

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.

Agency: Employee Benefits Security Administration (EBSA).

Type of Review: Extension of a currently approved collection.

Title: Prohibited Transaction Class Exemption 97-41; Collective Investment Funds Conversion Transactions.

OMB Number: 1210-0104.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Number of Respondents: 75.

Number of Annual Responses: 75.

Estimated Time Per Response: 35 hours.

Total Burden Hours: 2,625.

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$186,750.

Description: Prohibited Transaction Class Exemption 97-41 provides an exemption from the prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (Code). The exemption permits an employee benefit plan to purchase shares of one or more open-end investment companies (Mutual Funds) registered under the Investment Advisers Act of 1940 in exchange for plan assets transferred in-kind to the Mutual Fund from a collective investment fund (CIF) maintained by a bank or plan adviser, where the bank or plan adviser is both the investment adviser to the Mutual Fund and a fiduciary of the plan. The transfer and purchase must be in connection with a complete withdrawal of a plan's assets from the CIF. The exemption affects participants and beneficiaries of the plans that are involved in such transactions as well as the bank or plan adviser and the Mutual Fund.

In order to ensure that the exemption is not abused and that rights of participants and beneficiaries are protected, the Department requires the bank to give the independent fiduciary notice of the in-kind transfer and full written disclosure of information concerning the registered investment company. Further, the bank or plan

adviser must provide the independent fiduciary with certain ongoing disclosures.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03-14528 Filed 6-9-03; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003-11; Exemption Application No. D-10840 et al.]

Grant of Individual Exemptions; Deutsche Bank AG

AGENCY: Employee Benefits Security 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).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is 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 exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Deutsche Bank AG, located in New York, New York.

[Prohibited Transaction Exemption 2003-11; Exemption Application Number D-10840.]

Exemption

Section I—Retroactive Relief

For the period from June 4, 1999, until June 10, 2003, the restrictions of section 406(a) and (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the investment of the assets of a Bank Plan or a Client Plan (either, a Plan) in deposits of Deutsche Bank AG, its current or future branches, and/or its current or future subsidiaries, if—

(a) Deutsche Bank AG is supervised by the Deutsche Bundesbank and/or the Bundesanstalt für Finanzdienstleistungsaufsicht (the BaFin),¹ and, in the case of a subsidiary of Deutsche Bank AG, is also supervised by similar local government authorities;

(b) The deposit bears a rate of interest that is reasonable, as defined in section III(f);

(c) The investment is:

(i) Made by a Bank Plan; or

(ii) Made by a Client Plan and expressly authorized pursuant to a provision of such Plan (or trust thereof) or expressly authorized by an independent fiduciary,² as defined in

¹ For purposes of this exemption, supervision of Deutsche Bank AG by the BaFin is deemed to include supervision of Deutsche Bank AG by the Federal Banking Supervisory Authority (das Bundesaufsichtsamt fuer das Kreditwesen), the predecessor to the BaFin.

² The Department notes that the Act's general standards of fiduciary conduct apply to arrangements involving the investment of Plan assets permitted by this exemption. In this regard, section 404 of the Act requires, among other things, a fiduciary to discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, an independent fiduciary with respect to a Plan must act prudently with respect to: (1) The decision to enter into an arrangement described

section III(g), with respect to such Plan; and

(d) In situations where Deutsche Bank AG, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank AG does not average, over any six month period, more than 5% of the total amount of the plan's assets managed by such investment manager.

Section II—Prospective Relief

Effective after June 10, 2003, the restrictions of section 406(a) and (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the investment of the assets of a Plan in deposits of Deutsche Bank AG, its current or future branches, and/or its current or future subsidiaries, if—

(a) Deutsche Bank AG is supervised by the Deutsche Bundesbank and/or the BAFin, and, in the case of a subsidiary of Deutsche Bank AG, is also supervised by similar local government authorities;

(b) The deposit bears a rate of interest that is reasonable, as defined in section III(f);

(c) Prior to: (i) an investment of Plan assets in bank deposits; or (ii) the commencement of any Deutsche Bank AG program that invests Plan assets in such deposits, an independent fiduciary (other than with respect to a Bank Plan) receives a written disclosure describing:

(A) The circumstances pursuant to which Plan assets will be invested in deposits of Deutsche Bank AG or its subsidiaries or branches; and

(B) A description of the applicable sovereign regulatory authority/authorities governing the activities of Deutsche Bank AG;

(d) A fiduciary independent of Deutsche Bank AG and its affiliates (other than with respect to a Bank Plan) receives, upon request, copies of the most recent financial statement of Deutsche Bank AG and/or its subsidiaries;

(e) Immediately after any material adverse change in the financial

condition of Deutsche Bank AG, Deutsche Bank AG will notify each Plan fiduciary of such material adverse change and will not use its authority to continue the program of deposits with respect to the Plans without the consent of a Bank Plan fiduciary or an independent Client Plan fiduciary;

(f) In situations where Deutsche Bank AG, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank AG does not average, over any six month period, more than 1% of the total amount of the plan's assets managed by such investment manager;

(g) Deutsche Bank AG—

(1) Agrees to submit to the jurisdiction of the United States;

(2) Agrees to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Consents to service of process on the Process Agent;

(4) Agrees that it may be sued in the United States Courts in connection with the transactions described in this proposed exemption;

(5) Agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank AG; and

(6) Agrees to comply with, and be subject to, all relevant provisions of the Act.

(h) The investment is:

(i) Made by a Bank Plan and authorized by a Bank Plan fiduciary; or

(ii) Made by a Client Plan and authorized by an independent fiduciary with respect to such Client Plan. Notwithstanding (h)(i) and (h)(ii) above, authorization for the investment by a Plan in the deposits of Deutsche Bank AG may be presumed notwithstanding that Deutsche Bank AG does not receive any response from such Plan pursuant to two written requests by Deutsche Bank AG (one request by a certified mailing that contains only such request) for the authorization, provided that: (A) with respect to Plans that invest in the deposits of Deutsche Bank AG prior to June 10, 2003, the first request occurs not later than July 25, 2003, and the second request occurs within 30 days thereafter; and (B) with respect to Plans that invest in the deposits of Deutsche Bank AG following June 10, 2003, the first request occurs at least 45 days prior to such investment and the second request occurs within 30 days thereafter;

(i) Investments in the deposits of a subsidiary of Deutsche Bank AG will be backed by the full faith and credit of Deutsche Bank AG;

(j) Short-term debt issued by Deutsche Bank AG is rated in one of the three highest categories by an independent rating agency such as Standard & Poors, Moody's or a similar institution;

(k) Deutsche Bank AG maintains or causes to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described below in paragraph (l) of this exemption to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Deutsche Bank AG, the records are lost or destroyed prior to the end of the six-year period; and

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

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

(ii) Any fiduciary of a Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraphs (l)(1)(ii) and (iii) shall be authorized to examine trade secrets of Deutsche Bank AG, or commercial or financial information that is privileged or confidential.

Section III—Definitions

(a) The term “bank” means a bank supervised by the United States, a state, or a sovereign government.

(b) An “affiliate” of a person includes:

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

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

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

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

herein; and (2) the negotiation of the terms of such an arrangement, including, among other things, the specific terms by which Plan assets will be invested in the deposits of Deutsche Bank AG. The Department further emphasizes that it expects plan fiduciaries, prior to allowing or authorizing the transactions described herein, to fully understand the benefits and risks associated with such transactions, following disclosure by Deutsche Bank AG of all relevant information. In addition, the Department notes that such plan fiduciaries must periodically monitor, and have the ability to so monitor, the services provided by Deutsche Bank AG.

(d) A "Client Plan" refers to an employee benefit plan as described in section 3(3) with respect to which Deutsche Bank AG acts as a trustee or custodian.

(e) A "Bank Plan" means a plan sponsored or maintained by: (1) Deutsche Bank AG or any person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, Deutsche Bank AG or; (2) any entity in which Deutsche Bank AG holds more than a ten percent equity interest.

(f) A "reasonable" rate of interest means a rate of interest determinable by reference to short-term rates available to other customers of the bank, those offered by other banks, those available from money market funds, those applicable to short-term instruments such as repurchase agreements, or by reference to a benchmark such as sovereign short term debt (e.g., in the U.S., treasury bills), all in the jurisdiction where the rate is being evaluated. The requirement that an interest rate be "reasonable" does not preclude the payment of no interest in situations where the deposit is with a branch or subsidiary of Deutsche Bank AG that acts as a local subcustodian and no interest is paid to similarly situated custody clients of the global custodian so long as, prior any investment in deposits that pays no interest, Deutsche Bank AG discloses to the appropriate Plan fiduciary that no interest may be paid with respect to an arrangement described above. Notwithstanding the foregoing, no interest may be paid if local law is changed to preclude the payment of interest, and Deutsche Bank AG discloses such fact to the appropriate Plan fiduciary as soon as reasonably possible.

(g) An "independent fiduciary" means a fiduciary independent of Deutsche Bank AG and its affiliates who has the authority to make the investments described herein, or to instruct the trustee or other fiduciary with respect to such investments, and who has no interest in the transaction which may affect the exercise of such authorizing fiduciary's best judgment as a fiduciary so as to cause such authorization to constitute an act described in section 406(b) of the Act.

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 March 3, 2003, at 68 FR 10035.

FOR FURTHER INFORMATION CONTACT:
Christopher Motta of the Department,

telephone (202) 693-8544. (This is not a toll-free number.)

Deutsche Bank AG (Deutsche Bank), located in Germany, with Affiliates in New York, New York and other locations.

[Prohibited Transaction Exemption 2003-12; Exemption Application Number D-11055]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective December 11, 2001, to the following foreign exchange transactions between Deutsche Bank or a foreign affiliate thereof that is a bank or broker-dealer (collectively, DBAG), and an employee benefit plan with respect to which DBAG is a trustee, custodian, fiduciary or other party in interest, pursuant to a standing instruction, if the conditions set forth in section II below are met:

- (1) An income item conversion; or
- (2) A *de minimis* purchase or sale transaction.

Section II. Conditions

(a) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's-length foreign exchange transactions between unrelated parties.

(b) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms afforded by DBAG in comparable arm's-length foreign exchange transactions involving unrelated parties.

(c) DBAG does not have any discretionary authority or control with respect to the investment of the plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to the investment of those assets.

(d) DBAG maintains at all times written policies and procedures regarding the handling of foreign exchange transactions for plans with respect to which DBAG is a trustee, custodian, fiduciary or other party in interest or disqualified person which assure that the person acting for DBAG knows that he or she is dealing with a plan.

(e) The covered transaction is performed under a written authorization executed in advance by a fiduciary of

the plan whose assets are involved in the transaction, which plan fiduciary is independent of DBAG. The written authorization must specify:

(1) The identities of the currencies in which covered transactions may be executed; and

(2) That the authorization may be terminated by either party without penalty on no more than 10 days notice.

(f)(1) Income item conversions are executed within no more than one business day from the date of receipt of notice by DBAG that such items are good funds, and a foreign custodian which is an affiliate of DBAG, provides such notice to DBAG within "one business day" of its receipt of good funds;

(2) *De minimis* purchase and sale transactions are executed within no more than one business day from the date that either DBAG receives notice from a foreign custodian that the proceeds of a sale of foreign securities dominated in foreign currency are good funds, or the direction to acquire foreign currency was received by DBAG and a foreign custodian which is an affiliate of DBAG provides such notice to DBAG within one business day of its receipt of good funds from a sale.

(g)(1) At least once each day, at the time(s) specified in its written policies and procedures, DBAG establishes either a rate of exchange or a range of rates to be used for income item conversions and *de minimis* purchase and sale transactions covered by this exemption.

(2) Income item conversions are executed at the next scheduled time for conversions following receipt of notice by DBAG from the foreign custodian that such funds are good funds. If it is the policy of DBAG to aggregate small amounts of foreign currency until a specified minimum threshold amount is received, then the conversion may take place at a later time but in no event more than 24 hours after such receipt of notice.

(3) *De minimis* purchase and sale transactions are executed at the next scheduled time for such transactions following receipt of either notice that the sales proceeds denominated in foreign currency are good funds, or a direction to acquire foreign currency. If it is the policy of DBAG to aggregate small transactions until a specified threshold amount is received, then the execution may take place at a later time but in no event more than 24 hours after receipt of either notice that the sales proceeds have been received by the foreign custodian as good funds, or a direction to acquire foreign currency.

For purposes of this paragraph (g), the range of exchange rates established by DBAG for a particular foreign currency cannot deviate by more than three percent [above or below] the interbank bid and asked rates as displayed on Reuters or another nationally recognized independent service in the foreign exchange market (provided that the independent service chosen will be consistently used in determining whether the deviation limitation has been met) for such currency at the time such range or rates is established by DBAG;

(h) Prior to the execution of the authorization referred to in paragraph (e), DBAG provides the independent fiduciary with a copy of DBAG's written policies and procedures regarding the handling of foreign exchange transactions involving income item conversions and *de minimis* purchase and sale transactions. The policies and procedures must, at a minimum, contain the following information:

(1) Disclosure of the time(s) each day that DBAG will establish the specific rate of exchange or the range of exchange rates for the covered transactions to be executed and the time(s) that such covered transactions will take place. DBAG shall include a description of the methodology that DBAG uses to determine the specific exchange rate or range of exchange rates;

(2) Disclosure that income item conversions and *de minimis* purchase and sale transactions will be executed at the first scheduled transaction time after notice that good funds from an income item conversion or a sale have been received, or a direction to purchase foreign currency has been received. To the extent that DBAG aggregates small amounts of foreign currency until a specified minimum threshold amount is met, a description of this practice and disclosure of the threshold amount; and

(3) A description of the process by which DBAG's foreign exchange policies and procedures for income item conversions and *de minimis* purchase and sale transactions may be amended and disclosed to plans.

(i) DBAG furnishes to the independent fiduciary a written confirmation statement with respect to each covered transaction not more than five business days after execution of the transaction.

(1) With respect to income item conversions, the confirmation shall disclose the following information:

- (A) Account name;
- (B) Date of notice that good funds were received;
- (C) Transaction date;

- (D) Exchange rate;
- (E) Settlement date;
- (F) Identity of foreign currency;
- (G) Amount of foreign currency sold;
- (H) Amount of U.S. dollars or other currency credited to the plan; and

(2) With respect to *de minimis* purchase and sale transactions, the confirmation shall disclose the following information:

- (A) Account name;
- (B) Date of notice that sales proceeds denominated in foreign currency are received as good funds or direction to acquire foreign currency was received;
- (C) Transaction date;
- (D) Exchange rate;
- (E) Settlement date;
- (F) Currencies exchanged:
 - i. Identity of the currency sold;
 - ii. Amount sold;
 - iii. Identity of the currency purchased; and
 - iv. Amount purchased.

(j) DBAG—

(1) Agrees to submit to the jurisdiction of the United States;

(2) Agrees to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Consents to service of process on the Process Agent;

(4) Agrees that it may be sued in the United States Courts in connection with the transactions described in this exemption;

(5) Agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank; and

(6) Agrees to comply with, and be subject to, all relevant provisions of the Act.

(k) DBAG maintains, within territories under the jurisdiction of the United States Government, for a period of six years from the date of the transaction, the records necessary to enable the persons described in paragraph (l) of this section to determine whether the applicable conditions of this exemption have been met, including a record of the specific exchange rate or range of exchange rates DBAG established each day for foreign exchange transactions effected under standing instructions for income item conversions and *de minimis* purchase and sale transactions. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond DBAG's control, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than DBAG shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of

the Code, if the records, are not maintained by DBAG, or are not made available for examination by DBAG, or its affiliate as required by paragraph (l) of this section.

(l)(1) Except as provided in subparagraph (2) of this paragraph and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (k) of this section are available at their customary location for examination, upon reasonable notice, during normal business hours by:

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

(B) Any fiduciary of a plan who has authority to acquire or dispose of the assets of the plan involved in the foreign exchange transaction or any duly authorized employee or representative of such fiduciary.

(C) Any contributing employer to the plan involved in the foreign exchange transaction or any duly authorized employee or representative of such employer.

(2) None of the persons described in subparagraphs (B) and (C) shall be authorized to examine DBAG's trade secrets or commercial or financial information of DBAG, which is privileged or confidential.

Section III. Definitions and General Rules

For purposes of this exemption,

(a) A "foreign exchange" transaction means the exchange of the currency of one nation for the currency of another nation.

(b) The term "standing instruction" means a written authorization from a plan fiduciary, who is independent of DBAG, to DBAG to effect the transactions specified therein pursuant to the instructions provided in such authorization.

(c)(1) The term "independent of DBAG" means a plan fiduciary who is unrelated to, and independent of, DBAG. For purposes of this exemption, a plan fiduciary will be deemed to be unrelated to, and independent of, DBAG if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of DBAG and represents that such fiduciary shall advise DBAG if those facts change.

(2) Notwithstanding anything to the contrary in this section III (c), a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with DBAG;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from DBAG for his own personal account in connection with any transaction described in this exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of DBAG, responsible for the transactions described in section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the plan sponsor or of the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in section I. However, if such individual is a director of the plan sponsor or of the responsible fiduciary, and if he or she abstains from participation in (A) the choice of DBAG as a directed trustee or custodian and (B) the decision to authorize or terminate authorization for transactions described in section I, then section III(c)(2)(iii) shall not apply.

(3) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

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

(e) An "income item conversion" means: (1) The conversion into U.S. dollars of an amount which is the equivalent of no more than 300,000 U.S. dollars of interest, dividends or other distributions or payments with respect to a security, tax reclaims, proceeds from dispositions of rights, fractional shares or other similar items denominated in the currency of another nation that are received by DBAG on behalf of the plan from the plan's foreign investment portfolio; or (2) the conversion into any currency as required and specified by the standing instruction of an amount which is the equivalent of no more than 300,000 U.S. dollars of interest, dividends, or other distributions or payments with respect to a security, tax reclaims, proceeds from dispositions of rights, fractional shares or other similar items denominated in the currency of another nation that are received by DBAG on behalf of the plan from the plan's foreign investment portfolio, provided that the converted funds are either

transferred to an interest bearing account which provides a reasonable rate of interest within 24 hours of the conversion and held therein pending reinvestment by the plan or the bank reinvests such proceeds within 24 hours of the conversion at the direction of the plan.

(f) A "*de minimis* purchase or sale transaction" means the purchase or sale of foreign currencies in an amount of no more than 300,000 U.S. dollars or the equivalent thereof in connection with the purchase or sale of foreign securities by a plan.

(g) For purposes of this exemption the term "employee benefit plan" refers to a pension plan described in 29 CFR 2510.3-2 and/or a welfare benefit plan described in 29 CFR 2510.3-1.

(h) For purposes of this exemption, the term "good funds" means funds immediately available in cash with no sovereign or other governmental impediments or restrictions to the exchange or transfer of such funds.

(i) For purposes of this exemption, the term "business day" means a banking day as defined by federal or state banking regulations.

(j) For purposes of this exemption, a "foreign affiliate" of Deutsche Bank means any non-U.S. entity that is directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Deutsche Bank.

(k) For purposes of this exemption, the term "bank" means a foreign affiliate of Deutsche Bank: (1) That is a banking institution supervised and examined by the German banking authorities (currently, the Bundesanstalt für Finanzdienstleistungsaufsicht (the BaFin), in cooperation with the Deutsche Bundesbank (the Bundesbank)), or is subject to regulation by similar governmental banking authorities located in the same country as such affiliate; and (2) whose activities are monitored and controlled pursuant to the statutory and regulatory standards of German law applicable to the foreign affiliates of Deutsche Bank engaged in banking activities.

(l) For purposes of this exemption, the term "broker-dealer" means a foreign affiliate of Deutsche Bank: (1) Engaged in the business of effecting transactions in securities for the account of others, or regularly engaged in the business of buying and selling securities for its own account through a broker or otherwise; and (2) supervised by the German authorities responsible for regulating the activities described in (1) of this paragraph, or subject to regulation by similar governmental authorities located

in the country in which such affiliate is located.

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 December 30, 2002 at 67 FR 79649.

FOR FURTHER INFORMATION CONTACT: Christopher Motta, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8544. (This is not a toll-free number.)

Law Offices of Richard D. Gorman Pension & Profit Sharing Plan (the Plan), located in Monterey, California.

[Prohibited Transaction Exemption No. 2003-13; Application No. D-11104]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of unimproved real property (the Property) by the Plan to Mr. Richard Gorman, a trustee of the Plan, and a party in interest with respect to the Plan. This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) The sale is a one-time cash transaction;

(b) The Plan receives the greater of either: (i) \$290,000; or (ii) the fair market value for the Property established at the time of the sale by an independent, qualified appraiser; and

(c) The Plan pays no commissions or other expenses associated with 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 March 21, 2003, at 68 FR 13964.

FOR FURTHER INFORMATION CONTACT: Khalif I. Ford of the Department at (202) 693-8540. (This is not a toll-free number.)

ACR Homes, Inc. Employee Stock Ownership Plan and Trust (the ESOP), located in Roseville, Minnesota.

[Prohibited Transaction Application 2003-14; Exemption Application No. D-11146]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason

of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale on August 28, 2001 (the Stock Redemption), by the ESOP to the ACR Homes, Inc., the sponsoring employer (the Employer), of 3,600 shares of the Employer's class A common stock (the Shares) for \$511,250 in cash; provided that the following conditions were satisfied:

(a) The Stock Redemption was a one-time cash transaction;

(b) The ESOP received the fair market value of the Shares as determined by an independent, qualified appraiser on the date of the Stock Redemption; and

(c) The ESOP paid no commissions or other expenses associated with the Stock Redemption.

EFFECTIVE DATE: This exemption is effective as of August 28, 2001.

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 April 16, 2003, at 68 FR 18686 (the notice).

Written Comments

The Department received one written comment (the Comment) with respect to the notice and no requests for a hearing. The Comment was filed by the attorney for the applicant. The Comment states that the chart contained in Paragraph 2 of the Summary of Facts and Representations in the notice erroneously lists the number of shares owned by Dorothy Nelson (Mrs. Nelson) before the Stock Redemption as 10,400. The correct amount owned by Mrs. Nelson before the Stock Redemption was 10,000 shares.

The Department acknowledges the applicant's correction to the notice, as stated in the Comment. Accordingly, based on the entire record, the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 693-8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his

duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is 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 this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed in Washington, DC, this 5th day of June, 2003.

Ivan Strasfeld,

*Director of Exemption Determinations,
Employee Benefits Security Administration,
Department of Labor.*

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DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Secretary of Labor's Opportunity Award, Exemplary

Voluntary Effort (EVE), and Exemplary Public Interest Contribution (EPIC) Awards. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before August 11, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S-3201, Washington, DC 20210, telephone (202) 693-0418, fax (202) 693-1451, Email hbell@fenix2.dol-esa.gov. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. *Background:* The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of the Secretary of Labor's Opportunity Award, Exemplary Voluntary Effort (EVE), and Exemplary Public Interest Contribution (EPIC) Awards. These awards are presented annually to Federal contractors and non-profit organizations whose activities support the mission of the OFCCP. The recognition of Federal contractors who are in compliance with the OFCCP regulations and who work with community and public interest organizations sends a positive message throughout the U.S. Labor Force and business community.

The Secretary of Labor's Opportunity and EVE award recipients must be Federal contractors covered by Executive Order 11246, as amended; Section 503 of the Rehabilitation Act, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act, as amended.

The Secretary of Labor's Opportunity Award is presented to one contractor each year that has established and instituted comprehensive workforce strategies to ensure equal employment opportunity. The EVE Award is given to those contractors who have demonstrated through programs or activities, exemplary and innovative efforts to create an inclusive American Workforce. The EPIC Award is presented to public interest organizations that have supported equal employment opportunity and linked their efforts with those of the Federal contractors to enhance employment opportunities for those with the least opportunity to join the workforce. Guidelines for the nomination process can be found in Administrative Notice Number 261 dated January 21, 2003.