

Issuer receiving such payments on at least a quarterly basis;

(3) It is not "leveraged" as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)–(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) the principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

#### IV. Modifications

For the Underwriter Exemptions provided to Residential Funding Corporation, Residential Funding Mortgage Securities, Inc., et al. and GE Capital Mortgage Services, Inc. and GECC Capital Markets (the Applicants) (PTEs 94–29 and 94–73, respectively);

A. Section III.A. of this exemption is modified to read as follows:

A. "Security" means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which (i) one of the Applicants or any of its Affiliates is the Sponsor, [and] an entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this exemption, is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent or (ii) one of the Applicants or any of its Affiliates is the sole underwriter or the manager or co-manager of the underwriting syndicate, or a selling or placement agent.

**B. Section III.C. of this exemption is modified to read as follows:**

C. Underwriter means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this exemption. In addition, the term Underwriter includes Ironwood Capital Partners Ltd., Deutsche Bank AG, New

York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc.; ABN AMRO and Credit Lyonnais Securities, Inc. (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62);

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

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) above is a manager or co-manager with respect to the Securities; or

(4) Any entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this exemption.

#### I. Effective Date

This exemption is effective for transactions occurring on or after August 23, 2000, except as otherwise provided in section I.C., subsection II.A.(4)(b), and section III.JJ. of the exemption. Section I.C., relating to the defeasance of mortgage obligations, is applicable to transactions occurring on or after January 1, 1999; subsection II.A.(4)(b) is applicable to transactions occurring on or after January 1, 1998; and section III.JJ., relating to Eligible Yield Supplement Agreements involving notional principal contracts, is applicable to transactions occurring on or after April 7, 1998.

Signed at Washington, D.C., this day of November, 2000.

**Ivan L. Strasfeld,**

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

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 2000–55; Exemption Application No. D–10863, et al.]**

### Grant of Individual Exemptions; Country Securities Corporation (Countrywide)

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of

the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

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

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### Countrywide Securities Corporation (Countrywide) Located in Calabasas, California

**[Prohibited Transaction Exemption 2000–55; Exemption Application No. D–10863]**

### Exemption

#### I. Transactions

A. Effective January 28, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by

section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

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

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2). Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.<sup>1</sup>

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

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

(i) The plan is not an Excluded Plan;

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

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

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.<sup>2</sup> For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

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

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

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

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

(2) The pooling and servicing agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.<sup>3</sup>

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of

<sup>2</sup> For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

<sup>3</sup> In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to "prospectus" include any related prospectus supplement thereto, pursuant to which certificates are offered to investors.

section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

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

## II. General Conditions

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

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

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

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

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

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more

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

than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

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

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

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

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

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

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

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will be either

monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the Rating Agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

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

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

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

### III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate—

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

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

(2) A certificate denominated as a debt instrument—

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

(b) That is issued by, and is an obligation of, a trust;

with respect to certificates defined in (1) and (2) above for which Countrywide or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notwithstanding the foregoing, the term “trust” does not include any investment pool unless: (i) The investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools

have been rated in one of the three highest generic rating categories by a Rating Agency for at least one year prior to the plan’s acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan’s acquisition of certificates pursuant to this exemption.

C. “Underwriter” means:

(1) Countrywide;

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

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

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

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

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

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

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

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

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

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

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

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

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

(7) any affiliate of a person described in (1)–(6) above.

M. “Affiliate” of another person includes:

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

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

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

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

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

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

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

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

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

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

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

Q. “Forward delivery commitment” means a contract for the purchase or

sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

W. "Rating Agency" means Standard & Poor's Structured Rating Group,

Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., Fitch IBCA, Inc., or their successors;

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

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

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

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

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

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

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

For a more complete statement of the fact and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 19, 2000 at 65 FR 56720.

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

## **Journal Company, Inc. 401(k) Savings Plan (the Plan) Located in Trenton, New Jersey**

[Prohibited Transaction Exemption 2000-56; Exemption Application No. D-10781]

### **Exemption**

The restrictions of 406(a) and 406(b)(1), 406(b)(2), and 406(b)(3) 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 to: (a) The receipt by certain affiliates and predecessors of Journal Register East, Inc. (JRE), by Bank of America NA. (the successor in interest to Boatmen's Trust Company) (the Bank), and by certain individuals alleged in a complaint to have been or to be fiduciaries of the Plan (collectively, the Defendants) of releases signed by participants in the Plan, in which such participants waive their rights to sue in connection with the acquisition and retention in such participants' accounts in the Plan of interests in certain guaranteed investment contracts (GICs) issued by Confederation Life Insurance Company (CLI); and (b) the payment by the corporate Defendants of a settlement amount to be allocated to the accounts of participants in the Plan in exchange for release from liability obtained from such participants; provided that the following conditions are satisfied:

(a) The payment of the settlement amount is a one-time cash transaction;

(b) Each participant whose account in the Plan has an interest in the GICs decides whether, in exchange for the settlement amount, to waive his or her right to sue in connection with the acquisition and retention in such participant's account in the Plan of interests in such GICs; or to opt out of such settlement and retain all such rights and causes of action;

(c) Pursuant to the terms of the settlement, the account of each participant in the Plan who waives his or her right to sue receives an amount of the settlement proceeds in proportion to the interest each such account has in the GICs;

(d) Pursuant to the terms of the settlement, the corporate Defendants are responsible for paying the attorneys' fees to the law firm representing the plaintiffs (the Plaintiffs);

(e) A portion of the fees that would have been due and payable to the Plaintiffs' attorneys will be withheld from the settlement proceeds by JRE, an employer of employees covered by the Plan, and paid to the Plaintiffs' in cash based on each Plaintiff's share of the amount of the settlement proceeds allocated to all of the Plaintiffs;

(f) Notwithstanding the waiver by any participant of his or her right to sue, the Plan does not release any claims, demands, and/or causes of action which it may have in connection with the acquisition and retention in participants' accounts in the Plan of interests in the GICs;

(g) No expenses are incurred by the Plan as a result of the settlement;

(h) The Plaintiffs' attorneys and each participant who signs the release and waives his or her right to sue will monitor the payment of the settlement proceeds by the corporate Defendants and the allocation of the proper amounts into such participants' accounts in the Plan, in order to ensure compliance with the terms of the settlement agreement; and

(i) All terms and conditions of the transaction are no less favorable than those obtainable at arm's length with unrelated third parties.

**EFFECTIVE DATE:** This exemption is effective upon the date that the Defendants enter into a settlement of the lawsuit with the Plaintiffs.

#### Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption. As set forth in the Notice, interested persons consisted of all participants and beneficiaries in the Plan who have an interest in the GICs. The deadline for submission of such comments was within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on September 7, 2000. All comments and requests for a hearing were due on October 23, 2000.

On September 25, 2000, the applicant informed the Department in writing that, with the exception of seven (7) former participants in the Plan, notification had been sent to all interested persons by first class mail to the last known address. In a letter dated September 29, 2000, the applicant notified the Department that, as of September 27, 2000, a copy of the Notice had been sent to all former participants in the Plan who had not received the earlier mailing. In order to allow all interested parties to have the full comment period after receiving the Notice, the Department required, and the applicants agreed to, an extension of the deadline when comments would be due on the proposed exemption. Accordingly, all comments and requests for a hearing were due on October 30, 2000.

During the comment period, the Department received no requests for a hearing. However, the Department received two (2) comment letters in which interested persons informed the Department of factual changes to the Summary of Facts and Representations (SFR) in the Notice. In this regard, in a letter, dated September 12, 2000, the attorney for Boatman's Trust Company informed the Department that, effective March 13, 1998, Boatman's Trust Company had merged with Bank of America NA (formerly known as NationsBank, NA). The attorney advised the Department that Bank of America NA at the time of the merger assumed all of the obligations of Boatman's Trust Company, including those obligations under the terms of the settlement agreement. The Department acknowledges the merger of Boatman's Trust Company with Bank of America NA and has amended the operant language of this exemption to reflect such change.

In a letter dated October 30, 2000, the attorney for the Plaintiffs informed that Department that the correct name of the labor organization mentioned in the SFR on page 54304, column 3, lines 35–36 of the Notice is the Woonsocket Newspaper Guild CWA/TNG Local 31182, AFL–CIO. The Department acknowledges the correct name of the labor organization and has included such information in the record of the exemption application.

After giving full consideration to the entire record, including the written comments, 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, NW., 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 of Proposed Exemption published on September 7, 2000, at 65 FR 54303.

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

#### Sun Life Assurance Company of Canada (Sun Life) Located in Toronto, Ontario, Canada

[Prohibited Transaction Exemption 2000–57; Exemption Application No. D–10814]

#### Exemption

##### Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective March 22, 2000, to the (1) receipt of common stock (Common Shares) issued by Sun Life Financial Services of Canada, Inc., the holding company for Sun Life; or (2) the receipt of cash (Cash) or policy credits (Policy Credits), by or on behalf of any eligible policyholder (the Eligible Policyholder) of Sun Life which is an employee benefit plan (the Plan), subject to applicable provisions of the Act and/or the Code, including any Eligible Policyholder which is a Plan established by Sun Life or an affiliate for their own employees (the Sun Life Plans), in exchange for such Eligible Policyholder's membership interest in Sun Life, in accordance with the terms of a plan of conversion (the Conversion Plan) adopted by Sun Life and implemented under the insurance laws of Canada and the State of Michigan.

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

##### Section II. General Conditions

(a) The Conversion Plan was implemented in accordance with procedural and substantive safeguards that were imposed under the insurance laws of Canada and the State of Michigan and was subject to review and/or approval in Canada by the Office of the Superintendent of Financial Institutions (OSFI) and the Minister of Finance (the Canadian Finance Minister) and, in the State of Michigan, by the Commissioner of Insurance (the Michigan Insurance Commissioner).

(b) OSFI, the Canadian Finance Minister and the Michigan Insurance Commissioner reviewed the terms of the options that were provided to Eligible Policyholders of Sun Life as part of their separate reviews of the Conversion Plan. In this regard,

(1) OFSI (i) authorized the release of the Conversion Plan and all information to be sent to Eligible Policyholders; (ii) oversaw each step of the conversion process (the Conversion); and (iii) made a final recommendation to the Canadian Finance Minister on the Conversion Plan.

(2) The Canadian Finance Minister, in his sole discretion, could consider such factors as whether: (i) the Conversion Plan was fair and equitable to Eligible Policyholders; (ii) whether the Conversion Plan was in the best interests of the financial system in Canada; and (iii) sufficient steps had been taken to inform Eligible Policyholders of the Conversion Plan and of the special meeting on the Conversion.

(3) The Michigan Insurance Commissioner made a determination that the Conversion Plan was (i) fair and equitable to all Eligible Policyholders and (ii) consistent with the requirements of Michigan law.

(4) Both the Canadian Finance Minister and the Michigan Insurance Commissioner concurred on the terms of the Conversion Plan.

(c) Each Eligible Policyholder had an opportunity to vote to approve the Conversion Plan after full written disclosure was given to the Eligible Policyholder by Sun Life.

(d) One or more independent fiduciaries of a Plan that was an Eligible Policyholder received Common Shares, Cash or Policy Credits pursuant to the terms of the Conversion Plan and neither Sun Life nor any of its affiliates exercised any discretion or provided "investment advice," as that term is defined in 29 CFR 2510.3-21(c), with respect to such acquisition.

(e) After each Eligible Policyholder was allocated 75 Common Shares, additional consideration was allocated to an Eligible Policyholder who owned an eligible policy based on an actuarial formula that took into account such factors as the total cash value, the base premium and the duration of such eligible policy. The actuarial formula was reviewed by the Canadian Finance Minister and the Michigan Insurance Commissioner.

(f) With respect to a Sun Life Plan, where the consideration was in the form of Cash or Common Shares, an independent Plan fiduciary—

(1) Determined that the Conversion Plan was in the best interest of the Sun Life Plans and their participants and beneficiaries;

(2) Voted for the Conversion Plan on behalf of the Sun Life Plans;

(3) Received either Common Shares or Cash on behalf of a Sun Life Plan;

(4) Determined that the transactions did not violate the investment objectives and policies of the Sun Life Plans;

(5) Negotiated on behalf of the contributory Sun Life Plans and determined a reasonable allocation of proceeds between Sun Life and the participants in the Sun Life Plans; and

(6) Took (and will continue to take until the proposed exemption becomes final) all actions that were (or will be) necessary and appropriate to safeguard the interests of the Sun Life Plans.

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

(h) No Eligible Policyholder paid any brokerage commissions or fees to Sun Life or its affiliates in connection with their receipt of Common Shares or with respect to the implementation of the initial public offering in which an Eligible Policyholder could elect to sell such Common Shares for cash.

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

### *Section III. Definitions*

For purposes of this exemption:

(a) The term "Sun Life" means Sun Life Assurance Company of Canada and any affiliate of Sun Life as defined in paragraph (b) of this Section III.

(b) An "affiliate" of Sun Life includes—

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

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

(c) The term "Eligible Policyholder" means a policyholder who—

(i) On January 27, 1998 (the Eligibility Day) was the owner of a voting policy;

(ii) Was the holder of a voting policy issued by Sun Life, if the policy was applied for by that person on or before the Eligibility Day and the application was received by Sun Life within a period specified by Sun Life in the Conversion Plan;

(iii) Was the holder of a voting policy, issued to the holder by Sun Life, that lapsed before Sun Life's Eligibility Day and was reinstated during the period beginning on the Eligibility Day and ending 90 days before the day on which Sun Life's Special Meeting was held; or

(iv) Was named by Sun Life in its Conversion Plan as an Eligible Policyholder under subsection 4(4) of the Conversion Regulations.

(d) The term "Policy Credit" means—

(1) For an individual or joint ordinary life insurance policy, an increase in the paid-up dividend additional cash value or dividend accumulation value;

(2) For a policy that is in force as extended term life insurance pursuant

to a nonforfeiture provision of a life insurance policy, an extension of the coverage expiry date;

(3) For a policy which is a deferred annuity certificate, an increase in the deferred annuity payment; and

(4) For a policy which is an individual accumulation annuity, an increase in the account value.

**EFFECTIVE DATE:** This exemption is effective as of March 22, 2000.

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 that was published on September 7, 2000 at 65 FR 54307.

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

### **General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions 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, DC, this 6th day of November, 2000.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Pension and Welfare Benefits,  
Administration, U.S. Department of Labor.*  
[FR Doc. 00-28856 Filed 11-9-00; 8:45 am]

**BILLING CODE 4510-29-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### Agency Report Forms Under OMB Review

**AGENCY:** National Aeronautics and Space Administration (NASA).

[Notice 00-135]

**ACTION:** Notice of Agency Report Forms Under OMB Review.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)). This information is used to determine whether the requested license should be granted.

**DATES:** Written comments and recommendations on the proposal for the collection of information should be received within 60 days of this notice.

**ADDRESSES:** All comments should be addressed to Mr. Brian Dunbar, Code PM, National Aeronautics and Space Administration, Washington, DC 20546. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358-1223.

### Reports

*Title:* Voluntary Response Survey of NASA Internet Customers

*OMB Number:* 2700-.

*Type of review:* New.

*Need and Uses:* NASA is seeking input from Internet users that they will use to redesign the NASA Home Page, the NASA-wide Search Engine and other Internet offerings so that the NASA Web is more customer-focused and provides users with the information they are seeking more quickly.

*Affected Public:* Individuals or households.

*Number of Respondents:* 100.

*Responses Per Respondent:* 4.

*Annual Responses:* 400.

*Hours Per Request:* 15 min.

*Annual Burden Hours:* 100.

*Frequency of Report:* quarterly.

**Dr. David B. Nelson,**

*Deputy Chief Information Officer, Office of the Administrator.*

[FR Doc. 00-28955 Filed 11-9-00; 8:45 am]

**BILLING CODE 7510-01-P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Notice of Meetings

**TIME AND DATE:** 10 a.m., Thursday, November 16, 2000.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** 1. Appeals from Two (2) Federal Credit Unions of the Regional Directors' Denials of Conversion from a Multiple Common Bond to a Community Charter.

2. Advance Notice of Proposed Rulemaking: Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.

3. Proposed Rule: Amendments to Part 721, NCUA's Rules and Regulations, Federal Credit Union Insurance and Group Purchasing Activities.

4. NCUA's 2001 Annual Performance Plan.

5. Proposed Information Systems and Technology Examination Program (ISTEP).

6. NCUA's 2001/2002 Operating Budget.

7. Proposed Operating Fee Scale.

**RECESS:** 11:15 a.m.

**TIME AND DATE:** 11:30 a.m., Thursday, November 16, 2000.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** 1. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

2. One (1) Personnel Matter. Closed pursuant to exemptions (2) and (6).

**FOR FURTHER INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone 703-518-6304.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 00-29105 Filed 11-8-00; 3:58 pm]

**BILLING CODE 7535-01-M**

## NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

### Agency Information Collections Activities; Submission for OMB Review, Comment Request; Technology Survey for Libraries and Museums

**AGENCY:** Institute of Museum and Library Services.

**ACTION:** Notice of requests for new information collection approval.

**SUMMARY:** The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). Currently, the Institute of Museum and Library Services is soliciting comment concerning extending collection entitled, Technology Survey for Libraries and Museums. A copy of this proposed form, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Public and Legislative Affairs, Mamie Bittner at (202) 606-8339. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606-8636.

**DATES:** Comments must be received by December 13, 2000. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**ADDRESSES:** Send comments to: Mamie Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 510, Washington, DC 20506.