Diplomat Project) which was the subject of PTE 99–46, and expressed concern over the ASA Counselors' authority under the exemption to use assets of the Fund for the operation of the Diplomat Project. In response to the comment, the applicants noted that the Department previously granted PTE 99–46 which permitted the investment. Further, the applicants maintain that the Diplomat Project involves a large hotel, country club, and marina. Given the number of participants, contributing employers, and service providers for the Fund and the scope of the Diplomat Project, in the opinion of the applicants, there would be significant administrative difficulties in identifying and preventing inadvertent prohibited transactions. In the opinion of the applicants, the granting of this exemption to ASA Counselors, the Named Fiduciary, will eliminate the risk that a prohibited transaction will occur during the course of building, selling, or operating the Diplomat Project.

One commentator asked whether CS Capital Management had any ties to Capital Consultants, Inc. or Wilshire Financial Services. In response, CS Capital Management has confirmed that they do not have ties to either organization.

After giving full consideration to the entire record, including the written comments from the commentators, the Department has decided to grant the exemption. In this regard, the comment letters submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on June 26, 2000, at 65 FR 39435.

For Further Information Contact: Ms. Angelena C. Le Blanc 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 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

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

Signed at Washington, D.C., this 4th day of October, 2000.

Ivan Strasfeld,

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

[FR Doc. 00–26029 Filed 10–10–00; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10538, et al.]

Proposed Exemptions; Sei Investments Company (SEI Investments), SEI Investments Management Corporation (SIMC) and SEI Trust Company (STC)

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, N.W., Washington, D.C. 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, N.W., Washington, D.C. 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.

SEI Investments Company (SEI Investments), SEI Investments Management Corporation (SIMC) and SEI Trust Company (STC), Located in Oaks, PA

[Application No. D–10538]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). [1]

Section I. Proposed Exemption for the Purchase of Fund Shares With Assets Transferred in Kind From a Plan Account

If the exemption is granted, the restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, effective June 19, 1996, to the purchase of shares of one or more open-end management investment companies (the Fund or Funds) registered under the Investment Company Act of 1940 (the ICA), to which SEI Investments, SIMC, STC, or any of their affiliates (collectively, SEI) serve as investment adviser and may provide other services, by an employee benefit plan (the Plan or Plans) whose assets are held by SEI as trustee, investment manager, or as a discretionary fiduciary, in exchange for securities held by the Plan in an account (the Account) with SEI (the Purchase Transaction), provided the following conditions are met:

(a) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected Plan and who is independent of and unrelated to SEI, as defined in paragraph (g) of Section III below, receives advance written notice of the Purchase Transaction and full and written information concerning the Funds which includes the following:

(1) A current prospectus for each Fund to which the Plan's assets may be transferred;

(2) A statement describing the fees to be charged to, or paid by, the Plan and the Funds to SEI, including the nature and extent of any differential between the rates of the fees paid by the Fund and the rates of the fees otherwise payable by the Plan to SEI;

(3) A statement of the reasons why SEI may consider the Purchase Transaction to be appropriate for the Plan;

(4) A statement of whether there are any limitations on SEI with respect to which Plan assets may be invested in the Funds;

(5) The identity of all securities that are deemed suitable by the Funds' sub-advisers for transfer to the Funds;

(6) The identity of all such securities that will be valued in accordance with the procedures set forth in Rule 17a–7(b)(4) under the ICA; and

(7) Upon such fiduciary's request, copies of the proposed and final exemptions pertaining to the exemptive relief provided herein for Purchase Transactions occurring after the date of the final exemption.

(b) On the basis of the foregoing information, the Second Fiduciary gives SEI prior written approval with respect to—

(1) Each Purchase Transaction, consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(2) The transaction date proposed by SEI; and

(3) The receipt of confirmation statements, described below in paragraph (g)(1) and (g)(2), by facsimile or electronic mail.

(c) No sales commissions or other fees are paid by the Plans in connection with a Purchase Transaction.

(d) All transferred assets are securities for which market quotations are readily available, or cash.

(e) The transferred assets consist of assets transferred to the Plan's Account at the direction of the Second Fiduciary and constitute all of the assets held in the Account immediately prior to the transfer (other than Fund shares already held in the Account). With respect to any Plan assets transferred in-kind to an Account wich are not suitable for acquisition by the Funds, such assets are liquidated as soon as reasonably practicable and the cash proceeds are invested directly in Fund shares.

(f) With respect to assets transferred in-kind, each Plan receives shares of a Fund which have a total net asset value that is equal to the value of the assets of the Plan exchanged for such shares, based on the current market value of such assets at the close of the business day on which such Purchase Transaction occurs, using independent sources in accordance with the procedures set forth in Rule 17a–7b (Rule 17a–7) under the ICA and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day prior to the Purchase Transaction determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of SEI.

(g) SEI sends by regular mail or personal delivery or, if applicable, by facsimile or electronic mail to the Second Fiduciary of each Plan that engages in a Purchase Transaction, the following information:

(1) Not later than 30 business days after completion of each Purchase Transaction, a written confirmation which contains—

(A) The identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) under the ICA;

(B) The current market price, as of the date of the Purchase Transaction, of each of the assets involved in the Purchase Transaction; and

(C) The identity of each pricing service or market maker consulted in determining the value of such assets.

(2) Not later than 90 days after completion of each Purchase Transaction, a written confirmation which contains—

(A) The aggregate dollar value of the assets held in the Account immediately before the Purchase Transaction; and

(B) The number of shares of the Funds that are held by the Account following the Purchase Transaction (and the related per share net asset value and the aggregate dollar value of the shares received).

(h) With respect to each of the Funds in which a Plan continues to hold shares acquired in connection with a Purchase Transaction, SEI provides the Second Fiduciary with—

(1) A copy of an updated prospectus of such Fund, at least annually; and

(2) Upon request of the Second Fiduciary, a report or statement (which

[1] 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.

may take the form of the most recent financial report, the current statement of additional information, or some other statement) containing a description of all fees paid by the Fund to SEI.

(i) As to each Plan, the combined total of all fees received by SEI for the provision of services to the Plan, and in connection with a Purchase Transaction, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(j) All dealings in connection with the Purchase Transaction between the Plan and the Fund are on a basis no less favorable to the Plan than dealings between the Fund and other shareholders.

(k) Between June 19, 1996 and the date this final exemption is granted, no Plan may enter into more than one Purchase Transaction with the Funds. However, subsequent to the granting of this exemption, a Second Fiduciary may engage in more than one Purchase Transaction provided that such Second Fiduciary allocates additional securities representing a different asset class to a Plan Account.

(l) SEI maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons, as described in paragraph (m) of this Section I, to determine wither the conditions of this proposed 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 SEI, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than SEI, 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 (m) of this Section I.

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

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

(B) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (m)(1)(B) or (C) of this Section I shall be authorized to examine the trade secrets of SEI or commercial or financial information which is privileged or confidential.

Section II. Availability of Prohibited Transaction Exemption (PTE) 77–4

Any purchase of Fund shares that complies with the conditions of Section I of this proposed exemption shall be treated as a ''purchase or sale'' of shares of an open-end investment company for purposes of PTE 77–4 and shall be deemed to have satisfied paragraphs (a), (d) and (e) of Section II of PTE 77–4 (42 FR 18732, April 3, 1977).[2]

Section III. Definitions

For purposes of this proposed exemption,

(a) The term ''SEI'' means SEI Investments Company, SEI Investments Management Corporation, SEI Trust Company and any affiliate of SEI, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of a person includes:

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

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

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

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

(d) The term ''Fund'' or ''Funds'' means any open-end investment company or companies registered under the ICA for which SEI serves as investment adviser, and may also provide custodial or other services as approved by such Funds.

(e) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

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

(g) The term ''Second Fiduciary'' means a fiduciary of a plan who is independent of and unrelated to SEI. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to SEI if—

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with SEI;

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

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

If an officer, director, partner, or employee of SEI (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser; (B) the approval of any purchase, continued holding or redemption by the Plan of shares of the Funds; and (C) the approval of any change of fees charged to or paid by the Plan, in connection with the transactions described above in Section I, then paragraph (g)(2) of this Section III, shall not apply.

Effective Date: If granted, this proposed exemption will be effective as of June 19, 1996, with the exception of Section I(a)(7), which will applicable for Purchase Transactions occurring after the date of the final exemption.

Summary of Facts and Representations

Description of the Parties

1. *SEI Investments*, which is located in Oaks, Pennsylvania, is a financial

[2] In relevant part, PTE 77–4 permits the purchase and sale by an employee benefit plan of shares of a registered open-end investment company when a fiduciary with respect to such plan is also the investment adviser for the mutual fund. Section II(a) of PTE 77–4 requires that a plan does not pay a sales commission in connection with such purchase or sale. Section II(d) describes the disclosures that are to be received by an independent plan fiduciary. For example, the plan fiduciary must receive a current prospectus for the mutual fund as well as full and detailed written disclosure of the investment advisory and other fees that are charged to or paid by the plan and the investment company. Section II(e) requires that the independent plan fiduciary approve, in writing, purchases and sales of mutual fund shares on the basis of the disclosures give.

services company that was founded in 1968. SEI Investments and its affiliates provide a broad range of financial services to banks, institutional investors, investment advisers, and insurance companies, including funds evaluation services, trust accounting systems and brokerage and information services and has offices located throughout the United States and Canada. As of December 31, 1999, SEI Investments had total assets of $253,779,000.

2. *SIMC,* a wholly owned subsidiary of SEI Investments and also located in Oaks, Pennsylvania, currently provides the Funds described herein with overall investment management services (including selection and supervision of investment advisers), and regulatory reporting services. In addition, SIMC serves as transfer agent with respect to certain classes of Fund shares and as investment adviser to certain Fund portfolios. Further, SIMC serves as manager or administrator to more than 40 investment companies and portfolios as well as to various Plans. As of December 31, 1999, SIMC had total assets under management of approximately $64.3 billion.

3. *STC*, a state-chartered trust company incorporated under the laws of the Commonwealth of Pennsylvania, is located in Oaks, Pennsylvania. Formerly known as Eagle Trust Company, STC is a wholly owned subsidiary of SEI Investments and serves as trustee/investment manager of the Plans. As of December 31, 1999, STC had custody of approximately $35.5 billion in assets.

4. *The Plans,* as to which SIMC may serve as an investment manager or STC may serve as a trustee, consist of retirement plans qualified under section 401(a) of the Code which constitute ''pension plans'' as defined in section 3(2) of the Act, certain welfare plans as defined under section 3(1) of the Act and ''plans'' as defined in section 4975(e)(1) of the Code. The Plans do not include any plans sponsored by SEI.

5. *The Funds* to which the requested exemption will apply currently consist of the separate portfolios of the SEI Institutional Investments Trust (the Investments Trust), the SEI Institutional Managed Trust (the Managed Trust) and the SEI Institutional International Trust (the SIT), all of which are investment companies registered under the ICA.[3] The Funds are further described as follows:

(a) *The Investments Trust* is a Massachusetts business trust established on March 1, 1995. It is a no-load, open-end management investment company which is available only to Plans and other institutional investors that retain SIMC as investment manager. Currently, nine portfolios comprise the Investments Trust. They are the Large Cap Fund, the Large Cap Value Fund, the Large Cap Growth Fund, the Small Cap Fund, the International Equity Fund, the Core Fixed Income Fund, the Emerging Markets Equity Fund, the High Yield Bond Fund and the International Fixed Income Fund.[4] Each of the portfolios of the Investments Trust issues only one class of beneficial interests (*i.e.*, shares). No sales loads or fees payable under Rule 12b–1 of the ICA (the Rule 12b–1 Fees) are paid with respect to Investments Trust shares.

(b) *The Managed Trust* is a Massachusetts business trust that was established on October 20, 1986. It is a no-load, open-end management investment company currently having the following twelve portfolios: the Large Cap Value Fund, the Large Cap Growth Fund, the Tax-Managed Large Cap Fund, the Small Cap Value Fund, the Small Cap Growth Fund, the Capital Appreciation Fund, the Balanced Fund, the Mid-Cap Fund, the Equity Income Fund, the Core Fixed Income Fund, the Bond Fund and the High Yield Bond Fund.[5] Each of the Fund portfolios of the Managed Trust issues two classes of shares, only one of which, Institutional Class A shares, is offered to institutional investors, including Plans. No sales loads or Rule 12b–1 Fees are paid with respect to such shares.

(c) *SIT*, a Massachusetts business trust established on June 30, 1988, currently offers the following four portfolios: the International Equity Fund, the Emerging Markets Equity Fund, the Emerging Markets Debt Fund and the International Fixed Income Fund. Each of the portfolios of the International Trust issues two classes of shares, only one of which, Institutional Class A shares, is offered to institutional investors including Plans. No sales loads or Rule 12b-1 fees are paid with respect to such shares.

6. SIMC (including its subsidiaries) acts as the administrator of all of the Funds and serves as investment adviser to all of the Funds with the exception of the International Trust's International Fixed Income Fund, which is advised by Strategic Fixed Income LLC, an unaffiliated investment adviser. However, for this Fund, SIMC retains overall investment advisory supervision including the formulation of investment policy. In addition, SIMC generally follows a ''manager of managers'' approach to the Funds whereby all of the assets of the Funds are advised by sub-advisers which are independent of SIMC.

As administrator and investment adviser, SIMC retains independent sub-advisers, makes overall investment decisions with respect to the assets of each Fund, and continuously reviews, supervises and administers each Fund's investment program. SIMC receives an investment advisory fee from each Fund for such services and is responsible for paying the sub-advisers. The Funds may also pay certain transfer agent and administrative fees to SIMC or to other SEI affiliates.

The Funds are offered and sold exclusively through the use of prospectuses and materials (which have been, or will be, filed, as required, with the various federal and state securities regulatory authorities prior to their distribution) and are offered and sold in full compliance with regulations of the SEC. Shareholders of the Funds periodically receive the following disclosures concerning the Funds as mandated by the SEC: (a) a copy of the prospectus, which is updated annually; (b) an annual report containing audited financial statements of the Funds and information regarding such Funds' performance (unless such performance information is included in the prospectus of such Funds); and (c) a semi-annual report containing unaudited financial statements. With respect to the Plans, SIMC or the custodian reports all transactions in shares of the Funds in periodic account statements provided to each of the Plans.

The Asset Allocation Strategy (the Strategy)

7. According to SEI, the Strategy can be viewed as a series of separate, but interrelated, asset allocation transactions provided by SIMC and its affiliates to a Plan. In effect, the Strategy constitutes a set of investment guidelines established in advance by the Second Fiduciary, under which SIMC may be retained to exercise investment discretion with respect to all of the Plan's assets covered by such Strategy.

As Representations 7 and 8 illustrate, the specific steps involved in creating

[3] Because SEI would like the exemption to apply prospectively to any Fund in which a Plan invests and with respect to which SEI or any of its affiliates may provide services, SEI represents that all other future Funds that utilize the requested exemption will assume similar structures and the Plan investments therein will be subject to the terms and conditions of this exemption.

[4] It should be noted that although the Emerging Markets Equity Fund, the High Yield Bond Fund and the International Fixed Income Fund constitute part of the Investments Trust, these Funds are no longer open.

[5] It should be noted that the Bond Fund is presently closed.

and implementing the Strategy generally can be described as follows:

(a) The development of a Plan-level asset allocation policy, *i.e.*, the selection of broad asset classes and percentages of Plan assets to be allocated among those asset classes (*e.g.*, one such class may be ''domestic equities'').

(b) The development of a more refined asset allocation policy within each asset class (*e.g.*, ''domestic equities'' may be further divided into ''large-cap,'' ''small-cap,'' ''growth,'' etc.).

(c) The Second Fiduciary's determination of what asset classes SIMC will manage.

(d) With respect to each asset class that will be invested in shares of the Funds, the selection and liquidation of securities, and the purchase of Fund shares (in-kind or in cash).

(e) The retention of SIMC as the discretionary asset manager with respect to the Plan or specified asset classes.

Theoretically, a Plan may retain SIMC to perform one or more component Strategy functions separately, even though they are all offered as part of the same package (in other words, tasks (a) through (e) may be purchased separately), and the Strategy steps may occur in different orders or concurrently.

Thus, as a preliminary step, SIMC, as investment adviser, must first develop the overall asset allocation. Using its own proprietary software, SIMC will work with a Second Fiduciary of the Plan [6] to develop an asset allocation strategy that is based upon various objective and measurable criteria such as the Plan's employee population information, investment goals and risk tolerance. For this purpose, SIMC will assume that the Plan will implement the Strategy by investing assets in the Funds, irrespective of whether the Strategy is being implemented through in-kind or cash transfers.

A Strategy will represent a different asset allocation model. If SIMC manages all of the Plan's assets, there will be only one Strategy per Plan. [7] Once the Strategy is proposed, it must be reviewed, approved and adopted by the Second Fiduciary. Although certain information is obtained in writing, generally this will be done in narrative format through a series of meetings and interviews. If two Plans provide the same inputs, SIMC's software will present both investors with the same generic Strategy.

Once a Strategy is selected by the Second Fiduciary, it may be modified only by such Second Fiduciary. No separate fee is being charged for an asset allocation. The fee for such services is included in SEI's Plan-level investment management fee.

After reviewing the Strategy, the Plan's Second Fiduciary must decide whether it will ask SIMC to manage part or all of the Plan's assets in accordance with the Strategy. For example, the Strategy may have a fixed income allocation and an equity allocation. Thus, it is possible that the Second Fiduciary may retain SIMC to manage Plan assets that are allocated to only one asset allocation.

The Purchase Transaction

8. In conjunction with the hiring of SIMC and the development and adoption of the Strategy, the Second Fiduciary will allocate certain assets of the Plan to an Account that is maintained by SIMC. In many cases, this transfer of fiduciary authority involves the Second Fiduciary's termination of one or more pre-existing agreements with investment managers who are not affiliated with SIMC. In other situations, it may involve a Second Fiduciary's decision to retain SIMC to manage only a portion (or portions) of the Plan's investment portfolio and the continued use of unaffiliated investment managers. Accordingly, the assets to be transferred to the Account may include an existing portfolio of securities representing a distinct asset class. However, because it invests Plan assets in the Funds rather than in individual securities and because of fiduciary liability concerns raised by taking responsibility for an existing portfolio of securities acquired at the direction of a different investment manager, SIMC prefers that such assets be liquidated before they are transferred to the Account.

In many cases, an existing securities portfolio may include securities that are suitable for investment by the Funds. Therefore, SEI recognizes that it may be appropriate to transfer such securities in-kind directly to the relevant Fund(s) in order to avoid transaction costs and potential market disruption that could occur from a sale of those securities by the Plan and the nearly simultaneous repurchase of those same securities by the Fund. Rather than require that the existing portfolio be liquidated before it is allocated to the Account, SIMC will accept an in-kind allocation of such securities to an Account, at the request of the Second Fiduciary. Whatever portfolio securities may be acceptable for an in-kind transfer will be determined by the sub-advisers to the Funds.

Specifically, upon obtaining a new client Plan that proposes to engage in a Purchase Transaction, SIMC will present to all Fund sub-advisers [8] a list of the Plan's portfolio securities. [9] Each sub-adviser will be asked to indicate which of those securities (and in what quantities) it would be interested in acquiring in connection with the Fund portfolio for which it is responsible. SIMC will then compile the results and forward them to the Second Fiduciary for approval or rejection.

In addition, SIMC will accept the entire securities portfolio, including those securities that are not suitable for investment by the Funds. Subsequently, any securities that are acceptable to the Funds will be transferred in-kind in exchange for Fund shares. Any securities that are not acceptable will be liquidated at the direction of SIMC. [10] Once SIMC has directed the liquidation of any securities of the Account that are not suitable for transfer to the Funds, SIMC will use the cash proceeds to buy Fund shares directly on behalf of the Plan.

9. SEI maintains that the in-kind transfers of Account assets in exchange for shares of the Funds will be ministerial transactions performed in

[6] The Strategy services that are subject to this exemption relate only to defined benefit plans, welfare plans and fiduciary-managed defined contribution plans but they do not cover participant-directed accounts.

[7] To the extent that SIMC is asked to manage only a portion of a Plan, it may develop one or more specific strategies, *e.g.*, an Equity Strategy or a Fixed Income Strategy.

[8] Although the requested exemption currently covers unaffiliated sub-advisers, SEI represents that it may wish to retain affiliated sub-advisers for the Funds in the future so that the benefits of the Purchase Transactions will not be diluted. SEI points out that the only theoretical way that an affiliated sub-adviser could act to the detriment of a Plan would be to agree to accept a security for in-kind transfer on terms that favored the Fund over the Plan. However, SEI believes that several factors protect the Plan from this action. First, when an affiliated sub-adviser checks off the securities it is willing to take in-kind, it is bidding for the same securities against unaffiliated sub-advisers. Second, when the sub-adviser determines which securities it is willing to take, it does not set a price at that time but agrees to take them at their fair market value. Third, the price on such transfer date (SEI will propose the transaction date but the Second Fiduciary will make the actual determination.) will be objectively determined in accordance with Rule 17a–7 (see Representation 13).

[9] A Sub-adviser will not be presented with the option of purchasing securities held in a Plan's portfolio for which there is no corresponding Fund. Instead, only those sub-advisers of Funds that may be used to implement the Strategy will be presented with a list of the Plan's securities for possible Purchase Transactions. Each sub-adviser will then be limited to acquiring only those securities which do not exceed in value the amount of Fund shares the Plan will be purchasing.

[10] SEI represents that brokerage transactions with respect to an Account may be executed by an affiliate of SIMC in accordance with the terms of PTE 86–128 (51 FR 41686, November 18, 1986). However, the Department expresses no opinion herein on whether such transactions will satisfy the terms and conditions of PTE 86–128.

accordance with pre-established objective procedures which are approved by the board of trustees of each Fund. Such procedures require that assets transferred to a Fund (a) be consistent with the investment objectives, policies and restrictions of the corresponding portfolios of the Fund, as determined by the Funds' sub-advisers; (b) satisfy the applicable requirements of the ICA and the Code; and (c) have a readily ascertainable market value. In addition, any assets that are transferred will be liquid and will not be subject to restrictions on resale. Assets which do not meet these requirements will be sold in the open market prior to any transfer in-kind. Further, prior to entering into an in-kind transfer, each affected Plan will receive certain disclosures from SIMC and approve such transaction in writing.

10. With certain exceptions, SEI represents that the Purchase Transactions are similar to the in-kind exchange transactions described in PTE 93–72 (58 FR 51109, September 30, 1993) involving Western Asset Management Co. (WAMC). The first exception relates to the fact that SIMC proposes that a Plan participate in more than one Purchase Transaction over time, i.e., as the Second Fiduciary decides to allocate additional securities representing a different asset class to the Account, perhaps in connection with changing the Strategy.[11] In WAMC, concern was expressed by the Department about WAMC's ability to exercise its fiduciary authority to engage in (or to influence) exchanges in a manner that would allow WAMC to ''time'' transactions. In contrast to WAMC, SEI notes that SIMC does not (except for the limited purpose of disposing of those assets that are not suitable for in-kind transfer to the Funds) manage assets both ''inside'' and ''outside'' the Funds and all fiduciary discretion over which Plan assets will be allocated to the Funds remains with the Plan's Second Fiduciary.[12] According to SEI, the second exception relates to the valuation of the securities to be transferred. In this regard, SEI is following the valuation procedures under Rule 17a–7 of the ICA as set forth in Representation 13.

Notwithstanding the above, SEI represents that it will not permit a Plan to engage in more than one Purchase Transaction prior to the granting of this exemption so as to conform the Purchase Transaction more closely to PTE 93–72, the WAMC exemption, and the Rule 17a–7 valuation procedures that are set forth in the Department's ''conversion'' exemptions.[13]

Accordingly, SEI requests that the exemption apply retroactively and be made effective as of June 19, 1996 with respect to Purchase Transactions occurring at that time.[14] The Department concurs with this retroactivity date. However, it has imposed a requirement to the effect that Section I(a)(7) of the proposal, relating to SEI's dissemination to Second Fiduciaries of copies of the proposed and final exemptions, will be applicable to Purchase Transactions occurring after the exemption is granted.

Rebalancing

11. The Investment Management Agreement requires SIMC to rebalance the Account periodically among the Funds. In this regard, SIMC uses close-of-business values to determine the daily net asset value of assets held in an Account. Each Account has a pre-set ''trigger'' point for rebalancing purposes. Although the exact trigger may vary from Account to Account, SIMC typically rebalances an Account if an investment allocation varies by more than 4 percent from the target allocation. Generally, rebalancing occurs automatically and on the last day of any calendar month if any allocation deviates from its target percentage by more than an agreed upon percentage.

Advance Disclosure/Approval

12. Under the Investment Management Agreement, a Second Fiduciary will receive all of the disclosures required by PTE 77–4. In this regard, such information includes, but is not limited to, (a) a current prospectus for the Fund in which the Plan's assets may be transferred; (b) a statement describing the fees to be charged to, or paid by, the Plan and the Fund to SEI, including the nature and extent of any differential between the rates of the fees paid by the Fund and the rates of the fees otherwise payable by the Plan to SEI; (c) a statement of the reasons why SEI may consider the Purchase Transaction to be appropriate for the Plan; (d) a statement of whether there are any limitations on SEI with respect to which Plan assets may be invested in the Funds; (e) the identity of all securities that are deemed suitable by the Funds' sub-advisers for transfer to the Funds; and (f) the identity of all such securities that will be valued in accordance with Rule 17a–7(b)(4). In addition, for Purchase Transactions occurring after the date of the grant notice, SEI will provide copies of the proposed and final exemptions to the Second Fiduciary, upon request.

Based on these disclosures, the Second Fiduciary by executing the Investment Management Agreement will approve, in writing, the transfer of the Plan's assets to the corresponding Fund in exchange for shares of such Fund and the receipt by SEI of fees for services to the Fund. If the Second Fiduciary does not approve the use of the Funds as Plan investments, it will not retain SIMC as the Plan's investment manager. Additionally, if the Second Fiduciary does not approve the Purchase Transaction, the securities held by the Plan will be sold for cash on the open market and the transaction will proceed in accordance with PTE 77–4.

Valuation Procedures

13. The assets transferred by an Account to the Funds in connection with a Purchase Transaction will consist entirely of cash and marketable

[11] For example, a Second Fiduciary may hire SIMC to manage a domestic equity Account only so the initial Strategy would provide for allocation among domestic equity Funds. If the Second Fiduciary subsequently decides to expand the scope of SIMC's management authority to include international equities, it will transfer to the Account an existing portfolio of international equity securities in another Purchase Transaction. At a later date, the Second Fiduciary may decide to retain SIMC to manage the Plan's fixed income securities. So, the Second Fiduciary would engage in still another Purchase Transaction.

Under the foregoing circumstances, subsequent transfers of similar types of securities are not contemplated. Instead, SEI represents that a Second Fiduciary will be able to make a one-time, in-kind transfer of a distinct portion of the Plan's asset portfolio.

[12] It is represented that SIMC does not become a fiduciary until after the Second Fiduciary has specified which portion of the Plan's assets (including which specific assets) will be allocated to the Account. It is also represented that SEI may become a fiduciary with respect to a particular pool of assets (e.g., helping the Plan develop its Strategy) before those assets are ''converted'' into Fund shares.

[13] See, for example, PTE 94–82 involving Marshall & Ilsley Trust Company (59 FR 62422, December 5, 1994); PTE 94–86 involving The Bank of California, N.A. (59 FR 65403, December 19, 1994); PTE 95–33 involving Bank South, N.A. (60 FR 20773, April 27, 1995); PTE 95–48 involving Mellon Bank, N.A. (60 FR 32995, June 26, 1995); and PTE 95–49 involving Norwest Bank (60 FR 33000, June 26, 1995).

[14] SEI represents that SIMC accepted two or three new Plan clients which elected to engage in Purchase Transactions. In each case, the Plan (or its outside manager) expressly retained responsibility for (a) selecting the securities to be transferred and directing their transfer; (b) directing the sale of all other securities through SEI's brokerage affiliates; and (c) determining whether the securities were valued in accordance with Rule 17a–7 for purposes of the transfer. SEI further notes that its fiduciary responsibilities only commenced after the completion of the Purchase Transactions. Accordingly, SEI does not believe that exemptive relief is necessary with respect to these Purchase Transactions. However, because the determination of its fiduciary status is uncertain, SEI requests that the exemption be made retroactive to June 19, 1996 to cover the Purchase Transactions that occurred at that time.

securities. For this purpose, the value of the securities in the Account will be determined based on market value as of the close of business on the last business date prior to the transfer (the Account Valuation Date). The values on the Account Valuation Date will be determined in a single valuation using the valuation procedures described in Rule 17a–7 under the '40 Act. In this regard, the ''current market price'' for specific types of Account securities will be determined as follows:

(a) If the security is a ''reported security'' as the term is defined in Rule 11Aa3–1 under the 1934 Act, the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System) for the Account Valuation Date; or if there are no reported transactions in the Consolidated System that day, the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1–1 under the 1934 Act), as of the close of business on the Account Valuation Date; or

(b) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange on the Account Valuation Date; or if there is no reported transaction on such exchange that day, the average of the highest current independent bid and lowest current independent offer on such exchange as of the close of business on the Account Valuation Date; or

(c) If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ as of the close of business on the Account Valuation Date; or

(d) For all other securities, the average of the highest current independent bid and lowest current independent offer as of the close of business on the Account Valuation Date, determined on the basis of reasonable inquiry. For securities in this category, SIMC intends to obtain quotations from at least three sources that are either broker-dealers or pricing services independent of and unrelated to SEI and, where more than one valid quotation is available, use the average of the quotations to value the securities, in conformance with interpretations by the SEC and practice under Rule 17a–7.[15]

The securities received by a transferee Fund portfolio will be valued by such portfolio for purposes of the transfer in the same manner and as of the same day as such securities will be valued by the corresponding transferor Account. The per share value of the shares of each Fund portfolio issued to the Accounts will be based on the corresponding portfolio's then-current net asset value.

SEI will send by regular mail or personal delivery, or if applicable, by facsimile or electronic mail, the following information to the Second Fiduciary of a Plan that engages in a Purchase Transaction:

(a) Not later than 30 business days after completion of the transaction, a written confirmation of the transaction to each affected Plan. Such confirmation will contain (1) the identity of each security that is valued in accordance with Rule 17a–7(b)(4), as described above; (2) the price of each such security for purposes of the transaction; and (3) the identity of each pricing service or market maker consulted in determining the value of such securities.

(b) Not later than 90 days after completion of each Purchase Transaction, a written confirmation which contains (1) the aggregate dollar value of the assets held in the Account immediately before the Purchase Transaction; and (2) the number of shares of the Funds that are held by the Account following the Purchase Transaction (and the related per net asset value and the aggregate dollar value of the shares received).

Compliance With PTE 77–4

14. It is anticipated that most Purchase Transactions will occur when a Plan retains SIMC as a discretionary fiduciary under the Investment Management Agreement in connection with an existing portfolio of assets or possibly, STC may serve as a directed trustee and be instructed by a Plan to engage in a Purchase Transaction.[16] Thus, once the Purchase Transactions are completed, SIMC intends to continue to manage an Account in accordance with the terms of the Investment Management Agreement and under the exemptive relief afforded by PTE 77–4 with respect to future purchases and sales of Fund shares as well as with respect to the receipt of fees by SEI or its affiliates in connection with such transactions. Therefore, SEI is not requesting further administrative exemptive relief from the Department with respect to such transactions after they are completed as described above.

Besides engaging in a Purchase Transaction, SEI may invest a Plan's cash assets in the Funds as a directed or discretionary fiduciary, pursuant to the terms of PTE 77–4. Under certain conditions, PTE 77–4 permits SEI to receive fees from the Funds (a) where the Plan does not pay any investment management, investment advisory or similar fees with respect to the assets of such Plan invested in shares of the Fund for the entire period of the investment; or (b) where the Plan pays investment management, investment advisory or similar fees to SEI based on the total assets of such Plans from which a credit has been subtracted representing such Plan's *pro rata* share of such investment advisory fees.

Each individual Plan (or Plan sponsor) that retains SIMC as an investment manager pays directly to SIMC a Plan-level investment management fee covering all services of SIMC and its subsidiaries. With respect to any Plan assets invested in the Funds, SEI follows the second approach of PTE 77–4. Thus, each Plan's *pro rata* share of investment advisory fees paid to SEI by the Funds is applied as a credit against Plan-level fees.[17] Investment management fees charged with respect to the Funds vary and are described in the Fund prospectuses.

SEI's Plan-level investment management fees may also include a performance fee which is calculated and payable to it or its affiliates in accordance with advisory opinions issued by the Department to Batterymarch Financial Management (ERISA Advisory Opinion 86–20A, August 29, 1986); BDN Advisers, Inc. (ERISA Advisory Opinion 86–21A, August 29, 1986); and Alliance Capital Management Corporation (ERISA Advisory Opinion 89–28A, September 25, 1989).[18] The Fund-level fees which do not include any performance fee component, are applied as a credit against such Plan-level fees.

In addition, STC may be separately retained by the Plan (in which case it may be paid an additional Plan-level fee) as a non-discretionary trustee or custodian where it is directed to invest in the Funds by SIMC (if SIMC is the

[15] Securities of non-U.S. issuers may be traded on U.S. exchanges or the NASDAQ, directly or in the form of ADRs, or may be acquired on foreign exchanges or foreign over-the-counter markets. In the latter case, valuation will be in accordance with Representation 13(d).

[16] If STP is separately retained by a Plan as a non-discretionary trustee or a custodian, STC will take legal title to the Fund shares being acquired. Otherwise, it will have no role with respect to the Purchase Transactions and will act solely at the directions of the Second Fiduciary and/or SIMC.

[17] Fees paid to third party sub-advisers that are retained by SIMC are paid by SIMC out of its own pocket and are not deducted prior to applying the credit. Under such circumstances, SIMC credits back a ''gross'' investment advisory fee to the Plan as opposed to a ''net'' investment advisory fee.

[18] In an arrangement involving a performance fee, SEI may charge a Plan, at the Plan-level, an annualized minimum (floor) fee calculated as a fixed percentage of the Plan's assets under SEI's management and ranging from 40 to 60 basis points. Typically, the performance fee is calculated based on the Plan's return in excess of an annual hurdle rate which represents a weighted average of several generally recognized external mutual fund indices. Both the weighting and the choice of indices are negotiated between the Plan and SEI. The performance fee may represent a percentage of the excess return to the Plan, a fixed amount or ''scaled'' and have multiple hurdle rates. Thus, SEI states that there is no standard or model performance fee arrangement.

The Department expresses no opinion herein on whether SEI's performance fee arrangements comply with the advisory opinions cited above.

investment manager), by a fiduciary independent of SEI, or by Plan participants and beneficiaries pursuant to section 404(c) of the Act. As a non-discretionary trustee or custodian, STC receives no Plan-level fees for investment management or investment advisory services; its fees are strictly for non-discretionary administrative, custodial and similar services.

SEI may also receive other Fund-level fees for administrative, transfer, accounting, and other secondary services (the Secondary Services) [19] provided to such Fund or to the distributor of shares of such Funds and its affiliates. However, no such fees will be paid to SEI pursuant to a 12b–1 Plan. SEI represents that the Funds' Trustees and the shareholders of the Funds approve the compensation that SEI receives from the Funds. Also, the Funds' Trustees approve any changes in the compensation paid to SEI for services rendered to the Funds. Although currently under the Investment Management Agreement all such fees for Secondary Services are credited back to the Plans in the same manner as SEI credits back its Fund-level advisory fees, it reserves the right to retain such fees in the future in accordance with the Department's advisory opinions involving PNC Financial Corp (ERISA Advisory Opinion 93–12A, April 27, 1993) and the Frank Russell Company (ERISA Advisory Opinion 93–13A, April 27, 1993).

SEI represents that, after all of the foregoing credits are taken into account, the combined total of all Plan-level and Fund-level fees received by SEI for the provision of services to the Plans and to the Funds, respectively, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

Conditions for Exemption

15. If granted, this proposed exemption will be subject to the satisfaction of certain general conditions that will further protect the interests of the Plans. For example, the transactions are subject to the prior authorization of a Second Fiduciary, acting on behalf of each of the Plans, who has been provided with full written disclosure by SEI. The Second Fiduciary will generally be the administrator, sponsor, or a committee appointed by the sponsor to act as a named fiduciary for a Plan.

With respect to disclosure, the Second Fiduciary of such Plan will receive advance written notice of the in-kind transfer of assets of the Accounts and full written disclosure of information concerning the Funds as set forth in the Investment Management Agreement, including (a) a current prospectus for each Fund to which the Plan's assets may be transferred; (b) a statement describing the fees to be charged to, or paid by, the Plan and the Funds to SEI, including the nature and extent of any differential between the rates of the fees paid by the Fund and the rates of the fees otherwise payable by the Plan to SEI; (c) a statement of the reasons why SEI may consider the Purchase Transaction to be appropriate for the Plan; (d) a statement of whether there are any limitations on SEI with respect to which Plan assets may be invested in the Funds; (e) the identity of all securities that are deemed suitable by the Funds' sub-advisers for transfer to the Funds; (f) the identity of all such securities that will be valued in accordance with the procedures set forth in Rule 17a–7(b)(4) under the ICA; and (g) upon such fiduciary's request, copies of the proposed and final exemptions pertaining to the exemptive relief provided herein for Purchase Transactions occurring after the date of the grant notice.

On the basis of the information disclosed, the Second Fiduciary, by executing the Investment Management Agreement, will authorize in writing the investment of assets of the Plans in shares of the Fund in connection with the transactions set forth herein (including the transaction date proposed by SEI), the compensation received by SEI in connection with its services to the Funds, and the receipt of confirmation statements by facsimile or electronic mail. The Second Fiduciary's written authorization will extend to those investment portfolios of the Funds referenced in the Investment Management Agreement, contingent upon delivery of a prospectus to such Second Fiduciary. Having obtained the authorization of the Second Fiduciary, SEI will invest the assets of a Plan among the portfolios and in the manner provided in the Investment Management Agreement and the Strategy, subject to satisfaction of the other terms and conditions of this proposed exemption.

In addition to the disclosures provided to the Plan prior to investment in any of the Funds, SEI represents that it will routinely provide at least annually to the Second Fiduciary updated prospectuses of the Funds in accordance with the requirements of the ICA and the SEC rules promulgated thereunder. Further, the Second Fiduciary will be supplied, upon request, with a report or statement (which may take the form of the most recent financial report of such Funds, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to SEI. [20]

In addition to the foregoing, SEI represents that (a) Plans and other investors will purchase or redeem shares in the Funds in accordance with standard procedures adopted by each Fund's board of directors; (b) the Plans will pay no sales commissions or redemption fees in connection with purchase or redemption of shares in the Funds by the Plans; (c) SEI will not purchase from or sell to any of the Plans shares of any of the Funds; and (d) the price paid or received by the Plans for shares of the Funds will be the net asset value per share at the time of such purchase or redemption and will be the same price as any other investor would have paid or received at that time. The value of the Funds' shares and the value of each Funds' portfolios are determined on a daily basis. Assets are valued at fair market value, as required by Rule 17a–7. Net asset value per share for purposes of pricing purchases and redemptions is determined by dividing the value of all securities and other assets of each portfolio, less the liabilities charged to each portfolio, by the number of each portfolio's outstanding shares.

16. In summary, it is represented that the transactions have satisfied or will satisfy the statutory criteria for an

[19] The term ''Secondary Service'' means a service, other than an investment management, investment advisory or similar service which is provided by SEI to the Funds, including, but not limited to custodial, accounting, administrative, brokerage or any other service.

[20] In some cases, SEI executes brokerage transactions for the investment portfolios of certain of the Funds as a Secondary Service. To the extent that SEI does not presently execute securities brokerage transactions with respect to any Fund for which an investment advisory fee is paid to SEI, but proposes to do so in the future, for any Plan that invests in the Fund (other than an SEI-sponsored Plan investing in the Fund pursuant to PTE 77–3), SEI will, at least 30 days in advance of the implementation of such additional service, provide a written notice to the Plan's Second Fiduciary which explains the nature of such additional brokerage service and the amount of the fees. Further, with respect to any Fund for which SEI does or will provide such brokerage services, SEI will provide, at least annually to each such Plan, a written disclosure indicating (a) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid to SEI by such Fund; (b) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to SEI; (c) the average brokerage commissions per share, expressed as cents per share, paid to SEI by each portfolio of a Fund; and (d) the average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to SEI.

exemption under section 408(a) of the Act because:

(a) A Second Fiduciary has authorized or will authorize, in writing, a Purchase Transaction prior to its consummation after such Second Fiduciary has received or will receive full written disclosure of information concerning a Fund.

(b) Each Plan has received or will receive shares of a Fund, in connection with a Purchase Transaction, that are equal in value to the assets of the Plan exchanged for such shares, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures set forth in Rule 17a–7 under the ICA, as amended from time to time or any successor rule, regulation or similar pronouncement.

(c) Not later than 30 business days after completion of a Purchase Transaction, a Second Fiduciary of a Plan has received or will receive written confirmation of the securities involved in the exchange which were valued in accordance with Rule 17a–7(b)(4), the price of such securities and the identity of the pricing service or market maker consulted in determining the current market price of such securities.

(d) Not later than 90 days after completion of a Purchase Transaction, a Second Fiduciary of a Plan has received or will receive written confirmation of the aggregate dollar value of the assets held by the Plan in its Account immediately before the Purchase Transaction (and the related per share net asset value and the aggregate dollar value of the shares received).

(e) The price that has been or will be paid or received by the Plans for shares in the Funds is the net asset value per share at the time of the transaction and will be the same price for the shares which would have been paid or received by any other investor for shares of the same class at that time.

(f) As to each individual Plan, the combined total of all fees received by SEI for the provision of services to a Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, has not been or will not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(g) No sales commissions or Rule 12b–1 Fees have been paid or will be paid by a Plan in connection with a Purchase Transaction.

(h) With respect to each Purchase Transaction, the Second Fiduciary has received or will receive a full and detailed written disclosure of information concerning such Fund, including a current prospectus and a statement describing the fee structure, and such Second Fiduciary has authorized or will authorize, in writing, the investment of the Plan's assets in the Fund and the fees paid by the Fund to SEI.

(i) In accordance with the requirements of PTE 77–4 and advisory opinions issued by the Department thereunder, (1) the Plans have received or will receive a full credit against Plan-level fees of any investment management, investment advisory or similar fees to SEI with respect to any of the assets of such Plans that are or will be invested in shares of any of the Funds; and (2) SEI may retain fees for certain Secondary Services it performs on behalf of the Funds.

(j) SEI has provided or will provide ongoing disclosures to Second Fiduciaries of Plans so that such fiduciaries may, among other things, verify the fees charged by SEI to the Funds.

(k) All dealings between the Plans and any of the Funds have been or will be on a basis that is no less favorable to such Plans than dealings between the Funds and other shareholders holding shares of the same class as the Plans.

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

The David Mandelbaum IRA Rollover Account (the IRA), Located in West Orange, New Jersey

[Application No. D–10765]

Proposed Exemption

The Department is considering granting an exemption under section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply to the proposed cash sale by the IRA to the David Mandelbaum Family Trust (the Family Trust) of a 50 percent (50%) undivided interest in two (2) parcels of improved real property subject to a long term lease (the Property); provided the following conditions are satisfied:

(1) The sale is a one time transaction for cash; (2) the terms and conditions of the sale are at least as favorable to the IRA, as the terms of similar transactions negotiated at arm's length with unrelated third parties; (3) the IRA receives the *greater* of $4,307,000 dollars or the fair market value of the IRA's undivided interest in the Property, as of the date of the sale; (4) the fair market value of the IRA's undivided interest in the Property is determined by an independent, qualified appraiser, as of the date of the sale; and (5) the IRA does not pay any commissions, costs, finder's fees, or other expenses in connection with such sale.

Summary of Facts and Representations

1. The IRA is a self-directed individual retirement account, as described under section 408(a) of the Code.[21] David Mandelbaum is the owner of the IRA and retains discretion with respect to the investment of the assets in the IRA. As such, David Mandelbaum is a fiduciary with regard to the IRA and a disqualified person, pursuant to section 4975(e)(2)(A) of the Code. The primary beneficiaries under the terms of the IRA are David Mandelbaum's four (4) sons, and as such they are disqualified persons with respect to the IRA, pursuant to section 4975(e)(2)(F) of the Code.

The IRA was established in 1989 with the roll over distributions from the Mandelbaum & Mandelbaum, P.A. Employees Retirement Plan (the M&M Plan). As of December 31, 1998, the IRA held assets of approximately $19.6 million dollars with an estimated annual income of $777,722. The custodian of the IRA is Summit Bank (formerly Summit Trust Company) of Summit, New Jersey.

2. The M&M Plan was a tax qualified money purchase plan which was sponsored by Mandelbaum & Mandelbaum P.A. Both David Mandelbaum and his brother, Nathan Mandelbaum, were participants in the M&M Plan. The M&M Plan was terminated, effective June 30, 1983. On July 8, 1983, the M&M Plan acquired the Property which is the subject of this exemption, as a real estate investment from Frank X. Weny and Mary E. Weny, unrelated third parties. The M&M Plan was subsequently liquidated in December of 1989.

3. The Property, located in the Municipality of Wayne, Passaic County, New Jersey, consists of two parcels of improved commercial real estate which function as a single economic unit of approximately 49.48 acres. Each of the parcels is subject to a long term triple net lease totaling 99 years, consisting of an initial term that extends from December 1, 1965, through November

[21] Pursuant to the provisions contained in 29 CFR 2510.3–2(d), the IRA is not subject to Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, the IRA is subject to Title II of the Act, pursuant to section 4975 of the Code.

30, 2015; four (4) option periods of ten (10) years each; and a final option period of nine (9) years. Pursuant to such leases, the right to use and occupy the Property was conveyed to Westbelt Realty Associates, an unrelated third party.

The improvements on the Property consist of a shopping center, which was built in 1974 and subsequently renovated and expanded in 1989 and 1997, professional landscaping, exterior lighting, and a 38,000 space parking lot. The shopping center is an enclosed mall, commonly known as Wayne Towne Center (a/k/a the Westbelt Mall) which offers approximately 650,000 square feet of rental space to anchor tenants, such as Fortunoff's, J. C. Penney, Borders Books and Music, Loehmann's, and Old Navy. It is represented that no related party owns any interest in the buildings or improvements on the Property.

4. As a result of the liquidation of the M&M Plan in 1989, David Mandelbaum and Nathan Mandelbaum each received a lump sum in-kind distribution of an undivided interest in the ownership of the Property. In this regard, together the brothers owned 100 percent (100%) of the interests in the Property, with David and Nathan Mandelbaum receiving a distribution of a 62.4% interest and a 37.6% interest, respectively, in such Property.

5. On December 7, 1989, RMJJ Associates (RMJJ) purchased a 20 percent (20%) interest in the Property from David and Nathan Mandelbaum. RMJJ is a New Jersey partnership, the partners of which consist of four (4) trusts, each of which own a 25 percent (25%) interest in RMJJ. Each trust was established to benefit one of David Mandelbaum's four sons. From a total purchase price of $950,000 paid by RMJJ for its interest in the Property, David Mandelbaum received $589,000 and Nathan Mandelbaum received $361,000. Further, it is represented that, pursuant to section 402(c)(6) of the Code, David and Nathan Mandelbaum timely rolled over into their respective individual retirement accounts the proceeds from the sale to RMJJ and their remaining interests in the Property. Accordingly, it is represented that, as of the filing of the application for exemption, the IRA, RMJJ, and the Nathan Mandelbaum IRA, respectively, owned a 50 percent (50%), a 20 percent (20%), and a 30 percent (30%) undivided interest in the Property, as tenants in common. It is represented that the fair market value of the IRA's 50 percent (50%) undivided interest in the Property constitutes 21.9% of the assets of such IRA.

It is represented that the sole purpose of RMJJ is to facilitate collection and proper disbursement of rents. In this regard, RMJJ collects rents from various properties owned by Mandelbaum family members, including the Property which is the subject of this exemption. It is represented that the Property has produced annual rental income averaging $1,114,212 over the past four (4) years. It is further represented that such rental income has been apportioned and distributed among the owners of the Property in accordance with each owner's interest.[22]

6. Louis S. Izenberg (Mr. Izenberg), MAI, SRPA, SRA, and Steven J. Wetstein (Mr. Wetstein), both state certified general real estate appraisers associated with Izenberg Appraisal Associates in Parsippany, New Jersey, were hired to determine the value of the leased fee interest in the Property. Mr. Izenberg and Mr. Wetstein represent that they are qualified real estate appraisers with approximately twenty (20) years and twelve (12) years of experience, respectively, and are familiar with the Property and with similar properties located in the surrounding area. In addition, Mr. Izenberg and Mr. Wetstein represent that they are independent in that they have no present or prospective interest in the Property and have no personal interest or bias with respect to the parties involved, and are unrelated to David Mandelbaum.

Mr. Izenberg's and Mr. Wetstein's appraisal of the leased fee interest in the Property relied primarily on the income capitalization approach to establish the fair market value. Based on this analysis and their inspection of the Property, Mr. Izenberg and Mr. Wetstein concluded that the fair market value of the leased fee interest in the Property, as of May 27, 1998, was $16,565,000 dollars. It is represented that Mr. Izenberg and Mr. Wetstein will update their appraisal of the value of the leased fee interest in the Property at the time of the actual sale by the IRA of its interest in the Property to the Family Trust.

[22] The applicant maintains that if RMJJ is deemed to be a disqualified person with respect to the IRA, pursuant to section 4975(e)(2)(B) of the Code, the provision of services RMJJ renders to the IRA and to other parties would qualify for statutory exemption, pursuant to section 4975(d)(2) of the Code. In this regard, it is represented that RMJJ receives no compensation for the services rendered to the IRA and others in connection with the collection and distribution of rents. The Department is not opining, herein, whether RMJJ is a disqualified person with respect to the IRA, nor has the Department determined that the conditions, as set forth in section 4975(d)(2) of the Code, have been satisfied. Further, the Department is offering no relief for transactions other than those proposed.

7. Because Mr. Izenberg's and Mr. Wetstein's appraisal was based on the fair market value of the leased fee interest in the entire Property, Frank E. Koehl, Jr. (Mr. Koehl) ASA, a certified business valuation appraiser, and Michael F. Nelson (Mr. Nelson), a valuation analyst, both of Management Planning, Inc. (MPI) were retained to undertake a financial analysis of undivided fractional interests in the Property and to determine the fair market value of the 50 percent (50%) undivided interest in the Property owned by the IRA. In this regard, it is represented that MPI has been preparing financial analyses of closely held businesses and evaluating the securities of such businesses since 1939. Mr. Koehl and Mr. Nelson maintain they are qualified in that they, respectively have eighteen (18) years and three (3) years of experience as employees of MPI. It is represented that neither MPI nor its employees have any present or contemplated future financial interest in the Property or any other interest that might affect their performance in a disinterested manner.

The analysis of the value of the IRA's 50 percent (50%) undivided interest in the Property included a discount of 20 percent (20%) for lack of control. In the appraisal report Mr. Koehl and Mr. Nelson noted that a majority ownership position does not constitute control where co-tenants of an undivided interest in real property have equal rights and cannot act upon those rights without the consent of the other co-tenants. For this reason, Mr. Koehl and Mr. Nelson determined that a discount for lack of control was appropriate to the IRA's undivided ownership interest in the Property, even though Mr. Koehl and Mr. Nelson acknowledged that all of the co-tenants of the Property are members of the Mandebaum family.

The analysis of the value of the IRA's 50 percent (50%) undivided interest in the Property also included a discount of 35 percent (35%) for lack of marketability. In this regard, Mr. Koehl and Mr. Nelson stated in their report that a willing buyer would be aware that the Property has three owners; there is no ready market for fractional interests; and that such buyer would be buying an asset that could be sold only in a private transaction.

Based on their analysis, Mr. Koehl and Mr. Nelson concluded that the fair market value of the IRA's 50 percent (50%) undivided interest in the Property is $4,307,000 dollars, as of December 31, 1998. In this regard, it is represented that Mr. Koehl and Mr. Nelson will update their appraisal at the time of the actual sale of the IRA's 50

percent (50%) interest in the Property to the Family Trust.[23]

8. The Family Trust is an irrevocable trust established by David Mandelbaum, as the grantor. The trustee of the Family Trust is Ronald Targan. One hundred percent (100%) of the interest of the Family Trust is held for the benefit of David Mandelbaum's grandchildren. David Mandelbaum's grandchildren, as lineal descendants of a fiduciary, are members of the family, within the meaning of section 4975(e)(6) of the Code, and disqualified persons, pursuant to section 4975(e)(2)(F) of the Code.

9. David Mandelbaum requests an exemption for the sale by the IRA of a 50 percent (50%) undivided interest in the Property to the Family Trust. In this regard, the sale by the IRA to the Family Trust would be an indirect sale by a plan to the members of a fiduciary's family, pursuant to section 4975(c)(1)(A) of the Code, and a direct transfer of a plan's assets for the benefit of such fiduciary's family, under section 4975(c)(1)(D) of the Code. Although David Mandelbaum, the fiduciary of the IRA, is not a beneficiary of the Family Trust, he has an interest in his grandchildren who are the beneficiaries of the Family Trust which may effect his best judgment as a fiduciary. Accordingly, the application describes a transaction for which relief from the prohibitions of section 4975(c)(1)(A)–(F) of the Code is requested.

10. The applicant maintains that the proposed transaction is feasible in that it involves a one-time sale of the IRA's interest in the Property in exchange for cash. In this regard, it is represented that the IRA will not pay any commissions, costs, finder's fees, or other expenses in connection with such sale. Further, David Mandelbaum shall personally bear the cost of filing the exemption application.

11. The transaction is in the interest of the IRA, in that the IRA will be able to dispose of an illiquid asset which would otherwise be difficult to sell, especially in a period of economic downturn. In this regard, the IRA will receive for its undivided interest in the Property a price equal to the greater of $4,307,000 dollars or the fair market value of the such interest, as of the date of the sale. It is represented that the Property has appreciated in value, and that the IRA will realize a gain on the sale from the purchase price to be paid by the Family Trust. Further, in selling at this time the IRA will avoid the costly annual appraisals which have been required by the IRA's trustees and custodian, as a condition of the IRA's continuing to hold the asset.

12. The transaction is structured to include certain safeguards for the protective of the participant and beneficiaries of the IRA. In this regard, the terms of the transaction will be at least as favorable as arm's length terms negotiated with unrelated parties. Further, the fair market value of the Property has been determined by independent, qualified appraisers, and such value will be updated at the time the transaction is entered. In addition, independent qualified financial analysts have issued a certified business valuation appraisal of the fair market value of the IRA's 50 percent (50%) undivided interest in the Property, and an updated appraisal will be used at the time of the sale to determine the purchase price to be paid by the Family Trust.

13. In summary, the applicant represents that the proposed transaction will meet the statutory criteria of section 4975(c)(2) of the Code because: (a) The sale by the IRA of the undivided interest in the Property to the Family Trust will be a one-time transaction for cash; (b) the terms and conditions of the sale are at least as favorable to the IRA as similar terms negotiated at arm's length with unrelated parties; (c) the IRA will receive the *greater* of $4,307,000 dollars or the fair market value of the IRA's undivided interest in the Property, as of the date of the sale; (d) the fair market value of the Property and the fair market value of the IRA's undivided interest in the Property will be determined by independent, qualified appraisers, as of the date of the sale; and (e) the IRA will not pay any commissions, costs, finder's fees, or other expenses in connection with the sale.

Notice to Interested Persons

Because David Mandelbaum is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing must be received by the Department within thirty (30) days of the date of publication of the Notice in the **Federal Register**.

[23] The Department notes that the appraisers have included in their calculations of the fair market value of the IRA's 50 percent (50%) interest in the Property substantial discounts for lack of control (20%) and lack of marketability (35%). In this regard, the Department states that relief from the prohibited transactions provisions of the Code provided by this exemption would not be available, if the amount received by the IRA for the sale of its interest in the Property is not equal to the *greater* of $4,307,000 dollars or the fair market value of the IRA's 50 percent (50%) undivided interest in the Property, as determined by an independent, qualified appraiser, as of the date of the sale of such Property to the Family Trust.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

HSBC Holdings plc, Located in London, England

[Exemption Application No.: D–10910]

Proposed Exemption

The Department of Labor 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 29 CFR Part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[24] If the exemption is granted, HSBC Asset Management Americas, Inc. (AMUS), HSBC Asset Management Hong Kong, Ltd. (AMHK), HSBC Bank USA (Bank USA), any current affiliate of HSBC Holdings plc (HSBC) that in the future becomes eligible to serve as a qualified professional asset manager, as defined in Prohibited Transaction Class Exemption 84–14 (PTCE 84–14) (QPAM),[25] HSBC, itself, if in the future it becomes a QPAM, and any newly acquired or newly established affiliate of HSBC that is a QPAM or in the future becomes a QPAM, other than the Bangkok Metropolitan Bank PLC (BMB), shall not be precluded from functioning as a QPAM, pursuant to the terms and conditions of PTCE 84–14, for the period beginning on June 16, 2000, and ending ten (10) years from the date the final exemption is published in the **Federal Register**, solely because of a failure to satisfy Section I(g) of PTCE 84–14, as a result of an affiliation with BMB; provided that:

(a) BMB has not in the past acted, nor does it now act, nor will it act as a fiduciary with respect to any employee benefit plans subject to the Act;

(b) This exemption is not applicable if HSBC and/or any successor or affiliate becomes affiliated with any person or entity convicted of any of the crimes described in Section I(g) of PTCE 84–14, other than BMB; and

(c) This exemption is not applicable if HSBC and/or any successor or affiliate is convicted of any of the crimes described in Section I(g) of PTCE 84–14, including any such crimes subsequently committed by BMB.

Effective Date: If granted, this proposed exemption will be effective for the period beginning on June 16, 2000, the date the application for exemption

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

[25] 49 FR 9494 (March 13, 1984), *as amended*, 50 FR 41430 (October 10, 1985).

was filed with the Department, and ending ten (10) years from the date of publication of the final exemption in the **Federal Register**.

Summary of Facts and Representations

1. HSBC, a publicly owned holding company headquartered in London, England, provides banking and financial services worldwide. The exemption is requested for affiliates of HSBC, AMUS, AMHK, and Bank USA, as well as for any current affiliate of HSBC that in the future becomes eligible to serve as a QPAM, HSBC, itself, if it becomes a QPAM, and any newly acquired or newly established affiliate of HSBC that is a QPAM or in the future becomes a QPAM (collectively, the Applicants), other than BMB.

It is represented that HSBC's affiliate, Bank USA, is a bank as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (the Advisers Act) and is subject to the anti-fraud provisions of the Advisers Act, as well as the fiduciary standards imposed by the Office of the Comptroller of Currency and pursuant to state law. Further, Bank USA has equity capital in excess of $1,000,000. Accordingly, the Applicants represent that Bank USA qualifies as a QPAM, pursuant to Section V (a)(1) of PTCE 84–14.

Two other HSBC affiliates, AMUS and AMHK, each are also currently qualified to serve as a QPAM.[26] In this regard, both AMUS and AMHK are investment advisers registered under the Advisers Act, and, as such, are subject to the jurisdiction of the Securities and Exchange Commission and to the substantive requirements of the Advisers Act. It is represented that AMUS has total assets under its management and control well in excess of $50,000,000. In this regard, $6.4 million, as of March 31, 2000, is attributable to three (3) accounts subject to the Act. As of March 31, 2000, AMHK had total funds under management of $13.1 billion of which $462 million was attributable to two (2) accounts subject to the Act. It is represented that consistent with the requirements of PTCE 84–14, a fiduciary independent of the Applicants (typically a named fiduciary other than a trustee) is or will be involved in the appointment of a QPAM with respect to the assets of any plan that is or will be affected by this proposed exemption.

2. The proposed exemption would apply with respect to any employee benefit plans to which the Applicants now or in the future provide investment management services, (collectively, the ERISA Plan Clients).[27] Given the changing identity of such plans, the Applicants maintain that such plans could not definitely be identified at the time the application was filed.

3. BMB is a commercial bank incorporated in Thailand. Prior to 1994, BMB maintained two agencies in the United States (the US Agencies), one in New York and one in California. In 1994, regulators in the United States identified approximately twenty (20) aspects of BMB's operations in the United States that fell short of acceptable standards. Under the terms of a written agreement dated July 29, 1994, between BMB and its regulators, BMB agreed to rectify these deficiencies. Following BMB's failure to correct such deficiencies in accordance with such agreement, BMB's license to maintain its US Agencies in the United States was revoked and its operations wound up under the terms of a Consent Order, dated July 25, 1996.

In a Joint Statement issued concurrently with the Consent Order, the Board of Governors of the Federal Reserve System, the California State Banking Department, and the New York State Banking Department concluded that BMB should no longer have a banking presence in the United States. This conclusion was based on the following: (1) Both US Agencies made loans knowing that the stated purposes of the loans were false; (2) both US Agencies made loans that were diverted from their stated purposes, sometimes to benefit insiders; (3) senior management of BMB could not satisfactorily explain the appearance of involvement in a money laundering scheme; (4) officials and employees at BMB and the US Agencies were not forthright with examiners; (5) both US Agencies had misleading books and records; (6) officers of the US Agencies admitted that BMB's home office mandated that certain transactions occur in a manner contrary to safe and sound banking practices; and (7) management at BMB and its US Agencies failed to rectify problems identified by regulators.

In addition to the Consent Order, under the terms of a plea agreement with the United States Attorney for the Southern District of New York and for the Northern District of California, BMB also pleaded guilty to four criminal offenses in relation to the activities of its US Agencies. In this regard, BMB pleaded guilty to one count of obscuring the examination of a fiscal institution in violation of 18 U.S.C. § 1517 and three (3) counts of falsifying its books, reports, and statements in violation of 18 U.S.C. 1005.

4. After the Asian economic crisis, it is represented that the Thai government took control of 99 percent (99%) of the voting shares of BMB, and subsequently, conducted an auction sale of its interests in BMB. It is represented that HSBC was the winning bidder at the auction sale and that HSBC expects to finalize its acquisition of BMB within the next several months. As of June 16, 2000, the date the application was submitted, HSBC represents that no transaction that is the subject of this proposed exemption had been consummated or is planned to be consummated. However, it is represented that the size and diversity of the operations of the Applicants make it impossible to say that a transaction requiring the requested relief will not be consummated before the final decision is made on this proposed exemption. Accordingly, the Applicants seek retroactive relief, effective June 16, 2000, from the restrictions of section 406(a)(1)(A)–(D), 406(b)(1), 406(b)(2), and 407(a) of the Act and 4975(c)(1)(A)–(E) of the Code for the subject transactions.

5. The requested exemption would apply to a full range of transactions on and after the acquisition by HSBC of BMB from the Thai government. Such transactions include, but are not limited to sale and exchange transactions, derivative transactions, leasing and other real estate transactions, foreign currency trading transactions, and transactions involving the furnishing of goods, services, and facilities to an investment fund managed on a discretionary basis by the Applicants. It is represented that such transactions will be evaluated by the Applicants, consistent with their fiduciary responsibilities under the Act.[28]

[26] The Department expresses no opinion as to whether AMUS, AMHK, or Bank USA would qualify as a QPAM for purposes of PTCE 84–14.

[27] It is represented that with respect to transactions concerning employee benefit plans that cover employees of one or more of the Applicants, the Applicants will rely on Prohibited Transaction Class Exemption 96–23.

[28] The Department notes that the general standards of fiduciary conduct under the Act would apply to the investment transactions permitted by this proposed exemption, and that satisfaction of the conditions of this proposed exemption should not be viewed as an endorsement of any particular investment by the Department. Section 404 of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the manager or other plan fiduciary must act prudently with respect to the decision to enter into an investment transaction, as well as to the negotiation of the specific terms under which the plan will engage in such transaction. The Department further emphasizes that it expects a manager or other plan fiduciary to fully understand

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6. The Applicants represent that it would not be uncommon for one of the Applicants, as a fiduciary for one of the ERISA Plan Clients, to propose a transaction, such as those described above, that involve a party in interest, as defined under section 3(14) of the Act. The proposed exemption would apply to all current and future parties in interest with respect to the ERISA Plan Clients. Given the size and number of such ERISA Plan Clients and the large number of service providers (particularly financial institutions) that such ERISA Plan Clients engage, it is impractical for the Applicants to identify all the parties in interest that might be involved in transactions covered by the requested exemption. Accordingly, the Applicants have not attempted to do so in the application file.

7. The proposed exemption, if granted, will be subject to terms and conditions, similar to those, as set forth PTCE 84–14. PTCE 84–14, in general, permits various parties in interest with respect to an employee benefit plan to engage in certain transactions involving plan assets if, among other conditions, the assets are managed by a QPAM, who is independent and who meets specified financial standards and other conditions. One such condition, Section I(g)of PTCE 84–14, requires that neither the QPAM nor any affiliate of the QPAM were convicted of certain felonies [29] within a ten (10) year period preceding the subject transaction. Section V(d) of PTCE 84–14, defines an ''affiliate'' of a person to mean—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and (4) Any employee or officer of the person who —(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management, or disposition of plan assets.

Section V(e) of PTCE 84–14 states that the term, ''control,'' means the power to exercise a controlling influence over the management or disposition of plan assets.

8. Upon acquisition of BMB by HSBC from the Thai government, the Applicants will become affiliates of BMB, pursuant to the definition of ''affiliate,'' as set forth in Section V(d) of PTCE 84–14. Further, because BMB, in 1996, entered a plea of guilty with respect to a felony described in Section I(g) of PTCE 84–14, the Applicants, as affiliates of BMB, could not satisfy Section I(g) of PTCE 84–14. Furthermore, even though BMB's plea occurred well before HSBC acquisition of BMB, any of the Applicants which qualify as a QPAM (*e.g.,* AMUS, AMHK and Bank USA) would be precluded from acting or continuing to act as a QPAM. In order to avoid this result, the Applicants have requested the proposed exemption.

9. The Applicants maintain that the requested exemption should be granted notwithstanding the guilty plea entered by BMB. In support of their position, the Applicants state that no entity affiliated with HSBC, other than BMC, nor any employee of HSBC was involved in the conduct that formed the basis of the guilty plea. In this regard, it is represented that the individuals responsible for BMB's misconduct have not been and will not be employed at any time by HSBC or any of its affiliates.

None of the acts underlying the guilty plea involved any investment management activities of BMB; nor did such acts involve any assets of plans subject to the Act. Further, all of the acts that formed the factual basis of the guilty plea occurred prior to HSBC's acquisition and control of BMB.

With regard to the future, it is represented that BMB will not influence or control the management or policies of the Applicants, nor will BMB be involved in the investment management activities relating to any ERISA Plan Clients. In this regard, BMB employees will not have any involvement in the investment management activities of the Applicants. Finally, it is represented that BMB has not in the past acted, nor does it now act, nor does it intend to act in the future as a fiduciary with respect to any employee benefit plans subject to the Act.

10. The Applicants maintain that the requested exemption will afford protection similar to that provided in PTCE 84–14. In this regard, other than Section I(g) of PTCE 84–14, all of the conditions of PTCE 84–14 will apply to this proposed exemption. Further, it is represented that many of the Applicants' ERISA Plan Clients have significant assets, and hence are sophisticated and have access to resources necessary to monitor effectively the performance of the investment manager.

The proposed exemption also contains conditions, in addition to those imposed by PTCE 84–14, which are designed to ensure the presence of adequate safeguards to protect the interests of the ERISA Plan Clients against wrongdoers now and in the future. In this regard, the proposed exemption will not be applicable if any of the Applicants is convicted of or becomes affiliated with any person or entity convicted of any of the crimes described in Section I(g) of PTCE 84–14, including any such crimes subsequently committed by BMB.

11. The Applicants represent that the requested exemption is administratively feasible because the relief would not impose any administrative burdens on the Department which are not already imposed by PTCE 84–14. In the opinion of the Applicants, the administrative feasibility of the requested exemption is also demonstrated by the fact that the Department has previously granted other individual exemptions for a variety of similarly situated entities under substantially the same circumstances.[30]

12. The requested exemption would allow the Applicants' ERISA Plan Clients to enter into transactions which are in the best interest of such plans. In this regard, such plans would not be precluded from engaging in transactions with parties in interest, where the terms of such transactions are at least as favorable to such plans as those of a similar transaction with an unrelated party. Absent the proposed exemption, the Applicants would be required to examine each transaction involving

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the benefits and risks associated with engaging in a specific transaction. In addition, such manager or plan fiduciary must be capable of periodically monitoring the investment, including any changes in the value of the investment and the creditworthiness of the issuer or other party to the transaction. Thus, in considering whether to enter into a transaction, a fiduciary should take into account its ability to provide adequate oversight of the particular investment.

[29] The term, ''felony,'' as set forth in Section I(g) of PTCE 84–14 includes: (1) Any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; (2) any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary; (3) income tax evasion; (4) any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or (5) any other crimes described in section 411 of the Act.

[30] Bankers Trust Co., BT Alex Brown, Inc., and Deutsche Bank, Prohibited Transaction Exemption 99–29, 64 FR 40623 (July 22, 1999); PanAngora Management, Inc., Prohibited Transaction Exemption 97–10, 62 FR 4813 (Jan. 31, 1997; American Express Company and Affiliates, Prohibited Transaction Exemption 94–34, 59 FR 19247 (April 22, 1994); CS Holding and its Worldwide Affiliates, Prohibited Transaction Exemption 94–31, 59 FR 17590 (April 13, 1994).

such ERISA Plan Clients to determine parties in interest, no matter how remote, with respect to such plans.

13. Denial of the exemption, in the opinion of the Applicants, would be unduly and disproportionately severe and would have adverse consequences for the ongoing business operation of the Applicants. Disqualification from serving or continuing to serve as a QPAM would deprive the Applicants of their ability to render diversified investment advisory services to their ERISA Plan Clients. Further, the unavailability of the exemption would work a hardship on the ERISA Plan Clients which the Applicants serve. In this regard, such ERISA Plan Clients might be forced to forgo certain attractive investment opportunities or beneficial transactions that involve parties in interest for which no existing class exemptions apply. Finally, the ERISA Plan Clients would have to incur higher transaction costs and risks on other investments by limiting the number of parties that might engage in transactions with such plans and by limiting the number of high-credit quality counter-parties available in principal transactions.

14. In summary, the Applicants represent that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because, among other things:

(a) no entity affiliated with HSBC, other than BMB, nor any employee of HSBC was involved in the conduct that formed the basis of the guilty plea;

(b) all of the acts that formed the factual basis of the guilty plea occurred before the date that HSBC acquired control of BMB;

(c) the individuals responsible for BMB misconduct have not been and will not be employed at any time by HSBC or any other affiliates;

(d) absent the proposed exemption, the ERISA Plan Clients may have to forgo attractive investment opportunities or incur higher transaction costs and risks;

(e) AMUS and AMHK, as investment advisors registered under the Advisers Act, are subject to the jurisdiction of the Securities and Exchange Commission and the requirements of the Advisers Act;

(f) Bank USA is a bank, as defined in section 202(a)(2) of the Advisers Act), and is subject to the anti-fraud provisions of the Advisers Act, as well as the fiduciary standards imposed by the Office of the Comptroller of Currency and pursuant to state law;

(g) BMB has not in the past acted, nor does it now act, nor will it act in the future as a fiduciary with respect to any employee benefit plans subject to the Act;

(h) BMB will not be involved in investment management activities relating to the ERISA Plan Clients, nor will BMB influence or control the management or policies of HBSC;

(i) other than Section I(g) of PTCE 84–14, all of the conditions of PTCE 84–14 will apply to the transactions covered by this exemption;

(j) this exemption, if granted, would not be applicable if any of the Applicants now or in the future becomes affiliated with any person or entity convicted of any of the crimes described in Section I(g) of PTCE 84–14, other than BMB; and

(k) this exemption, if granted, would not be applicable if any of the Applicants now or in the future becomes convicted of any of the crimes described in Section I(g) of PTCE 84–14, including such crimes subsequently committed by BMB.

Notice to Interested Persons

The Applicants will furnish a copy of the Notice of Proposed Exemption (the Notice) along with the supplemental statement (the Supplemental Statement), described at 29 CFR 2570.43(b)(2), to the trustee or other fiduciary of each of the ERISA Plan Clients for which one or more of the Applicants have discretionary investment authority.

The Notice and the Supplemental Statement will be delivered by hand delivery or first class mail, within fifteen (15) days of the publication of the Notice in the **Federal Register**. Comments and requests for a hearing are due on or before 45 days from the date of publication of the Notice in the **Federal Register**.

A copy of the final exemption, if granted, will also be provided to the trustee or fiduciary of each of the ERISA Plan Clients for which one or more of the Applicants have discretionary investment authority.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department telephone (202) 219–8883. (This is not a toll-free number.)

Pembroke Construction Company, Inc. Employees 401(k) Profit Sharing Plan (the Plan), Located in Hampton, Virginia

[Application No. D–10915]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (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 (E) of the Code, shall not apply to the proposed sale of a condominium (the Condo) by Thomas N. Hunnicutt (Mr. Hunnicutt), and his wife Ann N. Hunnicutt (collectively, the Hunnicutts), to Mr. Hunnicutt's self-directed individual account (the Account) in the Plan, with respect to which the Hunnicutts are parties in interest; provided that the following conditions are satisfied:

(a) the proposed sale will be a one-time cash transaction;

(b) the Account will pay the current fair market value for the Condo, as established at the time of the purchase by an independent qualified appraiser;

(c) the Account will pay no expenses or commissions associated with the purchase; and

(d) the purchase will enable the Account to acquire the Condo, which is expected to be a valuable asset that will yield significant rental income.

Summary of Facts and Representations

1. The Plan was established on May 10, 1977, and was amended and restated effective January 1, 1992. As of June 30, 1999, the Plan had 72 participants. As of June 30, 1999, the Plan had $4,899,548 in total assets, and the Account had $2,272,573 in total assets. Pembroke Construction Company, Inc. (PCC) is the sponsor of the Plan. The Hunnicutts are trustees of the Plan as well as employees, officers and directors of PCC. PCC was established on September 12, 1961, and is a subchapter ''S'' corporation in the Commonwealth of Virginia. PCC is in the business of residential and commercial construction.

2. On or about March 9, 1987, the Hunnicutts purchased the Condo from Busch Properties, for $140,000 in cash and credit (*i.e.*, the Condo is encumbered by an existing mortgage). However, the applicant states that when the Condo will be transferred to the Account, such mortgage will be paid off and the Account will own the Condo free and clear of any debt. It is represented that the Hunnicutts have not rented or leased the Condo to anyone. The Hunnicutts currently use the Condo for business purposes, such as for overnight guests. As noted below in paragraph 4, the Condo will only be leased to, and used by, independent third parties after it is sold to the

Account. Thus, the Condo will not be used by the Hunnicutts after the purchase by the Account.[31] The applicant represents that the Condo is not adjacent to any other property owned by the Hunnicutts.

3. The Property, located at 314 Padgetts Ordinary, Williamsburg, Virginia, was appraised on January 27, 2000 (the Appraisal). The Appraisal was prepared by R. Epes McMurran, Jr., SRA (Mr. McMurran), who is an independent Virginia state certified appraiser. Mr. McMurran is employed with Barker and Associates, Inc., a real estate firm located in Newport News, Virginia. In the Appraisal, Mr. McMurran states that the Condo consists of 1,686 square feet and contains, among other things, three bedrooms and three baths. The common elements include a storage area, swimming pool, tennis courts, and clubhouse. Mr. McMurran represents in the Appraisal that the monthly home owners association unit charge for the Condo is $237 (the Condo Fee). Mr. McMurran states further that the Condo has been well maintained, has received periodic maintenance, and is in readily marketable condition. Mr. McMurran relied primarily on the sales comparison approach to value the Condo. Based on an analysis of recent sales of similar properties in the local real estate area, Mr. McMurran determined that the fair market value of the Property was $285,000, as of January 27, 2000.

4. The applicant maintains that after the Account acquires the Condo, the Condo will be leased to independent third parties only. The applicant represents that the Condo could yield annual rental income for the Account in the range of $80,000 to $85,000. In this regard, the applicant submitted a statement dated November 30, 1999, from Barbara Eddins (Ms. Eddins), Rental Property Manager of Kingsmill Resort, located in Williamsburg, Virginia. Ms. Eddins states that possible rental revenue income for 3 bedroom condominiums in the Padgett's Ordinary area of Kingsmill Resort may be in the range of $80,000 to $85,000 during any calendar year. The applicant also represents that after the transaction is consummated, the Account will pay the monthly Condo Fee for the Condo.

5. The applicant now proposes that the Account purchase the Condo from the Hunnicutts in a one-time cash transaction. After the proposed purchase, the Condo will represent approximately 14% of the Account's total assets. The applicant represents that the proposed transaction would be in the best interest and protective of the Account and the Plan because the Account and the Plan will pay no expenses or commissions associated with the purchase. The Account will pay the Hunnicutts the current fair market value of the Condo, as determined by an independent qualified appraiser at the time of the transaction.

The acquisition of the Condo by the Account will diversify the Account's portfolio, and will enable the Account to realize an annual return of approximately 28 percent (28%) if the Condo can be fully leased throughout the year.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed purchase of the Condo by the Account will be a one-time cash transaction;

(b) The Account will pay the Hunnicutts the current fair market value for the Condo, as established at the time of the transaction by an independent qualified appraiser;

(c) The Condo will represent approximately 14% of the Account's total assets at the time of the transaction;

(d) The transaction will enable the Account to acquire the Condo, which is expected to be a valuable asset that will yield significant rental income; and

(e) Mr. Hunnicutt is the only participant in the Plan that will be affected by this transaction, and he desires that the transaction be consummated.

Notice to Interested Persons

Because Mr. Hunnicutt is the only participant in the Plan that will be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (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 4th day of October, 2000.

Ivan Strasfeld,

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

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[31] The Department notes that this proposed exemption would not permit any leasing of the Condo to, or use of the condo by, a party in interest with respect to the Plan (*e.g.*, employees of PCC).

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, October 19, 2000, and Friday, October