

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Notice of a Proposed Amendment to Prohibited Transaction Exemption (PTE) 2000–58, 65 FR 67765 (November 13, 2000) and PTE 2002–41, 67 FR 54487 (August 22, 2002) Involving Bear, Stearns & Co. Inc., Prudential Securities Incorporated, et al. to Add Dominion Bond Rating Service Limited and Dominion Bond Rating Service, Inc. to the Definition of “Rating Agency” (D–11370)

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of a Proposed Amendment to the Underwriter Exemptions.¹

SUMMARY: This document contains a notice of pendency before the

¹ The term “Underwriter Exemptions” refers to the following PTEs: PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 20545 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); PTE 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 97–34, 62 FR 39021 (July 21, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); PTE 2000–41, 65 FR 51039 (August 22, 2000); PTE 2000–55, 65 FR 37171 (November 13, 2000); PTE 2002–19, 67 FR 14979 (March 28, 2002); PTE 2003–31, 68 FR 59202 (October 14, 2003); and PTE 2006–07, 71 FR 32134 (June 2, 2006), each as subsequently amended by PTE 97–34, 62 FR 39021 (July 21, 1997) and PTE 2000–58, 65 FR 67765 (November 13, 2000) and for certain of the exemptions, amended by PTE 2002–41, 67 FR 54487 (August 22, 2002).

In addition, the Department notes that it is also proposing individual amendments for: Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization

Department of Labor (the Department) of a proposed amendment to the Underwriter Exemptions. The Underwriter Exemptions are individual exemptions that provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (Plans) of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The proposed amendment, if granted, would expand the definition of “Rating Agency” in section III. X of the Underwriter Exemptions to include Dominion Bond Rating Service Limited (DBRS Limited) and Dominion Bond Rating Service, Inc. (DBRS, Inc.). The proposed amendment, if granted, would affect the participants and beneficiaries of the Plans participating in such transactions and the fiduciaries with respect to such plans.

DATE: Written comments and requests for a hearing should be received by the Department by February 23, 2007.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (Attention: Exemption Application Number D–11370). Interested persons are invited to submit comments and/or hearing requests to the Department by the end of the scheduled comment period either by facsimile to (202) 219–0204 or by electronic mail to moftitt.betty@dol.gov. The application pertaining to the proposed amendment (Application) and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Wendy M. McColough of the

Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999) (supersedes FAN 97–02E (November 25, 1996)); William J. Mayer Securities LLC, FAN 01–25E (October 15, 2001); Raymond James & Associates Inc. & Raymond James Financial Inc., FAN 03–07E (June 14, 2003); WAMU Capital Corporation, FAN 03–14E (August 24, 2003); and Terwin Capital LLC, FAN 04–16E (August 18, 2004); which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62, 61 FR 39988 (July 31, 1996).

Department, telephone (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption to amend the Underwriter Exemptions. The Underwriter Exemptions are a group of individual exemptions that provide substantially identical relief for the operation of certain asset-backed or mortgage-backed investment pools and the acquisition and holding by Plans of certain securities representing interests in those investment pools. These exemptions provide relief from certain of the prohibited transaction restrictions of sections 406(a), 406(b) and 407(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986, as amended (the Code), by reason of certain provisions of section 4975(c)(1) of the Code. All of the Underwriter Exemptions were amended by PTE 97–34, 62 FR 39021 (July 21, 1997) and PTE 2000–58, 65 FR 67765 (November 13, 2000) and certain of the Underwriter Exemptions were amended by PTE 2002–41, 67 FR 54487 (August 22, 2002).

The Department is proposing this amendment to the Underwriter Exemptions pursuant to 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).² In addition, the Department is proposing to provide the same individual exemptive relief to: Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999) (supersedes FAN 97–02E (November 25, 1996)); William J. Mayer Securities LLC, FAN 01–25E (October 15, 2001); Raymond James & Associates Inc. & Raymond James Financial Inc., FAN 03–07E (June 14, 2003); WAMU Capital Corporation, FAN 03–14E (August 24, 2003); and Terwin Capital LLC, FAN 04–16E (August 18, 2004); which previously received the approval of the Department to engage in transactions substantially similar to the transactions

² Section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 [1996]) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

described in the Underwriter Exemptions pursuant to PTE 96–62, 61 FR 39988 (July 31, 1996).

1. The Underwriter Exemptions permit Plans to purchase certain securities representing interests in asset-backed or mortgage-backed investment pools. The securities generally take the form of certificates issued by a trust (Trust). The Underwriter Exemptions permit transactions involving a Trust (including the servicing, management and operation of the Trust) and certificates evidencing interests therein (including the sale, exchange or transfer of certificates in the initial issuance of the certificates or in the secondary market for such certificates). The securities acquired by a Plan have been rated in one of the three highest rating categories (or four in the case of Designated Transactions³) by a rating agency as defined in the Underwriter Exemptions (Rating Agency). The Rating Agency, in assigning a rating to such securities, takes into account the fact that the Issuer⁴ may hold interest rate swaps or yield supplement agreements with notional principal amounts or, in Designated Transactions, securities may be issued by an Issuer holding residential and home equity loans with LTV ratios in excess of 100%. Section III.X. of the Underwriter Exemptions defines “Rating Agency” as Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc., Moody’s Investors Services, Inc., Fitch Inc., or any successors thereto.

2. Section II of the original Underwriter Exemptions, PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); and PTE 89–90, 54 FR 42597 (October 17, 1989), sets forth the general conditions which must be met in order for an investing Plan to avail itself of the relief provided by one of the exemptions.

Section II.A(3) requires that any certificate acquired by a plan in reliance on the exemption must have received a rating at the time of acquisition that is in one of the three highest categories from either Standard & Poor’s Corporation, Moody’s Investors Services, Inc. or Duff & Phelps. The Department proposed an amendment to this condition by notice at 55 FR 25914 (June 25, 1990) in response to a request from the three individual exemption applicants that Fitch Investors Service, Inc. (Fitch Inc.) be added to the rating agencies described in section II.A.(3) of PTE 89–88, PTE 89–89, and PTE 89–90.⁵

To support this request, Fitch Inc. submitted letters to the Department which provided information on Fitch Inc.’s rating programs in general and its experience in rating asset backed securities in particular. Based on the information provided by Fitch Inc., the requests submitted on behalf of the applicants and the Department’s previous consideration of Fitch Inc. in conjunction with several other Underwriter Exemptions, the Department amended PTE 89–88, PTE 89–89, and PTE 89–90 by notice at 55 FR 48939 (November 23, 1990) to include Fitch Inc. as an acceptable rating agency for the rating of certificates described in the exemptions.⁶

3. The proposed amendment was requested by Application, dated April 5, 2006, on behalf of the Securities Industry and Financial Markets Association (SIFMA)⁷, the American Securitization Forum (ASF), DBRS Limited and DBRS, Inc. (collectively, the Co-Applicants). The Co-Applicants request that the Department amend the Underwriter Exemptions to add DBRS Limited and DBRS, Inc. to the group of entities included in the definition of “Rating Agency” in section III.X. of the

Underwriter Exemptions. The Co-Applicants provide that DBRS Limited was recognized as a nationally recognized statistical rating organization (NRSRO) for purposes of Rule 15c3–1 under the Securities Exchange Act of 1934 by virtue of receiving a “no action” letter from the Securities and Exchange Commission (SEC) on February 24, 2003. As the Co-Applicants explain below, the Co-Applicants believe that DBRS, Inc., its affiliate, is also considered to be covered under this no action letter. Accordingly, “DBRS” shall hereinafter refer both to DBRS Limited and DBRS, Inc., except where the context indicates otherwise. The Co-Applicants state that SIFMA and ASF agreed to make this request on behalf of their member underwriters for the reasons outlined below and because The Bond Market Association (TBMA), now merged into SIFMA, was the original entity that requested the exemptive relief granted by the Department pursuant to PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (Nov. 13, 2000) and PTE 2002–41, 67 FR 54487 (August 22, 2002). ASF was formed in February 2002, as an adjunct forum for TBMA to more specifically represent the interests of underwriters and other organizations related to the securitization markets (although ASF is part of the same legal entity as TBMA).

4. The Co-Applicants represent that, if the requested amendment is not granted, possible violations of the prohibited transaction provisions of sections 406(a), 406(b) and 407(a) of ERISA (and the corresponding provisions of sections 4975(c)(1)(A) through (F) of the Code) resulting from: (a) The purchase and sale of securities by a Plan to which any of the other parties is a party in interest;⁸ and (b) the servicing, management and operation of an issuer may occur if DBRS Limited or DBRS, Inc. ratings are used for such transactions. The Co-Applicants believe that, if the requested amendment is not granted, this would result in the loss of opportunities for an investing Plan to achieve a current market return through investment in securities that have received a rating from an NRSRO as high as or higher than that of comparable instruments in which the Plan is clearly permitted to invest. The Co-Applicants assert that it is in the interests of Plan participants and beneficiaries that a Plan has the opportunity to diversify its investment portfolio by purchasing securities rated

³ “Designated Transaction” means a securitization transaction in which the assets of the Issuer (see below) consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein.

⁴ “Issuer” means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code.

⁵ Since the granting of these three exemptions on October 17, 1989, the Department had granted several other Underwriter Exemptions that included Fitch Inc. as an acceptable rating agency.

⁶ The final paragraph of section III.B of these exemptions was also amended to include Fitch Inc. as an acceptable rating agency.

⁷ On November 15, 2006, the Co-Applicants informed the Department that on October 31, 2006, The Bond Market Association and the Securities Industry Association merged into a new entity, SIFMA. SIFMA is a Delaware nonstock corporation that was incorporated in June 2006 for purposes of the merger. Its members are approximately 650 securities firms, banks and asset managers. Its mission is to promote policies and practices that expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. The Bond Market Association no longer exists, having merged into SIFMA. The ASF is now a forum of SIFMA, and it is still a joint applicant.

⁸ The term “party in interest” also includes, where applicable, a “disqualified person” within the meaning of section 4975(e)(2) of the Code.

by a wide variety of rating agencies subject to a significant amount of competition.

5. The Co-Applicants believe that the proposed amendment would be administratively feasible because the proposed requirements generally mirror those deemed administratively feasible in the asset-backed and mortgage-backed securities (ABS and MBS, respectively) exemptions previously issued by the Department. The transactions may be audited easily by a Plan fiduciary and all the records necessary to review these transactions will be kept for six years. The Co-Applicants state that no further action would be required by the Department. The Co-Applicants consider that the requested amendment would be in the interest of the Plans and its participants and beneficiaries because it increases the number of available investment options, enhances diversification and liquidity and promotes a greater ability to assess credit risk and the rating process. The Co-Applicants state that the amendment would be protective of the rights of the Plans since the sale of the securities will be conducted under all of the safeguards contained in the existing Underwriter Exemptions for the sale of asset and mortgage-backed pass-through securities. Additionally, the Co-Applicants believe that expanding the number of rating agencies with experience in rating the type of obligations covered under the Underwriter Exemptions would significantly benefit the Plans. The number of NRSROs that had been included within the definition of Rating Agency under the Underwriter Exemptions as of 1990 has been reduced from four to three since Duff & Phelps Inc. (D & P) and Fitch Inc. merged in 2000 and became FitchRatings, Inc. (Fitch). There may be additional mergers in the future. The Co-Applicants believe that this could make the number of Rating Agencies available to rate Underwriter Exemption-eligible MBS and ABS even fewer; resulting in fewer and less liquid securities available for Plans to purchase. The Co-Applicants further note that, when the Department considered First Boston Corporation's original application for its Underwriter Exemption in the proposed exemption to PTE 89-90 at 53 FR 52851 (December 29, 1988), First Boston requested that any certificate receiving a rating in the three highest rating categories from any NRSRO receive exemptive relief. According to the Applicants, while the Department recognized that rating agencies other than Standard & Poor's Corporation

(currently, Standard & Poor's Rating Services, a division of The McGraw Hill Companies, Inc. (S & P)), Moody's Investor Services, Inc. (Moody's) and D&P qualified as NRSROs, it decided that only those three should qualify as Rating Agencies under the Underwriter Exemptions, based on their respective experience in rating certain types of MBS/ABS.⁹ Fitch Inc. was later specifically named as an additional Rating Agency for purposes of the Underwriter Exemptions beginning in 1989. The Co-Applicants believe that if the Department were to add DBRS Limited and DBRS, Inc. to the group of Rating Agencies permitted to rate Underwriter Exemption-eligible securities, it would benefit Plan investors in several ways, including: (a) Investors would have access to additional information and additional opinions about the creditworthiness of issuers and securities; (b) competition among rating agencies would result in improved accuracy and timeliness of ratings, thereby allowing investors to assess risk with greater certainty; and (c) competition among rating agencies would encourage different methods of analyzing credit risk.

6. The Co-Applicants assert that DBRS has extensive experience in rating every type of obligation that is eligible for exemptive relief under the Underwriter Exemptions and listed under the definition of an "Issuer" in section III.B of the Underwriter Exemptions; and, therefore, meets a major criterion for recognition as a Rating Agency for purposes of the Underwriter Exemptions. In reviewing the information submitted to the Department by S&P and Fitch Inc. at that time, the Department was given information regarding how these agencies rated securities and the credentials of the senior management of their securitization groups. In this regard, DBRS has reviewed the description of the rating process in both the D&P submission and the proposed exemption for PTE 2000-58 and feels that its rating process is comparable to these. The Co-Applicants submitted the biographies of senior management for the DBRS Limited and DBRS, Inc. Structured Finance Departments to the Department with their Application.

7. In order for the SEC to recognize DBRS Limited as an NRSRO in 2003, DBRS Limited had to satisfy certain established criteria. The single most important criterion was that DBRS

⁹ 53 FR 52851 at p. 52857, footnote 7 (December 29, 1988). There are currently five entities which were recognized by the SEC through the no-action letter process as NRSROs: S&P, Moody's, Fitch, DBRS and A.M. Best Company, Inc.

Limited be widely accepted in the U.S. as an issuer of credible and reliable ratings by the predominant users of securities ratings. In addition, the following aspects of DBRS Limited's operational capability and reliability were reviewed: (i) Its organizational structure, (ii) its financial resources, to determine, among other things, whether it is able to operate independently of economic pressures or control from the companies its rates, (iii) the size and experience and training of its staff to determine if it is capable of thoroughly and competently evaluating an issuer's credit, (iv) its independence from the entities it rates, (v) its rating procedures to determine whether it has systematic procedures designed to produce credible and accurate ratings and (vi) whether it has internal procedures to prevent the misuse of non-public information and whether those procedures are followed. On April 5, 2006, the Co-Applicants provided the following update of the statistics set forth in the SEC's no action letter dated February 24, 2003 regarding DBRS's business. DBRS now has a total staff of 175, 110 of which are analysts. Of those analysts, 51 rate securitization transactions. The Co-Applicants also provided biographical information about the senior management team for that latter group. As of the application date, the principal amount of asset-backed securities (ABS), residential mortgage-backed securities (RMBS) and commercial mortgage-backed securities (CMBS) transactions that DBRS has rated and that are currently outstanding are: Can. \$128.3 billion of ABS for Canadian issuers (representing 158 transactions); U.S. \$192.1 billion of RMBS and ABS for U.S. issuers (representing 207 transactions); and U.S. \$20.5 billion of CMBS for U.S. issuers (representing 14 transactions). DBRS's Structured Finance Department has also written over 95 industry reports and 442 rating reports.

8. The Co-Applicants state that DBRS Limited is a Canadian rating agency that has been in existence for almost 30 years, having been incorporated in 1976 under the Ontario Business Corporations Act. DBRS Limited was originally founded and owned by Walter Schroeder, who remains its President. DBRS Limited operates primarily through its Toronto office and DBRS Limited's U.S. affiliate, DBRS, Inc., which has offices in New York and Chicago.¹⁰ On February 24, 2003 when the SEC issued its no action letter

¹⁰ DBRS also recently opened offices in London, Paris and Frankfurt through another affiliate, DBRS (Europe) Limited.

identifying DBRS Limited as an NRSRO, DBRS Limited conducted all of its credit rating activities from its Toronto Ontario headquarters and rated issuers and securities both in Canada and in the United States. Subsequently, DBRS Limited decided to establish a physical presence in the United States. The New York and Chicago offices were incorporated as DBRS, Inc. on August 21, 2003. The U.S. operations were organized for tax reasons as a separate Delaware affiliate corporation instead of as a branch of the Canadian company. The Co-Applicants assert that, although technically it is principally DBRS, Inc. that rates U.S. issuers and securities and DBRS Limited that rates Canadian issuers and securities, the ratings activities of Dominion Bond Rating Service worldwide are conducted in a seamless fashion and both DBRS Limited and DBRS, Inc. are considered to be covered by the SEC's NRSRO no-action letter. The Co-Applicants add that DBRS, Inc. employs the same rating process that DBRS Limited uses; its ratings are approved by the same rating committees that approve DBRS Limited's ratings; its staff are subject to the same code of conduct that applies to DBRS Limited's staff; all ratings are "DBRS" ratings without attribution to one corporate entity or the other, DBRS Limited stands behind the ratings issued by DBRS, Inc. and the officers of DBRS Limited supervise the ratings process conducted by DBRS, Inc. In this regard, the Co-Applicants submitted a letter dated November 1, 2005 from Mari-Anne Pisarri, Esq. of Pickard and Djinis, LLP, counsel to DBRS Limited to Mr. Michael A. Macchiaroli, Associate Director, Division of Market Regulation at the SEC discussing the NRSRO status of the ratings activities of DBRS, Inc.

9. On September 29, 2006, the President signed into law S. 3850, the Credit Rating Agency Reform Act of 2006 (CRARA). CRARA was introduced as a bill to improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating agency industry. The law will restructure the existing regulation of credit rating agencies by the SEC. Under CRARA, a credit rating agency can obtain the NRSRO designation through an application process unless the SEC determines that the agency lacks adequate financial and managerial resources to consistently produce credit

ratings with integrity and to comply with its stated methodologies and procedures (CRARA subsection 4(a)(2)(C)). The Securities Exchange Act of 1934 is amended at section 3(a) and by the addition of new section 15E. Registration of Nationally Recognized Statistical Rating Organizations. Section 3(a) is amended by adding certain new definitions relevant to this proposed amendment (CRARA section 3):

(60) CREDIT RATING—The term 'credit rating' means an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.

(61) CREDIT RATING AGENCY—The term 'credit rating agency' means any person—

(A) Engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company;

(B) Employing either a quantitative or qualitative model, or both, to determine credit ratings; and

(C) Receiving fees from either issuers, investors, or other market participants, or a combination thereof.

(62) NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION—The term 'nationally recognized statistical rating organization' means a credit rating agency that—

(A) Has been in business as a credit rating agency for at least the 3 consecutive years immediately preceding the date of its application for registration under section 15E;

(B) Issues credit ratings certified by qualified institutional buyers, in accordance with section 15E(a)(1)(B)(ix), with respect to—

(i) Financial institutions, brokers, or dealers;

(ii) Insurance companies;

(iii) Corporate issuers;

(iv) Issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of title 17, Code of Federal Regulations, as in effect on the date of enactment of this paragraph);

(v) Issuers of government securities, municipal securities, or securities issued by a foreign government; or

(vi) A combination of one or more categories of obligors described in any of clauses (i) through (v); and

(C) Is registered under section 15E.

CRARA establishes a registration and oversight scheme for NRSROs under the Securities Exchange Act of 1934 (Exchange Act). This regime replaces the SEC's current no-action letter process for designating NRSROs and removes NRSROs from the jurisdiction of the Investment Advisers Act of 1940 (Advisers Act). The new regulatory

regime takes effect when the SEC promulgates the rules necessary to implement CRARA, or in 270 days after CRARA's enactment date, whichever is sooner. Thus, the new registration requirements will apply by June 26, 2007. However, because the SEC has 90 days to consider an NRSRO application (or longer, if the applicant consents), the first NRSRO registration may not occur until the end of September 2007. Although the NRSRO no-action letters will be void after the effective date of the new law, the 5 existing NRSROs will be allowed to function as NRSROs while the SEC considers their applications.

10. The Co-Applicants represent that DBRS Limited and DBRS, Inc. each: (a) Will qualify as a "Nationally Recognized Statistical Rating Organization" within the meaning of new section 3(a)(62) of the Exchange Act as amended by the legislation, as each will be in business for at least three years prior to its applying for registration under the new statutory procedures, (b) rate the specified types of securities listed under such section, and (c) intend to register at the first date DBRS is able to register under new section 15E of the legislation and the applicable regulations and procedures to be promulgated by the SEC. The Co-Applicants state that DBRS Limited and DBRS, Inc. will each be able to supply the information and meet the implied substantive criteria set forth in the legislation in new section 15E(a)(1)(B) of the Exchange Act as demonstrated in the chart below, provided by the Co-Applicants, that compares the requirements for NRSRO registration under the legislation to existing requirements and the Co-Applicants confirm that each rating agency would comply. The Co-Applicants assert that the criteria for registration under the new law are not substantively different from what DBRS and the other current NRSROs already comply with. DBRS has also adopted and adheres to the International Organization of Securities Commissions' (IOSCO) Code of Conduct Fundamentals for Credit Rating Agencies issued in December 2004 (IOSCO Code of Conduct). Additionally, the Co-Applicants have provided the Department with copies of the DBRS Code of Conduct, the Report of Compliance to the DBRS Code of Conduct and the DBRS Corporate Default Study 1977–2005, which are pertinent to this analysis.

CRA Reform Act requirement	Existing requirement	DBRS complies?
Under Exchange Act § 15E (a) (1)(B), NRSRO applications must include:		

CRA Reform Act requirement	Existing requirement	DBRS complies?
(i) Applicant's credit rating performance measurement statistics.	IOSCO Code §§ 1.2, 3.8	Yes. Corporate Default Study shows performance 1977–2004.
(ii) Procedures & methodologies Applicant uses in determining credit ratings.	Required as part of NRSRO no-action letter designation process; IOSCO Code, §§ 1.A, 3.2, 3.5, 3.10.	Yes.
(iii) Policies and procedures to prevent the misuse of inside information.	Advisers Act, § 204A IOSCO Code, § 3.B	Yes.
(iv) The organizational structure of the Applicant	Required as part of NRSRO no-action letter designation process; information on organization required on Form ADV; IOSCO Code, §§ 2.5, 2.10, 2.11, 2.12.	Yes.
(v) Whether or not Applicant has a code of ethics, and if not, why not.	Advisers Act Rule 204A–1 requires a Code of Ethics; IOSCO Code, §§ 1.C, 2, 4.1.	Yes.
(vi) Any conflict of interest relating to the Applicant's issuance of credit ratings; § 15E(h) also requires NRSROs to maintain written policies and procedures to address and manage any conflicts of interest.	Advisers Act Rule 204A–1 requires advisers' codes of ethics to address conflicts; IOSCO Code, § 2.B.	Yes.
(ix) Written certifications from Qualified Institutional Buyers (QIBs) who use Applicant's ratings.	Does not apply to current NRSROs. However, DBRS already supplied this type of information to the SEC to prove its "national recognition" under the no-action letter designation process.	N/A.
Exchange Act § 15E(j) requires NRSROs to designate an individual responsible for administering its compliance policies and procedures.	Advisers Act Rule 206(4)–7 requires the appointment of a Chief Compliance Officer; IOSCO Code § 1.15 requires that a person be specified as responsible for overseeing compliance with applicable laws and regulations.	Yes.
Exchange Act § 15E(i) directs the SEC to adopt rules prohibiting unfair business practices by NRSROs.	Advisers Act Rule 204A–1; IOSCO Code §§ 1.C, 2.3, 2.4, 2.5, 2.11, 2.12, 2.15.	Yes.

11. The Co-Applicants assert that under the new legislation, there would be no period of time when DBRS would not maintain its status as an NRSRO. They note that under new section 15E(1)(2)(A) of the Exchange Act, a rating agency is entitled to rely on its no-action letter from the SEC to be treated as an NRSRO and act as an NRSRO while the SEC is considering its registration application pursuant to the new procedures and thereafter on and after its application is approved. The no-action letters that the SEC has issued to date to the five rating agencies including DBRS will become void under section 15E(1)(2)(B) upon the earlier of (i) 270 days following the date of enactment of the legislation (September 29, 2006) or (ii) the date the regulations are issued by the SEC in final form. This theoretically means that if the SEC fails to issue the regulations on a timely basis, all five rating agencies would lose their NRSRO status. However, if this were to occur, it would also affect Moody's, Standard & Poor's, Fitch and A.M. Best Company, Inc. in the same manner as DBRS, and this would have disastrous results in the capital markets. Presumably this issue would have to be addressed by an amendment to the legislation.

12. The Co-Applicants request that the Department grant DBRS Rating Agency status under the Underwriter Exemptions at this time and that it not wait until the SEC issues a final rule. Waiting until the SEC issues a final rule

could take a substantial period of time which can only be disadvantageous for Plan investors. The Co-Applicants represent that DBRS Limited and DBRS, Inc. are already fully recognized together as an NRSRO and also meet the new proposed requirements. Accordingly, the Co-Applicants believe that there is no reason to wait for the SEC to issue the regulations and procedures for registration under CRARA as it will not affect DBRS's status. The Co-Applicants believe that although CRARA provides that any no-action letter previously granted by the SEC would be revoked, DBRS's NRSRO status would be quickly reinstated as it would meet all of the qualifications under the new registration requirements. The Co-Applicants assert that DBRS also complies with the substantive standards that the Department has previously established under the Underwriter Exemptions. Second, CRARA also will affect S&P, Moody's and Fitch, which have already been granted status as Rating Agencies under the Underwriter Exemptions, in exactly the same way as it would affect DBRS if the Department were to grant this application. All four rating agencies would have their NRSRO status revoked and replaced with a new form of NRSRO registration. Accordingly, the Department would still be required to make its own determinations as to whether it considers a rating agency eligible to be covered under a particular type of exemption.

13. The Co-Applicants believe that the Department also intended to look to the SEC's proposed definition of NRSROs as published in Part 240 of its General Rules and Regulations under the Exchange Act for guidance in determining who should qualify as a "Rating Agency" for purposes of the broad exemptive relief that has been previously granted by the Department. Prior to the enactment of CRARA, the Department had indicated that it would consider DBRS' status as a Rating Agency under the Underwriter Exemptions based on the criteria set forth in the SEC's proposed rule regarding the definition of an NRSRO published in the **Federal Register** on April 25, 2005 (70 FR 21306). In proposing the new definition, the SEC indicated that it believes that the five rating agencies to which it has already issued NRSRO no-action letters, including DBRS, would meet the proposed definition. The Co-Applicants assert that DBRS would meet the proposed definition of an NRSRO as set forth in the SEC's proposed rule that the entity: (a) Issues publicly available credit ratings that are current assessments of the credit worthiness of obligors with respect to specific securities or money market instruments; (b) is generally accepted in the financial markets as an issuer of credible and reliable ratings, including ratings for a particular industry or geographic segment by the predominant users of securities ratings; and (c) uses

systematic procedures designed to ensure credible and reliable ratings, manage potential conflicts of interest and prevent the misuse of nonpublic information, and has sufficient financial resources to ensure compliance with those procedures.

The Co-Applicants submitted the following review of the standards the SEC discussed in its proposal to demonstrate DBRS' status as an NRSRO prior to CRARA.

a. Publicly Available Credit Ratings: DBRS makes its credit ratings available on its Web site at <http://www.dbrs.com>. The basic rationale behind the ratings is also available to the public through press releases. Both types of information are available at no charge.

b. Issue-Specific Credit Opinions: DBRS rates specific securities, as well as issuers.

c. Current Credit Opinions: DBRS issues ratings that represent current assessments of the securities ratings, as it has procedures in place to have at least two analysts be familiar with, and responsible for, all current and recent events relating to an issuer after DBRS issues its initial rating of the securities. A rating is fully reviewed and a meeting arranged with each sponsor's¹¹ senior management on at least an annual basis. Follow up meetings occur where there have been material changes to the sponsor associated with the issuer or amendments to the initial program parameters and/or the program structure. In addition, if events occur that materially affect the credit performance of the issuer, a rating will be changed on a more frequent basis. A rating may also be placed "Under Review" if a significant event which impacts credit quality occurs and DBRS is unable to provide an objective forward looking opinion. In order to maintain the currency and accuracy of structured debt ratings, DBRS has several surveillance departments located in offices both in the United States and Canada. The analysts working in these departments are responsible for the collection, entry, analysis, and reporting related to the monitoring of structured finance transactions. Analysts are expected to analyze the data being reported by issuers and sponsors, identify transactions that require remediation or additional follow-up, and work with

other analysts to determine the most appropriate course of action.

d. General Acceptance in the Financial Markets: DBRS credibility and reasonable reliance of the marketplace have already been established by the SEC's grant of DBRS Limited's February 24, 2003 no-action letter, as this is the most important criterion cited by the SEC in such a grant.

e. Limited Coverage NRSROs: DBRS Limited received a no-action letter with respect to its ability to rate all securities and issuers with no limitations. The Co-Applicants believe this letter also applies to DBRS, Inc. as discussed above.

f. Analyst Experience and Training: DBRS requires that its analysts have the requisite experience and training to rate issuers and securities competently. The SEC in previously making this determination for its no-action letter, mentioned that generally, all of DBRS' analysts have degrees in business administration or accounting and many have professional designations such as MBAs, JDs and CFAs.

g. Number of Ratings per Analyst: DBRS maintains reasonable workloads for its analysts so that their analytical abilities to rate securities remain high, while not overloading them so that their work suffers in quality. The statistics of the number of ABS/RMBS/CMBS transactions and the number of securitization analysts have been given herein. In general, DBRS analysts work within groups, with each group containing approximately two to six analysts who cover issuers from industries that are as related as possible. Each issuer is normally covered directly by two analysts, who work together on the rating, arrange for and attend meetings with the sponsor's senior management, and make a recommendation with regard to the rating action for the entity. The "primary analyst" is responsible for preparing and for conducting the interview with the sponsor's management, for writing the initial draft rating report, and for making the presentation to the rating committee. The "secondary" or backup analyst is responsible for supporting the primary analyst with these duties. Other analysts from the group can be available to provide additional support prior to the rating committee recommendations. The group head will review the report prior to the rating committee. Thus, there are generally at least two analysts that are familiar with, and responsible for, all current and recent events for that issuer. Since each issuer and sponsor is under continuous surveillance, all ratings are current.

h. Information Sources Used in the Ratings Process: DBRS has procedures in place to verify financial information it receives from any given sponsor with respect to itself and the issuer. In many cases, DBRS will also require third party reports on the sponsor and with respect to the issuer as well as comparisons that have been done for comparable sponsors and issuers. All opinions expressed at the sponsor's senior management level during meetings are scrutinized to deal with any inherent biases that may have affected sponsor's perceptions of their relative strengths and weaknesses in absolute terms or in comparison to their competition. For both initial ratings and subsequent maintenance of such ratings, DBRS obtains a wide variety of information from third party sources. Public documents include regulatory filings, newspaper subscriptions, electronic news from services such as Reuters and Bloomberg, equity research from investment banks, and a wide variety of industry, sponsor and issuer specific news from the internet. DBRS also subscribes to publications such as Forbes, the Wall Street Journal, the Financial Post, Value Line, Business Week and the Economist. Most groups at DBRS have additional subscriptions related to their own specific area of interest. The general market intelligence that each analyst gains from conferences, DBRS sponsored seminars and luncheons, industry contacts, other independent reading and speeches are additional sources of information that assist in DBRS's analysis.

i. Contacts: As discussed above, DBRS meets with senior management of the sponsors related to the issuers of securities it rates.

j. Organizational Structure: DBRS Limited, DBRS, Inc. and DBRS (Europe) Limited are not affiliated with any other organizations or engaged in any other businesses that could create conflicts of interest or cause the misuse of nonpublic information.

k. Conflicts of Interest: (i) Reliance on Issuer Fees—DBRS does not have any one sponsor accounting for a meaningful percentage of its overall revenues, so no one sponsor can exert untoward pressure on DBRS's rating activities. (ii) Internal Policies—DBRS encourages analysts to strive for good long-term relationships with its sponsor clients, while at the same time being mindful of maintaining objectivity. For example, when dealing with sponsors, DBRS expects analysts to be familiar with the *CFA Institute Standards of Practice Handbook* (the Handbook), which sets forth rules of ethics and professional responsibility for certified financial analysts, and to comply with

¹¹ The Co-Applicants note that the term "sponsor" is used in their Application in the same way as the term "sponsor" is defined in the Underwriter Exemptions under Section III.D. "Sponsor" may also be deemed to refer to an originator of loans, if deemed necessary and/or appropriate by DBRS for its ratings analyses with respect to securities issued by a specific issuer.

its Code of Ethics, regardless of analysts' CFA status. As mandated by the Code of Ethics, analysts are warned to always be conscious about accepting gifts from a sponsor that could be considered significant enough to impair objectivity. Analysts are also prohibited from soliciting money, gifts, cash or favors from anyone with whom DBRS does business. As stated above, DBRS has adopted and adheres to the IOSCO Code of Conduct and has published a DBRS Code of Conduct that summarizes how its extensive range of policies, procedures and internal controls meet the IOSCO Code of Conduct. (iii) Consulting or Advisory Fees from Issuers—DBRS does not engage in a separate consulting or advisory for fee services business. (iv) Preferential Access to Information—DBRS does not allow subscribers to be given access to potential DBRS rating actions before they become public or to any nonpublic information. (v) Proprietary Associations with Rated Issuers: DBRS does not allow any employee, analyst or consultant to invest in any company or subsidiary that DBRS rates or benchmarks except for "grandfathered securities."¹² DBRS also requires employees, analysts and consultants to report their investment activities to the Compliance Department each calendar quarter (i) by completing a signed transaction report or forwarding copies of brokerage statements if they have "reportable securities transactions;" (ii) by completing a signed statement indicating that they have reportable securities but did not engage in any "reportable securities transactions;" (iii) by email if they hold only "excluded securities;" and (iv) by email if they hold no investments. Excluded securities are mutual funds, GIC's, CD's, etc.; reportable securities include all securities that are not specifically excluded.

1. Misuse of Information: DBRS prohibits employees from discussing nonpublic information with anyone other than the sponsor being rated or other DBRS employees. In addition, DBRS staff and consultants must annually review and sign an "Annual Statement of Understanding" concerning DBRS's Code of Ethics which among other areas contains

sections on confidentiality and nonpublic information.

m. Financial Resources: DBRS has sufficient financial resources to maintain appropriate staffing levels to continuously monitor the sponsors and the issuers whose securities it rates. As mentioned above, it believes that conflicts of interests with sponsors and subscribers are minimized as none alone provide a significant source of business for it.

n. Standardized Rating Symbols: DBRS uses the same generic substantive rating categories as the other four existing NRSROs and the SEC is not proposing to change the "sub-symbols" (i.e., "plus" or "minus" versus "high" or "low").

o. Statistical Models: Statistical models are only one of the methods used by DBRS to rate issuers or securities.

14. The Plans affected by the requested amendment are those Plans that will participate in a trust established under a pooling and servicing agreement. One or more Plans may invest in the securities to be issued with respect to a given issuer. Every Plan which intends to invest in an issuer will be able to review the form of the pooling and servicing agreement prior to acquiring a security. Each Plan will be an "accredited investor" as defined in Rule 501(a)(1) of Regulation D under the Securities Act of 1933, as amended. The proposed amendment involves a class of prospective transactions with Plans. In its capacity as a rating agency, DBRS has no Plan clients or potential Plan clients.¹³ Therefore, the Co-Applicants request that the publication of this proposed exemption in the **Federal Register** serve as the Notice to Interested Persons for purposes of this request.

15. The Co-Applicants request that the relief, if granted, be made retroactive to the date that they originally filed their request on April 5, 2006. DBRS had originally been prepared to file its application prior to April 5th; however, the SEC issued its proposed rules defining an NRSRO and this caused a delay in filing the application. The application was further delayed by the submission of additional information in response to the enactment of CRARA on September 29, 2006. Retroactive relief is requested to cover those transactions that have occurred or will occur over the next few months where DBRS was or is the only rating agency that gave or will give an investment-grade rating to certificates. If the relief is granted

retroactively, Plans would be able to purchase certificates in the secondary market relying upon the Underwriter Exemptions once exemptive relief is granted, even if the transactions originally closed or will close prior to the date the final exemption, if granted by the Department, is published in the **Federal Register**.

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 section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her 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 requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

2. Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plans and of their participants and beneficiaries and protective of the rights of participants and beneficiaries of the plans; and

3. The proposed amendment, 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.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending amendment to the address above, within the time frame set forth above, after the publication of this proposed amendment in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the

¹² "Grandfathered securities" are securities of companies that DBRS rates or benchmarks but that a staff member already owns at the time they become newly employed by DBRS and those securities that a staff member held prior to DBRS undertaking the company as a rated or benchmarked entity. Grandfathered securities must not be sold unless and until written permission is obtained from the Chief Compliance Officer.

¹³ Although not relevant to this application, some Plans subscribe to DBRS's subscription service.

Application at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, 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), the Department proposes to modify the following individual Prohibited Transaction Exemptions (PTEs), as set forth below: PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 55 FR 48178 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); PTE 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); PTE 2000–41, 65 FR 51039 (August 22, 2000); PTE 2000–55, 65 FR 37171 (November 13, 2000); PTE 2002–19, 67 FR 14979 (March 28, 2002); PTE 2003–31, 68 FR 59202 (October 14, 2003); and PTE 2006–07, 71 FR 32134 (June 2, 2006), each as subsequently amended by PTE 97–34, 62 FR 39021 (July 21, 1997) and PTE 2000–58, 65 FR 67765 (November 13, 2000) and for certain of the

exemptions, amended by PTE 2002–41, 67 FR 54487 (August 22, 2002).

In addition, the Department notes that it is also proposing individual exemptive relief for: Deutsche Bank A.G., New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); Ironwood Capital Partners Ltd., FAN 99–31E (December 20, 1999) (supersedes FAN 97–02E (November 25, 1996)); William J. Mayer Securities LLC, FAN 01–25E (October 15, 2001); Raymond James & Associates Inc. & Raymond James Financial Inc., FAN 03–07E (June 14, 2003); WAMU Capital Corporation, FAN 03–14E (August 24, 2003); and Terwin Capital LLC, FAN 04–16E (August 18, 2004); which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62, 61 FR 39988 (July 31, 1996).

The definition of “Rating Agency” under section III.X. of the Underwriter Exemptions is amended to read:

“Rating Agency” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.; Moody’s Investors Service, Inc.; FitchRatings, Inc.; Dominion Bond Rating Service Limited, or Dominion Bond Rating Service, Inc.; or any successors thereto.

If granted, the amendment would be effective for transactions occurring on or after April 5, 2006.

The availability of this amendment, if granted, is subject to the express condition that the material facts and representations contained in the Application are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the Application change, the amendment will cease to apply as of the date of such change. In the event of any such change, an application for a new amendment must be made to the Department.

Signed at Washington, DC, this 17th day of January, 2007.

Ivan L. Strasfeld,

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

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D–11183]

Prohibited Transaction Exemption 2007–01; Grant of Individual Exemptions Involving; The Plumbers and Pipefitters National Pension Fund (the Fund)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

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

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

Statutory Findings

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