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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10014, et al.]

Proposed Exemptions; Wells Fargo Bank, N.A., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Wells Fargo Bank, N.A. (Wells Fargo) Located in San Francisco, CA; Proposed Exemption

[Application No. D–10014]

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

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply, effective October 1, 1995, to the

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

purchase or redemption of shares by an employee benefit plan (the Plan), in certain mutual funds that are either affiliated with Wells Fargo (the Affiliated Funds) or are unaffiliated with Wells Fargo (the Third Party Funds),[2] in connection with the participation by the Plan in the Wells Fargo Portfolio Advisor Program (the Portfolio Advisor Program).

In addition, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (E) and (F) of the Code, shall not apply, effective October 1, 1995, to the provision, by Wells Fargo, of asset allocation services to an independent fiduciary of a participating Plan (the Independent Fiduciary) or to a participant (the Directing Participant) of a Plan covered under the provisions of section 404(c) of the Act (the Section 404(c) Plan) which may result in the selection of portfolios by the Independent Fiduciary or the Directing Participant in the Portfolio Advisor Program for the investment of Plan assets.

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

Section II. General Conditions

(a) The participation by each Plan in the Portfolio Advisor Program is approved by an Independent Fiduciary or Directing Participant, in the case of a Section 404(c) Plan, and no Plan investing therein is sponsored or maintained by Wells Fargo and/or its affiliates.

(b) As to each Plan, the total fees that are paid to Wells Fargo and its affiliates constitute no more than reasonable compensation for the services provided.

(c) With the exception of distribution-related fees pursuant to Rule 12b–1 (the 12b–1 Fees) of the Investment Company Act of 1940 (the '40 Act) which are offset, no Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Funds.

(d) The terms of each purchase or redemption of shares in the Funds remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) Wells Fargo provides written documentation to each Plan's Independent Fiduciary or Directing Participant of its recommendations or evaluations with respect to the Affiliated Funds or the Third Party Funds based upon objective criteria.

(f) Any recommendation or evaluation made by Wells Fargo to an Independent Fiduciary or Directing Participant is implemented only at the express direction of such Independent Fiduciary or Directing Participant.

(g) The quarterly fee that is paid by a Plan to Wells Fargo and its affiliates for asset allocation and related services (the Outside Fee) rendered to such Plan under the Portfolio Advisor Program is offset by all gross investment management fees (the Advisory Fees) and administrative fees (the Administrative Fees) received from the Affiliated Funds by Wells Fargo, its affiliates, its former affiliates and unrelated parties, including all 12b–1 Fees and Administrative Fees that are paid by the Affiliated Funds to Stephens Inc. (Stephens) and all 12b–1 Fees that Wells Fargo receives from the Third Party Funds, such that the sum of the offset and the net Outside Fee (the Net Outside Fee) will always equal the Outside Fee and the selection of Affiliated or Third Party Funds will always be revenue neutral.

(h) With respect to its participation in the Portfolio Advisor Program, prior to purchasing shares in the Affiliated Funds and the Third Party Funds,

(1) Each Independent Fiduciary receives the following written or oral disclosures from Wells Fargo:

(A) A brochure describing the Portfolio Advisor Program; a Portfolio Advisor Program Account Agreement; a description of the allocation models (the Allocation Models) as discussed in Representation 1; and a reference guide/disclosure statement providing details about the Portfolio Advisor Program, the fees charged thereunder, the procedures for establishing, making additions to and withdrawing from Portfolio Advisor Program Accounts (the Accounts); and other related information.

(B) A risk tolerance and goal analysis questionnaire (the Questionnaire) as described in Representation 11.

(C) Copies of applicable prospectuses (the Prospectuses) for the Funds discussing the investment objectives of the Funds; the policies employed to achieve these objectives; the corporate affiliation existing between Wells Fargo and its affiliates; the compensation paid to such entities; disclosures relating to rebalancing and reallocating Allocation Models; and information explaining the risks attendant to investing in the Affiliated Funds or the Third Party Funds.

(D) Upon written or oral request to Wells Fargo, a Statement of Additional Information supplementing the applicable Prospectus, which describes the types of securities and other instruments in which the Funds may invest, the investment policies and strategies that the Funds may utilize, including a description of the risks.

(E) A copy of the agreement between the Plan and Wells Fargo relating to such Plan's participation in the Portfolio Advisor Program.

(F) A written recommendation of a specific Allocation Model together with a copy of the Questionnaire and response.

(G) Upon written request to Wells Fargo, a copy of its investment advisory agreement and sub-advisory agreement pertaining to the Affiliated Funds as well as its distribution agreement pertaining to the Third Party Funds.

(H) Copies of the proposed exemption and grant notice describing the exemptive relief provided herein.

(I) Written disclosures of Wells Fargo's affiliation or nonaffiliation with the parties who act as sponsors, distributors, administrators, investment advisers and sub-advisers, custodians and transfer agents of the Third Party Funds and the Affiliated Funds; and

(2) In the case of a Section 404(c) Plan,

(A) Wells Fargo provides each Directing Participant or Independent Fiduciary (for dissemination to the Directing Participant) with copies of the documents described above in paragraphs (h)(1)(A)–(I); and,

(B) In addition to the written disclosures, an explanation will be provided to the Independent Fiduciary, upon request, by a Wells Fargo Personal Financial Officer (the Personal Financial Officer) regarding the services offered under the Portfolio Advisor Program, including the operation and objectives of the Funds. Such information will be given to either the Independent Fiduciary or the Directing Participant.

(3) If accepted as an investor in the Portfolio Advisor Program, an Independent Fiduciary or Directing Participant is required to acknowledge, in writing, to Wells Fargo, prior to purchasing shares of the Funds that such Independent Fiduciary or Directing Participant has received copies of the documents described in paragraph (h)(1) of this Section II.

(4) With respect to a Title I Plan that does not permit participant-directed investments as contemplated under section 404(c) of the Act, written acknowledgement of the receipt of such documents is provided by the Independent Fiduciary (i.e., the Plan administrator, trustee, investment manager or named fiduciary, as the recordholder of shares of the Funds.) Such Independent Fiduciary will be

[2] The Affiliated Funds and the Third Party Funds are collectively referred to herein as the Funds.

required to represent in writing to Wells Fargo that such fiduciary is—

(A) Independent of Wells Fargo and its affiliates;

(B) Capable of making independent decisions regarding the investment of Plan assets;

(C) Knowledgeable with respect to the Plan in administrative matters and funding matters related thereto; and

(D) Able to make an informed decision concerning participation in the Portfolio Advisor Program.

(5) With respect to a Section 404(c) Plan or a Plan that is covered under Title II of the Act, the Directing Participant or the Independent Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to Wells Fargo that such individual is—

(A) Independent of Wells Fargo and its affiliates;

(B) Knowledgeable with respect to the Plan in administrative matters and funding matters related thereto; and,

(C) Able to make an informed decision concerning participation in the Portfolio Advisor Program.

(i) Subsequent to its participation in the Portfolio Advisor Program, each Independent Fiduciary receives the following written or oral disclosures from Wells Fargo with respect to ongoing participation in the Portfolio Advisor Program:

(1) Written confirmations of each purchase or redemption transaction involving shares of an Affiliated Fund or a Third Party Fund (including transactions resulting from the realignment of assets caused by a change in the Allocation Model's investment mix and from periodic rebalancing of Account assets).

(2) Telephone quotations of such Independent Fiduciary's Plan Account balance.

(3) A periodic, but not less frequently than quarterly, statement of Account specifying the net asset value of the Plan's assets in such Account, a summary of purchase, sale and exchange activity and dividends received or reinvested and a summary of cumulative realized gains and/or losses.

(4) Semiannual and annual reports that include financial statements for the Affiliated Funds and the Third Party Funds as well as the fees paid to Wells Fargo and its affiliates.

(5) A quarterly newsletter or other report pertaining to the applicable Allocation Model which describes the Allocation Model's performance during the preceding quarter, market conditions and economic outlook and, if applicable, prospective changes in Affiliated Fund and Third Party Fund allocations for the Allocation Model and the reasons therefor.

(6) At least annually, a written or oral inquiry from Wells Fargo to ascertain whether the information provided on the Questionnaire is still accurate and to determine if such information should be updated.

(7) At least annually, a termination form (the Termination Form) as described below in Section II(l) and (m).

(j) In the case of a Section 404(c) Plan, the Independent Fiduciary will decide whether the information described in Section II(i) above is to be distributed by Wells Fargo to the Directing Participants of such Plan or whether the Independent Fiduciary will receive this information and then provide it to the Directing Participants.

(k) If authorized in writing by the Independent Fiduciary or Directing Participant, the Plan is automatically rebalanced on a periodic basis by Wells Fargo to the Allocation Model previously prescribed by the Independent Fiduciary or Directing Participant, if one or more Fund allocations deviates from the Allocation Model prescribed by the Independent Fiduciary or Directing Participant.

(l) In rebalancing a Plan,

(1) Wells Fargo is bound by the Allocation Model and is limited in the degree of change that it can make to an Allocation Model's investment mix.

(2) Wells Fargo is authorized to make changes in the mix of asset classes in a Plan Account within a range of 0–15 percent (plus or minus) for Stock and Bond Fund investments and within a range of 0–30 percent (plus or minus) for Money Market Fund investments without obtaining the prior written approval of the Independent Fiduciary or Directing Participant.

(3) Wells Fargo may not change the asset mix outside the authorized limits unless it provides the Independent Fiduciary or Directing Participant with 30 days' advance written notice of the proposed change and gives the Independent Fiduciary or Directing Participant time to elect not to have the change made.

(4) Wells Fargo may not divide a Fund sub-class unless it provides 30 days' advance written notice to the Independent Fiduciary or Directing Participant of the proposed change and gives such individual the opportunity to object to the change.

(5) Wells Fargo may not replace a Third Party Fund with an Affiliated Fund.

(m) Although an Independent Fiduciary or Directing Participant may withdraw from the Portfolio Advisor Program at any time, Wells Fargo will provide such Independent Fiduciary or Directing Participant with the Termination Form, at least annually during the first quarter of each calendar year, but in all cases where Wells Fargo changes the asset mix outside of the current Allocation Model, when a Fund sub-class is to be divided, when Wells Fargo determines that it is in the best interest of the Plan to use a Third Party Fund instead of an Affiliated Fund and whenever the Outside Fee is increased. Wells Fargo will provide such written notice to the Independent Fiduciary or Directing Participant at least 30 days prior to the implementation of the change.

(n) The instructions for the Termination Form must—

(1) State that the authorization is terminable at will by the Independent Fiduciary or Directing Participant, without penalty to such, upon receipt by Wells Fargo of written notice from the Independent Fiduciary or Directing Participant; and

(2) Explain that any of the proposed changes noted above in paragraph (m) of this Section, will go into effect if the Independent Fiduciary or Directing Participant does not elect to withdraw by the effective date.

(o) Wells Fargo maintains, for a period of six years, the records necessary to enable the persons described in paragraph (p) of this Section II to determine whether the conditions of this 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 Wells Fargo and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

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

(p)(1) Except as provided in section (p)(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 (o) of this Section II are unconditionally available at their customary location during normal business hours by:

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

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

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

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

(p)(2) None of the persons described above in paragraphs (p)(1)(B)–(p)(1)(D) of this paragraph (p) are authorized to examine the trade secrets of Wells Fargo or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term ''Wells Fargo'' means Wells Fargo Bank, N.A. and any affiliate of Wells Fargo, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Wells Fargo includes—

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

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

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

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

(d) The term ''Plan or Plans'' include Keogh plans, cash or deferred compensation plans, profit sharing plans, pension and stock bonus plans, individual retirement accounts (IRAs), salary reduction simplified employee pension plans (SARSEPs), simplified employee pension plans (SEP–IRAs) and, in the case of a Section 404(c) Plan, the individual account of a Directing Participant.

(e) The term ''Independent Fiduciary'' means a Plan fiduciary which is independent of Wells Fargo and its affiliates and is either—

(1) A Plan administrator, trustee, investment manager or named fiduciary, as the recordholder of shares of the Funds of a Section 404(c) Plan;

(2) An individual covered by a Keogh Plan which invests in shares of the Funds;

(3) An individual covered under a self-directed IRA, SEP–IRA or SARSEP which invests in shares of the Funds;

(4) An employee, officer or director of Wells Fargo and/or its affiliates covered by an IRA, a SEP–IRA or a SARSEP subject to Title I of the Act; or

(5) A Plan administrator, trustee, investment manager or named fiduciary responsible for investment decisions in the case of a Title I Plan that does not permit individual direction as contemplated by Section 404(c) of the Act.

(f) The term ''Directing Participant'' is a participant in a Plan, such as a Section 404(c) Plan, who is permitted under the terms of the Plan to direct, and who elects to so direct the investment of the assets of his or her account in such Plan.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of October 1, 1995.

Summary of Facts and Representations

Description of the Parties

1. The parties to the transactions are described as follows:

(a) *Wells Fargo,* a wholly owned subsidiary of Wells Fargo & Company, is one of the sixteenth largest commercial banks in the United States. Wells Fargo provides a full range of banking services to commercial, agribusiness, real estate and small business customers mainly in California. Its Investment Management Group manages personal trust accounts, corporate 401(k) and other qualified plans and mutual funds. Its holding company, Wells Fargo and Company, is a full-line banking firm serving institutions, government and individual investors in the United States. Wells Fargo & Company stock is publicly-traded on the New York Stock Exchange. Wells Fargo maintains its corporate headquarters in San Francisco, California.

In addition to serving as a custodian or trustee to employee benefit plans, IRAs and SEP–IRAs, Wells Fargo sponsors and serves as a mass submitter and identical adopter for master and prototype pension and profit sharing plans, including Keogh plans, cash or deferred plans, and pension and stock bonus plans. Wells Fargo sponsors prototype IRAs, SEP–IRAs and SARSEPs. With respect to the subject transactions, Wells Fargo serves as the investment adviser/manager, transfer agent, selling agent and dividend disbursing agent to certain Affiliated Funds.

(b) *Wells Fargo Securities, Inc. (WFSI),* a wholly owned broker-dealer of Wells Fargo, is a full service broker-dealer registered with the SEC and a member of the National Association of Securities Dealers. WFSI provides a full range of brokerage services to retail and private customers and is principally located in San Francisco, California.

(c) *Stephens* of Little Rock, Arkansas, is a full service broker-dealer and investment advisory firm that is unrelated to Wells Fargo and/or its affiliates. It is the clearing broker for WFSI and the sponsor and administrator for the Affiliated Funds. Stephens also serves as the principal underwriter or distributor of each Affiliated Fund's shares.

(d) *Wells Fargo Nikko Investment Advisors (WFNIA)* is a general partnership that was formerly 50 percent owned by a subsidiary of Wells Fargo and 50 percent owned by a subsidiary of The Nikko Securities Co., Ltd., an unaffiliated Japanese securities firm. WFNIA is a registered investment adviser and serves as a sub-adviser to certain of the Affiliated Funds. WFNIA maintains its principal place of business in San Francisco, California.

(e) *Wells Fargo Institutional Trust Company, N.A. (WFITC)* is a trust company that was 99.9 percent owned by WFNIA and 0.1 percent owned by Wells Fargo & Company. WFITC serves as the custodian for certain of the Affiliated Funds. WFITC maintains its principal place of business in San Francisco, California.

Pursuant to an agreement dated June 21, 1995, Wells Fargo & Company and Wells Fargo agreed to effect the sale of all of their right, title and interest in the capital stock of WFITC and the partnership interest in WFNIA, respectively, to Barclays Bank PLC, Barclays California Corporation and Barclays Bank of Canada (collectively, Barclays), all of which are unrelated to Wells Fargo & Company, Wells Fargo or any of their affiliates. After consummation of the sale, which occurred on December 29, 1995, WFITC and WFNIA became a part of BZW Global Investors, an indirect wholly owned subsidiary of Barclays Bank PLC. The new entity is located in San Francisco, California.

(f) *The Plans* are qualified plans, IRAs, SARSEPs and SEP–IRAs for which Wells Fargo acts as master or prototype plan sponsor, mass submitter sponsor and identical adopter, custodian, directed trustee or recordkeeper. None of the Plans are sponsored by Wells Fargo or its affiliates.

Description of the Affiliated Funds

2. The Affiliated Funds consist of the Stagecoach Funds, Inc. (the Stagecoach Funds) and the Overland Express Funds, Inc. (the Overland Funds), which are open-end investment companies registered under the '40 Act. The Stagecoach Funds were organized as a Maryland corporation in September 1991 and currently offer sixteen separate portfolios. The Overland Funds

were organized as a Maryland corporation in April 1987 and currently offer shares in twelve separate portfolios. Each Affiliated Fund is registered under the Securities Act of 1933, as amended (the '33 Act), and the '40 Act.

Each Affiliated Fund is designed to provide a means of investing in separate portfolios that are professionally managed by Wells Fargo or sub-advised by WFNIA. These portfolios may be sold through WFSI or Wells Fargo as selling agent on behalf of the Affiliated Funds. Shares in the Stagecoach Funds and the Overland Funds are currently being offered by Wells Fargo to Plan customers, at no load.

Overall management and supervision of each Affiliated Fund rests with such Fund's Board of Directors (the Directors). The Directors approve all significant agreements involving the appropriate Affiliated Fund and the persons and companies that furnish services. At least 40 percent of the Directors are unrelated to Wells Fargo and its affiliates, including Stephens.

Currently, fifteen Affiliated Funds are being offered to investors under the Portfolio Advisor Program. These Fund portfolios range from the Stagecoach Corporate Stock Fund to the Overland U.S. Treasury Money Market Fund. The Affiliated Funds are further divided into eight asset sub-classes which range from Growth and Income to Cash. A number of the portfolios are sub-advised by WFNIA whose sub-advisory fees are paid by Wells Fargo from its Advisory Fees.

3. Wells Fargo serves as each Affiliated Fund's investment manager pursuant to an advisory agreement entered into with such Fund. In addition, Wells Fargo serves as the transfer agent, selling agent and dividend disbursing agent of each Affiliated Fund, as custodian of certain of the Affiliated Funds and as shareholder servicing agent of the Stagecoach Funds.

For services rendered to the Affiliated Funds by Wells Fargo, its affiliates or Stephens, the underlying contracts entered thereunder must be approved by the Directors of each Affiliated Fund, including a majority of disinterested Directors. The contracts must be approved for an initial period of up to two years and then reapproved by the Directors or the shareholders of the Affiliated Funds and by the disinterested Directors, at least annually thereafter. Subject to the supervision and direction of the Directors, Wells Fargo manages the investment and reinvestment of each Affiliated Fund's assets and provides investment guidance and policy direction in connection with the objectives of the Affiliated Funds.

Each Affiliated Fund portfolio pays Wells Fargo Advisory Fees that are computed daily and paid monthly at an annual rate based on a percentage of the value of the portfolio's average daily net assets. Currently, the annualized Advisory Fees range from 0.05 percent to 0.70 percent depending upon the portfolio.

In addition to the Advisory Fees, Wells Fargo and WFTIC may receive custody, portfolio accounting, transfer agency and shareholder servicing expenses from the Affiliated Funds (i.e., the Administrative Fees) which may be waived from time to time. For some portfolios, the Administrative Fees are included in that portion of Wells Fargo's Advisory Fee that is paid to the sub-adviser. If not included in the Advisory Fee, the current fee for (a) custodial services is 0.0167 percent annually, (b) $2,000 per month plus 0.07 percent on the first $50 million, 0.045 percent on the next $50 million and 0.02 percent on the excess over $100 million for portfolio accounting services, (c) a minimum of $3,000 monthly, plus various transaction charges for transfer agency services, and (d) 0.00 percent to 0.30 percent for shareholder servicing.

4. Stephens serves as each Affiliated Fund's sponsor and administrator and as distributor of portfolio shares. In general, Stephens manages all aspects of the administration and operation of the portfolios of the Affiliated Funds. For services provided to the portfolio, Stephens receives a fee that is computed daily and paid monthly at an annual rate based on a percentage of the value of the portfolio's average net assets. As distributor, Stephens is the principal underwriter of the shares of each Affiliated Fund. Stephens enters into selling agreements with broker-dealers and other financial institutions (i.e., selling agents) which make such shares available to their customers. Stephens receives 12b–1 Fees from certain of the Affiliated Fund portfolios. These fees range from 0.05 percent of net assets annually from the Stagecoach Funds to 0.75 percent of net assets annually from certain Overland Funds. In addition, Stephens receives Administrative Fees from each Affiliated Fund portfolio ranging from 0.03 percent to 0.15 percent annually of such portfolios' net assets.

5. WFSI has entered into selling agreements with Stephens and acts as a selling agent for certain Affiliated Fund portfolios. However, with respect to Plans investing in the Affiliated Funds, WFSI will not receive a sales load or commission (in the form of a 12b–1 Fee) from Stephens.

6. WFNIA acts as the sub-adviser for certain portfolios. For services rendered, WFNIA is paid a fee that is computed daily and paid monthly at an annual rate based on a percentage of the portfolio's average daily net assets. As stated above, these sub-advisory fees are paid by Wells Fargo out of its Advisory Fees. Although WFNIA may provide investment advice to such portfolios, Wells Fargo retains final investment discretion with respect to the management of the assets of each portfolio.

7. WFTIC currently acts as the custodian of the assets of certain of the Affiliated Funds and it receives a custodian fee for such services. The amount of this expense, to the extent not included in the Advisory Fees is 0.0167 percent of the daily net assets of the applicable Affiliated Fund.

Description of the Third Party Funds

8. The Third Party Funds are open-end, diversified management investment companies registered under the '40 Act whose sponsors, administrators, distributors, investment advisers and sub-advisers are not affiliated with Wells Fargo or its affiliates. The Third Party Funds may be made available from time to time to Plans investing in the Portfolio Advisor Program.

Description of the Portfolio Advisor Program

9. The Portfolio Advisor Program is an asset allocation program that has been offered by Wells Fargo to Independent Fiduciaries of Plans since October 1, 1995. It is designed to provide small- and medium-sized Plans with access to the type of investment advice that is typically available to larger investors. The Portfolio Advisor Program is intended to provide a format for investment with the following features—a unified account statement covering all investments, automatic allocation of assets and contributions, a single asset allocation fee and no sales charges on purchases, redemptions, reinvestments or transfers between investments.[3] The minimum investment required to establish a Portfolio Advisor Program Account is $10,000.[4]

[3] Although shares in the Affiliated Funds can be marketed outside of the Portfolio Advisor Program, such shares would generally carry load fees.

[4] If an investor has already opened a Portfolio Advisor Program Account with Wells Fargo with a minimum investment of $10,000, that same investor may open a second Portfolio Advisor Program Account with Wells Fargo with a minimum investment of $2,000. An investor having other

With respect to a Section 404(c) Plan, Wells Fargo will offer the Portfolio Advisor Program to the Plan's Independent Fiduciary as an investment option for the Plan or a portion of the Plan. Alternatively, the Plan's Independent Fiduciary may decide to utilize the Portfolio Advisor Program for all of the Plan's investment needs. In either situation, Wells Fargo will afford the Independent Fiduciary the opportunity to decide whether Wells Fargo will interact directly with the Plan's Directing Participants or exclusively with the Independent Fiduciary.

Wells Fargo will provide each Independent Fiduciary contemplating investing in the Portfolio Advisor Program with a brochure describing the Program; an Account agreement; a description of the Allocation Models; and a reference guide/disclosure document providing detailed information about the Portfolio Advisor Program, the fees charged thereunder, the procedures for establishing, making additions to and withdrawing from Accounts, and other related information. In the case of a Section 404(c) Plan, this information may be provided to either the Directing Participants by Wells Fargo or to the Independent Fiduciary depending upon the arrangement such Independent Fiduciary has negotiated with Wells Fargo.[5]

10. Individual IRA, SEP–IRA and single participant Keogh plan participants contemplating investing in the Portfolio Advisor Program will open an Account with Wells Fargo. With respect to the Independent Fiduciary of a Section 404(c) Plan, Wells Fargo will ask such fiduciary to select the type of Account that is to be established. The Independent Fiduciary of a Section 404(c) Plan may open a custody Account for each individual Directing Participant or, in the alternative, establish single custody Accounts in the name of the Plan reflecting the grouping of Directing Participants by similar asset Allocation Models.[6]

11. After opening an Account, the Independent Fiduciary will obtain and complete an Account Agreement and risk tolerance and goal analysis Questionnaire (which may be in paper or electronic form). Then, the Independent Fiduciary will present the completed Account Agreement and Questionnaire to a Personal Financial Officer or other representative of Wells Fargo. The Questionnaire will be scored to determine which one of several Allocation Models is most appropriate given the financial goals, objectives and risk tolerances identified by the Independent Fiduciary in the Questionnaire.[7]

In the case of a Section 404(c) Plan, the Independent Fiduciary may elect to have Wells Fargo meet with each Directing Participant. Then, a Personal Financial Officer will provide information relating to the Portfolio Advisor Program as noted above, have each Directing Participant complete the Questionnaire, present the Directing Participant with a recommended Allocation Model and provide the Directing Participant with the relevant Prospectuses of the Funds in the Allocation Model.

Alternatively, if the Independent Fiduciary chooses to have Wells Fargo interact with it instead of the Directing Participants, the Personal Financial Officer will meet with the Independent Fiduciary and provide such fiduciary with a description of the Portfolio Advisor Program for dissemination to the Directing Participants. The Personal Financial Officer will also give the Independent Fiduciary Questionnaires for completion by the Directing Participants. Based on the results of the returned Questionnaires, Wells Fargo will then recommend to the Independent Fiduciary, the appropriate Allocation Models and provide such fiduciary with relevant Prospectuses of the Funds in the recommended Allocation Models for distribution to the Directing Participants.

12. The Allocation Models are designed to satisfy a variety of risk tolerances and investment horizons. At the outset, there will be only nine Allocation Models, some with growth-based investment objectives and others with income-based investment objectives. In the future, more Allocation Models may be added by Wells Fargo. Each Allocation Model will have three asset classes and initially, nine asset sub-classes. Table I shows the asset distribution for a sample Portfolio Advisor Program Allocation Model.

TABLE I.—PORTFOLIO ADVISOR PROGRAM SAMPLE ALLOCATION MODEL

[Moderate Medium-Term Model Allocation]

Class	Min (percent)	Norm (percent)	Max (percent)	Fund type	Asset sub-class	Min (percent)	Norm (percent)	Max (percent)
Stock Funds	45	60	75	Third party	Growth	0	15	30
				Third party	Equity International	0	5	20
				Affiliated	Growth & Income	0	15	30
				Affiliated	Equity Income	0	15	30
				Affiliated	Asset Allocation	0	10	25
Bond Funds	25	40	55	Affiliated	Total Return Bond	0	15	30
				Affiliated	Intermediate Bond	0	15	30
				Affiliated	Short-Term Bond	0	10	25
Money Market Funds	0	0	30	Affiliated	Cash	0	0	30

Note: A Third Party Fund will never be replaced by an Affiliated Fund whereas an Affiliated Fund may be replaced by a Third Party Fund. (See discussion in Representation 15 regarding extraordinary changes that are outside the accepted percentage bands.)

accounts with Wells Fargo of $10,000 or more that are not Portfolio Advisor Program Accounts will not be eligible for this lower investment minimum.

[5] The Department wishes to point out that an Independent Fiduciary has the responsibility to disseminate all information it receives to each Directing Participant investing in the Portfolio Advisor Program.

[6] If Wells Fargo establishes a single custody account in the name of a Section 404(c) Plan, it is represented that Wells Fargo will not keep track of the individual interests of the Directing Participants. Instead, the Independent Fiduciary will maintain such records or have a third party recordkeeper perform this service.

[7] Wells Fargo proposes to canvass each investor annually to ascertain whether any of the answers to the Questionnaire have changed from the previous year. If so, Wells Fargo will update the Questionnaire. However, in the event an investor wishes to change his or her Questionnaire during a quarter so that another Allocation Model is called for, that new Allocation Model will be presented to and approved by the investor and the change to the new Allocation Model will be effected immediately.

13. The Allocation Models are developed and maintained by the Wells Fargo Bank Asset Allocation Committee (the Allocation Committee) which is comprised of senior investment officers of Wells Fargo's Investment Management Group. The Allocation Committee is responsible for determining the overall asset allocation of each Allocation Model among the currently nine asset sub-class categories. The Allocation Committee integrates both quantitative and fundamental analysis to determine optimal Allocation Models that match risk and reward objectives. In this regard, the Allocation Committee does not rely upon a software program but rather examines current asset allocation strategies and determines changes based on the present financial outlook, estimates of expected returns, volatility in markets, asset class correlation, economic trends and various securities valuation measures. These criteria are provided by Wells Fargo to all Portfolio Advisor Program investors in the disclosure materials.

14. The Allocation Models may be adjusted by the Allocation Committee as changes in the economy and market conditions dictate within the permissible ranges described below in Representation 15. Such adjustments may include changing the investment mix of the Allocation Models by altering the proportion of assets invested among the asset sub-classes. However, such adjustments do not include the Allocation Committee's adding to or deleting from Funds in an Allocation Model without obtaining the written consent of the Independent Fiduciary or the Directing Participant.

In addition, the Allocation Committee is subject to certain limitations in changing the design of the Allocation Models. For example, the Allocation Committee is required to design Allocation Models that include the stock, bond and money market fund asset classes and their respective sub-classes.

15. The Independent Fiduciary or Directing Participant will authorize Wells Fargo to change the asset mix of a given Allocation Model within a 15 percent range (i.e., 15 percent above or below the normal position for the stock and bond asset sub-classes).[8] Movement within each sub-class of assets will also be authorized within a range of no more than 15 percent above or below the normal position. The Independent Fiduciary or Directing Participant will also authorize Wells Fargo to change the cash position in a given Allocation Model in a range of 0–30 percent above or below the normal position to accommodate extremes in the other two asset sub-classes.[9] Wells Fargo will make changes in the asset mix within these authorized limits without seeking further approval from the Independent Fiduciary or the Directing Participant. However, Wells Fargo will not change the asset mix outside those limits unless it provides the Independent Fiduciary or Directing Participant with 30 days' advance written notice of the proposed change [10] and gives the Independent Fiduciary or Directing Participant time to elect not to have the change made.[11]

16. Wells Fargo's Investment Review Committee (the Review Committee), which is comprised of senior Wells Fargo officers, is responsible for selecting Affiliated Funds and Third Party Funds that satisfy the asset allocations specified by the Allocation Committee for each Allocation Model. With the exception of the Growth and Equity International asset sub-classes, the Review Committee will select portfolios of the Affiliated Funds for investment. The Review Committee will always select Third Party Funds for investment to the extent an Allocation Model calls for an allocation of assets in the Equity International and Growth sub-classes. If, however, the Review Committee determines that investment in an Affiliated Fund is imprudent (e.g., the Affiliated Fund does not meet the requirements of a necessary asset sub-class), it will select a Third Party Fund in lieu of an Affiliated Fund for a particular sub-class of assets.[12] If a Third Party Fund is substituted for an Affiliated Fund, the Review Committee must thereafter use only a Third Party Fund (i.e., the same Third Party Fund or another Third Party Fund). In the applicants' view, this precaution will remove any conflicts of interest that may arise if the Review Committee is faced with the prospect of selecting an Affiliated Fund over a Third Party Fund.[13]

[8] Movement within each sub-class will apply to the total assets held in an Independent Fiduciary's or a Directing Participant's Account.

[9] For any Allocation Model, it is represented that not more than 30 percent of an investor's assets can be placed in the Money Market Funds. If the range for cash is exceeded on a rebalancing date due to market forces, then the assets will be rebalanced to achieve the targeted percentages established in the relevant Allocation Model. The rebalancing will require a redemption of shares in the Money Market Funds so that the percentage in cash will be aligned with the relevant Allocation Model percentage. In addition, a corresponding purchase of funds in the asset sub-classes that are below the targeted range will be made. (See Representation 18 for a discussion of the rebalancing of Accounts.)

[10] Changes outside these limits may take the form of an extraordinary shift (such as the movement of a large percentage of assets into cash if the Allocation Committee determines that such a move is warranted by economic conditions) or a change in the normal position for the allocation mix of a particular Allocation Model which the Allocation Committee considers necessary because of a more permanent shift in market or economic conditions. In either case, Wells Fargo will notify each Independent Fiduciary whose Plan is invested in the relevant model or Directing Participant of the change and give such Independent Fiduciary or Directing Participant time to elect not to have the change made. The change will then be made for all Independent Fiduciaries or Directing Participants who do not elect otherwise. If a change is made to the normal position for the allocation mix of a particular Allocation Model, Wells Fargo will be authorized to change the allocation of assets within a 15 percent range (30 percent in the case of cash) above or below the newly established normal position without notifying the Independent Fiduciary in advance. If, on the other hand, after first notifying the Independent Fiduciary or Directing Participant, Wells Fargo makes an extraordinary change to the asset allocation which moves it outside the authorized limit, Wells Fargo will be authorized to return the asset mix back within the authorized limit without further notice, but any other change which will result in the asset mix remaining outside the authorized limit will only be made after giving 30 days' advance written notice and allowing the Independent Fiduciary or Directing Participant the opportunity to elect not to have such change made.

[11] Assuming an Independent Fiduciary of a Section 404(c) Plan establishes a single custody Account with Wells Fargo in the name of the Plan, it is represented that if a Directing Participant does not wish to have his or her assets reallocated in accordance with Wells Fargo's recommendation, such Directing Participant may choose another Allocation Model or leave the Portfolio Advisor Program.

[12] Changes in the Affiliated Funds or Third Party Funds used to satisfy the need for investment in a particular asset sub-class will only be made after Wells Fargo has notified all of the affected Independent Fiduciaries or Directing Participants in writing and has explained that the proposed changes will go into effect if the Independent Fiduciaries or Directing Participants do not elect to withdraw by the effective date of such change. (See Representation 27.)

[13] If the Allocation Committee should later divide the asset sub-classes for an Allocation Model into one or more new sub-classes, the Review Committee will select Affiliated Fund Portfolios to satisfy the call for investment in the new sub-class unless (a) there is no Affiliated Fund Portfolio which invests in the new sub-class of assets; (b) Wells Fargo's Affiliated Fund is not performing as well as a similar Third Party Fund based upon such measurable criteria as performance, expense ratio, standard deviation and, in the case of the Bond Funds, the SEC yield; or (c) a Third Party Fund has been utilized initially for the asset sub-class that is being divided.

For example, Wells Fargo represents that ''total return'' is a recognized sub-class of the Bond Fund asset class that is set forth in Table I. Assuming the industry begins distinguishing between U.S. bonds and foreign bonds, Wells Fargo explains that it may do this for the benefit of its investors. In this regard, if an Affiliated Fund has been used as the Fund for the total return sub-class, and Wells Fargo has available two Bond Funds, each of which is appropriate for the new sub-classes, Wells Fargo explains that it will utilize these Affiliated Funds. If an Affiliated Fund is being used for the U.S. bond sub-class, but Wells Fargo does not have an appropriate Affiliated Fund for the foreign bond sub-class, it will select a Third Party Fund. Thus, when the original sub-class is serviced by an Affiliated Fund and that sub-class is divided, Wells Fargo states that it may use an Affiliated Fund, a

17. The asset allocation services provided by the Personal Financial Officer will not be binding on the Independent Fiduciary or Directing Participant. No action will be taken on the recommendation unless and until the Independent Fiduciary or Directing Participant accepts and approves in writing the particular Allocation Model and the corresponding investment mix (i.e., the investment allocation) recommended by the Personal Financial Officer. The Independent Fiduciary or Directing Participant can add or withdraw Plan assets to or from the respective Account at any time (subject to a $100 minimum redemption and purchase requirement) and can also choose a different Allocation Model if the Independent Fiduciary's or Directing Participant's investment needs and goals have changed. Moreover, Wells Fargo intends to ask Independent Fiduciaries or Directing Participants annually whether any information provided in the Questionnaire should be changed or updated.

Rebalancing and Reallocation of Plan Accounts

18. Once an Independent Fiduciary or Directing Participant has directed Wells Fargo to invest Plan assets that are held in an Account in a particular Allocation Model, Wells Fargo will invest the Account in the Affiliated Funds and/or Third Party Funds that the Allocation Committee has previously chosen to satisfy the asset allocation called for by the Allocation Model. It is anticipated that, over time, disproportionate earnings as between asset types will cause the Account's investment mix to drift out of balance with the Allocation Model originally chosen by the Independent Fiduciary or Directing Participant.

For example, the Allocation Model chosen by the Independent Fiduciary or Directing Participant may require that 60 percent of Account assets be invested in the Stock Funds and 40 percent of Account assets be invested in the Bond Funds. If the Stock Funds perform better than the Bond Funds during a particular period of time, more than 60 percent of the Account's assets will be invested in the Stock Funds by the end of the period.

To correct this imbalance, Wells Fargo will move assets among investments by buying and selling shares of the Affiliated Funds and/or Third Party Funds on the second to the last business day of each calendar quarter. For purposes of rebalancing, Wells Fargo will use the net asset values of the affected Funds as of close of business for the preceding trading day.[14] The applicants represent that the act of rebalancing Accounts will not involve any exercise of investment discretion on the part of Wells Fargo or its affiliates because the rebalancing will be confined to bringing the Account into balance with the Allocation Model chosen by the Independent Fiduciary or the Directing Participant.

Wells Fargo will also make periodic changes (or reallocations) to the asset mix of the Allocation Models and to the mix and identity of the Affiliated Funds and/or Third Party Funds that satisfy the Allocation Models. Such changes will be made to take into account changes in the economy and market conditions and will be made independently of the selection of Funds. The changes will also be confined to the percentage bands set forth above in Table I. When changes are made to the Allocation Models, Wells Fargo will automatically realign each Plan Account to make the Account's investment mix match the new investment mix of the Allocation Model selected by the Independent Fiduciary or Directing Participant.

Wells Fargo will realign the Accounts' assets by shifting assets between Affiliated Funds and Third Party Funds according to changes in the Allocation Model. This type of automatic realignment will take place only within the percentage bands that have been authorized by the Independent Fiduciary or Directing Participant. If an Allocation Model changes such that assets would be allocated outside of the authorized bands, Wells Fargo will notify the affected Independent Fiduciary or Directing Participant of the proposed change and give each individual an opportunity to elect not to permit such change.[15]

Disclosures

19. Aside from the Questionnaire described above, in order for a Plan to participate in the Portfolio Advisor Program, Wells Fargo will provide an Independent Fiduciary or Directing Participant, with the following materials and/or oral disclosures: (a) A copy of the agreement between the Plan and Wells Fargo relating to the Plan's participation in the Portfolio Advisor Program; (b) upon written request to Wells Fargo, a copy of its investment advisory agreement and sub-advisory agreement pertaining to the Affiliated Funds as well as its distribution agreement pertaining to the Third Party Funds; (c) a written recommendation of a specific Allocation Model together with a copy of the Independent Fiduciary's Questionnaire and answers; (d) a written or oral explanation of the Portfolio Advisor Program and the operation and objectives of the Allocation Models; (e) sufficient and understandable disclosure relating to rebalancing and reallocating the Allocation Models; (f) a copy of the proposed and final exemptions granting the relief requested herein; (g) written disclosures of Wells Fargo's affiliation or nonaffiliation with the parties who act as sponsors, distributors, administrators, investment advisers and sub- advisers, custodians and transfer agents of the Third Party Funds and the Affiliated Funds; and (h) in the case of a Section 404(c) Plan, to the extent requested by the Independent Fiduciary, an explanation by a Personal Financial Officer to Directing Participants in such Plan of the services offered under the Portfolio Advisor Program, the operation and objectives of the Funds and copies of the documents described in (a)–(g).

Wells Fargo will make available for inspection by the Independent Fiduciary or Directing Participant at the time of enrollment in the Portfolio Advisor Program, copies of Prospectuses of each Affiliated Fund and Third Party Fund in which a Plan's assets are invested. The Prospectuses will also be mailed to the Independent Fiduciary, or if applicable, to the Directing Participant, after the initial investment of assets under the Portfolio Advisor Program. These documents discuss the investment objectives of the Affiliated Funds and the Third Party Funds, the policies employed to achieve these objectives, the corporate affiliation existing between Wells Fargo and its

Third Party Fund or a combination of the two. If, on the other hand, a Third Party Fund is being used for the total return sub-class, Wells Fargo must utilize Third Party Funds for both the new divided sub-classes. In any event, Wells Fargo represents that it will give all investors 30 days' notice and the ability to object before any sub-class is divided.

[14] It is represented that neither Wells Fargo nor its affiliates will receive fees or commissions in connection with the rebalancing. It is also represented that the current percentage threshold for triggering rebalancing is a deviation of more than 5 percent above or below the targeted percentage for an asset sub-class.

[15] In the preceding example, if the Allocation Model were to be changed such that the new investment allocation is 55 percent in the Stock Funds and 45 percent in the Bond Funds (a 5 percent change that is within 15 percent of the normal position for that Allocation Model), Wells Fargo would then sell sufficient shares in the Stock Funds to reduce the percentage of assets invested in such fund to 55 percent and invest the proceeds in the Bond Funds. If, however, a change of more than 15 percent is proposed, Wells Fargo will first notify each Independent Fiduciary or Directing Participant affected and make changes to the Accounts of the Independent Fiduciaries or Directing Participants who did not elect otherwise.

affiliates, the compensation paid to such entities and any information explaining the risks attendant to investing in the Affiliated Funds or Third Party Funds. In addition, upon written or oral request, an Independent Fiduciary or Directing Participant will be given a Statement of Additional Information supplementing the applicable Prospectus which describes the securities and other instruments in which the Funds may invest, the investment policies and strategies that the Affiliated Funds or Third Party Funds may utilize, including a description of the risks.

20. If accepted as an investor in the Portfolio Advisor Program, the Independent Fiduciary or Directing Participant will be required to acknowledge in writing, prior to investing through the Program, that such Independent Fiduciary or Directing Participant has received copies of the aforementioned documents. With respect to a Title I Plan that does not permit participant-directed investments as contemplated under section 404(c) of the Act, written acknowledgement of the receipt of such documents is provided by the Independent Fiduciary (i.e., the Plan administrator, trustee, investment manager or named fiduciary, as the recordholder of shares of the Funds.) Such Independent Fiduciary will be required to represent in writing to Wells Fargo that such fiduciary is (a) independent of Wells Fargo and its affiliates; (b) capable of making independent decisions regarding the investment of Plan assets; (c) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto; and (d) able to make an informed decision concerning participation in the Portfolio Advisor Program.

With respect to a Section 404(c) Plan or a Plan that is covered under Title II of the Act, the Directing Participant or the Independent Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to Wells Fargo that such individual is (a) independent of Wells Fargo and its affiliates; (b) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto; and, (c) able to make an informed decision concerning participation in the Portfolio Advisor Program.

21. On an ongoing basis, Wells Fargo will provide the Independent Fiduciary with (a) written confirmations of each purchase and redemption of shares of an Affiliated Fund or Third Party Fund (including transactions resulting from the realignment of assets caused by a change in an Allocation Model's investment mix and from periodic rebalancing of Account assets); (b) telephone quotations of such Independent Fiduciary's Account balance; (c) a periodic (but not less frequently than quarterly) statement of Account specifying the net asset value of a Plan's assets that are invested in such Account, a summary of purchase, sale and exchange activity and dividends received or reinvested and a summary of cumulative realized gains/losses; (d) semiannual and annual reports which will include financial statements for the Funds and the fees paid by the Funds to Wells Fargo and its affiliates; (e) a quarterly newspaper or other report pertaining to the applicable Allocation Model describing such Allocation Model's performance during the preceding quarter, market conditions and economic outlook and, if applicable, prospective changes in Affiliated Fund and Third Party Fund allocations for the Allocation Model and the reasons therefor; (f) a written or oral inquiry at least once annually to determine if the information provided in the Questionnaire is still accurate and to determine if such information should be updated; and (g) at least annually, a Termination Form that the Independent Fiduciary may use to withdraw from the Portfolio Advisor Program together with instructions for using such form.

With respect to a Section 404(c) Plan, the Independent Fiduciary will determine whether the aforementioned information is provided directly to the Directing Participants by Wells Fargo or whether such fiduciary will receive this information and disseminate it to the Directing Participants. If custody accounts are established in the names of the Directing Participants, such participants will receive individualized information.

Fee Structure

22. As to each investing Plan, the total fees that are paid to Wells Fargo and its affiliates will constitute no more than reasonable compensation for the services provided.[16] In this regard, for its asset allocation and related services, Wells Fargo will charge each participating Plan an annual Plan-level investment fee. The Outside Fee will be based on total assets under management which are attributable to such Plan's investment in both the Affiliated Funds and the Third Party Funds. The annualized Outside Fee will be 1.95 percent (for balances below $20,000), 1.85 percent (for balances of between $20,000 and $100,000, 1.65 percent (for balances between $100,000 and $250,000) and 1.50 percent (for balances above $250,000).[17] From time to time, Wells Fargo may reduce the Outside Fee for promotional purposes. The duration and promotional nature of such reductions will be disclosed to investors. The Outside Fee will be computed quarterly on the average daily value of assets in the Plan's Account during the quarter and will be deducted directly from the Account on a quarterly basis.

23. Wells Fargo will receive Advisory Fees from the Affiliated Funds ranging from 0.05 percent to 0.70 percent, annually, depending upon the applicable portfolio. A sub- advisory fee is paid by Wells Fargo out of its investment advisory fee to WFNIA. Wells Fargo may also receive Administrative Fees from the Affiliated Funds. As stated in Representation 3, if such fees are not included in the Advisory Fee for a portfolio, the current fee for (a) custodial services is 0.0167 percent annually, (b) $2,000 per month plus 0.07 percent on the first $50 million, 0.045 percent on the next $50 million and 0.02 percent on the excess over $100 million for portfolio accounting services, (c) a minimum of $3,000 monthly, plus various transaction charges for transfer agency services, and (d) 0.00 percent to 0.30 percent for shareholder servicing. Further, Wells Fargo may receive 12b-1 fees in the form of ''trailing'' commissions of 0.05 percent to 0.50 percent of assets invested with respect to Third Party Funds in the Portfolio Advisor Program.

24. With respect to the Affiliated Funds, Wells Fargo proposes to offset,

[16] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the fiduciaries of the Plans from the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions Independent Fiduciaries of Plans investing in the Funds that they have an ongoing duty under section 404 of the Act to monitor the services provided to the Plans to assure that the services remain appropriate and that the fees paid by the Plans for such services are reasonable in relation to the value of the services provided. In considering whether to enter into the arrangement for the provision of asset allocation services, the Department emphasizes that it expects the Independent Fiduciary to fully understand that the selection or addition of Third Party Funds may result in a Plan paying a larger overall aggregate fee for the package of services than if the fiduciary had selected Affiliated Funds.

[17] In the case of a Section 404(c) Plan, the computation of the Outside Fee will be based on the average daily value of all of the assets in the Accounts of Directing Participants who invest in the Portfolio Advisor Program. In other words, the Outside Fee is based on the aggregate asset value of the Plan's asset and not on the value of each Directing Participant's Account in the Portfolio Advisor Program. The result is that all Directing Participants in a Section 404(c) Plan will be subject to the same Outside Fee as well as the breakpoints.

quarterly, against its Outside Fee, (a) all Advisory Fees and Administrative Fees that are paid by the Affiliated Funds to Wells Fargo, its affiliated sub-advisers, its former affiliates, WFNIA and WFITC, and to other unrelated parties and (b) all 12b-1 Fees and Administrative Fees that are paid to Stephens.[18] As stated in Representation 3, the annualized Advisory Fees currently range from 0.05 percent to 0.70 percent of the portfolio's average daily net assets. As stated in Representation 4, the annualized 12b-1 Fees that are paid to Stephens range from 0.05 to 0.75 percent of the net assets of the Affiliated Funds. In addition, the annualized Administrative Fees that are paid to Stephens range from 0.03 percent to 0.15 percent of the portfolio's net assets. With respect to the Third Party Funds, Wells Fargo proposes to offset quarterly, against the Outside Fee, all 12b-1 Fees that it receives. As stated in Representation 23, these fees currently range from 0.05 percent to 0.50 percent annually of net assets invested.

All such Fees described above will be offset in accordance with the crediting mechanism that is described in Prohibited Transaction Exemption (PTE) 77–4 (42 FR 18732, April 8, 1977). After the offset, Wells Fargo will be paid a Net Outside Fee that may be deducted from Plan Accounts. The Net Outside Fee, together with the Advisory Fees, the Administrative Fees and 12b- 1 Fees will equal the Outside Fee prior to any offset. Wells Fargo believes that the offset will eliminate any potential conflicts of interest that may exist as a result of the fact that the investment in certain Funds would generate higher overall fees to Wells Fargo and its affiliates. In addition, by insuring that the sum of the offset and the Net Outside Fee always equals the Outside Fee, Wells Fargo believes that the selection of Affiliated or Third Party Funds will be revenue-neutral.

Table II illustrates the revenue-neutral result of the offset arrangement. As Table II shows, if a Plan with an Account balance of $10,000 is invested in a Portfolio in which 50 percent or $5,000 is invested, respectively, in an Affiliated Fund and a Third Party Fund, the Plan will be subject to an Outside Fee of $195 or 1.95 percent of assets invested.

TABLE II.—EXAMPLE OF REVENUE-NEUTRAL FEE OFFSET

Fund type	Percentage of assets allocated to fund (percent)	Amount invested in fund	Offset (advisory, administrative, 12b-1 fees)		Net outside fee	Outside fee (1.95%)
			Percent	Amount		
Third Party	0.50	5,000	0.25	12.50	85.00	97.50
Affiliated	0.50	5,000	0.80	40.00	57.50	97.50
Total	100.00	10,000	N/A	52.50	142.50	195.00

25. At the end of each quarter, Wells Fargo will calculate the percentage of gross revenues that it has received during the quarter in the form of Advisory Fees, Administrative Fees and 12b-1 Fees from the applicable Affiliated Fund or Third Party Fund. Such percentage will also include all 12b-1 Fees and Administrative Fees that are paid to Stephens. These figures will be calculated as a percentage of the average daily net asset value of assets in the appropriate Fund. The weighted average of such revenues (the Offset Percentage) will then be calculated for each Allocation Model. This will yield the amount of Advisory Fees, Administrative Fees and 12b-1 Fees that are received. This amount will be expressed as a percentage of the average daily net value of Account assets. Wells Fargo proposes to reduce the Outside Fee for the quarter for each Plan by subtracting from the Outside Fee the Offset Percentage for the Allocation Model in which Plan assets were invested during the quarter. Only after the Offset Percentage has been subtracted will Wells Fargo deduct the Outside Fee from the Plan Account in the Portfolio Advisor Program.

26. Table III shows the calculation of the Offset Percentage for a sample Allocation Model. In this example, gross revenues for Wells Fargo, its affiliates and where applicable, Stephens, as between the Affiliated Funds and the Third Party Funds vary from 0.25 percent to 1.09 percent of the daily net asset value (annualized), depending on which Affiliated Fund or Third Party Fund is selected. The weighted average of these revenues for the entire Allocation Model is 0.83 percent (annualized), which is subtracted from the 1.95 percent Outside Fee, thereby leaving a net Outside Fee of 1.12 percent (annualized) for the quarter.

TABLE III.—EXAMPLE OF FEE OFFSET ON SAMPLE ALLOCATION MODEL

Fund type	Sub-class	Total revenues* (percent)		Percentage of assets allocated to fund		Weighted fee percentage
Third Party	Growth	0.50	×	15.00	=	7.50
Third Party	Equity Intn'tl.	0.25	×	5.00	=	1.25
Affiliated	Growth & Income	1.09	×	10.00	=	10.90
Affiliated	Equity Income	1.09	×	15.00	=	16.35
Affiliated	Asset Allocation	0.80	×	10.00	=	8.00
Affiliated	Total Return	1.03	×	15.00	=	15.45
Affiliated	Intermediate	0.75	×	15.00	=	11.25

[18] The Department notes that if the Advisory Fee that is offset includes a fee that is paid by Wells Fargo to an unrelated sub- adviser, no additional offsetting will be required with respect to that portion of the fee that is actually paid by Wells Fargo to such sub-adviser.

TABLE III.—EXAMPLE OF FEE OFFSET ON SAMPLE ALLOCATION MODEL—Continued

Fund type	Sub-class	Total revenues* (percent)		Percentage of assets allocated to fund		Weighted fee percentage
Affiliated	Short-Term	0.80	×	10.00	=	8.00
Affiliated	Cash	0.75	×	5.00	=	3.75
Total				100.00		82.45
Outside Fee				1.95		
Weighted Average of Wells Fargo Revenues (82.45 ÷ 100).				0.83		
Net Account Fee (Annual)—Would be Calculated Quarterly.				1.12		

*For the Affiliated Funds, total revenues include all fees that are paid to Wells Fargo, its affiliated sub-advisers, its former affiliates, Stephens and to other unrelated parties. For the Third Party Funds, total revenues include 12b-1 Fees. Any other fees that Wells Fargo may receive from the Third Party Funds are paid from the 12b-1 Fees.

Use of the Termination Form

27. Although an Independent Fiduciary or Directing Participant may withdraw from the Portfolio Advisor Program at any time, Wells Fargo will provide each such individual with a Termination Form, at least annually, but in all cases where Wells Fargo changes the asset mix outside of the current Allocation Model, when Wells Fargo proposes to divide a Fund sub-class, when Wells Fargo determines that it is in the best interest of the Plan to use a Third Party Fund instead of an Affiliated Fund and whenever the Outside Fee is increased. Wells Fargo will provide such written notice to the Independent Fiduciary or Directing Participant at least 30 days prior to the implementation of the change. The written notification will include the Termination Form that the Independent Fiduciary or Directing Participant may use to withdraw from the Portfolio Advisor Program. The Termination Form will be accompanied by instructions on its use. The instructions will expressly (a) provide that the authorization is terminable at will and without penalty, upon receipt by Wells Fargo of written notice from the Independent Fiduciary or Directing Participant; and (b) explain that the proposed change will go into effect if the Independent Fiduciary or Directing Participant does not elect to withdraw by the effective date.

28. In summary, it is represented that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The investment of a Plan's assets in the Portfolio Advisor Program has been or will be made by a Plan fiduciary or Directing Participant who is independent of Wells Fargo and its affiliates such that the Independent Fiduciary or Directing Participant will maintain complete discretion with respect to participating in the Portfolio Advisor Program.

(b) No Plan has paid or will pay a fee or commission by reason of the acquisition, redemption, reinvestment or transfer of shares in the Funds.

(c) As to each Plan, the total fees that are paid to Wells Fargo and its affiliates have constituted or will constitute no more than reasonable compensation for the services provided.

(d) Prior to investing in the Portfolio Advisor Program, each Independent Fiduciary or Directing Participant have received or will receive offering materials and disclosures from Wells Fargo which set forth all material facts concerning the purpose, fees, structure, operation, Account rebalancing, risks and participation in such program.

(e) Wells Fargo has provided or will provide written documentation to an Independent Fiduciary or Directing Participant of its recommendations or evaluations based upon objective criteria.

(f) The quarterly Outside Fee that is paid by a Plan to Wells Fargo for asset allocation and related services rendered to such Plan under the Portfolio Advisor Program will be offset by (i) all Advisory Fees (including sub-advisory fees) and Administrative Fees received from the Affiliated Funds by Wells Fargo, its affiliates, its former affiliates, and unrelated parties, (ii) all 12b-1 Fees and Administrative Fees that are paid by the Affiliated Funds to Stephens and (iii) all 12b-1 Fees Wells Fargo receives from the Third Party Funds, such that the sum of the offset and the Net Outside Fee will always equal the Outside Fee and the selection of Affiliated or Third Party Funds will always be revenue neutral.

(g) Although Wells Fargo will have discretion to change the investment mix of an Allocation Model, it has been and will be bound by the financial goals and risk tolerances that the model represents and it will be limited in the degree of change that it can make to an Allocation Model's investment mix.

(h) Any authorizations made by an Independent Fiduciary or Directing Participant with respect to increases in the Outside Fee, changes in the asset mix outside an Allocation Model, the division of a Fund sub-class, or the substitution of a Third Party Fund for an Affiliated Fund, have been and will be terminable at will and without penalty to the Plan, upon receipt by Wells Fargo of written notice of termination from the Independent Fiduciary or the Directing Participant.

(i) Each Independent Fiduciary or Directing Participant has received and will receive ongoing disclosures from Wells Fargo regarding the continued participation in the Portfolio Advisor Program.

(j) All dealings between the Plans, the Funds and Wells Fargo have been and will remain on a basis which is at least as favorable to the Plans as such dealings are with other shareholders of the Funds.

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

Cassemco, Inc. Retirement Plan and Trust Agreement Located in Cookeville, Tennessee; Proposed Exemption

[Application No. D–10350]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) 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 proposed cash sale (the Sale) by the Plan of certain securities (the Securities) to Cassemco, Inc. the sponsoring employer (the Employer) and party in interest with respect to the Plan; provided (1) the Sale is a one-time transaction for cash, (2) the Plan pays no commissions nor incurs any expenses in connection with the proposed Sale, and (3) the Plan receives as consideration for the Sale no less than the fair market value of the Securities as of the date of the Sale.

Summary or Facts and Representations

1. The Employer, a Tennessee corporation organized October 19, 1978, is in the business of manufacturing protective sporting goods equipment for sporting-goods dealers and supplying packaging materials for ammunition to military prime contractors.

Mrs. Barbara Nipper Tetreault is the sole owner of the Employer, succeeding her late husband in 1991, when also she became the trustee and fiduciary of the Plan.

The Plan is a defined benefit pension plan with approximately $137,921.50 in total assets and 31 participants, as of September 3, 1996. The Employer, because of financial problems, discontinued funding the Plan in 1991. On July 3, 1996, the Plan submitted a formal notice of termination to the Pension Benefit Guaranty Corporation, and now the Plan is prepared to distribute the accrued vested benefits of the Plan to its participants and beneficiaries.

2. The Securities, which the Plan proposes to sell to the Employer, consist of 956 shares of common stock, and 956 warrants that are exercisable at $10.50 and expire December 31, 1997. The Securities were issued to the Plan, effective December 31, 1995, by AquaPro Corporation, a Tennessee corporation, in an exchange for the limited partnership holdings of the Plan in a catfish farm, Circle Creek AquaCulture, L.P., a Tennessee limited partnership. The Plan acquired its limited partnership holdings in the Circle Creek AquaCulture, L.P. on May 1, 1989, from an unrelated party for investment purposes.

In a letter dated September 4, 1996, Mr. George S. Hastings, Jr., President of AquaPro Corporation determined that the current fair market value of the Securities held by the Plan was $7.50 for each of the 956 shares and $2.25 for each of the 956 warrants, or a total fair market value of $9,321 for all the Securities held by the Plan.

Mr. Hastings represents, that although the Securities are not currently registered or listed on a national securities exchange, several million dollars have been invested in the shares of common stock of AquaPro Corporation and acquired by outside investors, paying $7.50 per share; also, Mr. Hastings determined that the automatic conversion feature of the warrants, effective on the expiration date, December 31, 1997,[19] gave the warrants a fair market value of $2.25 per warrant.

In addition, in a letter dated November 6, 1995, Bishop Crown Investment Research, Inc. (Bishop), located in San Diego, California determined the Securities value was $7.50 per share for the common stock and the value of the warrants was $2.25 per warrant. The determination by Bishop was made for determining the exchange values when AquaPro Corporation acquired the limited partnership holdings of the Plan, effective December 31, 1995, in Circle Creek AquaCulture, L.P.

The applicant and Mr. Hastings represent that both Mr. Hastings and Bishop are unrelated and independent of the Plan and the trustee or sponsor of the Plan.

3. The applicant requests an administrative exemption from the prohibited transaction provisions of the Act to enable the Plan to sell for cash the Securities at their fair market value to the Employer. Following the proposed Sale the applicant intends to complete the termination of the Plan by distributing the accrued vested benefits to the Plan participants and beneficiaries. The applicant represents that an additional funding contribution will be made to the Plan so that on the date of distribution the Plan will pay the participants and beneficiaries all their accrued benefits due under the terms of the Plan. The applicant also represents that because of the limited trading activity of the Securities since they are not registered or listed on a national securities exchange, the Plan has not been able to sell the Securities to a non-party in interest with respect to the Plan.

[19] The automatic conversion feature of the warrants provides that upon their expiration each warrant converts to 3/10 share of the common stock issued by AquaPro Corporation.

The Sale is represented by the applicant to be in the best interests of the Plan and its participants and beneficiaries because the Plan will be able to distribute the accrued vested benefits and be able to terminate and avoid additional costs and expenses.

Also, the applicant represents that the rights of the participants and beneficiaries are protected by the independent determination of the fair market value of the Securities by Mr. Hastings and Bishop.

4. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because (a) the Sale of the Securities involves a one-time transaction for cash; (b) the Plan will not incur any commission payments nor any other expenses from the Sale; (c) the Plan will be able to distribute the accrued vested benefits to Plan participants and beneficiaries and terminate; (d) the Securities have been independently appraised by the president of the issuing corporation; and (e) the Plan will receive as consideration from the Sale an amount no less than the fair market value of the Securities as of the date of the Sale.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

PanAgora Asset Management, Inc. (PanAgora) Located in Boston, Massachusetts; Proposed Exemption

[Application No. D–10351]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, PanAgora shall not be precluded from functioning as a ‘‘qualified professional asset manager’’ pursuant to Prohibited Transaction Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984) solely because of a failure to satisfy Section I(g) of PTE 84–14, as a result of affiliation with E.F. Hutton & Company, Inc. (Hutton) and Shearson Lehman Brothers, Inc. (Shearson), formerly Shearson Lehman Hutton, Inc. (SLH).

Effective Date: This exemption, if granted, will be effective as of September 22, 1989, the date on which PanAgora was formed.

Summary of Facts and Representations

1. PanAgora is a Delaware corporation that was formed on September 22, 1989.

PanAgora originally was a wholly-owned subsidiary of The Boston Company, Inc. (TBC), which was in turn a subsidiary of SLH. On April 27, 1990, Nippon Life Insurance Company (NLI) obtained a 50% interest in PanAgora; the remaining 50% interest was owned 25% by SLH and 25% by TBC. On May 20, 1993, the ownership was changed so that NLI owned 50% and SLH owned 50%. On July 31, 1993, as part of the reorganization accompanying the sale of the Shearson retail brokerage business, the ownership changed to 50% NLI and 50% Lehman Brothers, Inc.[20]

PanAgora has a Board of Directors of 10 persons. Four are designated by NLI, three are designated by Lehman and three are PanAgora employees. PanAgora is a registered investment adviser under the Investment Advisers Act of 1940 (the Advisers Act). As of December 31, 1995, PanAgora managed investments of $13,486,300,000 for 98 clients, including 73 clients which are plans subject to the Act, 5 foundations, 10 governmental plans, 7 mutual funds and 3 offshore funds.

2. Shearson is a wholly-owned subsidiary of Shearson Lehman Brothers Holdings Inc. (Shearson Holdings), 100 percent of the issued and outstanding common stock of which is owned by American Express Company (AMEX). AMEX is a publicly-owned company whose stock is traded on the New York Stock Exchange. AMEX and its subsidiaries form a diversified financial and travel services company.

On January 13, 1988, over 90 percent of the stock of E.F. Hutton Group Inc. (Hutton Group), the parent company of Hutton, was tendered to SLBP Acquisition Corporation (SLBP), a wholly-owned subsidiary of Shearson Holdings, pursuant to an Agreement and Plan of Merger (Merger Agreement) dated December 2, 1987, as amended on December 28, 1987, entered into among Shearson Holdings, SLBP, and the Hutton Group. On January 21, 1988, as permitted by the terms of the Merger Agreement, SLBP assigned its right to purchase those shares so accepted to Shearson and Shearson purchased the shares. As a result of the acquisition of the Hutton Group stock, Shearson controls the Hutton Group and indirectly controls Hutton.

3. On May 2, 1985, Hutton entered a plea of guilty (the Guilty Plea) to an Information filed in the United States District Court for the Middle District of Pennsylvania. The Information charged that Hutton had violated the federal mail and wire fraud statutes in connection with its handling of certain checking accounts it maintained for the deposit of its own funds during the period from July 1, 1980 to February 16, 1982. The applicant represents that as a result of the Guilty Plea, Hutton agreed to pay, and has paid, a criminal fine of $2,000,000 plus $750,000 to defray the costs of the government investigation. Hutton further agreed to establish, and has established, a restitution program for the benefit of commercial banks that may have been damaged by its actions. None of the acts alleged in the Information, however, involved funds or securities owned by any investment advisory or brokerage clients of Hutton or any employee benefit plan for which Hutton or any affiliate is a party in interest.

4. On May 16, 1988, Hutton entered a plea of guilty (the Providence Plea) in the United States District Court for the District of Rhode Island on two counts of violating the Bank Secrecy Act and one count of conspiracy to violate that Act. The applicant represents that Hutton agreed to pay, and has paid, an aggregate fine of $1,010,000 as a result of the Providence Plea. The Information filed by the government in connection with the Providence Plea alleges that the conduct of the two brokers, formerly employed at Hutton-Providence, was in violation of the Bank Secrecy Act. The Bank Secrecy Act requires the filing of a Currency Transaction Report, under certain circumstances, if more than $10,000 in cash is deposited with a financial institution. The applicant represents that the brokers' unlawful conduct occurred primarily in the period from 1982 to 1983, and no such conduct transpired later than October 1984—more than three years before Shearson acquired its majority interest in Hutton.

5. On March 3, 1989, George Inserra, a broker employed by Shearson, pled guilty to charges of securities fraud, soliciting commissions in connection with an employee benefit plan, and filing a false income tax return. On the same date, John Inserra, also employed by Shearson as a broker, pled guilty to securities fraud conspiracy. Further, on May 1, 1989, the Department filed a complaint in the U.S. District Court for the Northern District of New York alleging that Shearson, among others, and its agents, misused assets of three New York Teamsters Funds (the Funds) to benefit themselves and others through a stock parking scheme and indirect fee arrangements with banks, and that Shearson mishandled the Funds' cash balances and manipulated stock purchases. On September 19, 1990, Shearson and the Department executed a settlement agreement (the Settlement) regarding the Department's complaint. Without admitting or denying the Department's allegations, Shearson agreed pursuant to the Settlement to make a payment to the affected Funds.

6. The applicant states that the Inserras had left the employment of Shearson in October 1985, long before the guilty pleas were entered in March 1989. The applicant further represents that although the Securities and Exchange Commission (SEC) instituted proceedings against Shearson as a result of the Inserras' activities, Shearson was not charged with any criminal offenses. Shearson settled the SEC proceedings by accepting a censure by the SEC for failure to exercise reasonable supervision of the Inserras. As part of the settlement with the SEC, Shearson agreed to institute revised policies and procedures recommended by an independent consultant to prevent the kinds of defalcations engaged in by the Inserras. The applicant represents that the independent consultant thoroughly analyzed Shearson's operations and recommended systemic changes designed to preclude the types of unsupervised actions committed by the Inserras.

7. AMEX has represented that although none of the unlawful conduct involved Hutton's investment management activities or any plans covered by the Act, the criminal activities described above could preclude each component of AMEX, as an affiliate of Hutton, from serving as a "qualified professional asset manager" (QPAM) pursuant to sections I(g) and V(d) of PTE 84–14. Similarly, AMEX has represented that the guilty pleas of the Inserras could preclude each component of AMEX, as an affiliate of Shearson, from serving as a QPAM, pursuant to sections I(g) and V(d) of PTE 84–14. Section I(g) of PTE 84–14 precludes a person who otherwise qualifies as a QPAM from serving as a QPAM if such person or an affiliate[21] thereof has

[20] On March 13, 1993, Shearson entered into an asset purchase agreement with Primerica Corporation and its wholly-owned subsidiary, Smith Barney, providing for the sale to Smith Barney and its designated affiliates of substantially all of the assets of the Shearson Lehman Brothers Division of Shearson and the SLB Asset Management Division of Shearson. The remaining business was renamed Lehman Brothers, Inc.

[21] For purposes of section I(g) of PTE 84–14, an "affiliate" of a person is defined, in relevant part, as "any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person * * *" (PTE 84–14 section V(d)). As such, under this definition, American Express and all its subsidiaries (collectively, AMEX) would be considered affiliates of Shearson and Hutton.

within the 10 years immediately preceding the transaction been either convicted or released from imprisonment as a result of certain criminal activity. PanAgora requests an exemption to enable it to function as a QPAM despite its failure to satisfy section I(g) of PTE 84–14 due to affiliation with Hutton and Shearson and the pleas entered by Hutton and the Inserras.[22]

8. The transactions covered by this proposed exemption would include the full range of transactions that can be executed by investment managers who qualify as QPAMs pursuant to PTE 84–14. The applicant represents that the requested exemption is not relevant to most transactions involving the purchase/sale of securities, securities lending, investment in short-term instruments (such as repurchase agreements and bankers' acceptances) and certain residential mortgage pools, since each such transaction is covered by other class exemptions. However, the applicant represents that the requested exemption, to enable access to the exemptive relief afforded by PTE 84–14, is needed for PanAgora to engage in various transactions involving investments in real estate, mortgages, and commodities, between plans over which PanAgora has investment discretion and parties in interest with respect to such plans.

9. AMEX has represented that various measures have been taken by Hutton and Shearson, since the Hutton pleas and the Inserra pleas, to ensure that conduct such as that involved in such pleas will not recur. Among the steps taken to prevent such conduct in the future are the following:

(A) Hutton has acted to recompense its depository banks for any harm which may have been caused by the illegal acts involved in the Guilty Plea and the Providence Plea.

(B) Hutton initiated changes in its organizational structure and management practices: Realignment and centralization of financial operations, computerized enhancement of Hutton's headquarters to monitor activity at the branch and regional levels, and instruction of all employees on the procedural revisions.

(C) Hutton adopted recommendations made by former Judge Griffin Bell, U.S. Court of Appeals for the Fifth Circuit,[23] who was retained to conduct an independent inquiry into the cash management practices to which Hutton pled guilty. The changes made pursuant to Judge Bell's recommendation include restructuring of the financing, financial control, operations and general counsel functions, establishment of an independent audit committee with full access to Hutton's chief executive officer and board of directors, and development of a corporate code of ethics, supplemented by educational and monitoring programs, in conjunction with the Ethics Resource Center in Washington, D.C.

(D) In late December 1987, following the announcement of Shearson's merger with Hutton Group, Shearson retained outside counsel to investigate and advise with respect to Hutton's compliance with the Bank Secrecy Act. The investigation revealed certain unreported currency transactions at Hutton branch offices prior to Shearson's acquisition of Hutton. AMEX has represented that the United States Attorney for the Southern District of New York completed its inquiry into possible legal violations at Hutton branch offices and indicated it will take no further action.

(E) In connection with Shearson's application to the SEC for an exemption from the provisions of section 9(a) of the Investment Company Act of 1940, Shearson agreed to retain independent auditors: (i) To confirm that the Shearson currency reporting procedures are in place in each former Hutton branch office; (ii) to review the currency reporting procedures to determine whether they are reasonably designed to ensure compliance with the Bank Secrecy Act and whether changes are needed to ensure ongoing compliance; and (iii) to report the results of the review to Shearson. AMEX has represented that upon completion of the auditor's review, Shearson submitted the report and recommendations to the SEC, together with a report by Shearson setting forth the action proposed for implementation of the recommendations. AMEX stated that such proposed action has been taken.

(F) As of February 8, 1988, as part of the consolidation of the Hutton branch offices into the Shearson branch office system, each Hutton branch adopted the same internal procedures for processing currency transactions as those followed by Shearson. AMEX has represented that such procedures prevent the kind of irregularities involved in the Providence Plea. AMEX stated that as additional safeguards, the Shearson procedures forbid all Shearson employees from taking possession of currency for a customer, escorting a customer to a financial institution to convert currency, and/or advising a customer as to how to ''structure'' a transaction with a financial institution in order to avoid reporting requirements under the Currency Transaction Reporting Act.

(G) Although the SEC instituted proceedings against Shearson as a result of the Inserras' activities, Shearson was not charged with any criminal offense, and Shearson expeditiously settled the SEC proceedings by accepting a censure by the SEC for failure to reasonably supervise the Inserras and the branch manager overseeing the Inserras. As part of the settlement, Shearson committed to institute revised policies and procedures recommended by an independent consultant and designed to prevent the kinds of defalcations engaged in by the Inserras.

10. The applicant asserts that failure to grant the requested exemption will prohibit employee benefit plans for which PanAgora acts as investment manager from engaging in transactions with parties in interest that would otherwise be permitted under PTE 84–14, and will cause the plans to forego attractive investment opportunities. The applicant notes that it would be deprived of its abilities to offer and render the full panoply of specialized investment advisory services demanded by employee benefit plans covered by the Act. The applicant represents that neither of the Hutton pleas involved PanAgora in any way, and thus do not impair the abilities of PanAgora to serve as independent investment manager.

With respect to the conduct and pleas of the Inserras, AMEX has pointed out that the Inserras were not employees of Shearson at the time they pled guilty to the charges against them, and Shearson was never charged with any criminal offense in connection with their activities. The applicant represents that the ability of PanAgora or any other AMEX affiliate to act as a QPAM has not been affected by the activities of the Inserras, which were neither authorized nor condoned by Shearson or any other AMEX affiliate.

11. In summary the applicant represents that the proposed exemption satisfies the criteria of section 408(a) of the Act for the following reasons: (A) Hutton's criminal activity occurred prior to acquisition by Shearson, and the activities of the Inserras did not involve any criminal charges against Shearson; (B) Both Hutton and Shearson have undertaken substantial reforms

[22] In Prohibited Transaction Exemption 94–34 (PTE 94–34, 59 FR 19247, April 22, 1994), AMEX obtained the relief proposed herein for itself and its wholly owned subsidiaries, including Lehman Brothers, Inc., the successor to SLH. Although PanAgora was then a subsidiary of AMEX, PTE 94–34 provided no relief for PanAgora because it was not a wholly owned subsidiary.

[23] Judge Bell has also served as Attorney General of the United States.

and put in place procedures designed to prevent any recurrence of the criminal activity; (C) PanAgora will be able to engage in a broader variety of investment services on behalf of employee benefit plans which demand such services; (D) The ability of PanAgora to act as QPAM has not been impaired by criminal acts that were neither authorized nor condoned by Shearson or any other AMEX affiliate; and (E) The other conditions of PTE 84–14, combined with the procedures adopted by Hutton and Shearson, afford ample protection of the interests of participants and beneficiaries of employee benefit plans.

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

SouthTrust Securities, Inc. (ST) Located in Birmingham, Alabama; Proposed Exemption

[Application No. D–10376]

I. Transactions

A. Effective October 25, 1996, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

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

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

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

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[24]

B. Effective October 25, 1996, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

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

(i) The plan is not an Excluded Plan;

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

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

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

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

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

C. Effective October 25, 1996, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

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

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[26]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in section III.S.

D. Effective October 25, 1996, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

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

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

(2) The rights and interests evidenced by the certificates are not subordinated

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

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

[26] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Ratings Servicer (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

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

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

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

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

III. Definitions

For purposes of this exemption:

A. ''Certificate'' means:

(1) a certificate—

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

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

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

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

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

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

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

(1) either

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

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

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

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

(e) ''guaranteed governmental mortgage pool certificates,'' as defined in 29 CFR 2510.3–101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1); [27]

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

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

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

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. ''Underwriter'' means:

(1) ST;

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

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

D. ''Sponsor'' means the entity that organizes a trust by depositing

[27] It is the Department's view that the definition of ''trust'' contained in III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

obligations therein in exchange for certificates.

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

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

G. ''Servicer'' means any entity which services loans contained in the trust, including the master servicer and any subservicer.

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

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

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

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

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

(1) each underwriter;
(2) each insurer;
(3) the sponsor;
(4) the trustee;
(5) each servicer;
(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or
(7) any affiliate of a person described in (1)–(6) above.

M. ''Affiliate'' of another person includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

T. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

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

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

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

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

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

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

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

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

W. ''ST'' means SouthTrust Securities, Inc. and its affiliates.

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

Summary of Facts and Representations

1. ST is the wholly-owned, separately capitalized investment banking subsidiary of South Trust Corporation (the Bank), a Birmingham, Alabama based bank holding company which had assets of $24.8 billion as of September 30, 1996 and operates eight affiliate banks with more than 500 offices in Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina and Tennessee. The Bank also owns and operates subsidiaries that engage in data processing, trust, leasing, mortgage

banking, and investment and brokerage services.

ST was originally incorporated as SouthTrust Brokerage Services in 1985. In 1989, the investment division of SouthTrust Bank of Alabama was merged into SouthTrust Brokerage Services, Inc., and the name of the corporation was changed to SouthTrust Securities, Inc. ST maintains its principal place in Birmingham, Alabama. ST is a registered broker-dealer with the Securities and Exchange Commission. As a member of the National Association of Securities Dealers, ST maintains a fixed income securities brokerage service for the initial placement and remarketing of offerings originated by the firm as well as other issues traded in the secondary market.

Pursuant to a July 10, 1989 order of the Board of Governors of the Federal Reserve System, ST is authorized to engage, to a limited extent, in underwriting and dealing in certain securities through a bank holding company subsidiary. The underwriting activities include one- to four-family mortgage-related securities, municipal revenue bonds, commercial paper, and consumer receivable-related securities. Pursuant to this order, ST may also provide full service brokerage services and investment advice and buy and sell securities solely as agent for the account of customers. This order is subject to the condition that ST does not derive more than 10% of its average gross revenues from such activities during any two year rolling period.

Affiliates of ST began securitizing assets in 1993. Since that time ST's affiliates have securitized nursing home loans and multi-family conduit loans. The professionals of ST have also been active participants in the area of tax-exempt financing, including housing, public finance and industrial development issues. ST itself began securitizing assets in 1996 when it completed a securitization of mobile home loans in a private placement. It is anticipated that ST will be involved as an underwriter or placement agent in the future in asset securitizations.

Trust Assets

2. ST seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts; [28] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[29]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[30]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.[31]

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. ST, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated are to be underwritten by ST on a firm commitment basis. In addition, ST anticipates that it may privately place certificates on both a firm commitment and an agency basis. ST may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to

[28] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. ST requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, ST has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[29] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[30] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

[31] It is the view of the Department that section III.B.(4) includes within the definition of the term ''trust'' rights under any yield supplement or similar arrangement which obligates the sponsor or master servicer, or another party specified in the relevant pooling and servicing agreement, to supplement the interest rates otherwise payable on the obligations described in section III.B.(1), in accordance with the terms of a yield supplement arrangement described in the pooling and servicing agreement, provided that such arrangements do not involve swap agreement or other notional principal contracts.

certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. ST requests exemptive relief for two types of multi-class certificates: ''strip'' certificates and ''fast-pay/slow-pay'' certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[32]

''Fast-pay/slow-pay'' certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[33]

[32] It is the Department's understanding that where a plan invests in REMIC ''residual'' interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[33] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a home-owner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities: (i) A special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to ST, the trust sponsor or the servicer. ST represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, the receivables may be ''subserviced'' by their respective originators and a single entity may ''master service'' the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investor's interest, the servicer ordinarily covenants that this ''sold flag'' will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing, posting and collection procedures related to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placement of certificates may be made on a firm commitment or agency basis. The lead or co-managing underwriters may make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to ST. In other cases, however, affiliates of ST may originate or service receivables included in a trust or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[34] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

[34] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into ''principal'' and ''interest'' components based on an implicit interest rate.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) The unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of a trust that is not a REMIC.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer, paying agent or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

24. To date, no forward delivery commitments have been entered into by ST in connection with the offering of any certificates, but ST may contemplate entering into such commitments. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and ST may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

25. ST anticipates that it may make a market in certificates for which it is lead or co-managing underwriter.

Retroactive Relief

26. ST represents that it has not assumed that retroactive relief would be granted prior to the date of its application, and therefore has not engaged in transactions related to mortgage-backed and asset-backed securities based on such an assumption. However, ST requests the exemptive relief granted to be retroactive to October 25, 1996, the date of its application, and would like to rely on such retroactive relief for transactions entered into prior to the date exemptive relief may be granted.

Summary

27. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain ''fixed pools'' of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which ST seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) ST may make a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 [46 FR 7520, January 23, 1981], Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 [48 FR 895, January 7, 1983].

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406 (b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406(a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[35]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

ST represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[36] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[37] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, ST represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. ST represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, ST represents that to the extent there is a plan asset ''look through'' to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor with respect to receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

NOTICE TO INTERESTED PERSONS: The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the Federal Register. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

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

General Information

The attention of interested persons is directed to the following:

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

[35] In referring to different ''types'' of asset-backed securities, the Department means certificates representing interests in trusts containing different ''types'' of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been ''seasoned'' (e.g., originated at least one year prior to the plan's investment in the trust).

[36] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which ST or any of its affiliates is either (a) the sole underwriter or manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent.

[37] The applicant represents that where a trust sponsor is an affiliate of ST, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if ST is not a fiduciary with respect to plan assets to be invested in certificates.

responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

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

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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 26th day of November, 1996.

Ivan Strasfeld,

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

[FR Doc. 96–30720 Filed 12–2–96; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–137]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee on Behavioral and Biomedical Research; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee on Behavioral and Biomedical Research.

DATES: December 19, 1996, 8:30 a.m. to 5:30 p.m.; and December 20, 1996, 8:00 a.m. to 12:30 p.m.

ADDRESSES: NASA Headquarters, Room 7H46, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Diana P. Hoyt, Code UP, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1893.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Thursday, December 19, 1996, from 5:00 p.m. to 5:30 p.m. in accordance with 5 U.S.C. 552b (c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Committee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of the office of Life and Microgravity Sciences and Applications Status
—Status of NASA–NIH Activities
—Neurolab
—Behavioral Studies
—Pharmacology
—Global Health and Remote Sensing
—Update on Centrifuge
—NASA–Mir Studies
—ISS Prioritization
—Science Institute
—Committee Discussion Regarding Future Activities

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

Dated: November 25, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–30771 Filed 12–2–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting; Sunshine Act

TIME AND DATE: 5:00 p.m., Friday, December 6, 1996.

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

STATUS: Open.

MATTER TO BE CONSIDERED:

1. Request from a Federal Credit Union to Convert to a Community Charter.
2. Request from a Federal Credit Union to Convert to a Group Community Charter.

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

Beckey Baker,

Secretary of the Board.

[FR Doc. 96–30905 Filed 11–29–96; 2:37 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[DOCKET No. 50–368]

Arkansas Nuclear One, Unit 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–6 issued to Entergy Operations, Inc. for operation of Arkansas Nuclear One, Unit 2 (ANO–2) located in Pope County, Arkansas.

The proposed amendment would change the Small-Break Loss-of-Coolant Accident (SBLOCA) evaluation code CENPD–137, Supplement 1–P, as the preferred evaluation method. This methodology has been applied with a steam generator tube plugging limit of 30% and an associated 10% reduction in Reactor Coolant System (RCS) flow.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below: