Section III(b) of the Definitions, as long as the following conditions were met:

(1) The Merger Transaction resulted in Citigroup receiving, among other things, approximately 4 percent of the Legg Mason voting common stock (Legg Mason Common Stock), and non-voting convertible preferred stock (Legg Mason Preferred Stock) which was convertible into approximately 10 percent of Legg Mason Common Stock (together, Legg Mason Stock).

(2) Following the Merger Transaction, Legg Mason Stock was being held by a subsidiary of Citigroup that is not in the vertical chain of ownership with CGMI, and CGMI was not controlling or controlled by the entity holding Legg Mason Stock.

(3) Legg Mason Preferred Stock was converted into Legg Mason Common Stock only after it was sold by Citigroup.

(4) Citigroup engaged in efforts to sell Legg Mason Preferred Stock within a reasonable amount of time pursuant to an underwritten broadly distributed public offering.

(5) Citigroup reduced its holdings in Legg Mason Stock below 10 percent within three months following the consummation of the Merger Transaction.

(6) Citigroup did not participate in any proxy contest or other activities concerning the management of Legg Mason.

(7) Citigroup did not acquire more than 5 percent of Legg Mason Common Stock at any time.

(8) Brandywine and Western operated as separate and autonomous business units within Legg Mason.

(9) The Consulting Group had no ability to exercise control or influence over the business of Brandywine or Western. Similarly, Brandywine and Western had no ability to exercise control or influence over the business of the Consulting Group.

(10) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, with respect to each Portfolio for which Brandywine or Western currently serves as a Sub-Adviser, the percentage of Portfolio assets allocated for management purposes to these entities by the Consulting Group was not increased.

(11) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, Brandywine and Western were not permitted to manage assets for any other Portfolio in the TRAK Program.

(12) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, the fee rates paid to Brandywine and Western were not increased.

(13) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, no other affiliates of Legg Mason were retained to act as Sub-Advisers in the TRAK Program.

(14) The Board of Trustees of the Trust for the Consulting Group subjected Brandywine and Western to the same review process and fiduciary requirements as in effect for all other Sub-Advisers, and to the same performance standards.

Section V. Effective Dates

This exemption is effective: (1) December 1, 2005 until March 10, 2006 with respect to the limited exception described in Section IV; (2) as of December 1, 2005 with respect to the Covered Transactions, the General Conditions and the Definitions that are described in Sections I, II and III; and (3) as of January 1, 2008 with respect to the new fee offset procedure.

Signed at Washington, DC, this 20th day of March, 2009.

Ivan L. Strasfeld,

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

[FR Doc. E9–6621 Filed 3–25–09; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving: 2009–10, Camino Medical Group, Inc. Employee Retirement Plan (the Retirement Plan) D–11336; and 2009–11, JPMorgan Chase Bank, National Association, D–11471

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 (ERISA or 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.

Camino Medical Group, Inc. Employee Retirement Plan
(the Retirement Plan)
Located in Sunnyvale, CA
[Prohibited Transaction Exemption 2009–10;
Exemption Application No. D–11336]

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,[1] shall not apply, effective July 1, 2003 until December 14, 2007, to (1) the leasing (the 2003 Leases) of a medical facility (the Urgent Care Facility) and a single family residence

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

converted to an office (the Residence) by the Retirement Plan to CMG, the sponsor of the Retirement Plan and a party in interest with respect to such plan; and (2) the exercise, by CMG, of options to renew the 2003 Lease with respect to the Residence for one year and the 2003 Lease with respect to the Urgent Care Facility for three years, provided that the following conditions were or will be met:

(a) The terms and conditions of each 2003 Lease were no less favorable to the Retirement Plan than those obtainable by the Retirement Plan under similar circumstances when negotiated at arm's length with unrelated third parties.

(b) The Retirement Plan was represented for all purposes under the 2003 Leases, and during each renewal term, by a qualified, independent fiduciary.

(c) The independent fiduciary negotiated, reviewed, and approved the terms and conditions of the 2003 Leases and the options to renew such leases on behalf of the Retirement Plan and determined that the transactions were appropriate investments for the Retirement Plan and were in the best interests of the Retirement Plan and its participants and beneficiaries.

(d) The rent paid to the Retirement Plan under each 2003 Lease, and during each renewal term, was no less than the fair market rental value of the Urgent Care Facility and the Residence, as established by a qualified, independent appraiser.

(e) The rent was subject to adjustment at the commencement of the second year of each 2003 Lease and each year thereafter by way of an independent appraisal. A qualified, independent appraiser was selected by the independent fiduciary to conduct the appraisal. If the appraised fair market rent of the Urgent Care Facility or the Residence was greater than that of the current base rent, then the base rent was revised to reflect the appraised increase in fair market rent. If the appraised fair market rent of the Urgent Care Facility or the Residence was less than or equal to the current base rent, then the base rent remained the same.

(f) Each 2003 Lease was triple net, requiring all expenses for maintenance, taxes, utilities and insurance to be paid by CMG, as lessee.

(g) The independent fiduciary—

(1) Monitored CMG's compliance with the terms of each 2003 Lease and the conditions of the exemption throughout the duration of such leases and the renewal terms, and was responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of CMG under the terms of such leases.

(2) Expressly approved the renewals of the 2003 Leases beyond their initial terms.

(3) Determined whether the rent had been paid on a monthly basis and in a timely manner based on documentation provided by CMG.

(4) Determined whether CMG owed the Camino Medical Group, Inc. Matching 401(k) Plan (the 401(k) Plan) or the Retirement Plan additional rent by reason of CMG's leasing of the Urgent Care Facility and/or the Residence from such plans prior to July 1, 2003 and ensured that CMG made such payments to the Plans, including reasonable interest.

(h) At all times throughout the duration of each 2003 Lease and each respective renewal term, the fair market value of the Urgent Care Facility and the Residence did not exceed 25 percent of the value of the total assets of the Retirement Plan.

(i) Within 90 days of the publication of the grant notice in the **Federal Register**, Palo Alto Medical Foundation, the successor in interest to CMG, (1) files a Form 5330 with the Internal Revenue Service and pays all applicable excise taxes that are due with respect to the leasing of the Urgent Care Facility and the Residence to CMG by the 401(k) Plan and/or the Retirement Plan prior to July 1, 2003; and (2) provides a copy of the cancelled check and other documentary evidence to the Department indicating that the taxes were correctly computed and paid within 45 days of such payment.

DATES: *Effective Date:* This exemption is effective from July 1, 2003 until December 14, 2007.

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 24, 2008 at 73 FR 79168.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

JPMorgan Chase Bank, National Association, Located in Columbus, Ohio

[Prohibited Transaction Exemption 2009–11; Exemption Application No. D–11471]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (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 lending of securities to affiliates of JPMorgan Chase & Co. Inc. (JPMCC), which are engaged in JPMCC's capital markets line of business (referred to herein as Global Capital Markets), by employee benefit plans (the Client Plans), including commingled investment funds holding Client Plan assets, for which JPMCC through its Financing & Market Products or any other similar division of JPMCB or a U.S. affiliate of JPMCC (collectively, FMP) acts as securities lending agent or sub-agent, and for which JPMCC, through its Investor Services line of Business, as operated through JPMCB and its affiliates (Investor Services), may also act as directed trustee or custodian, and (2) to the receipt of compensation by FMP in connection with the proposed transactions, provided the general conditions set forth below in Section II are met.

Section II. General Conditions

(a) This exemption applies to loans of securities to Global Capital Markets, as operated in the United States (J. P. Morgan Securities Inc., or the U.S. Affiliated Borrower) and in the following foreign countries: the United Kingdom (J. P. Morgan Securities Ltd.), Canada (J. P. Morgan Securities Canada Inc.), Australia (J. P. Morgan Securities Australia Limited), Japan (J. P. Morgan Securities Japan Co. Ltd) (collectively, the Foreign Affiliated Borrowers). Global Capital Markets will also include other companies or their successors which are affiliated with either JPMCB or JPMCC within these countries.[2]

(b) For each Client Plan, neither Investor Services, Global Capital Markets, FMP, nor any other division or affiliate of JPMCC has or exercises discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction (other than with respect to the lending of securities designated by an independent fiduciary of a Client Plan as being available to lend and the investment of cash collateral after securities have been loaned and collateral received), or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, including decisions concerning a Client Plan's acquisition and disposition of securities available for loan.

(i) Notwithstanding the foregoing, for the period from March 16, 2008,

[2] Unless otherwise noted, Global Capital Markets will consist collectively of the above referenced entities.

through June 14, 2008, section II(b) shall not apply to the lending of securities by a Client Plan to Bear Stearns Affiliates, provided that (i) no division or affiliate of JPMCC that has discretionary authority or control with respect to the investment of the assets of the Client Plan involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, has access to information regarding whether the particular securities have been loaned to a Bear Stearns Affiliate, and (ii) an Independent Fiduciary (as defined in section IV(f)) conducts a Review (as defined in section IV(g)) of Client Plan securities loans to Bear Stearns Affiliates and within 180 days of the date of publication of this proposed amendment in the **Federal Register**, issues a written report presenting its specific findings.

(c) Before a Client Plan participates in a securities lending program and before any loan of securities to Global Capital Markets is effected, a Client Plan fiduciary which is independent of Global Capital Markets must have—

(1) Authorized and approved a securities lending authorization agreement with FMP, where FMP is acting as the securities lending agent;

(2) Authorized and approved the primary securities lending authorization agreement with the primary lending agent where FMP is lending securities under a sub-agency agreement with the primary lending agent; [3] and

(3) Approved the general terms of the securities loan agreement (the Loan Agreement) between such Client Plan and Global Capital Markets, the specific terms of which are negotiated and entered into by FMP.

Notwithstanding the foregoing, effective March 16, 2008, section II(c)(3) shall be deemed satisfied with respect to loans of securities by Client Plans to Bear Stearns Affiliates by FMP as securities lending agent or sub-agent, provided (i) FMP provided to such Client Plans no later than April 15, 2008, a description of the general terms of the securities loan agreements between such Client Plans and the Bear Stearns Affiliates and (ii) at the time of providing such information, FMP notified each Client Plan that it had 10 days to object in writing to the continued lending of securities to the Bear Stearns Affiliates. If a written objection is received from a Client Plan within the 10-day period, FMP shall cease to make any new securities loans on behalf of that Client Plan to Bear Stearns Affiliates; any securities loans made on behalf of that Client Plan to Bear Stearns Affiliates prior to the date the objection is received shall be covered by this exemption, and FMP shall seek to expeditiously terminate such securities loan in a manner approved by the Client Plan.

(d) Each loan of securities by a Client Plan to Global Capital Markets is at market rates and terms which are at least as favorable to such Client Plan as if made at the same time and under the same circumstances to an unrelated party.

(e) The Client Plan may terminate the agency or sub-agency arrangement at any time without penalty to such Client Plan on five business days notice whereupon Global Capital Markets delivers securities identical to the borrowed securities (or the equivalent in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Client Plan within—

(1) The customary delivery period for such securities;

(2) Five business days; or

(3) The time negotiated for such delivery by the Client Plan and Global Capital Markets, whichever is less.

(f) The Client Plan receives from Global Capital Markets (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to Global Capital Markets, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by a U.S. bank, which is a person other than Global Capital Markets or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 2006–16 (as amended from time to time or, alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans), having, as of the close of business on the preceding business day, a market value (or, in the case of a letter of credit, a stated amount) initially equal to at least the percentage required in PTE 2006–16 (as amended from time to time) but in no case less than 102 percent of the market value of the loaned securities.

(g) If the market value of the collateral on the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of business on that day, Global Capital Markets delivers additional collateral on the following day such that the market value of the collateral again equals 102 percent or the percentage otherwise required by 2006–16.

(h) The Loan Agreement gives the Client Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral and FMP monitors the level of the collateral daily.

(i) Before entering into a Loan Agreement, Global Capital Markets furnishes FMP the most recently available audited and unaudited statements of the financial condition of the applicable borrower within Global Capital Markets. Such statements are, in turn, provided by FMP to the Client Plan. At the time of the loan, Global Capital Markets gives prompt notice to the Client Plan fiduciary of any material adverse change in the borrower's financial condition since the date of the most recent financial statement furnished to the Client Plan. In the event of any such changes, FMP requests approval of the Client Plan to continue lending to Global Capital Markets before making any such additional loans. No new securities loans will be made until approval is received and each loan constitutes a representation by Global Capital Markets that there has been no such material adverse change.

Notwithstanding the foregoing, effective March 16, 2008, section II(i) shall be deemed satisfied with respect to loans of securities by Client Plans to Bear Stearns Affiliates by FMP as securities lending agent or sub-agent, provided (i) FMP provided to such Client Plans no later than April 15, 2008, the most recently available audited and unaudited consolidated statements of the financial condition of the parent company of the applicable Bear Stearns Affiliates and the parent company's subsidiaries, and notice of any material adverse change in financial condition since the date of the most recent financial statement being furnished to the Client Plans, and (ii) at the time of providing such information, FMP notified each Client Plan that it had 10 days to object in writing to the continued lending of securities to the Bear Stearns Affiliates. If a written objection is received from a Client Plan within the 10-day period, FMP shall cease to make any new securities loans on behalf of that Client Plan to Bear Stearns Affiliates; any securities loans made on behalf of that Client Plan to Bear Stearns Affiliates prior to the date the objection is received shall be covered by this exemption, and FMP

[3] The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than FMP, beyond that provided pursuant to PTE 2006–16.

shall seek to expeditiously terminate such securities loan in a manner approved by the Client Plan. Loans of securities by such Client Plans to a Bear Stearns Affiliate entered into on or after April 15, 2008, under the same securities loan agreement terms disclosed in accordance with the second paragraph of section II(c)(3) above shall be deemed to satisfy this section II(i), absent a material adverse change in the financial condition of the particular Bear Stearns Affiliate since April 15, 2008 (in which event the provisions of the first paragraph of this section II(i) shall apply).

(j) In return for lending securities, the Client Plan either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (In the case of cash collateral, the Client Plan may pay a loan rebate or similar fee to Global Capital Markets if such fee is not greater than the fee the Client Plan would pay an unrelated party in a comparable arm's length transaction.)

(k) All procedures regarding the securities lending activities conform to the applicable provisions of PTE 2006–16 (as amended from time, or alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans).

(l) If Global Capital Markets defaults on the securities loan or enters bankruptcy, the collateral will not be available to Global Capital Markets or its creditors, but will be used to make the Client Plan whole. In this regard,

(1) In the event a Foreign Affiliated Borrower defaults on a loan, JPMCB will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, JPMCB will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify properly under this provision). Alternatively, if such identical securities are not available on the market, FMP will pay the Client Plan cash equal to—

(i) The market value of the borrowed securities as of the date they should have been returned to the Client Plan, plus

(ii) All the accrued financial benefits derived from the beneficial ownership of such loaned securities as of such date, plus

(iii) Interest from such date to the date of payment.

The lending Client Plans will be indemnified in the United States for any loans to the Foreign Affiliated Borrowers.

(2) In the event the U.S. Affiliated Borrower defaults on a loan, JPMCB will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, either JPMCB or the U.S. Affiliated Borrower will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify property under this provision).

(m) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including all interest, dividends and distributions on the loaned securities during the loan period.

(n) Prior to any Client Plan's approval of the lending of its securities to Global Capital Markets, copies of the notice of proposed exemption and the final exemption, and, effective November 7, 2008, the proposed amendment to the exemption and, upon publication in the **Federal Register**, the final amendment to the exemption, are provided to the Client Plan; provided, that for Client Plans of FMP as of the date of the proposed amendment or final amendment, as applicable, is published in the **Federal Register**, section II(n) shall be deemed satisfied if such notice is provided to the Client Plan within 15 days of publication in the **Federal Register**.

(o) Each Client Plan receives a monthly report with respect to its securities lending transactions, including but not limited to the information described in Representation 24 of the proposed exemption for PTE 99–34 (64 FR 34281, 6/25/99), so that an independent fiduciary of the Client Plan may monitor the securities lending transactions with Global Capital Markets.

(p) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to Global Capital Markets; provided, however, that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (*i.e.*, the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with Global Capital Markets, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (*i.e.*, the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with Global Capital Markets, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(q) With respect to each successive two week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans by FMP, in the aggregate, will be to unrelated borrowers.

(r) In addition to the above, all loans involving Foreign Affiliated Borrowers within Global Capital Markets have the following supplemental requirements:

(1) Such Foreign Affiliated Borrower is registered as a bank or broker-dealer with—

(i) The Financial Services Authority in the case of J. P. Morgan Securities Ltd.;

(ii) The Office of the Superintendent of Financial Institutions (OSFI), in the case of J.P. Morgan Securities Canada Inc.;

(iii) The Australian Securities & Investments Commission in the case of J.P. Morgan Securities Australia Ltd.; and

(iv) The Financial Services Agency in the case of J.P. Morgan Securities Japan Ltd.

(2) Such broker-dealer or bank is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or dollar-denominated securities or letters of credit of U.S. banks or any combination thereof, or other collateral permitted under PTE 2006–16 (as amended from time to time, or alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans);

(4) All collateral is held in the United States;

(5) The situs of the Loan Agreement is maintained in the United States;

(6) The lending Client Plans are indemnified by JPMCB in the United States for any transactions covered by this exemption with the Foreign Affiliated Borrower so that the Client Plans do not have to litigate in a foreign jurisdiction nor sue the Foreign Affiliated Borrower to realize on the indemnification; and

(7) Prior to the transaction, each Foreign Affiliated Borrower enters into a written agreement with FMP on behalf of the Client Plan whereby the Foreign Affiliated Borrower consents to service of process in the United States and to the jurisdiction of the courts of the United States with respect to the transactions described herein.

(s) JPMCB or J.P. Morgan Securities Inc. (JPMSI) 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 in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of JPMCB or JPMSI, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than JPMCB or JPMSI shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

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

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

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

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

(iv) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(t)(2) None of the persons described above in paragraphs (t)(1)(ii)–(t)(1)(iv) of this paragraph (t)(1) are authorized to examine the trade secrets of JPMCB, the U.S. Affiliated Borrowers, or the Foreign Affiliated Borrowers or commercial or financial information which is privileged or confidential.

Section III. Temporary Exemption for Investment in Bear Stearns Master Note

The restrictions of sections 406(a)(1)(A) through (D) and sections 406(b)(1) and (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 securities lending collateral by JPMCB, as the investment manager of such collateral on behalf of the Client Plan or Collective Fund that has lent the securities, in the Bear Stearns Master Note (as defined in paragraph (b) below), provided that the condition set forth below in paragraph (a) is met.

(a) Repayment of the Bear Stearns Master Note is unconditionally guaranteed by JPMCB.

(b) For purposes of this Section III, the term ''Bear Stearns Master Note'' means the $750 million Evergreen Advance dated October 23, 2007, under the Master Note Agreement dated February 9, 2007, by and between JPMCB as agent for a group of lending entities and certain subsidiaries of The Bear Stearns Companies Inc., which matured on June 13, 2008, and was paid in full.

Section IV. Definitions

For purposes of this exemption,

(a) The terms ''JPMCB'' and ''JPMCC'' as referred to herein in Sections I, II and III, refer to JPMorgan Chase Bank, National Association, and its parent, JPMorgan Chase & Co., Inc.

(b) The term ''affiliate'' means any entity now or in the future, directly or indirectly, controlling, controlled by, or under common control with JPMCC or its successors. (For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(c) The term ''U.S. Affiliated Borrower'' means an affiliate of JPMCC that is a bank supervised by the United States or a State, or a broker-dealer registered under the 1934 Act.

(d) The term ''Foreign Affiliated Borrower'' means an affiliate of JPMCC that is a bank or a broker-dealer which is supervised by—

(i) The Financial Services Authority in the United Kingdom;

(ii) OSFI in Canada;

(iii) The Australian Securities & Investments Commission in Australia; and

(iv) The Financial Services Agency in Japan.

(e) The term ''Bear Stearns Affiliate'' means The Bear Stearns Companies Inc. and its affiliates as constituted on March 15, 2008.

(f) The term ''Independent Fiduciary'' means a fiduciary who is independent of and unrelated to JPMCB and Bear Stearns Affiliates. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to JPMCB and Bear Stearns Affiliates if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with JPMCB or a Bear Stearns Affiliate;

(ii) Such fiduciary, or any employee of the fiduciary who will be involved in the Review (as defined in section IV(g)), or any officer, director, partner, or highly compensated employee (as

defined in section 4975(e)(2)(H) of the Code) of the fiduciary, is an officer, director, partner or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of JPMCB or a Bear Stearns Affiliate; or any member of the business segment performing the independent fiduciary services is a relative of an officer, director, partner or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of JPMCB or a Bear Stearns Affiliate.

However, if an individual is a director of the fiduciary and an officer, director, partner or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of JPMCB or a Bear Stearns Affiliate, and if he or she abstains from participation in the Review, then this section IV(f)(ii) shall not apply.

For purposes of this section IV(f)(ii), 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 fiduciary, JPMCB, or a Bear Stearns Affiliate.

(iii) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption, except that the Independent Fiduciary may receive compensation from JPMCB for acting as Independent Fiduciary as contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision; or

(iv) The annual gross revenue received by such fiduciary, during any year of its engagement, from JPMCB and Bear Stearns Affiliates exceeds five percent (5%) of the fiduciary's annual gross revenue from all sources for its prior tax year.

(g) The term ''Review'' means a test by an Independent Fiduciary of a representative sample of transactions falling under section II(b)(i) of this Exemption that is sufficient in size to afford the Independent Fiduciary a reasonable basis to make findings as to compliance with the following:

(i) Whether allocation of the opportunity to lend securities to the applicable client plan account was in accordance with JPMCB's internal securities loan allocation procedures;

(ii) Whether the loan of securities by the Client Plan to Bear Stearns Affiliates was at market rates and terms which were at least as favorable to such Client Plan as if made at the same time and under the same circumstances to an unrelated party (as required by section II(d) hereof);

(iii) Whether with respect to each successive two-week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans by FMP, in the aggregate, were to unrelated borrowers (as required by section II(q) of the exemption); and

(iv) Whether investment by the applicable Client Plan in the underlying securities that were loaned was consistent with the investment guidelines for the particular Client Plan account.

For a more complete statement of facts and representations supporting the Department's decision to grant PTE 99–34, refer to the proposed exemption (64 FR 34281, June 25, 1999), the grant notice (64 FR 46419, August 25, 1999) and the notice of proposed amendment (the Notice)(73 FR 63200, October 23, 2008).

DATES: *Effective Date:* Except as otherwise specified herein, the amendment is effective as of August 25, 1999.

Written Comments: The Department received one comment with respect to the Notice, which was filed by the Applicants. The Applicants' commentary, a discussion of the Department's views in response thereto and the modifications to the proposed exemption are discussed below.

The Applicants noted that the proposed amendments to sections II(c)(3) and II(i) would deem certain disclosure conditions of the exemption to be satisfied with respect to Bear Stearns Affiliate loans ''for the period between March 16, 2008, and April 15, 2008,'' provided that the required information was furnished to the plans no later than April 15, 2008. The special relief would expire on April 15, 2008, and then preexisting disclosure conditions, which require disclosure prior to participating in a securities lending program and before any loans are effected, would apply. Applicants believe that loans to Bear Stearns Affiliates that were made before April 15, 2008, in reliance on the special relief, might be deemed non-compliant after April 15, 2008. Additionally, according to the Applicants, reinstating the general rule as of April 15, 2008, might also mean that further loans to Bear Stearns Affiliates could not be made after that date even though the required information has now been provided.

The Applicants suggest that removing the end date on the period for which relief is provided would address this concern. Relief would be limited to loans for those Client Plans that were clients of FMP during the March 16 to April 15 period, because those are the only plans that will have received the required disclosures by the April 15, 2008 date. For post-April 15 clients, the general rules of the exemption would apply. With that understanding of the applicability of the special relief, the Department has revised the final exemption accordingly.

The Applicants also suggest that with respect to section II(i), language be added to clarify that the special relief would not supersede the requirement to update the provided information in the event of a material adverse change to the borrower's financial condition. The Applicants provided the following sentence to be added to section II(i):

> Loans of securities by such Client Plans to a Bear Stearns Affiliate entered into on or after April 15, 2008, under the same securities loan agreement terms disclosed in accordance with the second paragraph of section II(c)(3) above shall be deemed to satisfy this section II(i), absent a material adverse change in the financial condition of the particular Bear Stearns Affiliate since April 15, 2008 (in which event the provisions of the first paragraph of this section II(i) shall apply).

The Department has added Applicants' proposed sentence at the end of the new paragraph in section II(i).

Applicants request that an additional sentence be added to the new paragraphs in section II(c)(3) and II(i) to give effect to certain provisions previously only described in the disclosure provisions of these paragraphs. The disclosure provisions in question require that FMP notify each Client Plan of its ability to object to continued securities lending to Bear Stearns Affiliates, and detail the process that will occur if a Client Plan objects. Applicants' proposed sentence states that:

> If a written objection is received from a Client Plan within the 10-day period, FMP shall cease to make any new securities loans on behalf of that Client Plan to Bear Stearns Affiliates; any securities loans made on behalf of that Client Plan to Bear Stearns Affiliates prior to the date the objection is received shall be covered by this exemption, and FMP shall seek to expeditiously terminate such securities loan in a manner approved by the Client Plan.

The Department concurs; however, to avoid redundancy, the Department shortened the disclosure provisions preceding Applicants' requested sentences.

With respect to section II(n), which requires copies of the notice of proposed exemption and final exemption to be

provided to Client Plans, Applicants suggest that the section be amended to require disclosure of the notice of proposed amendment and final amendment. The Department has revised that section as suggested.

Applicants additionally request a revision of the definition of ''Independent Fiduciary,'' in particular, the language describing the relationships that will cause the fiduciary not to be independent. The language in question, section IV(f)(ii) of the exemption, reads: ''Such fiduciary, or any officer, director, partner, employee or relative of the fiduciary, is an officer, director, partner or employee of JPMCB or a Bear Stearns Affiliate (or is a relative of such persons).''

Applicants state that the firm that has been retained as Independent Fiduciary is U.S. Trust, Bank of America Private Wealth Management, a business unit of Bank of America, N.A. Bank of America has entered into a definitive agreement to sell the Special Fiduciary Services (''SFS'') business segment of U.S. Trust, which is performing the Independent Fiduciary services for purposes of the exemption, to Evercore Partners (Evercore), in a transaction expected to close in early 2009, before U.S. Trust will be issuing its Independent Fiduciary report. Following this transaction, SFS will operate as Evercore Trust Company, N.A., a subsidiary of Evercore, which will assume the Independent Fiduciary role.

Given the size of JPMCB and Bear Stearns, Applicants assert that relationships of individuals within these organizations would be difficult to monitor, and should not affect the fiduciary's independence unless they involve persons with responsibility for the particular transaction. More specifically, Applicants informed the Department that monitoring relatives of the various classes of people was administratively burdensome. Applicants additionally request that a director of the fiduciary who is also an officer, director, partner or highly compensated employee of JPMCB or a Bear Stearns Affiliate be permitted to abstain from participation in the Review rather than cause the fiduciary to fail to be independent. Finally, Applicants requested that the exemption contain a definition of the term ''officer.''

The Department has revised the language to reduce the administrative burden to Applicants while continuing to protect plan participants and beneficiaries. In particular, the Department notes that the definition requires tracking the relatives only of the members of the SFS business unit performing the independent fiduciary services. The language, as revised, reads:

(f) The term ''Independent Fiduciary'' means a fiduciary who is independent of and unrelated to JPMCB and Bear Stearns Affiliates. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to JPMCB and Bear Stearns Affiliates if:

* * *

(ii) Such fiduciary, or any employee of the fiduciary who will be involved in the Review (as defined in section IV(g)), or any officer, director, partner, or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of the fiduciary, is an officer, director, partner or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of JPMCB or a Bear Stearns Affiliate; or any member of the business segment performing the independent fiduciary services is a relative of an officer, director, partner or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of JPMCB or a Bear Stearns Affiliate.

However, if an individual is a director of the fiduciary and an officer, director, partner or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of JPMCB or a Bear Stearns Affiliate, and if he or she abstains from participation in the Review, then this section IV(f)(ii) shall not apply.

For purposes of this section IV(f)(ii), 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 fiduciary, JPMCB, or a Bear Stearns Affiliate.

Finally, Applicants address the definition of ''Review'' (section IV(g)(ii)) which states that the Independent Fiduciary will conduct a review of:

[w]hether the loan of securities by the Client Plan to Global Capital Markets was at market rates and terms which were at least as favorable to such Client Plan as if made at the same time and under the same circumstances to an unrelated party * * *.

Applicants' position is that the scope of the Independent Fiduciary's review is limited to securities loans to Bear Stearns Affiliates, and accordingly, references in this section to Global Capital Markets should be changed to Bear Stearns Affiliates. The Department has made the requested change.

DATES: *Effective Date:* Except as otherwise specified herein, the amendment is effective as of August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd of the Department at (202) 693–8554. (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 at Washington, DC, this 20th day of March, 2009.

Ivan Strasfeld,

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

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