of the Property's fair market value, as of the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 7, 2000 at 65 FR 54314.

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

General Information

The attention of interested persons is directed to the following:

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

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

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

Signed at Washington, D.C., this 13th day of October, 2000.

Ivan Strasfeld,

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

[FR Doc. 00–26788 Filed 10–18–00; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10651, et al.]

Proposed Exemptions; Merrill Lynch & Co., Inc. (ML&Co.)

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.

Merrill Lynch & Co., Inc. (ML&Co.)

Located in New York, NY

[Application No. D–10651]

Proposed Exemption

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

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the purchase or sale by employee benefit plans (the Plans), other than Plans sponsored by ML&Co. or its affiliates (collectively, the Applicants), of Market Index Target-Term Securities (the MITTS), which are debt securities issued by the Applicants; and (2) the extension of credit by the Plans to the Applicants in connection with the holding of the MITTS.

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

This proposed exemption is subject to the general conditions that are set forth below in Section II.

Section II. General Conditions

(a) The MITTS are made available by the Applicants in the ordinary course of their business to Plans as well as to customers which are not Plans.

(b) The decision to invest in the MITTS is made by a Plan fiduciary (the Independent Plan Fiduciary) or a participant in a Plan that provides for participant-directed investments (the Plan Participant), which is independent of the Applicants.

(c) The Applicants do not have any discretionary authority or control or provide any investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to the Plan assets involved in the transactions.

(d) The Plans pay no fees or commissions to ML&Co. or its affiliates in connection with the transactions covered by the requested exemption, other than the mark-up for a principal transaction permissible under Part II of Prohibited Transaction Class Exemption (PTCE) 75–1 (40 FR 50845, October 31, 1975).[2]

(e) ML&Co. agrees to notify Plan investors in the prospectus (the Prospectus) for the MITTS that, at the time of acquisition, no more than 15 percent of a Plan's assets should be invested in any of the MITTS.

(f) The MITTS do not have a duration which exceeds 9 years from the date of issuance.

(g) Prior to a Plan's acquisition of any of the MITTS, the Applicants fully disclose, in the Prospectus, to the Independent Plan Fiduciary or Plan Participant, all of the terms and conditions of such MITTS, including, but not limited to, the following:

(1) A statement to the effect that the return calculated for the MITTS will be denominated in U.S. dollars;

(2) The specified index (the Index) or Indexes on which the rate of return on the MITTS is based;

(3) A numerical example, capable of being understood by the average investor, which explains the calculation of the return on the MITTS at maturity and reflects, among other things, (i) a hypothetical initial value and closing value of the applicable Index, and (ii) the effect of any adjustment factor on the percentage change in the applicable Index;

(4) The date on which the MITTS are issued;

(5) The date on which the MITTS will mature and the conditions of such maturity;

(6) The initial date on which the value of the Index is calculated;

(7) Any adjustment factor or other numerical methodology that would affect the rate of return, if applicable;

(8) The ending date on which interest is determined, calculated and paid;

(9) Information relating to the calculation of payments of principal and interest, including a representation to the effect that, at maturity, the beneficial owner of the MITTS is entitled to receive the entire principal amount, plus an amount derived directly from the growth in the Index (but in no event less than zero);

(10) All details regarding the methodology for measuring performance;

(11) The terms under which the MITTS may be redeemed;

(12) The exchange or market where the MITTS are traded or maintained; and

(13) Copies of the proposed and final exemptions relating to the exemptive relief provided herein, upon request.

(h) The terms of a Plan's investment in the MITTS are at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's length transaction at the time of such acquisition.

(i) In the event the MITTS are delisted from either the American Stock Exchange (the AMEX), the New York Stock Exchange (the NYSE) or any other nationally-recognized securities exchange, Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S) will apply for trading through the National Association of Securities Dealers Automated Quotations System (NASDAQ), which requires that there be independent market-makers establishing a market for such securities in addition to MLPF&S. If there are no independent market-makers, the exemption will no longer be considered effective.

(j) The MITTS are rated in one of the three highest generic rating categories by at least one nationally-recognized statistical rating service at the time of their acquisition.

(k) The rate of return for the MITTS is objectively determined and, following issuance, the Applicants retain no authority to affect the determination of the return for such security, other than in connection with a ''market disruption event'' (the Market Disruption Event) that is described in the Prospectus for the MITTS.

(l) The MITTS are based on an Index that is—

(1) Created and maintained [3] by an entity that is unrelated to the Applicants and is a standardized and generally-accepted Index of securities; or

(2) Created by the Applicants or an affiliate, but maintained by an entity that is unrelated to the Applicants,

(i) Consists either of standardized and generally-accepted Indexes or an Index comprised of at least 10 publicly-traded securities that are not issued by the Applicants or their affiliates, are designated in advance and listed in the Prospectus for the MITTS, (Under either circumstance, neither the Applicants nor their affiliates may unilaterally modify the composition of the Index, including the methodology comprising the rate of return.),

(ii) Meets the requirements for an Index in Rule 19b–4 (Rule 19b–4) under the Securities Exchange Act of 1934 (the 1934 Securities Act), and

(iii) The index value (the Index Value) for the Index is publicly-disseminated through an independent pricing service, such as Reuters Group, PLC (Reuters) or Bloomberg L.P. (Bloomberg), or through a national securities exchange, such as the AMEX.

(m) The Applicants do not trade in any way intended to affect the value of the MITTS through holding or trading in the securities which comprise an Index.

(n) The Applicants maintain, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this section to determine whether 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 the Applicants, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the Applicants 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 (o) below.

(o)(1) Except as provided in section (o)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (n) are unconditionally

[2] The Department is providing no opinion herein as to whether any principal transactions involving debt securities would be covered by PTCE 75–1, or whether any particular mark-up by a broker-dealer for such transaction would be permissible under Part II of PTCE 75–1.

[3] For purposes of this exemption, the term ''maintain'' means that all calculations relating to the securities in the Index, as well as the rate of return of the Index, are made by an entity that is unrelated to the Applicants or their affiliates.

available at their customary location during normal business hours by:

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

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

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

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

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

Summary of Facts and Representations

1. The Applicants consist of ML&Co., MLPF&S and such other affiliates of MLPF&S that are broker-dealers registered under U.S. law. The Applicants can be further described as follows:

(a) *ML&Co.* is a Delaware corporation headquartered in New York, New York. It is a holding company that, through its subsidiaries and affiliates, provides investment, financing, insurance, and related services on a global basis. As of December 1998, ML&Co. and its subsidiaries and affiliates had total consolidated assets of approximately $299.8 billion. ML&Co. constitutes a diversified global financial services group, maintaining the following key areas of client services:

• *Corporate and Institutional Client,* providing securities trading, investment banking, and advisory services to financial institutions, corporations, and governments worldwide. Additionally, this group provides merger and acquisition advisory services and raises capital through securities underwriting and loan syndications.

• *U.S. Private Client,* providing financial services and products, advice, and execution to individuals, small businesses, and Plans, including mortgage loans and commercial real estate financing.

• *International Private Client,* providing financial planning, private banking, and trust and investment services to individuals outside the United States through a network of private bankers and specialists abroad.

• *Asset Management Client,* providing investment advisory and portfolio management services.

(b) *MLPF&S*, the principal subsidiary of ML&Co., is a registered broker-dealer under section 15 of the 1934 Act. MLPF&S is a broker in securities, options contracts, and commodity and financial futures contracts as well as a dealer in options and in corporate and municipal securities. In addition, MLPF&S is an investment banking firm that provides advice to, and raises capital for, corporations and other institutional clients, sovereigns, and municipalities. Further, MLPF&S is an underwriter of selected insurance policies.

3. *The Plans* will consist of employee benefit plans that are covered under the provisions of Title I of the Act, as amended, and subject to section 4975 of the Code. For purposes of this proposed exemption, the Plans will not consist of Plans that are sponsored and maintained by the Applicants for their own employees. In the case of the Applicants' in-house Plans, ML&Co. represents that the acquisition and holding of the MITTS by such Plans would be covered under the statutory exemption that is provided under section 408(e) of the Act.[4]

4. The Applicants represent that their activities are subject to various levels of oversight and regulation by the SEC, the Commodities Futures Trading Commission, and other federal and state regulatory agencies. The Applicants also represent that their activities are subject to the oversight of self-regulatory organizations such as the NYSE and the AMEX. The Applicants further represent that MLPF&S, as a registered broker-dealer and member of the NYSE, is subject to the Net Capital Rule 15c3–1 of the 1934 Act, which specifies the minimum net capital requirement of a broker-dealer.

5. The Applicants represent that broker-dealers routinely need additional capital in order to maintain inventories of securities for their market-making and other business activities. For these reasons, the Applicants state that they have a continuous need to borrow funds from various institutional and individual investors for use in their business operations. In response to this need, the Applicants issue various high-quality, publicly-offered debt securities generally rated in one of the three highest generic rating categories by nationally-recognized rating firms, offering varying levels of risk and potential return. Among the debt securities offered by the Applicants are the MITTS which are publicly-offered, unsecured, SEC-registered debt securities, with terms that are no longer in duration than 9 years. The MITTS will be U.S. dollar-denominated so that no foreign currency conversions will be required in the calculation of the rate of return. Further, the MITTS will offer varying levels of risk and rates of return. The MITTS are currently listed on the AMEX or the NYSE and they are issued in denominations of $10 of principal per unit, with the minimum purchase being one unit.

Thus, the MITTS may be offered on a variety of terms and formulas under which rates of return are objectively determined in accordance with certain Indexes by MLPF&S, the calculation agent. The Applicants represent that since small Plans will likely invest in the MITTS, the formulas used to calculate the rates of return will be capable of being understood by the average investor and clearly described in the ''plain English'' summary of the MITTS in the Applicants' Prospectus.

6. Due to the affiliation between ML&Co., as an issuer of the MITTS described herein, and MLPF&S, as a service provider to the Plans, the Applicants represent that they are likely to be parties in interest, as defined in section 3(14)(B) or (H) of the Act, with regard to a high percentage of Plans that purchase, hold, or sell the MITTS, regardless of whether such securities are purchased directly from the Applicants.[5] Thus, the Applicants represent that ML&Co. may be a party in interest to a Plan solely because of its affiliation with a service provider to the Plan, and as the counterparty to the Plan in a transaction where the Plan holds a MITTS issued by ML&Co. or an affiliate. Further, other affiliates of ML&Co. may be service providers to Plans on account of their roles as trustees, custodians, investment advisers, or broker-dealers for such Plans. These relationships would make ML&Co. a party in interest to those Plans and would create potential prohibited transactions in the event such Plans acquire and hold the MITTS.

[4] The Department expresses no opinion herein on whether the acquisition and holding of the MITTS by the Applicants' in-house Plans is covered under the provisions of section 408(e) of the Act. In this regard, interested persons should refer to the conditions contained in section 408(e), as well as the definitions of the terms ''qualifying employer security'' (see section 407(d)(5) of the Act) and ''marketable obligations'' (see section 407(e) of the Act).

[5] In this regard, the Applicants represent that PTCE 75–1 does not directly address transactions where there is a continuing extension of credit as a result of a sale by a broker-dealer to a plan of debt securities issued by the broker-dealer's parent corporation.

The Applicants request an administrative exemption from the Department to enable Plans to invest in the MITTS under the terms and conditions described in this proposed exemption and to avoid liability for prohibited transactions resulting from such investments.

7. The Applicants believe that while Part II of PTCE 75–1 provides relief for principal transactions between a broker-dealer and a Plan, and would cover a purchase of the broker-dealer parent's debt securities by such Plans (if the conditions required therein were met), it is questionable whether that class exemption would cover the continuing extension of credit related to the holding of any debt securities by a Plan, including the MITTS.[6]

The Applicants note that some Independent Plan Fiduciaries have expressed concern regarding the application of PTCE 75–1 to broker-dealer sales of broker-parent debt to Plans either as part of an original issue of the securities or in the secondary market. Moreover, the Applicants represent that PTCE 96–23 (61 FR 15975, April 10, 1996)[7] is unavailable to participant-directed, defined contribution Plans and other small Plans because these Plans, due to their size, are unlikely to have INHAMs responsible for making investment decisions relating to the acquisition, holding and disposition of securities in which the Plans invest.

Similarly, the Applicants note that while PTCE 84–14[8] minimizes the risk of inadvertent prohibited transactions for Plans whose assets are managed by a QPAM, they believe it is unlikely that participant-directed, defined contribution Plans or small Plans would incur the expense of a QPAM for the purchase and continued holding of the MITTS. The Applicants also believe that the additional cost of a QPAM for a small Plan with a small investment would not be cost-effective. The Applicants further explain that this cost would be uneconomical here because the QPAM would be required to continue its services for the entire period during which the MITTS are held by the Plan since the potential prohibited transaction is not just a sale or exchange, under section 406(a)(1)(A) of the Act, but is also an extension of credit, under section 406(a)(1)(B) of the Act. Accordingly, the Applicants state that the cost of a QPAM would preclude small Plans from being able to purchase the MITTS without creating the risk of a prohibited transaction.

8. The Applicants propose to continue offering the MITTS to non-Plan investors and maintain that these investors will continue to constitute a substantial market for such securities. However, for each Plan investor, the Applicants represent that the terms of the Plan's investment in the MITTS will be at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's length transaction at the time the MITTS are acquired by the Plan. Additionally, the Applicants represent that no Plan will pay the Applicants any fees or commissions in connection with transactions involving the MITTS, except for the mark-up for a principal transaction permitted under PTCE 75–1.

In addition to the aforementioned requirements, the Applicants represent that a Plan's investment in the MITTS will be restricted to those Plans for which the Applicants have no discretionary authority and do not provide investment advice with respect to the investment in the MITTS. In this regard, the decision to invest in the MITTS will be made by an Independent Plan Fiduciary or a Plan Participant, which is independent of the Applicants. Moreover, the Applicants represent that the Prospectus for each of the MITTS that are offered to the Plans will contain a recommendation that no more than 15 percent of a Plan's assets should be invested in the MITTS at the time such security is acquired by a Plan.[9]

9. The MITTS will be rated in one of the three highest generic rating categories by a nationally-recognized rating firm at the time of acquisition by a Plan. There will be no triggering events or early amortization events if the Applicants' credit rating drops below a certain level established by a rating agency. Throughout the term of any of the MITTS, the Plans will be able to access the latest bid and asked price quotations for all of the Applicants' MITTS by calling a broker or any electronic service with a recognized price quotation delivery system. If a Plan wishes to terminate a MITTS investment prior to maturity, such investor may do so by selling the debt security on the open market at the prevailing market price. However, ML&Co. may not unilaterally terminate the MITTS prior to maturity unless the MITTS are callable at a specific price which will be disclosed in the Prospectus. Assuming the MITTS are callable, ML&Co. represents that there will be no loss of principal.

10. As noted above, the rate of return for the MITTS will be based upon an Index, which may be either (a) created and maintained by an entity that is unrelated to the Applicants or (b) created by the Applicants, but maintained by an unrelated entity.

(a) *Index Created and Maintained by an Entity Unrelated to the Applicants.* This Index, which will be created by an entity that is unrelated to the Applicants, will consist of a standardized and generally-accepted index of securities, such as the Nikkei 225 Index Tokyo Stock Exchange or the Standard & Poor's 500 Index. In addition, this Index will be maintained by such unrelated entity. In other words, all calculations relating to the securities in the Index, as well as the rate of return of the Index, will be made by an entity other than the Applicants or their affiliates.

(b) *Index Created by the Applicants or an Affiliate, but Maintained by an Unrelated Entity.* This Index will be created by the Applicants or an affiliate. However, it must be maintained by an entity that is unrelated to the Applicants, such as the AMEX. In addition, the Index will consist either of standardized and generally-accepted Indexes or it will be an Index comprised of at least 10 publicly-traded securities that are not issued by the Applicants or their affiliates, are designated in advance and listed in the Prospectus for the MITTS. Under either circumstance, neither the Applicants nor their affiliates will be permitted to make any modifications to the composition of the Index, including the methodology

[6] See Footnote 2 above.

[7] PTCE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an in-house asset manager (the INHAM). An INHAM is an entity which is generally a subsidiary of the employer sponsoring the plan. The INHAM is also a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

[8] PTCE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a qualified professional asset manager (the QPAM), provided certain conditions are met. QPAMS (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under the Act.

[9] In this regard, the Applicants propose to include the following statement in the Prospectus for each of the MITTS, under a heading entitled ''Employer-Sponsored Plan Considerations'':

These [MITTS] Securities are being sole to Employer-Sponsored Plans pursuant to an exemption issued by the Department of Labor. In accordance with the terms of this exemption, we are required to inform such Employer-Sponsored Plans that no more than 15 percent of plan (or individual participant) assets, at the time of acquisition, should be invested in MITTS. Please note, however, that it is the responsibility of the person making the investment decision to determine whether the purchase is a prudent investment for the plan (or participant-directed account).

comprising the rate of return, unilaterally.

Further, the Index will meet the requirements for an Index in accordance with Rule 19b–4 of the 1934 Securities Act, which imposes regulatory standards on the entity maintaining the Index. Under Rule 19b–4, a self-regulatory organization, such as a securities exchange, is required to adopt trading rules, procedures and listing standards for the product classes relating to any security that the exchange proposes to list. In addition, the self-regulatory organization must maintain a surveillance program for a class of securities. If the SEC has not approved the self-regulatory organization's rules, procedures and standards, the self-regulatory organization must make a filing with the SEC prior to listing the security. According to the Applicants, this procedure provides adequate safeguards so that any MITTS that are created by the Applicants or their affiliates will meet the listing and trading standards approved by the self-regulatory organization.

Finally, the Index Value of the Index will be publicly-disseminated through an independent pricing service, such as Reuters or Bloomberg, or through a national securities exchange, such as the AMEX.

11. Price quotations with respect to the MITTS will be available on a daily basis from market reporting services, such as Bloomberg or Reuters, and the daily financial press, such as The Wall Street Journal. In the event the MITTS are delisted from either the AMEX or the NYSE, MLPF&S will apply for trading through the NASDAQ, which requires that there be independent market-makers establishing a market for the securities in addition to MLPF&S. In the event there are no independent market-makers, the Applicants represent that the exemption will no longer be considered effective.

12. The terms of each of the MITTS will be set forth with specificity. Therefore, in addition to the description of the formula for computing the rate of return, the Prospectus will include, but will not be limited to, the following information:

- A statement to the effect that the return calculated for the MITTS will be denominated in U.S. dollars;
- The specified Index or Indexes on which the rate of return on the MITTS is based;
- A numerical example, capable of being understood by the average investor, which explains the calculation of the return on the MITTS at maturity and reflects, among other things, (i) a hypothetical initial value and closing value of the applicable Index, and (ii) the effect of any adjustment factor on the percentage change in the applicable Index;
- The date on which the MITTS will be issued;
- The date on which the MITTS will mature and the conditions of such maturity;
- The initial date on which the value of the Index is calculated;
- Any adjustment factor or other numerical methodology that would affect the rate of return, if applicable;
- The ending date on which interest will be determined, calculated and paid;
- Information relating to the calculation of payments of principal and interest, including a representation to the effect that, at maturity, the beneficial owner of the MITTS will be entitled to receive the entire principal amount, plus an amount derived directly from the growth in the Index (but in no event less than zero);
- All details regarding the methodology for measuring performance;
- The terms under which the MITTS may be redeemed;
- The exchange or market where the MITTS are traded or maintained; and
- Copies of the proposed and final exemptions relating to the exemptive relief provided herein, upon request.

Aside from the Prospectus, ML&Co. does not contemplate making any ongoing communications to the MITTS investors except to the extent required under applicable securities laws.

13. The Applicants represent that the level of specificity and the descriptions of the terms of the MITTS are sufficient to ensure that, after the MITTS are issued and traded on an exchange, the Applicants cannot, with the exception of a Market Disruption Event, affect the rate of return. A Market Disruption Event may occur infrequently and is typically defined as either: (a) the suspension or material limitation, in each case, for more than two hours of trading in 10 percent or more of the securities included in the applicable Index; or (b) the suspension or material limitation for more than two hours of trading (whether by reason of movements in price otherwise exceeding levels permitted by the relevant exchange or otherwise) in: (i) futures contracts related to the Index which are traded on the Chicago Mercantile Exchange; or (ii) option contracts related to the applicable Index which are traded on the Chicago Board Options Exchange, Inc. The Applicants represent that ML&Co. does not have the discretion to determine whether a Market Disruption Event has occurred.[10] Should the Applicants determine that a Market Disruption Event has occurred on a certain date, they indicate that the date will not be taken into consideration for calculating the rate of return of the Index.

14. The Applicants represent that the principal amount of the MITTS that are the subject of this exemption will always be protected regardless of the performance of the applicable Index. Although the return may go up or down in the same direction as the performance of the applicable Index, the interest rate floor is set at zero. Thus, even where the value of the applicable Index decreases, there will be no invasion of principal if the MITTS are held until maturity.[11] However, if a Plan must sell the MITTS on the open market prior to their maturity, the market price will reflect the market's perception of the potential yield on such securities based on the current yield and interest rates for other debt securities of the same duration. This market price may

[10] For purposes of the definition of the term ''Market Disruption Event,'' a limitation on the hours in a trading day and/or number of days of trading will not constitute a Market Disruption Event if it results from an announced change in the regular business hours of the relevant exchange. Furthermore, for purposes of this definition, any limitations pursuant to NYSE Rule 80A (or any applicable rule or regulation enacted or promulgated by the NYSE, or any other self-regulatory organization, or the SEC, of similar scope as determined by MLPF&S, as the calculation agent) on trading during significant market fluctuations shall be considered ''material.''

[11] The Applicants have provided the following example to illustrate this principle by describing the return at maturity on each $10 principal investment in the MITTS that are the subject of this proposed exemption:

- Where the value of the applicable Index increases by 50 percent, the Plan is entitled to receive $15 at maturity ($10 principal plus $5 interest) because the rate of return moves in the same direction as the growth in the applicable Index;
- Where the value of the applicable Index remains unchanged during the applicable period, the Plan is entitled to receive $10 at maturity ($10 principal plus $0 interest) because the rate of return moves in the same direction as the growth in the applicable Index; and
- Where the value of the applicable Index decreases by 50 percent, the Plan is entitled to receive $10 at maturity ($10 principal and $0 interest) because the rate of return moves in the same direction as the growth in the applicable Index but in no event drops below zero.

While the foregoing examples, are simplistic, it should be noted that for some of the MITTs, such as those tied to the Standard & Poor's 500 Index, the interest payments shown above may be reduced on a daily basis by an adjustment factor (the Adjustment Factor), equal to 1.3 percent per year. On the maturity date of the MITTS, the annual application of the Adjustment Factor will result in a total reduction of the Standard & Poor's 500 Index of 8.78 percent. In effect, this reduction will reduce the Plan investor's overall interest payments. This information will be disclosed prominently in the Prospectus.

result in a loss of principal value of the investment in the MITTS in the same fashion as would occur for other debt securities.

15. The Applicants represent that they will exercise no discretion with respect to the Indexes. Further, the Applicants represent that they will not trade in any way intended to affect the value of the MITTS through holding or trading in the securities which comprise these Indexes. The Applicants will maintain written records of all of the MITTS transactions for a period of six years.

16. The Applicants represent that the MITTS may be included among assets acquired by a Plan to comprise the underlying portfolio of a ''synthetic'' guaranteed investment contract (Synthetic GIC), whereby the Plan's beneficial interest in one or more debt instruments is combined with a guarantee of future value. In this regard, the Applicants represent that they will not be the issuer, guarantor, or ''wrapper'' provider in connection with a Synthetic GIC. The Applicants represent that they are not requesting any relief for extensions of credit to such Plans and the Plan Participants, other than extensions of credit resulting from such Plan's holding of the MITTS. Accordingly, the Applicants are not requesting specific exemptive relief with respect to any additional prohibited transactions that may relate to any Synthetic GICs.

17. In summary, the Applicants represent that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) The MITTS will be made available by the Applicants in the ordinary course of their business to customers which are not Plans.

(b) The Applicants will not have any discretionary authority or control, or provide any ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c), with respect to the assets of Plans which are invested in the MITTS.

(c) The Plans will pay no fees or commissions to the Applicants in connection with the transactions covered by the requested exemption, other than the mark-up for a principal transaction permissible under PTCE 75–1.

(d) The decision to invest in the MITTS will be made by an Independent Plan Fiduciary or a Plan Participant, which is independent of the Applicants.

(e) In connection with a Plan's acquisition of any of the MITTS, the Applicants will disclose to the Independent Plan Fiduciary, or, if applicable, the Plan Participant, in the Prospectus, all of the material terms and conditions concerning the MITTS.

(f) A Plan will acquire the MITTS on terms that are at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's length transaction.

(g) The MITTS will be rated in one of the three highest generic rating categories by at least one nationally-recognized statistical rating service at the time of such security's acquisition by the Plan.

(h) The rate of return for the MITTS will be objectively determined and the Applicants will retain no authority to affect the determination of such return, other than in connection with a Market Disruption Event that is described in the Prospectus for the MITTS.

(i) The Index will be: (1) created and maintained by an entity that is unrelated to the Applicants and consist of a standardized and generally-accepted Index; or (2) created by the Applicants or an affiliate, but maintained by an entity that is unrelated to the Applicants, and (i) will consist either of standardized and generally-accepted Indexes or will be an Index comprised of at least 10 publicly-traded securities that are not issued by the Applicants or their affiliates, are designated in advance, and listed in the Prospectus for the MITTS, (ii) will meet the requirements for an Index as set forth in Rule 19b–4, and (iii) the Index Value for such Index will be publicly-disseminated through an independent pricing service or a national securities exchange.

Notice to Interested Persons

The Applicants represent that because those potentially interested Plans proposing to engage in the covered transactions cannot all be identified, the only practical means of notifying Independent Plan Fiduciaries or Plan Participants of such affected Plans is by publication of the proposed exemption in the **Federal Register**. Therefore, any comments from interested persons must be received by the Department no later than 30 days from the publication of this notice of proposed exemption in the **Federal Register**.

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

General Motors Hourly-Rate Employees Pension Plan; General Motors Retirement Program for Salaried Employees; Saturn Individual Retirement Plan for Represented Team Members; Saturn Personal Choices Retirement Plan for Non-Represented Team Members; Employees' Retirement Plan for GMAC Mortgage Group; Delphi Hourly-Rate Employees Pension Plan; and Delphi Retirement Program for Salaried Employees (collectively, the Plans) Located in New York, New York

[Application Nos. D–10713; D–10714; D–10715; D–10716; and D–10717]

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 section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the past and continuing lease (the Lease) by the Plans to CB Richard Ellis, Inc. (CB Richard Ellis), a party in interest with respect to the Plans, of commercial space in a certain office building; and (2) the exercise, by CB Richard Ellis, of an option to renew the Lease for one additional term, provided that the following conditions are met:

(a) All the terms and conditions of the Lease, including those providing CB Richard Ellis with an option to renew the Lease, are at least as favorable to the Plans as terms and conditions the Plans could have obtained in an arm's length transaction with an unrelated party;

(b) The interests of the Plans for all purposes under the Lease, including any renewal thereof, are represented by a qualified, independent fiduciary;

(c) The rent paid by CB Richard Ellis under the Lease, including any renewal thereof, is, at all times, no less than the fair market rental value of the leased space; and

(d) The independent fiduciary monitors the Lease, and any renewal thereof, on behalf of the Plans, and takes whatever actions necessary to safeguard the interests of the Plans and their participants and beneficiaries.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of December 17, 1998, the date on which CB Richard Ellis entered into the Lease.

Summary of the Facts and Representations

1. The Plans are the General Motors Hourly-Rate Employees Pension Plan (GM Hourly Plan); General Motors Retirement Program for Salaried Employees (GM Salaried Plan); Saturn Individual Retirement Plan for Represented Team Members (Saturn Represented Team Plan); Saturn Personal Choices Retirement Plan for Non-Represented Team Members (Saturn Non-Represented Team Plan); Employees' Retirement Plan for GMAC Mortgage Group (GMAC Plan); Delphi Hourly-Rate Employees Pension Plan (Delphi Hourly Plan); and Delphi Retirement Program for Salaried Employees (Delphi Salaried Plan). The sponsors of the Plans are General Motors Corporation (GMC), Saturn Corporation, GMAC Mortgage Group, and Delphi Automotive Systems Corporation, respectively.

The GM Hourly Plan and the GM Salaried Plan covered approximately 514,120 and 200,183 participants, respectively, as of September 30, 1999. The Saturn Represented Team Plan and the Saturn Non-Represented Team Plan covered approximately 7,507 and 2,122 participants, respectively, as of December 31, 1999. The GMAC Plan covered approximately 5,936 participants, as of December 31, 1999. The Delphi Hourly Plan and the Delphi Salaried Plan covered approximately 56,360 and 20,821 participants, respectively, as of June 1, 2000.

The Plans' assets are held in two trusts: (i) the General Motors Salaried Employees Pension Trust, which holds the assets of the GM Salaried Plan and the Delphi Salaried Plan; and (ii) the General Motors Hourly-Rate Employees Pension Trust, which holds the assets of all the other Plans (together, the Trusts). The Plans are the beneficial owners of all the assets held in their respective Trusts. The Plans had total assets of $85,009,953,138.64, as of April 30, 2000. The property, known as ''Pacific Corporate Towers'' (described in Item 2, below), had a fair market value of $241,400,000.00, as of December 31, 1999.

2. Among the assets of the Plans, held through the Trusts, is a 100% beneficial ownership interest in Pacific Corporate Towers LLC (the LLC).[12] The LLC, a Delaware limited liability company, owns a 41-story office building (*i.e.,* Pacific Corporate Towers), which is located at 200 N. Sepulveda Boulevard, El Segundo, California, and has a total of 1,542,270 square feet of rentable space. CB Richard Ellis is the property manager and leasing agent for Pacific Corporate Towers and, thus, is a party in interest with respect to the Plans. CB Richard Ellis, headquartered in Los Angeles, California, is a large asset advisor for institutional real estate owners and, as of October 1, 1998, employed 9,000 full-time employees.

3. On December 17, 1998, CB Richard Ellis entered into the Lease with the Plans for the rental of 13,687 square feet of office space on the third floor of Pacific Corporate Towers. The Lease is for a period of six years, ending on November 14, 2004. The Lease provides CB Richard Ellis with an option to renew the Lease for an additional five-year period.

Under the Lease terms, the monthly rent for the office space for the first 36 months is $32,985.67,[13] and the monthly rent for the second 36 months is $35,723.07. The renewal option requires that CB Richard Ellis pay the then prevailing fair market rent at the time of renewal, but not less than the monthly rate in effect during the second 36 months of the Lease. The Lease also provides for a one-time tenant improvement allowance of $34.78 per rentable square foot, during the first 36 months of the Lease. Finally, the Lease provides that CB Richard Ellis is responsible for its proportionate share of tax, operating, and insurance costs.[14]

4. Prior to entering into the Lease with CB Richard Ellis, the Plans, through the General Motors Investment Management Corporation, hired Pacific Green Advisors Ltd. (Pacific Green), to act as an independent fiduciary for the Plans with respect to the Lease, pursuant to an agreement dated August 24, 1998 (the Fiduciary Agreement). Pacific Green is a real estate investment advisory firm located in Torrance, California.

It is represented that Pacific Green is qualified to act as an independent fiduciary for the Plans because it serves as an asset advisor for institutional real estate owners and provides advisory services relating to overall real estate asset planning. Specifically, Pacific Green provides property management services; engages and supervises managing agents on behalf of owners; provides long-term and short-term acquisition planning services; develops market studies with respect to potential acquisitions; negotiates, drafts, and executes leases; and purchases and sells targeted properties.

In addition, Pacific Green states that it is independent of CB Richard Ellis, because: (i) Neither Pacific Green nor its affiliates have any ownership interest in CB Richard Ellis or its affiliates; (ii) neither CB Richard Ellis nor any of its affiliates have any ownership interest in Pacific Green or its affiliates; and (iii) Pacific Green and its affiliates receive no annual income from CB Richard Ellis.

5. Pursuant to the Fiduciary Agreement, Pacific Green was retained to determine on behalf of the Plans whether the Lease would be in the best interests of the Plans and their participants and beneficiaries. In order to make this determination, Pacific Green specifically agreed to: (i) Perform such review and analysis as it deemed necessary to determine the fair market rental value of the leased space; (ii) determine whether the terms and conditions of the Lease, including basic rental and allowances, in the aggregate, were at least as favorable to the Plans as those available in an arm's length transaction with an unrelated party; (iii) determine whether the Lease, as proposed, would be in the best interests of the Plans; (iv) negotiate the terms of the Lease on behalf of the Plans; and (v) determine whether to grant approval of the Lease, or take any other action with respect to the Lease, on behalf of the Plans.

6. Pacific Green represents that, in order to determine whether the terms and conditions of the Lease would be fair to the Plans and the rent to be paid thereunder would be fair market value, it inspected the subject office space, evaluated the competitive office space market in El Segundo, California, and reviewed recent rentals of office space in Pacific Corporate Towers, as well as recent rentals of competitive office space in the local area.

[12] The applicant states that the assets of the LLC are deemed to be ''plan assets'' under the Department's regulations (see 29 CFR 2510.3–101) because the Plans own a 100% beneficial ownership interest in the LLC. Thus, all transactions between the LLC and persons that are parties in interest with respect to the Plans invested therein would be subject to the prohibited transaction restrictions of the Act.

[13] This rental amount per month would equal approximately $395,820 annually ($32,985 × 12 = $395,820). With 13,687 square feet of rental space, the annual rental amount per square foot would be approximately $28.92 during the first 36 months.

[14] It is represented that the cost of the one-time tenant improvement allowance and other expenses paid for by Pacific Corporate Towers were factored into the rental rate for the leased space.

The Department expresses no opinion in this proposed exemption as to whether the expenses incurred by the Plans, through the Trusts, relating to the tenant improvements provided for CB Richard Ellis would violate any provision of Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that plan fiduciaries act prudently and solely in the interest of the plan's participants and beneficiaries when making investment decisions on behalf of a plan. In addition section 404(a) of the Act requires that plan fiduciaries act for the exclusive purpose of providing benefits to participants and beneficiaries and to defray reasonable expenses of administering the plan.

Pacific Green represents that, after conducting this market survey, it completed negotiations on behalf of the Plans with respect to the Lease terms, including the renewal option. Then on November 16, 1998, John M. Williams, President of Pacific Green, rendered a report to the Plans. In his report, Mr. Williams stated that the Lease, as proposed, was fair to the Plans and that the proposed rental rate constituted the fair market rent for the office space. Mr. Williams further opined that the terms of the Lease, including the renewal option, were in the best interests of the Plans.

7. Pursuant to the Fiduciary Agreement, Pacific Green also accepted the continuing duty to monitor compliance with the terms and conditions of the Lease and to enforce the rights of the Plans with respect to the Lease and any renewal thereof. Pacific Green represents that it understands and acknowledges its duties and responsibilities as a fiduciary to the Plans under the Act. Pacific Green also agreed to take any actions necessary to ensure that CB Richard Ellis' obligations as lessee are fully performed. If CB Richard Ellis exercises its option to extend the Lease for five more years, Pacific Green will negotiate the terms of the extended Lease and will continue to serve as the independent fiduciary for the Plans.[15]

8. Only after Pacific Green determined that the Lease was in the best interests of the Plans, the parties entered into the Lease agreement on December 17, 1998. The applicant represents that the Lease was, and is, in the best interests of the Plans because it contains arm's length terms and conditions and a fair market rental rate for the leased space. In addition, the Plans did not have to pay any leasing commissions in connection with the transaction. The Lease reduces the amount of vacant rentable office space in Pacific Corporate Towers, resulting in greater cash flow to Pacific Corporate Towers over the term of the Lease, which should have a favorable impact on the value of that investment for the Plans.

9. In summary, the applicant represents that the subject transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) All the terms and conditions of the Lease are at least as favorable to the Plans as those the Plans could have obtained in an arm's length transaction with an unrelated party; (b) the interests of the Plans for all purposes under the Lease are represented by Pacific Green, a qualified, independent fiduciary; (c) Pacific Green has determined that the rent paid by CB Richard Ellis under the Lease is the fair market rental value of the leased space and will ensure that such rent remains so, upon any renewal of the Lease; and (d) Pacific Green will continue to monitor the Lease on behalf of the Plans and take whatever actions necessary to safeguard the interests of the Plans and their participants and beneficiaries.

[15] Should it become necessary in the future to appoint a successor independent fiduciary (the Successor) to replace Pacific Green, the applicant will notify the Department at least 30 days in advance of the appointment of the Successor. Any such Successor will be independent and have responsibilities and experience comparable to those of Pacific Green.

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

Butler-Johnson Corporation; Profit Sharing Plan (the Plan); Located in San Jose, California;

[Application No. D–10780]

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, effective as of October 25, 1996, to:

(1) the past sale on October 25, 1996, by the Plan of four residential mortgage notes (the Purchased Notes) to the Greater Bay Trust Company (the Trustee), the trustee of the Plan and, as such, a party in interest with respect to the Plan;

(2) the past sale on October 25, 1996, by the Plan of a seventy-one percent (71%) interest (the Interest) in a certain parcel of real property located in Oakland, California (the Oakland Property) to the Trustee;

(3) the ''makewhole'' payment made by the Trustee to the Plan on October 25, 1996 in connection with the Plan's investment losses with respect to certain other real property previously owned by the Plan which was sold to an unrelated party on June 28, 1996; and

(4) the proposed payment to the Plan of the accrued but unpaid interest (the Accrued Interest Payment) that was due on the Purchased Notes at the time of the past sale to the Trustee, as well as two other mortgage notes that were in default while held by the Plan (collectively, the Notes) which resulted in foreclosures on the underlying properties, and the proposed payment to the Plan of an additional interest payment for the period from October 25, 1996, until the date that the Accrued Interest Payment is made to the Plan (the Additional Interest Payment), based on the total amount of the Accrued Interest Payment; provided the following conditions are met:

(A) The sale of the Purchased Notes and the Interest by the Plan to the Trustee were one-time transactions for cash;

(B) The Plan was not required to pay any fees or commissions in connection therewith;

(C) The Plan received prices for the Purchased Notes constituting no less than the greater of either:

(i) the outstanding principal balances for each Purchased Note, or

(ii) the fair market value of each Purchased Note, as of the date of the sale transactions;

(D) The Plan received a purchase price for the Interest constituting no less than seventy-one percent (71%) of the fair market value of the Oakland Property, as of the date of the sale transaction;

(E) The Accrued Interest Payment to be paid by the Trustee to the Plan represents an amount equal to the total accrued but unpaid interest that was due on the Notes on October 25, 1996;

(F) The Additional Interest Payment to be paid by the Trustee to the Plan represents a reasonable rate of interest on the amount of accrued but unpaid interest on the Notes that was due to the Plan on October 25, 1996 (i.e., the Accrued Interest Payment referred to in (E) above), as determined by an appropriate third party source (*i.e.,* the U.S. Treasury rate for 3-month Treasury Bills);

(G) The Trustee provides the Department with documentation, within thirty (30) days of the Accrued Interest Payment and Additional Interest Payment, which verifies that the total amount of such payments have been made to the Plan;

(H) The Trustee, as the responsible fiduciary for the Plans, took appropriate actions necessary to safeguard the interests of the Plan and its participants and beneficiaries in connection with the past transactions, and will take whatever actions are necessary to continue to protect the Plan's interest with respect to the Accrued Interest Payment and the Additional Interest Payment;

(I) The Plan received a reasonable rate of return on the Purchased Notes and

the Interest during the period of time that it held these assets; and

(J) Upon any sale or other disposition of any of the Purchased Notes or the Interest by the Trustee, in the event the Trustee receives proceeds in excess of the amount which the Trustee paid the Plan for such assets, the additional proceeds shall be promptly forwarded to the Plan by the Trustee.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan which had approximately 103 participants and total assets of $2,949,910 as of December 31, 1996. The sponsor of the Plan is Butler-Johnson Corporation (the Employer), a California privately-held corporation. The trustee of the Plan is Greater Bay Trust Company (*i.e.,* the Trustee), which is a division of Cupertino National Bank & Trust, having its principal place of business in Palo Alto, California. The Trustee has discretionary authority for the investment of Plan assets, subject to investment guidelines provided by a committee (the Committee) comprised of employees and officers of the Employer.

2. In 1992, the Committee and the Trustee established guidelines for the purchase of real estate loans for the Plan. The guidelines provided that the Trustee was permitted to invest the Plan's assets in certain real estate loans secured by single family dwellings.

The Trustee invested the Plan's assets in six mortgage notes (the Notes) evidencing real estate loans made to persons unrelated to the Employer. The Notes were originated between May 1992 and December 1994. The Plan acquired a one hundred percent (100%) ownership of each of the Notes except one, referred to as the Kakos Note, in which the Plan acquired a seventy-one percent (71%) ownership interest. The remaining twenty-nine percent (29%) interest in the Kakos Note was held by an unrelated investor whom the Trustee represents was neither a disqualified person under the Code nor a party in interest under the Act with respect to the Plan. The Trustee states that all obligors under the Notes were independent of the Plan and the Trustee. As of December 31, 1995, the Plan's total investment in the Notes represented approximately twenty-eight percent (28%) of the fair market value of the Plan's assets.

3. All of the Notes resulted in default and two of the Notes resulted in foreclosure. On December 30, 1993, the Trustee, on behalf of the Plan, foreclosed on the Kakos Note. The Plan consequently acquired a seventy-one percent (71%) interest (*i.e.,* the Interest) in the underlying real property in Oakland, California (*i.e.,* the Oakland Property) which secured the Kakos Note. On January 20, 1995, the Trustee, on behalf of the Plan, foreclosed on another Note (referred to as the Bennett Note). The Plan consequently acquired the underlying real property in Grass Valley, California (the Grass Valley Property) which secured that Note. The Trustee represents that at the time of these foreclosures, the Oakland Property and the Grass Valley Property (together, the Properties) each had fair market values which were less than the outstanding principal balances of the Notes which they secured.

4. The Trustee represents that due to the circumstances surrounding the default on four of the Notes and the foreclosure on the remaining two Notes, the Trustee determined that the Notes and the Properties did not constitute suitable investments for the Plan.[16] The Trustee maintains that this determination included a finding by the Trustee that the Notes were not marketable to third parties. Based on the Trustee's belief that it shared responsibility in failing to meet certain due diligence obligations in investing in the Notes, the Trustee determined to take the steps necessary to make the Plan ''whole'' with respect to its investments in the Notes and the Properties, as follows:

(a) The Grass Valley Property was sold to an unrelated party on June 28, 1996 for $83,532.71, which was $56,041.80 less than the outstanding principal balance of the Note which the Grass Valley Property had secured. This investment loss was recovered by the Plan in a cash payment made to the Plan by the Trustee, as discussed below.

(b) The Trustee placed the Interest (*i.e.,* the Plan's interest in the Oakland Property) on the market for over two years. Finally, the Trustee purchased the Interest from the Plan on October 25, 1996 for $151,875.58. This amount was equal to the outstanding principal balance that had been due on the Kakos Note prior to default.

(c) The Trustee purchased the remaining four Notes (*i.e.,* the Purchased Notes) from the Plan on October 25, 1996 at prices constituting the outstanding principal balance of each Purchased Note as of the date of such purchase.

On October 25, 1996, the Trustee paid the Plan a total of $618,391.05, representing (i) the aggregate outstanding principal balances on the Purchased Notes at the time of the transaction, plus (ii) the purchase price for the Interest (*i.e.,* the Plan's 71% interest in the Oakland Property), plus (iii) $56.041.80 to reimburse the Plan for its loss on the sale of the Grass Valley Property to an unrelated party. The Trustee represents that the Plan paid no commissions or fees with respect to these transactions.

In addition to the Trustees' repayment of the principal amount of the investment losses resulting to the Plan from the default of four Notes and foreclosure on the remaining two Notes, the Trustee now proposes to pay all of the accrued but unpaid interest (i.e., the Accrued Interest Payment) that was due to the Plan on the Notes as of October 25, 1996. The Trustee has also agreed to pay the Plan a reasonable rate of interest on the amount represented by the Accrued Interest Payment (i.e., the Additional Interest Payment) for the period from October 25, 1996, until the date the Accrued Interest Payment is paid to the Plan. The interest rate for the Additional Interest Payment will be determined by the U.S. Treasury rate for 3-month Treasury Bills, which the Trustee has determined is an appropriate third party rate and source for such amount.

The applicant represents that the Accrued Interest Payment will be approximately $181,581. Further, the Additional Interest Payment would have been approximately $35,699, as of July 31, 2000. Thus, the total additional payments that the Trustee proposes to pay to the Plan was approximately $217,280, as of July 31, 2000.

5. The Trustee represents that the past transactions were in the best interests of the Plan because they enabled the Plan to dispose of non-productive assets under terms which were better than the Plan could have obtained in arm's-length transactions with unrelated parties. The Trustee maintains that if it had not purchased the Interest and the Purchased Notes from the Plan, the Plan either would have continued to hold these non-productive assets or would have sold these assets to unrelated parties and incurred a substantial loss on the investments. The Trustee represents that the past transactions

[16] The Department expresses no opinion in this proposed exemption as to whether the Plan's acquisition and holding of the Notes and the Properties violated any of the fiduciary responsibility provisions contained in Part 4 of Title I of the Act.

However, the Department notes that an investigation regarding the subject investments made by the Plan and related transactions has been conducted by the Department's Regional Office in San Francisco. In this regard, the proposed exemption, if granted, will facilitate certain agreements made by the parties to restore assets to the Plan.

were protective of the Plan because the Plan incurred no expenses related to the transactions. The Trustee states that prior to purchasing the Purchased Notes and the Interest from the Plan, it determined that these assets were unmarketable. In addition, with respect to the Interest, the Trustee represents that attempts were made over two years to sell the Oakland Property to an unrelated party without any success. Thus, the Trustee determined that any sale of the Purchased Notes and Interest (through a sale of the Oakland Property) to an unrelated party would have resulted in substantial losses to the Plan and its participants and beneficiaries.

6. The Trustee represents that all measures taken with respect to the Plan's investments in the Notes were taken in order to reimburse the Plan for actual out-of-pocket losses on the Notes. The additional measures that the Trustee now proposes to take with respect to the Accrued Interest Payments and the Additional Interest Payments are meant to restore additional assets to the Plan which relate to the Notes, including the Purchased Notes and the Interest which were sold by the Plan to the Trustee. The Trustee, as the responsible fiduciary for the Plans, will take whatever actions are necessary to protect the Plan's interest with respect to the Accrued Interest Payment and the Additional Interest Payment. The Trustee will provide the Department with documentation, within thirty (30) days of the Accrued Interest Payment and Additional Interest Payment, which verifies that the total amount of such payments have been made to the Plan. The Trustee states that, upon any sale or other disposition of any of the Purchased Notes or the Interest, in the event the Trustee receives proceeds in excess of the amount which the Trustee paid the Plan for these assets, the additional proceeds shall be promptly forwarded to the Plan.

7. In summary, the applicant represents that the transactions satisfied the criteria of section 408(a) of the Act for the following reasons:

(a) The sale of the Purchased Notes and the Interest by the Plan to the Trustee were one-time transactions for cash;

(b) The Plan received the full outstanding principal balances on the Purchased Notes, an amount which the Trustee determined to be in excess of the fair market value of such Notes at the time of the transaction;

(c) The Plan received a price for the Interest (i.e., the Plan's 71% interest in the Oakland Property) which was equal to the outstanding principal balance that had been due on the Kakos Note which had been secured by the Oakland Property, and the Trustee determined that this price represented an amount which exceeded the fair market value of the Interest at the time of the transaction;

(d) The transactions enabled the Plan to dispose of non-income-producing assets without incurring any losses on the investments or any expenses with respect to their disposition;

(e) The Plan received a full ''makewhole'' payment from the Trustee on October 25, 1996, in connection with the Plan's investment losses on the Grass Valley Property which was sold to an unrelated party on June 28, 1996;

(f) The Accrued Interest Payment to be paid by the Trustee to the Plan will represent an amount equal to the total accrued but unpaid interest that was due on the Notes on October 25, 1996;

(g) The Additional Interest Payment to be paid by the Trustee to the Plan will represent a reasonable rate of interest on the amount of the Accrued Interest Payment, as determined by the U.S. Treasury rate for 3-month Treasury Bills;

(h) The Trustee will provide the Department with documentation, within thirty (30) days of the Accrued Interest Payment and Additional Interest Payment, which verifies that the total amount of such payments have been made to the Plan;

(i) The Trustee, as the responsible fiduciary for the Plans, took appropriate actions necessary to safeguard the interests of the Plan and its participants and beneficiaries in connection with the past transactions, and will take whatever actions are necessary to continue to protect the Plan's interest with respect to the Accrued Interest Payment and the Additional Interest Payment; and

(j) Any proceeds received by the Trustee upon sale or other disposition of the Purchased Notes or the Interest in excess of the amount paid to the Plan by the Trustee for such assets shall be promptly forwarded to the Plan.

Notice to Interested Persons

The applicant will distribute (by first class mail, personal delivery or by posting in the applicant's places of business) a copy of the notice of pendency of this proposed exemption (the Notice) within fifteen (15) days of the date such Notice is published in the **Federal Register**. The Notice will be given to all interested persons, including all participants in the Plan and all employee organizations in which such participants are members.

The distribution to interested persons shall include a copy of the Notice, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption.

Comments and requests for a public hearing with respect to the proposed exemption are due within forty-five (45) days following the publication of the Notice in the **Federal Register**.

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

General Information

The attention of interested persons is directed to the following:

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

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each

application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of October, 2000.

Ivan Strasfeld,

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

[FR Doc. 00–26789 Filed 10–18–00; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–126]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

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

DATES: Tuesday, November 28, 2000, 8:30 a.m. to 5:00 p.m.; and Wednesday, November 29, 2000, 8 a.m. to 12:00 Noon.

ADDRESSES: National Aeronautics and Space Administration Room 6H46, 300 E Street, SW., Washington, DC 20546.

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

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

—Status of Aerospace Technology Programs
—Small Aircraft Transportation System (SATs) Report
—Status of Icing Workshop
—2nd, 3rd, and 4th Generation Reusable Launch Vehicles (RLVs)
—Government Performance Results Act (GPRA) Briefings
—Research Test Pilot Issues and Concerns
—Subcommittee Reports

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

Dated: October 16, 2000.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–26930 Filed 10–18–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–127]

NASA Advisory Council, Space Flight Advisory Committee (SFAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

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

DATES: Monday, November 6, 2000 from 8 a.m. until 5:30 p.m. and on Tuesday, November 7, 2000 from 8 a.m. until 3:30 p.m.

ADDRESSES: Kennedy Space Center Visitor Complex, Atlas Room, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Y. Edgington (Stacey), Code M, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4519.

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

—Overview, status and metrics for Office of Space Flight programs.
—Shuttle upgrades discussion.
—International Space Station commercialization

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 16, 2000.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–26931 Filed 10–18–00; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1]

General Electric Company, Morris Operation; Notice of Docketing, Notice of Consideration of Issuance, and Notice of Opportunity for a Hearing for the Renewal of Materials License SNM–2500 for the Morris Operation Independent Spent Fuel Storage Installation

The Nuclear Regulatory Commission (NRC or Commission) is considering a renewal application dated May 22, 2000, of a materials license under the provisions of 10 CFR Part 72, from General Electric Company (GE) for renewal of its Morris Operation independent spent fuel storage installation (ISFSI) license (SNM–2500). GE has owned and operated Morris Operations since its construction under Atomic Energy Commission Provisional Construction Permit No. CPCSF–3 issued in December 1967, as a spent fuel reprocessing facility, and specifically as an ISFSI for the last 18 years under the current NRC License SNM–2500. This application was docketed under 10 CFR Part 72; the ISFSI Docket No. is 72–1 and will remain the same for this action. The GE Morris Operation is located in Gooselake Township, Grundy County, Morris, Illinois, near the confluence of the Kankakee and Des Plaines Rivers. If granted, the license will authorize the applicant to continue to store spent fuel in a wet storage facility for a term of twenty (20) years.

Prior to issuance of the requested license renewal, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. The issuance of the materials license will not be approved until the NRC has reviewed the application and has concluded that renewal of the license will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public. The NRC will complete an environmental evaluation, in accordance with 10 CFR Part 51, to determine if the preparation of an environmental impact statement is warranted or if an environmental assessment and finding of no significant impact are appropriate. This action will be the subject of a subsequent notice in the **Federal Register**. Pursuant to 10 CFR 2.105, by November 20, 2000, the applicant may file a request for a hearing; and any person whose interest may be affected by this proceeding and who wishes to participate as a party in