406 or 407(a) of the Act in connection with the acquisition and holding of AE Stock by any AEFC Plans which invest in the Applicant's Index Funds. In this regard, such transactions may be covered by the statutory exemption under section 408(e) of the Act, if the conditions of that exemption are met. However, the Department is not providing an opinion in this proposed exemption as to whether the conditions of section 408(e) of the Act would be met for such transactions.

¹⁸ SEC Rule 10b-18 provides a "safe harbor" for issuers of securities from section 9(a)(2) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 (which generally prohibits persons from manipulating the price of a security and engaging in fraud in connection with the purchase or sale of a security).

¹² See 29 CFR 2510.3-101; Definition of "plan assets"—plan investments.

¹³ In this regard, the Department directs interested persons to the Proposed Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds which was published in the **Federal Register** on December 15, 1999 (64 FR 70057).

¹⁴ The Russell 2000 Index was established and is maintained by the Frank Russell Company, which is not an affiliate of AEFC. The Russell 2000 Index is a subject of the larger Russell 3000 Index. The Russell 3000 Index consists of the largest 3,000 publicly traded stocks of U.S. domiciled corporations, as identified by the Frank Russell Company, and includes large, medium and small stocks.

¹⁵ The S&P Index is composed of 500 stocks that are traded on the New York Stock Exchange and the

up".¹⁹ The conditions required for a "Buy-up" of AE Stock are as follows:

(A) Purchases will be from or through only one broker or dealer on a single trading day;

(B) Based on the best available information, purchases will not be the opening transaction for the trading day;

(C) Purchases will not be effected in the last half hour before the scheduled close of the trading day;

(D) Purchases will be at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(E) Aggregate daily purchases will not exceed 15 percent of the daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous five (5) business days, both based on the best information reasonably available at the time of the transaction;

(F) All purchases and sales of AE Stock will occur either (i) on a recognized U.S. securities exchange (as defined in Section III(k)), (ii) through an automated trading system (as defined in Section III(j)) operated by a broker-dealer independent of AEFC that is registered under the '34 Act, and thereby subject to regulation by the SEC, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section III(j) above) that is operated by a recognized U.S. securities exchange (as defined in Section III(k)), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(G) If the necessary number of shares of AE Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require AE Stock, AEFC will appoint a fiduciary which is independent of

AEFC to design acquisition procedures and monitor AEFC's compliance with such procedures.

The independent fiduciary and its principals will be completely independent from AEFC. The independent fiduciary will also be experienced in developing and operating investment strategies for individual and collective investment vehicles that track third-party indices. Furthermore, the independent fiduciary will not act as the broker for any purchases or sales of AE Stock and will not receive any commissions as a result of this initial acquisition program.

The independent fiduciary will have as its primary goal the development of trading procedures that minimize the market impact of purchases made pursuant to the initial acquisition program by the particular Fund. The Applicant would expect that, under the trading procedures established by the independent fiduciary, the trading activities will be conducted in a low-profile, mechanical, non-discretionary manner and would involve a number of small purchases over the course of each day, randomly timed. The Applicant further expects that such a program will allow AEFC to acquire the necessary shares of AE Stock for the Funds with minimum impact on the market and in a manner that will be in the best interests of any employee benefit plans that participate in such Funds.

The independent fiduciary will also be required to monitor AEFC's compliance with the trading program and procedures developed for the initial acquisition of AE Stock. During the course of any initial acquisition program, the independent fiduciary will be required to review the activities weekly to determine compliance with the trading procedures and notify AEFC should any non-compliance be detected. Should the trading procedures need modifications due to unforeseen events or consequences, the independent fiduciary will be required to consult with AEFC and must approve in advance any alteration of the trading procedures.

10. Subsequent to initial acquisitions necessary to bring a Fund's holdings of AE Stock to its specified weighting in the index or model pursuant to the restrictions described above, all aggregate daily purchases of AE Stock by the Funds will not exceed on any particular day the greater of:

(i) 15 percent of the average daily trading volume for the AE Stock occurring on the applicable exchange and automated trading system (as described herein) for the previous five (5) business days, or

(ii) 15 percent of the trading volume for AE Stock occurring on the applicable exchange and automated trading system (as described herein) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

11. All additional purchases or subsequent sales of the AE Stock by the Funds that are made on a daily basis merely to track an applicable Index or to conform to an applicable model would be accomplished either through cross-trade transactions, subject to the conditions of an applicable exemption,²⁰ or on the open market, subject to the conditions of this exemption. All such purchases and sales of the AE Stock shall be either: (1) Entered into on a principal basis in a direct, arms-length transaction with a broker-dealer,²¹ in the ordinary course of its business, where such broker-dealer is independent of AEFC and is registered under the '34 Act, and thereby subject to regulation by the SEC; (2) effected on an automated trading system (as defined in Section III(j) above) operated by a broker-dealer independent of AEFC that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or an automated trading system operated by a recognized U.S. securities exchange (as defined above) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; or (3) effected through a recognized U.S. securities exchange (as defined in Section III(k) above) so long as the broker is acting on an agency basis.

However, daily purchases of AE Stock for a Fund, which occur after all acquisitions of such Stock have been made in order to bring the Fund's holdings to the capitalization or other specified weighting of the AE Stock in the index, would not be subject to the conditions required herein for a "Buy-up" period. In this regard, the Applicant

²⁰ See footnote 2.

²¹ The Department notes that no relief is being provided herein for purchases and sales of securities between a Fund and a broker-dealer, acting as a principal, which may be considered prohibited transactions as a result of such broker-dealer being a party in interest, under section 3(14) of the Act, with respect to any plans that are investors in the Fund. However, such transactions may be covered by one or more of the Department's existing class exemptions. For example, PTE 84-14 (49 FR 9497, March 13, 1984) permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are invested in an investment fund managed by a "qualified professional asset manager" (QPAM) who is independent of the parties in interest (with certain limited exceptions) and meets specified financial standards.

¹⁹ The Applicant anticipates that generally acquisitions of AE Stock by an Index or Model-Driven Fund in a "Buy-up" will occur within 10 business days from the date of the event which causes the particular Fund to require AE Stock. AEFC does not anticipate that the amounts of AE Stock acquired by any Fund in a "Buy-up" will be significant. In this regard, the Department notes that the conditions required herein are designed to minimize the market impact of purchases made by the Funds in any "Buy-up" of AE Stock.

states that the restrictions required for acquisitions of AE Stock during a "Buy-up" period are not necessary for the volume of transactions which are expected by a Fund for daily tracking of an index in order to respond to changes in the composition or weighting of the AE Stock in the index.

12. The Applicant represents that no more than 5 percent of the total outstanding shares of the AE Stock will be held in the aggregate by Index and Model-Driven Funds managed by AEFC. In addition, the Applicant states that the AE Stock will not constitute more than 5 percent of the value of any independent third-party index on which investments of an Index or Model-Driven Fund are based. Specifically, the Applicant represents that the current weighting of AE Stock in the S&P Index is .56 percent.

13. The Applicant states that plan fiduciaries independent of AEFC will authorize the investment of any plan's assets in an Index or Model-Driven Fund which purchases and/or holds AE Stock, pursuant to the procedures described herein. AEFC will also appoint an independent fiduciary which will direct the voting of any AE Stock held by the Funds. The independent fiduciary will be a consulting firm specializing in corporate governance issues and proxy voting on behalf of public and private pension funds, banks, trust companies, money managers, insurance companies and other institutional investors with large equity portfolios. The independent fiduciary will be required to develop and follow standard guidelines and procedures for the voting of proxies by institutional fiduciaries. The Applicant will provide the independent fiduciary with all necessary information regarding the Funds that hold AE Stock on the record date for shareholder meetings of AEFC, and all proxy and consent materials with respect to the AE Stock. The independent fiduciary will maintain records with respect to its activities as an independent fiduciary on behalf of the Funds, including the number of the shares of AE Stock voted, the manner in which they were voted, and the rationale for the vote if the vote was not consistent with the independent fiduciary's procedures and current voting guidelines in effect at the time of the vote. The independent fiduciary will supply AEFC with the information after each shareholder meeting. The independent fiduciary will be required to acknowledge that it will be acting as a fiduciary with respect to the plans which invest in the Funds which own the AE Stock, when voting such stock.

14. In summary, with respect to all acquisitions, holdings, and dispositions of AE Stock by the Funds, the Applicant represents that such transactions will meet the criteria of section 408(a) of the Act for the following reasons:

(a) Each Index or Model-Driven Fund involved will be based on an Index, as defined in Section III(c) above;

(b) The acquisition or disposition of AE Stock will be for the sole purpose of maintaining strict quantitative conformity with the relevant Index upon which the Index or Model-Driven Fund is based, and will not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the AE Stock which is intended to benefit AEFC or any party in which AEFC may have an interest;

(c) Whenever AE Stock is initially added to an index on which a Fund is based, or initially added to the portfolio of a Fund (*i.e.*, a Buy-up), all acquisitions of AE Stock necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the computer model which has been used to transform the index, will be restricted by conditions which are designed to prevent possible market price manipulations;

(d) Subsequent to acquisitions necessary to bring a Fund's holdings of AE Stock to its specified weighting in the index or model, pursuant to the restrictions noted in paragraph (c) above, all aggregate daily purchases of AE Stock by the Funds will not exceed, on any particular day, the greater of:

(1) 15 percent of the average daily trading volume for the AE Stock occurring on the applicable exchange and automated trading system for the previous five (5) business days, or

(2) 15 percent of the trading volume for AE Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades that occurred on such date;

(e) All transactions in AE Stock, other than acquisitions of such Stock in a Buy-up described in paragraph (c) above, will be either: (i) entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of AEFC and is registered under the '34 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system operated by a broker-dealer independent of AEFC

that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system operated by a recognized U.S. securities exchange which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized U.S. securities exchange (as defined herein) so long as the broker is acting on an agency basis.

(f) No transactions by a Fund will involve purchases from or sales to AEFC (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption);

(g) No more than five (5) percent of the total amount of AE Stock, that is issued and outstanding at any time, will be held in the aggregate by Index and Model-Driven Funds managed by AEFC;

(h) AE Stock will constitute no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based;

(i) A plan fiduciary independent of AEFC will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds AE Stock (other than in the case of an AEFC plan), pursuant to the procedures described herein; and

(j) A fiduciary independent of AEFC will direct the voting of the AE Stock held by an Index or Model-Driven Fund on any matter in which shareholders of AE Stock are required or permitted to vote.

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

Countrywide Securities Corporation (Countrywide) Located in Calabasas, California

[Application No. D-10863]

Proposed Exemption

I. Transactions

A. Effective January 28, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the

initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.²²

B. Effective January 28, 2000, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25

percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.²³ For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective January 28, 2000, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.²⁴

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified

²³ For purposes of this proposed exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

²⁴ In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this proposed exemption, references to "prospectus" include any related prospectus supplement thereto, pursuant to which certificates are offered to investors.

administrative fee" as defined in section III.S.

D. Effective January 28, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating from a Rating Agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling

²² Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B.(1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a Rating Agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificateholders or by a Rating Agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will be either monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the

Rating Agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this proposed exemption:

A. "Certificate" means:

(1) A Certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A Certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code; and

(b) that is issued by, and is an obligation of, a trust; with respect to certificates defined in (1) and (2) above for which Countrywide or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent. For purposes of this proposed exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U); and/or

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3-101(i)(2); and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) (a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) Cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)-(g) of subsection II.A.(7) are met and/or;

(ii) are credited to a capitalized interest account (as defined in section III.X.); and

(iii) are held in the trust for a period ending no later than the first distribution date to certificateholders occurring after the end of the pre-funding period.

For purposes of this clause (c) of subsection III.B.(3), the term "permitted investments" means investments which are either: (i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and servicing agreement; and are permitted by the rating agency; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption,

and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption.

C. "Underwriter" means:

(1) Countrywide;

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

(3) Any member of an underwriting syndicate or selling group of which Countrywide or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services obligations contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services obligations contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)-(6) above.

M. "Affiliate" of another person includes:

(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, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

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

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this proposed exemption (if granted) applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the

certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The trust owns or holds a security interest in the lease;

(2) The trust owns or holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. "Rating Agency" means Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D&P) or Fitch IBCA, Inc. (Fitch) or their successors;

X. "Capitalized Interest Account" means a trust account: (i) which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. "Closing Date" means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. "Pre-Funding Account" means a trust account: (i) which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)-(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. "Pre-Funding Limit" means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. "Pre-Funding Period" means the period commencing on the closing date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. "Countrywide" means Countrywide Securities Corporation and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in section V(h) of Prohibited Transaction Exemption 95-60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at (see 60 FR 35932).

Summary of Facts and Representations

1. Countrywide is a California corporation, organized on November 4, 1981 as an indirect wholly-owned subsidiary of Countrywide Credit Industries, Inc. (CCI).²⁵ It is a registered

²⁵ The Department notes that it proposed exemptive relief for Countrywide (65 FR 51454) on August 23, 2000 in connection with the amendment of PTE 97-34. PTE 97-34 amended over 40 individual "Underwriter Exemptions". The proposed amendment of the individual Underwriter Exemptions, however, generally would be effective for transactions occurring on or after August 23,

broker-dealer and a member of both the National Association of Securities Dealers, inc. and the Securities Investor Protection Corporation. Countrywide primarily trades mortgage-related and other securities, including pass-through certificates issued by GNMA, FNMA and FHLMC, callable agency debt, and collateralized mortgage obligations. Countrywide also trades certificates of deposit issued by banks, the deposits of which are insured by the Bank Insurance Fund. It participates in the underwriting of securities for Countrywide Home Loans, Inc. (CHL), CWMBBS, Inc., CWABS, Inc. and others. Countrywide trades with institutional investors, such as investment managers, pension fund companies, insurance companies, depositories, and other broker-dealers. It does not maintain retail accounts. Countrywide had total assets of \$2.5 billion as of February 28, 2000, and CCI had total assets of \$18.4 billion on May 31, 2000.

Countrywide maintains its principal offices in Calabasas, California and maintains a sales office in New York City. CCI, a Delaware corporation organized in 1969, acts as a holding company. Its principal office is also located in Calabasas, California.

CHL is a New York corporation organized in 1969 as a wholly-owned subsidiary of CCI. It is engaged primarily in the mortgage banking business, and originates, purchases, sells and services prime mortgage loans, sub-prime mortgage loans and home equity loans. It originates mortgage loans through a retail branch system and through mortgage loan brokers, and purchases loans originated by correspondents nationwide. It sells substantially all loans that it originates or purchases. In the fiscal year ending February 28, 1999, CHL originated or purchased over 800,000 loans with an aggregate principal amount of over \$92 million. It also services on a non-recourse basis substantially all of the mortgage loans that it originates or purchases, and services loans originated by other lenders under bulk servicing contracts. At the end of the fiscal year ending February 28, 1999, the loans in CHL's servicing portfolio had a principal balance of more than \$215 billion. CHL has its principal offices in Calabasas, California, and maintains approximately 500 branch offices in all 50 states.

CWMBBS, Inc. is a Delaware corporation organized in 1993 for the

2000. Since Countrywide requested an exemption based upon 97-34 with an effective date retroactive to January 28, 2000, the Department determined to publish this proposal with the earlier effective date.

limited purpose of acquiring, owning and transferring mortgage-related assets and selling interests in and bonds secured by those assets. It is a limited purpose financial subsidiary wholly-owned by CCI, and it maintains its principal office in Calabasas, California.

CWABS, Inc. is a Delaware corporation incorporated in 1996 for the limited purpose of acquiring, owning and transferring mortgage-related assets and selling interests in and bonds secured by those assets. It is a limited purpose finance subsidiary wholly-owned by CCI, and it maintains its principal office in Calabasas, California.

Trust Assets

2. Countrywide seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts;²⁶ (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.²⁷

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest.

²⁶ The Department notes that PTE 83-1 (48 FR 895, January 7, 1983), a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83-1 are met. Countrywide requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Countrywide has stated that it may still avail itself of the exemptive relief provided by PTE 83-1.

²⁷ Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of "plan assets" (29 CFR 2510.3-101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.²⁸

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee.²⁹ The sponsor or servicer of a trust selects assets to be included in the trust.³⁰ These assets are receivables which may have been originated, in the ordinary course of business, by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.³¹

Typically, on or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Typically, all receivables to be held in the trust are transferred as of the closing date, but in some transactions, as described more fully below, a limited percentage of the

²⁸ Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90-32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

²⁹ The Department is of the view that the term "trust" includes a trust: (a) the assets of which, although all specifically identified by the sponsor or the originator as of the closing date, are not all transferred to the trust on the closing date for administrative or other reasons but will be transferred to the trust shortly after the closing date, or (b) with respect to which certificates are not purchased by plans until after the end of the pre-funding period at which time all receivables are contained in the trust.

³⁰ It is the Department's view that the definition of "trust" contained in section III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

³¹ It is the view of the Department that section III.B.(4) includes within the definition of the term "trust" rights under any yield supplement or similar arrangement which obligates the sponsor or master servicer, or another party specified in the relevant pooling and servicing agreement, to supplement the interest rates otherwise payable on the obligations described in section III.B.(1), in accordance with the terms of a yield supplement arrangement described in the pooling and servicing agreement, provided that such arrangements do not involve swap agreements or other notional principal contracts.

receivables to be held in the trust may be transferred during a limited period of time following the closing date, through the use of a pre-funding account.

Countrywide, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated have been or are to be underwritten by Countrywide on a firm commitment basis. In addition, Countrywide anticipates that it may privately place certificates on both a firm commitment and an agency basis. Countrywide may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each Rating Agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. Countrywide requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of

interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.³²

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.³³

6. The trust will be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution

of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed-through to certificateholders.

In some cases the trust will be maintained as a Financial Asset Securitization Investment Trust ("FASIT"), a statutory entity created by the Small Business Job Protection Act of 1996, adding sections 860H, 860J, 860K and 860L to the Code. In general, a FASIT is designed to facilitate the securitization of debt obligations, such as credit card receivables, home equity loans, and auto loans, and thus, allows certain features such as revolving pools of assets, trusts containing unsecured receivables and certain hedging types of investments. A FASIT is not a taxable entity and debt instruments issued by such trusts, which might otherwise be recharacterized as equity, will be treated as debt in the hands of the holder for tax purposes. However, a trust which is the subject of the proposed exemption will be maintained as a FASIT only where the assets held by the FASIT will be comprised of secured debt; revolving pools of assets or hedging investments will not be allowed unless specifically authorized by the exemption, if granted, so that a trust maintained as a FASIT will be maintained as an essentially passive entity.

Trust Structure with Pre-Funding Account

Pre-Funding Accounts

7. As described briefly above, some transactions may be structured using a pre-funding account or a capitalized interest account. If pre-funding is used, cash sufficient to purchase the receivables to be transferred after the closing date will be transferred to the trust by the sponsor or originator on the closing date. During the pre-funding period, such cash and temporary investments, if any, made therewith will be held in a pre-funding account and used to purchase the additional receivables, the characteristics of which will be substantially similar to the characteristics of the receivables

transferred to the trust on the closing date. The pre-funding period for any trust will be defined as the period beginning on the closing date and ending on the earliest to occur of (i) the date on which the amount on deposit in the pre-funding account is less than a specified dollar amount, (ii) the date on which an event of default occurs under the related pooling and servicing agreement or (iii) the date which is the later of three months or ninety (90) days after the closing date. Certain specificity and monitoring requirements described below will be met and will be disclosed in the pooling and servicing agreement and/or the prospectus or private placement memorandum.

For transactions involving a trust using pre-funding, on the closing date, a portion of the offering proceeds will be allocated to the pre-funding account generally in an amount equal to the excess of (i) the principal amount of certificates being issued over (ii) the principal balance of the receivables being transferred to the trust on such closing date. In certain transactions, the aggregate principal balance of the receivables intended to be transferred to the trust may be larger than the total principal balance of the certificates being issued. In these cases, the cash deposited in the pre-funding account will equal the excess of the principal balance of the total receivables intended to be transferred to the trust over the principal balance of the receivables being transferred on the closing date.

On the closing date, the sponsor transfers the assets to the trust in exchange for the certificates. The certificates are then sold to Countrywide for cash or to the certificateholders directly if the certificates are sold through Countrywide as a placement agent. The cash received by the sponsor from the certificateholders (or Countrywide) for the sale of the certificates issued by the trust in excess of the purchase price for the receivables and certain other trust expenses, such as underwriting or placement agent fees and legal and accounting fees, constitutes the cash to be deposited in the pre-funding account. Such funds are either held in the trust and accounted for separately, or are held in a sub-trust. In either event, these funds are not part of the assets of the sponsor.

Generally, the receivables are transferred at par value, unless the interest rate payable on the receivables is not sufficient to service both the interest rates to be paid on the certificates and the transaction fees (i.e., servicing fees, trustee fees and fees to credit support providers). In such cases, the receivables are sold to the trust at a

³² It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this proposed exemption.

³³ If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the proposed exemption does not provide relief for plan investment in such subordinated certificates.

discount, based on an objective, written, mechanical formula which is set forth in the pooling and servicing agreement and agreed upon in advance between the sponsor, the Rating Agency and any credit support provider or other insurer. The proceeds payable to the sponsor from the sale of the receivables transferred to the trust may also be reduced to the extent they are used to pay transaction costs (which typically include underwriting or placement agent fees and legal and accounting fees). In addition, in certain cases, the sponsor may be required by the Rating Agencies or credit support providers to set up trust reserve accounts to protect the certificateholders against credit losses.

The pre-funding account of any trust will be limited so that the percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered (the pre-funding limit) will not exceed 25%. The pre-funding limit (which may be expressed as a ratio or as a stated percentage or a combination thereof) will be specified in the prospectus or the private placement memorandum.

Any amounts paid out of the pre-funding account are used solely to purchase receivables and to support the certificate pass-through rate (as explained below). Amounts used to support the pass-through rate are payable only from investment earnings and are not payable from principal. However, in the event that, after all of the requisite receivables have been transferred into the trust, any funds remain in the pre-funding account, such funds will be paid to the certificateholders as principal prepayments. Upon termination of the trust, if no receivables remain in the trust and all amounts payable to certificateholders have been distributed, any amounts remaining in the trust would be returned to the sponsor.

A dramatic change in interest rates on the receivables held in a trust using a pre-funding account would be handled as follows. If the receivables (other than those with adjustable or variable rates) had already been originated prior to the closing date, no action would be required as the fluctuations in the market interest rates would not affect the receivables transferred to the trust after the closing date. In contrast, if interest rates fall after the closing date, loans originated after the closing date will tend to be originated at lower rates, with the possible result that the receivables will not support the certificate pass-through rate. In a situation where interest rates drop

dramatically and the sponsor is unable to provide sufficient receivables at the requisite interest rates, the pool of receivables would be closed. In this latter event, under the terms of the pooling and servicing agreement, the certificateholders would receive a repayment of principal from the unused cash held in the pre-funding account. In transactions where the certificate pass-through rates are variable or adjustable, the effects of market interest rate fluctuations are mitigated. In no event will fluctuations in interest rates payable on the receivables affect the pass-through rate for fixed rate certificates.

The cash deposited into the trust and allocated to the pre-funding account is invested in certain permitted investments (see below), which may be commingled with other accounts of the trust. The allocation of investment earnings to each trust account is made periodically as earned in proportion to each account's allocable share of the investment returns. As pre-funding account investment earnings are required to be used to support (to the extent authorized in the particular transaction) the pass-through amounts payable to the certificateholders with respect to a periodic distribution date, the trustee is necessarily required to make periodic, separate allocations of the trust's earning to each trust account, thus ensuring that all allocable commingled investment earnings are properly credited to the pre-funding account on a timely basis.

The Capitalized Interest Account

8. In certain transactions where a pre-funding account is used, the sponsor and/or originator may also transfer to the trust additional cash on the closing date, which is deposited in a capitalized interest account and used during the pre-funding period to compensate the certificateholders for any shortfall between the investment earnings on the pre-funding account and the pass-through interest rate payable under the certificates.

The capitalized interest account is needed in certain transactions since the certificates are supported by the receivables and the earnings on the pre-funding account, and it is unlikely that the investment earnings on the pre-funding account will equal the interest rates on the certificates (although such investment earnings will be available to pay interest on the certificates). The capitalized interest account funds are paid out periodically to the certificateholders as needed on distribution dates to support the pass-through rate. In addition, a portion of

such funds may be returned to the sponsor from time to time as the receivables are transferred into the trust and the need for the capitalized interest account diminishes. Any amounts held in the capitalized interest account generally will be returned to the sponsor and/or originator either at the end of the pre-funding period or periodically as receivables are transferred and the proportionate amount of funds in the capitalized interest account can be reduced. Generally, the capitalized interest account terminates no later than the end of the pre-funding period. However, there may be some cases where the capitalized interest account remains open until the first date distributions are made to certificateholders following the end of the pre-funding period.

In other transactions, a capitalized interest account is not necessary because the interest paid on the receivables exceeds the interest payable on the certificates at the applicable pass-through rate and the fees of the trust. Such excess is sufficient to make up any shortfall resulting from the pre-funding account earning less than the certificate pass-through rate. In certain of these transactions, this occurs because the aggregate principal amount of receivables exceeds the aggregate principal amount of certificates.

Pre-Funding Account and Capitalized Interest Account Payments and Investments

9. Pending the acquisition of additional receivables during the pre-funding period, it is expected that amounts in the pre-funding account and the capitalized interest account will be invested in certain permitted investments or will be held uninvested. Pursuant to the pooling and servicing agreement, all permitted investments must mature prior to the date the actual funds are needed. The permitted types of investments in the pre-funding account and capitalized interest account are investments which are either: (i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a Rating Agency, as set forth in the pooling and servicing agreement and as required by the Rating Agencies. The credit grade quality of the permitted investments is generally no lower than that of the certificates. The types of permitted investments will be

described in the pooling and servicing agreement.

The ordering of interest payments to be made from the pre-funding and capitalized interest accounts is pre-established and set forth in the pooling and servicing agreement. The only principal payments which will be made from the pre-funding account are those made to acquire the receivables during the pre-funding period and those distributed to the certificateholders in the event that the entire amount in the pre-funding account is not used to acquire receivables. The only principal payments which will be made from the capitalized interest account are those made to certificateholders if necessary to support the certificate pass-through rate or those made to the sponsor either periodically as they are no longer needed or at the end of the pre-funding period when the capitalized interest account is no longer necessary.

The Characteristics of the Receivables Transferred During the Pre-Funding Period

10. In order to ensure that there is sufficient specificity as to the representations and warranties of the sponsor regarding the characteristics of the receivables to be transferred after the closing date:

(i) All such receivables will meet the same terms and conditions for eligibility as those of the original receivables used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a Rating Agency. However, the terms and conditions for determining the eligibility of a receivable may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by a Rating Agency;

(ii) The transfer to the trust of the receivables acquired during the pre-funding period will not result in the certificates receiving a lower credit rating from the Rating Agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(iii) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(iv) The trustee of the trust (or any agency with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to receivables that were acquired as of the closing date, the characteristics of the additional obligations subsequently acquired will be either (i) monitored by a credit support provider or other insurance provider which is independent of the sponsor, or (ii) an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the Rating Agency, Countrywide and the trustee) stating whether or not the characteristics of the additional obligations acquired after the closing date conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date.

Each prospectus, private placement memorandum and/or pooling and servicing agreement will set forth the terms and conditions for eligibility of the receivables to be included in the trust as of the related closing date, as well as those to be acquired during the pre-funding period, which terms and conditions will have been agreed to by the Rating Agencies which are rating the applicable certificates as of the closing date. Also included among these conditions is the requirement that the trustee be given prior notice of the receivables to be transferred, along with such information concerning those receivables as may be requested. Each prospectus or private placement memorandum will describe the amount to be deposited in, and the mechanics of, the pre-funding account and will describe the pre-funding period for the trust.

Parties to Transactions

11. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or

leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their businesses, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

12. The *sponsor* will be one of three entities: (i) a special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

13. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to Countrywide, the trust sponsor, the servicer or any other member of the Restricted Group (as defined in section III.L.). Countrywide represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor or out of the trust assets. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

14. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of

different originators and deposited in a trust, the receivables may be "subserviced" by their respective originators and a single entity may "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investor's interest, the servicer ordinarily covenants that this "sold flag" will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing, posting and collection procedures related to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* (i.e., Countrywide, its affiliate, or a member of an underwriting syndicate or selling group of which Countrywide or its affiliate is a manager or co-manager) will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm

commitment basis. Private placement of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to Countrywide. In other cases, however, affiliates of Countrywide may originate or service receivables included in a trust or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

15. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

16. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.³⁴ This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a

certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

17. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

18. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

19. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would

³⁴ The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

20. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

21. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value

of the receivables in the case of a trust that is not a REMIC.

Certificate Ratings

22. The certificates will have received one of the three highest ratings available from a Rating Agency. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the Rating Agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

23. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the

servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent

accountants' review are delivered to the trustee; and

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

24. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, any material risk factors with respect to the certificates, and the fact that principal amounts left in the pre-funding account at the end of the pre-funding period will be paid to certificateholders as a repayment of principal;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects, and a description of any pre-funding account used or capitalized interest account used in connection with a pre-funding account;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets, including the terms and conditions for eligibility of any receivables transferred during the pre-funding period and the trustee's remedy

for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; a description of permitted investments for any pre-funding account or capitalized interest account; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors;

(j) Information about the scope and nature of the secondary market, if any, for the certificates; and

(k) A statement as to the duration of any pre-funding period and the pre-funding limit for the trust.

25. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

26. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10-Q and Annual Reports on Form 10-K, many trusts obtain, by application to the Securities and Exchange Commission (SEC), a complete exemption from the requirement to file quarterly reports on Form 10-Q and a modification of the disclosure requirements for annual reports on Form 10-K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on

Form 8-K to report material developments concerning the trust and the certificates and copies of the statements sent to certificateholders. While the SEC's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

27. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets (including those purchased by the trust from any pre-funding account), payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer, paying agent or trustee summarizing information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

28. To date, no forward delivery commitments have been entered into by Countrywide in connection with the offering of any certificates, but Countrywide may contemplate entering into such commitments. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and Countrywide may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

29. It is Countrywide's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter, and it is Countrywide's intention to make a market for any certificates for which it is lead or co-managing underwriter, although it is under no obligation to do so. At times Countrywide will facilitate

sales by investors who purchase certificates if Countrywide has acted as agent or principal in the original private placement of the certificates and if such investors request Countrywide's assistance.

Retroactive Relief

30. Countrywide represents that it has not engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would be granted prior to the date of their application. However, Countrywide requests the exemptive relief granted to be retroactive to January 28, 2000, the date of their application, and would like to rely on such retroactive relief for transactions entered into prior to the date exemptive relief may be granted.

Summary

31. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) In the case where a pre-funding account is used, the characteristics of the receivables to be transferred to the trust during the pre-funding period will be substantially similar to the characteristics of those transferred to the trust on the closing date, thereby giving the sponsor and/or originator little discretion over the selection process, and compliance with this requirement will be assured by the specificity of the characteristics and the monitoring mechanisms contemplated under the proposed exemption. In addition, certain cash accounts will be established to support the certificate pass-through rate and such cash accounts will be invested in short-term, conservative investments; the pre-funding period will be of a reasonably short duration; a pre-funding limit will be imposed; and any Internal Revenue Service requirements with respect to pre-funding intended to preserve the passive income character of the trust will be met. The fiduciary of the plans making the decision to invest in certificates is thus fully apprised of the nature of the receivables which will be held in the trust and has sufficient information to make a prudent investment decision.

(c) Certificates in which plans invest will have been rated in one of the three highest rating categories by a rating agency. Credit support will be obtained

to the extent necessary to attain the desired rating;

(d) All transactions for which Countrywide seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(e) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(f) Countrywide anticipates that it will make a secondary market in certificates (although it is under no obligation to do so).

Notice to Interested Persons: The applicant represents that any securities offered in reliance upon the proposed exemption prior to the date the final exemption is published in the **Federal Register** shall disclose in the offering memorandum or prospectus:

(a) The availability of the proposed exemption; (b) the right of potentially interested plan fiduciaries to comment on the proposed exemption; and (c) information on how an interested plan fiduciary can obtain a copy of the proposed exemption (once it is available) from Countrywide.

Once this proposed exemption is granted, a copy of the exemption published in the **Federal Register** shall be distributed to any current or prospective plan investor in a security offered in reliance upon the exemption upon request of such investor, and each offering memorandum or prospectus offering securities in reliance upon the exemption shall describe and disclose the availability of the exemption. Comments and requests for a hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

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

Maple Partners Financial Group, Inc. (Maple); Located in Toronto, Ontario, Canada

[Application No. D-10905]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).³⁵

³⁵ For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

Section I—Transactions

A. If the exemption is granted, 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 May 31, 2000, to any purchase or sale of securities between certain non-U.S. affiliates of Maple, 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, Maple, 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 a Plan.

B. If the exemption is granted, 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 May 31, 2000, to any extension of credit to the Plan by the Foreign Affiliate, 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. If the exemption is granted, 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 May 31, 2000, 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)³⁶ 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), 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) three 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;³⁷

(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

(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

³⁶ 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.

³⁷ 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.

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, if granted;

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 Maple 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, and the Federal Securities Trading Supervisory Commission, Bundesaufsichtsamt fuer den Wertpapierhandel (the BAWe); and

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 proposed exemption, if granted, will be effective as of May 31, 2000.

Summary of Facts and Representations

1. Maple is a holding company formed under the laws of the Province of New Brunswick, Canada. Maple is the parent company of Maple Partners

U.S.A. Inc. (MPUSA), a Delaware corporation and a broker-dealer registered with the SEC pursuant to Section 15 (b) of the 1934 Act. MPUSA is a full-line investment and financial services company which is a member of the National Association of Securities Dealers, Inc. (the NASD) and the Chicago Board Options Exchange, Inc.³⁸ As of September 30, 1999, Maple had (in U.S. dollars) approximately \$11.3 billion in assets under management, and \$284 million in business capital.

Maple has several foreign affiliates which are broker-dealers or banks. Those covered by the proposed exemption (*i.e.*, the Foreign Affiliates), and their respective regulating entities, are as follows:

(a) *Maple Partners Financial Products Limited*, located in Toronto, Ontario, is subject to regulation in Canada by the Ontario Securities Commission, as well as the Investment Dealers Association and the Toronto Stock Exchange, both self-regulatory organizations;

(b) *Maple Partners (U.K.) Limited*, located in London, England, is subject to regulation in the United Kingdom by the Securities and Futures Authority, as well as the London Stock Exchange, the Tradepoint Investment Exchange and the London-based Swedish Options Exchange, all of which are self-regulatory organizations;

(c) *Maple Partners Bankhaus GmbH (MPBG)*, located in Frankfurt, is subject to regulation in Germany by the Federal Supervisory Office, Bundesaufsichtsamt fuer das Kreditwesen (*i.e.*, the BAK), and the Federal Securities Trading Supervisory Commission, Bundesaufsichtsamt fuer den Wertpapierhandel (*i.e.*, the BAWe).

Maple requests an individual exemption to permit the Foreign Affiliates identified above, as well as those other affiliates of Maple who, in the future, may be subject to governmental regulation in Canada, the United Kingdom or Germany, to engage in the securities transactions described below with employee benefit plans (*i.e.*, the Plans). The proposed exemption is necessary because the Foreign Affiliates may be parties in interest with respect to the Plans under the Act, by virtue of being a fiduciary (for assets of the Plans other than those involved in the transactions) or a service provider to such Plans, or by virtue of a relationship to such fiduciary or service provider.

³⁸ Maple also owns Maple Arbitrage Inc. (MAI), a Delaware corporation and a broker-dealer registered with the SEC under the 1934 Act. MAI is a member of the NASD. MAI engages mainly in trading and securities lending activities for its own account.

2. Maple represents that the Foreign Affiliates are subject to regulation by a governmental agency in the foreign country in which they are located. Maple further represents that registration of a foreign broker-dealer or bank with the governmental agency in these cases addresses regulatory concerns similar to those concerns addressed by registration of a broker-dealer with the SEC under the 1934 Act. The rules and regulations set forth by the above-referenced agencies and the SEC share a common objective: the protection of the investor by the regulation of securities markets.

Canada and the United Kingdom each have comprehensive financial resource and reporting/disclosure rules concerning broker-dealers. Broker-dealers are required to demonstrate their capital adequacy. The reporting/disclosure rules impose requirements on broker-dealers with respect to risk management, internal controls, and records relating to counterparties. All such records must be produced at the request of the agency at any time. The agencies' registration requirements for broker-dealers are enforced by fines and penalties and thus constitute a comprehensive disciplinary system for the violation of such rules.

With respect to Germany, the BAK, an independent federal institution with ultimate responsibility to the Ministry of Finance, in cooperation with the Deutsche Bundesbank, the central bank of the German banking system, provides extensive regulation of the banking sector. The BAK insures that German banks have procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards, such as requirements regarding adequate internal controls, oversight, administration and financial resources. The BAK reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the year-end auditor and through special audits, e.g., on specific sections of the Banking Act, as ordered by the BAK and the respective State Central Bank auditors. The BAK obtains information on the condition of German banks, such as MPBG, by requiring submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the auditor. The BAK also receives information from German banks, such as MPBG, regarding capital adequacy, country risk exposure, and foreign exchange exposure. German banking law mandates penalties to insure correct reporting to the BAK. The auditors face penalties for gross violation of their duties in auditing, for

reporting misleading information, omitting essential information from the audit report, failing to request pertinent information, or failing to report to the BAK.

The distribution and trading of securities in Germany is governed by the Stock Corporation Act (Aktiengesetz), the Stock Exchange Code (Borsengesetz), and the Securities Trading Act, as amended (Wertpapierhandelsgesetz). The Stock Exchange Code involves a three-tier supervisory system—federal, state and private exchanges. The BAWe has been given broad powers to investigate and prosecute various securities trading violations.

Maple represents that, in connection with the transactions covered by this proposed exemption, the Foreign Affiliates' compliance with any applicable requirements of Rule 15a-6 [17 CFR 240.15a-6(1999)] of the 1934 Act (as discussed further in Paragraph 6, below), and SEC interpretations thereof, providing for foreign affiliates a limited exemption from U.S. registration requirements, will offer additional protections to the Plans.

Principal Transactions

3. Maple represents that the Foreign Affiliates operate as traders in dealers' markets wherein they customarily purchase and sell securities for their own account in the ordinary course of their business as broker-dealers or banks and engage in purchases and sales of securities, including options on securities, with their clients. Such trades are referred to as principal transactions. Maple represents that the role of a broker-dealer in a principal transaction in the subject foreign countries is virtually identical to that of a broker-dealer in a principal transaction in the United States.

Maple requests an individual exemption to permit the Foreign Affiliates to engage in principal transactions with the Plans under terms and conditions equivalent to those required in Prohibited Transaction Class Exemption 75-1 (PTE 75-1, 40 FR 50845, October 31, 1975), Part II.³⁹ Maple states that because PTE 75-1 provides an exemption only for U.S. registered broker-dealers and U.S. banks, the principal transactions at

issue would fall outside the scope of relief provided by PTE 75-1.⁴⁰

4. Maple represents that like the U.S. dealer markets, international equity and debt markets, including the options markets, are no less dependent on a willingness of dealers to trade as principals. Over the past decade, the Plans have increasingly invested in foreign equity and debt securities, including debt securities issued by foreign governments. Thus, Plans seeking to enter into such investments may wish to increase the number of trading partners available to them by trading with the Foreign Affiliates.

5. Under the conditions of this proposed exemption, as in PTE 75-1, Part II, the Foreign Affiliate must customarily purchase and sell securities for its own account in the ordinary course of its business as a broker-dealer or bank. The terms of any principal transaction will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. Neither the Foreign Affiliate nor an affiliate thereof will have discretionary authority or control with respect to the investment of the Plan assets involved in the principal transaction, or render investment advice [within the meaning of 29 CFR 2510.3-21(c)] with respect to those assets. In addition, the Foreign Affiliate will be a party in interest or disqualified person with respect to the Plan assets involved in the principal transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code (i.e., a service provider to the Plan), or by reason of a relationship to such a person as described in such sections.

6. Maple represents that Rule 15a-6 of the 1934 Act provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "major U.S. institutional investor," provided that the foreign broker-dealer, among other things, enters into these principal transactions through a U.S. registered broker or dealer intermediary.

The term "U.S. institutional investor," as defined in Rule 15a-6(b)(7), includes an employee benefit plan within the meaning of the Act if:

³⁹ The Department notes that the proposed principal transactions are subject to the general fiduciary responsibility provisions of Part 4 of Title I of the Act. Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently and solely in the interest of the plan and its participants and beneficiaries, when making investment decisions on behalf of the plan.

⁴⁰ PTE 75-1, Part II, provides an exemption, under certain conditions, from section 406(a) of the Act and section 4975(c)(1)(A) through (D) of the Code, for principal transactions between employee benefit plans and U.S. registered broker-dealers or U.S. banks that are parties in interest with respect to such plans.

(a) The investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or

(b) The employee benefit plan has total assets in excess of \$5 million, or

(c) The employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors," as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended.

The term "major U.S. institutional investor," as defined in Rule 15a-6(b)(4), includes a U.S. institutional investor that has total assets in excess of \$100 million.⁴¹ The intermediation of the U.S. registered broker or dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

Maple represents that under Rule 15a-6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance with Rule 15a-6 must, among other things:

(a) Provide written consent to service of process for any civil action brought by or proceeding before the SEC or a self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker or dealer through which the principal transactions with the U.S. institutional and major U.S. institutional investors are effected, among other things, for:

(1) Effecting the transactions, other than negotiating their terms;

(2) Issuing all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker or dealer, extending or arranging for the extension of any credit in connection with the transactions;

(4) Maintaining required books and records relating to the transactions,

including those required by Rules 17a-3 (Records to be Made by Certain Exchange Members) and 17a-4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3-3 (Customer Protection—Reserves and Custody of Securities) of the 1934 Act;⁴² and

(6) Participating in certain oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor, other than a major U.S. institutional investor. Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. institutional investor. (See April 9, 1997 No-Action Letter.)

Extensions of Credit

7. Maple 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 three-day settlement period. Such extensions of credit are also customary in connection with the writing of option contracts.

Maple requests that the proposed exemption include relief for extensions of credit to the Plans by the Foreign Affiliates in the ordinary course of their purchases or sales of securities, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts. In this regard, an exemption for such extensions of credit is provided under PTE 75-1, Part V, only for transactions between plans and U.S. registered brokers or dealers.⁴³

8. Under the conditions of this proposed exemption, as in PTE 75-1, Part V, the Foreign Affiliate may not be a fiduciary with respect to the Plan assets involved in the transaction.

⁴² Under certain circumstances described in the April 9, 1997 No-Action Letter (e.g., clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and a Foreign Affiliate. Please note that in such situations (as in the other situations covered by Rule 15a-6), the U.S. broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a-6.

⁴³ PTE 75-1, Part V, provides an exemption, under certain conditions, from section 406 of the Act and section 4975(c)(1) of the Code, for extensions of credit, in connection with the purchase or sale of securities, between employee benefit plans and U.S. registered brokers or dealers that are parties in interest with respect to such plans.

However, an exception to such condition would be provided herein, as in PTE 75-1, if no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with any such extension of credit. In addition, the extension of credit must be lawful under the 1934 Act and any rules or regulations thereunder, if the 1934 Act rules or regulations were applicable. If the 1934 Act would not be applicable, the extension of credit must still be lawful under applicable foreign law, in the country where the particular Foreign Affiliate is domiciled.

Securities Lending

9. The Foreign Affiliates, acting as principals, actively engage in the borrowing and lending of securities, typically foreign securities, from various institutional investors, including employee benefit plans.

Maple requests an exemption for securities lending transactions between the Foreign Affiliates and the Plans under terms and conditions equivalent to those required in PTE 81-6 (see Footnote 2). Because PTE 81-6 provides an exemption only for U.S. registered broker-dealers and U.S. banks, the securities lending transactions at issue would fall outside the scope of relief provided by PTE 81-6.

10. The Foreign Affiliates utilize borrowed securities either to satisfy their own trading requirements or to re-lend to other broker-dealers and entities which need a particular security for a certain period of time. As described in the Federal Reserve Board's Regulation T, borrowed securities are often used to meet delivery obligations in the case of short sales or the failure to receive securities that a broker-dealer is required to deliver. Maple represents that foreign broker-dealers are those broker-dealers most likely to seek to borrow foreign securities. Thus, the requested exemption will increase the lending demand for such securities, providing the Plans with increased securities lending opportunities, which will earn such Plans additional rates of return on the borrowed securities (as discussed below).

11. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities, (e.g., from the receipt of any interest, dividends, or other distributions due on those securities and from any appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized, and the collateral usually

⁴¹ Note that the categories of entities that qualify as "major U.S. institutional investors" has been expanded by an SEC No-Action letter. See No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (the April 9, 1997 No-Action Letter).

is in the form of cash, irrevocable bank letters of credit, or high quality liquid securities, such as U.S. Government or Federal Agency obligations.

12. With respect to the subject securities lending transactions, neither the Foreign Affiliate nor an affiliate of the Foreign Affiliate will have discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or render investment advice [within the meaning of 29 CFR 2510.3-21(c)] with respect to those assets.

13. By the close of business on the day the loaned securities are delivered, the Plan will receive from the Foreign Affiliate (by physical delivery, book entry in a securities depository, wire transfer, or similar means) 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 will be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and will be held in the United States. The collateral will have, as of the close of business on the business day preceding the day it is posted by the Foreign Affiliate, 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). (As is customary in the industry, the Foreign Affiliates typically provide collateral of between 102 and 105 percent of the market value of the loaned securities.)

14. The loan will be made pursuant to a written Loan Agreement, which may be in the form of a master agreement covering a series of securities lending transactions between the Plan and the Foreign Affiliate. The terms of the Loan Agreement will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. The Loan Agreement will also contain a requirement that the Foreign Affiliate pay all transfer fees and transfer taxes relating to the securities loans.

15. In return for lending securities, the Plan will either (a) receive a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) have 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.

Earnings generated by non-cash collateral will be returned to the Foreign Affiliate. The Plan will be entitled to at least the equivalent of all distributions on the borrowed securities made during the term of the loan. Such distributions will include 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 any applicable tax withholdings) had it remained the record owner of such securities.

16. 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 will deliver 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.

17. Before entering into a Loan Agreement, the Foreign Affiliate will furnish to the independent Plan fiduciary, who makes a decision whether to lend the Plan's securities, (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), 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.

18. The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate will 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) three 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 PTE 81-6, as it may be amended or superseded. In the event that the Foreign Affiliate fails to return the securities, or the equivalent thereof, within the designated time, the Plan will have certain rights under the Loan Agreement to realize upon the collateral. The Plan may purchase securities identical to the borrowed securities, or the equivalent thereof, 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 replacing the borrowed securities. The Foreign Affiliate is obligated to pay to the Plan the amount of any remaining obligations and expenses not covered by the collateral (the value of which shall be determined as of the date the borrowed securities should have been returned to the Plan), plus interest at a reasonable rate as determined in accordance with an independent market source. If replacement securities are not available, the Foreign Affiliate will pay the Plan an amount equal to (a) the value of the securities as of the date such securities should have been returned to the Plan, plus (b) all the accrued financial benefits derived from the beneficial ownership of such borrowed securities as of such date, plus (c) interest at a reasonable rate determined in accordance with an independent market source from such date to the date of payment. The amounts paid shall be reduced by the amount or value of the collateral determined as of the date the borrowed securities should have been returned to the Plan. 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.

19. The independent Plan fiduciary will maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act⁴⁴ and the regulations promulgated under 29 CFR 2550.404(b)-1.

20. In summary, the applicant represents that the subject transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

⁴⁴ Section 404(b) of the Act states that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, except as authorized by regulation by the Secretary of Labor.

(a) With respect to the principal transactions effected by the Foreign Affiliates, the proposed exemption will enable the Plans to realize the same benefits of efficiency and convenience which such Plans could derive from principal transactions with U.S. registered broker-dealers or U.S. banks, pursuant to PTE 75-1, Part II;

(b) With respect to extensions of credit in connection with purchases or sales of securities, the proposed exemption will enable the Foreign Affiliates and the Plans to extend credit in the ordinary course of the Foreign Affiliate's business to effect agency or principal transactions within the customary three-day settlement period, or in connection with the writing of option contracts, for transactions between Plans and U.S. registered brokers or dealers, pursuant to PTE 75-1, Part V;

(c) With respect to securities lending transactions effected by the Foreign Affiliates, the proposed exemption will enable the Plans to realize a low-risk return on securities that otherwise would remain idle, as in securities lending transactions between Plans and U.S. registered broker-dealers or U.S. banks, pursuant to PTE 81-6; and

(d) The proposed exemption will provide the Plans with virtually the same protections as those provided by PTE 75-1 and PTE 81-6.

FOR FURTHER INFORMATION CONTACT:

Ekaterina A. Uzlyan of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

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

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible,

in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

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

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

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

Ivan Strasfeld,

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

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