

site at <http://www.doleta.gov/sga/sga.cfm>, at <http://www.grants.gov>, and in the **Federal Register**.

### VIII. Additional Resources and Other Information

*A. High Schools and Ungraded Schools That Serve Primarily Students Ages 14 and Above That Have Been Designated as Persistently Dangerous for the 2008–2009 School Year and That Are Not Currently Receiving a Grant From DOL for These Purposes*

#### Maryland

- Reginald F. Lewis High School, Baltimore, 788 students.

#### New Jersey

- Plainfield High School, Plainfield, 1,803 students.

#### New York

- PS 12, Lewis and Clark School, New York City, 246 students ages 14 and above.

- PS/IS 25 South Richmond High School, New York City, 306 students ages 14 and above.

- Marta Valle Secondary School, New York City, 409 students.

- Schenectady High School, Schenectady, 2,902 students.

#### Oregon

- McKay High School, Salem, 1,791 students.

#### Pennsylvania

- Edison-Fariera High School, Philadelphia, 2,400 students.

- Frankford High School, Philadelphia, 2,057 students.

- Martin Luther King High School, Philadelphia, 1,424 students.

- Olney West High School, Philadelphia, 964 students.

- Samuel Fels High School, Philadelphia, 1,498 students.

- South Philadelphia High School, Philadelphia, 1,175 students.

- Strawberry Mansion High School, Philadelphia, 500 students.

- William Penn High School, Philadelphia, 689 students.

#### Puerto Rico

- Superior Dra. Trina Padilla de Sanz, Arecibo, 432 students.

- Superior Medardo Carazo, Trujillo Alto, 255 students.

- Superior Judith Vivas, Utuado, 313 students.

- Superior Lorenzo Coballes Gandia, Hatillo, 529 students.

#### B. Resources for the Applicant

DOL maintains a number of Web-based resources that may be of

assistance to applicants. Questions and responses submitted to the Grant Officer regarding the SGA will be posted on the ETA Web site at <http://www.doleta.gov>. Questions will be received for one month after publication.

#### C. Other Information

OMB Information Collection No.: 1225–0086.

Expires: September 30, 2009.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503. Please do not return your completed application to the OMB. Send it to the sponsoring agency as specified in this solicitation.

This information is being collected for the purpose of awarding a grant. The information collected through this “Solicitation for Grant Applications” will be used by DOL to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent’s application is not considered to be confidential.

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

**B. Jai Johnson,**

*Grant Officer, Employment and Training Administration.*

[FR Doc. E9–17560 Filed 7–23–09; 8:45 am]

**BILLING CODE 4510–FT–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**Prohibited Transaction Exemptions and Grant of Individual Exemptions involving: 2009–18, Robert W. Baird & Co. Incorporated, D–11488; 2009–19, MarkWest Energy Partners, L.P., D–11498; Morgan Stanley & Co. Incorporated, D–11501, 2009–20; and The Bank of New York Mellon Corporation (BNMC) and Its Affiliates (Collectively, BNY Mellon), D–11523, 2009–21**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of individual exemptions.

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

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

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

#### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29

CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

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

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

**Robert W. Baird & Co. Incorporated;  
Located in Milwaukee, Wisconsin**

*[Prohibited Transaction Exemption  
2009-18; Exemption Application  
Number D-11488]*

**Exemption**

*Section I. Loans Involving Auction Rate Securities*

The restrictions of section 406(a)(1)(A) through (D) and section 406(b)(1) and (2) of ERISA, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective February 1, 2008, to the lending of Auction Rate Securities (as defined in section III(b)) by a Plan (as defined in section III(e)) to Robert W. Baird & Co. Incorporated or any of its affiliates (Baird), provided that the conditions set forth in section II have been met.<sup>1</sup>

*Section II. Conditions*

(a) The last auction for the loaned Auction Rate Security was unsuccessful;

(b) The Plan does not waive any rights or claims in connection with the Auction Rate Security as a condition of engaging in the loan (the Loan);

(c) The transaction is not part of an arrangement, agreement or understanding designed to benefit a party in interest;

(d) Baird is and remains a broker-dealer registered under the Securities Exchange Act of 1934 (the Exchange Act) or is exempt from registration under section 15(a)(1) of the Exchange Act as a dealer in exempted government securities (as defined in section 3(a)(12) of the Exchange Act);

(e) The decision to enter into a Loan is made by a Plan fiduciary who is Independent (as defined in section III(d)) of Baird. Notwithstanding the foregoing, an employee of Baird who is the Beneficial Owner (as defined in section III(c)) of a Title II Only Plan (as defined in section III(f)) may direct the

Title II Only Plan to engage in a Loan if all of the other applicable conditions of this exemption have been met;

(f) Prior to any Loan, Baird shall have furnished the Plan fiduciary described in paragraph (e) with:

(1) The most recently available audited statement of Baird's financial condition, as audited by a United States certified public accounting firm;

(2) The most recently available unaudited statement of Baird's financial condition (if the unaudited statement is more recent than the audited statement described above); and

(3) A representation that, at the time the Loan is negotiated, there has been no material adverse change in its financial condition since the date of the most recent financial statement furnished to the Plan. Such representations may be made by Baird's agreement that each Loan shall constitute a representation by Baird that there has been no such material adverse change. Notwithstanding the foregoing, an employee of Baird who is the Beneficial Owner of a Title II Only Plan may receive the information described in this paragraph (f) if all of the other applicable conditions of this exemption have been met;

(g) The Loan is made pursuant to a written loan agreement (the Lending Agreement), the terms of which are at least as favorable to the Plan as an arm's-length transaction with an unrelated party would be. The Lending Agreement must contain all of the material terms of the Loan and cover only the lending of Auction Rate Securities by the Plan to Baird. Such Lending Agreement may be in the form of a master agreement covering a series of Loans;

(h) With respect to any Loan, Baird credits the lending Plan's account with Baird (the Account) with an amount of cash equal to 100 percent of the total par value of the loaned Auction Rate Securities. Baird must credit the Account by the close of business on the day on which Baird receives the Auction Rate Securities from the Plan;

(i) The Plan has the opportunity to derive compensation through the investment of the cash collateral described in paragraph (h);

(j) The Plan pays Baird a rebate fee negotiated in advance of the Loan that does not exceed the interest and/or dividends the Plan receives in connection with its ownership of the loaned Auction Rate Securities;

(k) The Plan may terminate the Loan at any time and for any reason;

(l) Baird may terminate the Loan if:

(1) The Plan closes its Account or reduces the balance thereof to less than

100 percent of the total par value of the Auction Rate Securities that are the subject of the Loan;

(2) The Plan is an individual retirement account described in section 4975(e)(1)(B)-(F) of the Code (an IRA) and the Beneficial Owner of the IRA dies or divides the IRA pursuant to a divorce, annulment or marital settlement;

(3) The Auction Rate Security associated with the Loan is redeemed by its issuer or may be sold at auction for its par value, or;

(4) Baird identifies a secondary market for the Auction Rate Security which Baird has a reasonable basis to believe will permit the lending Plan to receive no less than 90% of the Security's par value if the Auction Rate Security is promptly offered for sale on such market;

(m) Following any Loan termination as set forth in (k) or (l), Baird shall deliver Auction Rate Securities to the Plan which are identical (or the equivalent thereof (in the event of a reorganization, recapitalization or merger of the issuer of the Auction Rate Securities)) to the Auction Rate Securities borrowed by Baird within the lesser of:

(1) The customary delivery period for such securities;

(2) Five business days; or

(3) The time negotiated for such delivery by the Plan and Baird;

(n) Following any Loan termination as set forth in (k) or (l), if Baird fails to return all the borrowed Auction Rate Securities (or the equivalent thereof (in the event of a reorganization, recapitalization or merger of the issuer of the Auction Rate Securities)) within the timeframe set forth in paragraph (m), the Plan may keep the full amount of cash collateral provided by Baird in connection with the Loan;

(o) Following any Loan termination as set forth in (k) or (l), if the Plan fails to return the full amount of cash collateral:

(1) Baird may liquidate the borrowed Auction Rate Securities, in which case the Plan's obligation to return the cash collateral shall terminate. If the amount received by Baird from the liquidation (after deducting brokerage commissions and other transaction costs) exceeds the amount of cash collateral provided by Baird in connection with the Loan, then Baird shall pay such excess to the Plan. If the amount received by Baird from the liquidation (after deducting brokerage commissions and other transaction costs) is less than the amount of cash collateral provided by Baird in connection with the Loan, then the Plan shall pay such deficiency to Baird; or

<sup>1</sup> For purposes of this exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

(2) If Baird is unable to liquidate the ARS, Baird will retain the ARS and reserve its right to sue the Plan;

(p) (1) Where the Plan, as lender, does not return the full amount of cash collateral in connection with a Loan termination, Baird, as borrower, can seek interest at the prime rate on the amount of cash collateral owed by the Plan;

(2) Where Baird, as borrower, does not return the excess described in (o)(1), if any, the Plan, as lender, can seek interest at the prime rate on the amount of excess owed by Baird; and

(q) If Baird fails to comply with any provision of a loan agreement which requires compliance with this exemption the Plan fiduciary who caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of ERISA solely by reason of Baird's failure to comply with the conditions of the exemption.

## Section II. Definitions

(a) The term "affiliate" means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "Auction Rate Security" or "ARS" means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) with an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(c) The term "Beneficial Owner" means: the individual for whose benefit a Title II Only Plan is established and includes a relative or family trust with respect to such individual;

(d) The term "Independent" means a person who is: (1) Not Baird or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(e) The term "Plan" means: any plan described in section 3(3) of the Act and/or section 4975(e)(1)(B)–(F) of the Code; and

(f) The term "Title II Only Plan" means: any plan described in section 4975(e)(1) of the Code which is not an employee benefit plan covered by Title I of ERISA.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published in the **Federal Register** on January 21, 2009 at 74 FR 3650.

**FOR FURTHER INFORMATION CONTACT:**  
Chris Motta of the Department,

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

## MarkWest Energy Partners, L.P.; Located in Denver, CO

[Prohibited Transaction Exemption  
2009–19, Application No. D–11498]

## Exemption

### I. Retroactive Transactions

The restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), and 406(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) and 4975(c)(1)(E) of the Code,<sup>2</sup> shall not apply, effective February 21, 2008:

(a) To the acquisition by the individually, directed accounts (the Account(s)) of participants in the MarkWest Hydrocarbon, Inc. 401(k) Savings and Profit-Sharing Plan (the Plan), of publicly traded partnership units (the Units) issued by MarkWest Energy Partners, LP (Partners), the parent of MarkWest Hydrocarbon Inc. (Hydrocarbon), which is the sponsor of the Plan, as a result of the conversion of the common stock of Hydrocarbon (the Stock) held by the Plan into Units, pursuant to a plan of Redemption and Merger (the Merger); and

(b) To the holding of such Units by the Accounts in the Plan; provided that the conditions, as set forth, below, in this section I(b)(1) through (13), and the general conditions, as set forth, below, in section III of this exemption, were satisfied at the time the transaction, described, above, in sections I(a) of this exemption, was entered into and the transaction, described, above, in section I(b) of this exemption occurred:

(1) The past acquisition and holding of the Units by the Accounts in the Plan occurred in connection with the conversion of the Stock, pursuant to the terms of the Merger, which was the result of an independent act of Hydrocarbon, as a corporate entity;

(2) All shareholders of the Stock, including the participants in the Accounts in the Plan, were treated in a like manner with respect to all aspects of the redemption and conversion of the Stock, pursuant to the terms of the Merger;

(3) The past acquisition and holding of the Units by the Accounts in the Plan occurred in accordance with provisions in the Plan for individual participant direction of the investment of the assets of such Accounts;

<sup>2</sup> For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(4) The past acquisition and holding of the Units were each one-time transactions, and the dispositions of the Units by the Accounts in the Plan occurred in a series of transactions for cash on the New York Stock Exchange (NYSE);

(5) The participants in the Accounts in the Plan were provided with all shareholder rights and with the opportunity to direct the trustee of the Plan to vote "for," "against," or "abstain" with regard to the redemption and conversion of the Stock held in the Accounts in the Plan, pursuant to the terms of the Merger.

(6) The decision as to which compensation package to accept, in connection with the redemption and conversion of the Stock held in Accounts in the Plan, was made in accordance with the directions of the individual participants in whose Accounts such Stock was held, or, in the case of Accounts in the Plan for which no participant direction was given, the decision as to which compensation package to accept, in connection with the redemption and conversion of the Stock held in such Accounts in the Plan, was made in accordance with the directions of an independent, qualified fiduciary (the I/F), acting on behalf of such Accounts;

(7) The Units acquired, as a result of the conversion of the Stock held in the Accounts in the Plan, pursuant to the terms of the Merger, were held in such Accounts for no more than a period of sixty (60) days after such Units were acquired by such Accounts;

(8) The Accounts in the Plan disposed of all of the Units that such Accounts acquired as a result of the conversion of the Stock; and such dispositions occurred on the NYSE in a series of blind transactions for cash resulting in a weighted average price per Unit of no less than \$32.394,

(9) The cash proceeds from such dispositions of the Units by the Accounts in the Plan were distributed thereafter to each of the Accounts based on the number of Units held in each such Account;

(10) The decision to dispose of the Units, acquired by the Accounts in the Plan as a result of the conversion of the Stock was made by the I/F, acting on behalf of each such Account;

(11) The Accounts in the Plan did not pay any fees, commissions, transaction costs, or other expenses in connection with the redemption of the Stock by Hydrocarbon, the conversion of the Stock into Units, the acquisition and holding of such Units by such Accounts in the Plan, or the disposition of the Units on the NYSE;

(12) At the time each of the transactions, described, above, in sections I(a) and I(b) of this exemption occurred, the individual participants whose Accounts in the Plan engaged in each such transaction, or the I/F, acting on behalf of Accounts in the Plan for which no participant direction was given, determined that each such transaction was in the interest of the participants and beneficiaries of such Accounts; and

(13) The I/F took all appropriate actions necessary to safeguard the interests of the Accounts in the Plan, in connection with the transactions, described, above, in sections I(a) and I(b) of this exemption.

## II. Prospective Transactions

The restrictions of sections 406(a)(1)(E) and 406(a)(2) of the Act shall not apply, effective, as of the date a final exemption is published in the **Federal Register** to:

(a) The purchase of Units in the future by the Accounts in the Plan, and

(b) the holding of such Units by the Accounts in the Plan, provided that the conditions, as set forth below, in this section II(b)(1) through (8), and the general conditions, as set forth, below, in section III of this exemption, are satisfied at the time the transaction, described, above, in section II(a) of this exemption is entered into, and at the time the transaction, described, above, in section II(b) of this exemption occurs:

(1) The decision by the Accounts in the Plan as to whether to engage in the purchase, the holding, or the sale of the Units shall be made by the individual participants of the Accounts in the Plan which engage in such transactions;

(2) Hydrocarbon, rather than the Accounts in the Plan, shall bear any fees, commissions, expenses, or transaction costs, with respect to the purchase, holding, or sale of the Units;

(3) Each purchase and each sale of any of the Units shall occur only in blind transactions for cash on the NYSE at the fair market value of such Units on the date of each such purchase and each such sale;

(4) Each purchase and each sale of any of the Units shall occur on the same day (or if such day is not a trading day, the next day) as the direction to purchase or to sell the Units is received by the administrator of the Plan from the applicable participant of an Account which is engaging in such purchase or such sale;

(5) the terms of each purchase and each sale are at least as favorable to the Account as terms generally available in comparable arm's-length transactions between unrelated parties;

(6) prior to the purchase by an Account in the Plan of any Units, Partners provides the participant who is directing the investment of such Account in the Units with the most recent prospectus describing the Units, and the most recent quarterly statement, and annual report, concerning Partners, and thereafter, provides such participant with updated prospectuses on the Units, and updated quarterly statements, and annual reports of Partners, as published;

(7) Prior to a participant of an Account in the Plan engaging in the purchase of any Units, Partners must provide the following disclosures to such participant. The disclosure must contain the following information regarding the transactions and a supplemental disclosure must be made to the participant directing the covered investments if material changes occur. This disclosure must include:

(A) Information relating to the exercise of voting, tender, and similar rights with respect to the Units;

(B) The exchange or market system where the Units are traded; and

(C) A statement that a copy of the proposed and final exemption shall be provided to participants upon request.

(8) Each participant in an Account in the Plan shall have discretionary authority to direct the investment of such Account:

(A) To sell the Units purchased by such Account no less frequently than monthly, and

(B) To vote, tender, and exercise similar rights with respect to the Units held in such Account.

## III. General Conditions

(a) Partners or its affiliates maintain, or cause to be maintained, for a period of six (6) years from the date of each of the covered transactions such records as are necessary to enable the persons described, below, in section III(b)(1), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to the Plan which engages in the covered transactions, other than Partners and its affiliates, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination, as required, below, by section III(b)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Partners and its affiliates, such records are lost or

destroyed prior to the end of the six-year period.

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

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

(B) Any fiduciary of the Plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by the Plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of the Plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in section III(b)(1)(B)–(D) shall be authorized to examine trade secrets of Partners and its affiliates, or commercial or financial information which is privileged or confidential; and

(3) Should Partners or its affiliates refuse to disclose information on the basis that such information is exempt from disclosure, Partners or its affiliates shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

After giving full consideration to the entire record, the Department has decided to grant the exemption, as described above. The complete application file is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U. S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on May 6, 2009, at 74 FR 20974.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

**Morgan Stanley & Co. Incorporated;  
Located in New York, New York**

*[Prohibited Transaction Exemption  
2009-20 Exemption Application  
Number D-11501]*

**Exemption**

**Section I. Sales of Auction Rate Securities From Plans to Morgan Stanley: Unrelated to a Settlement Agreement**

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan (as defined in section V(e)) of an Auction Rate Security (as defined in section V(c)) to Morgan Stanley & Co. Incorporated (Morgan Stanley), where such sale (an Unrelated Sale) is unrelated to, and not made in connection with, a Settlement Agreement (as defined in section V(f)), provided that the conditions set forth in section II have been met.<sup>3</sup>

**Section II. Conditions Applicable to Transactions Described in Section I**

(a) The Plan acquired the Auction Rate Security in connection with brokerage or advisory services provided by Morgan Stanley to the Plan;

(b) The last auction for the Auction Rate Security was unsuccessful;

(c) Except in the case of a Plan sponsored by Morgan Stanley for its own employees (a Morgan Stanley Plan), the Unrelated Sale is made pursuant to a written offer by Morgan Stanley (the Offer) containing all of the material terms of the Unrelated Sale, including, but not limited to: (1) The identity and par value of the Auction Rate Security; (2) the interest or dividend amounts that are due with respect to the Auction Rate Security; and (3) the most recent rate information for the Auction Rate Security (if reliable information is available).

Notwithstanding the foregoing, in the case of a pooled fund maintained or advised by Morgan Stanley, this condition shall be deemed met to the extent each Plan invested in the pooled fund (other than a Morgan Stanley Plan) receives advance written notice regarding the Unrelated Sale, where such notice contains all of the material terms of the Unrelated Sale, including,

but not limited to, the material terms described in the preceding sentence;

(d) The Unrelated Sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security;

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends;

(f) The Plan does not waive any rights or claims in connection with the Unrelated Sale;

(g) The decision to accept the Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or IRA owner who is Independent (as defined in section V(d)) of Morgan Stanley. Notwithstanding the foregoing:

(1) In the case of an individual retirement account (an IRA, as described in section V(e) below) which is beneficially owned by an employee, officer, director or partner of Morgan Stanley, the decision to accept the Offer or retain the Auction Rate Security may be made by such employee, officer, director or partner; or (2) in the case of a Morgan Stanley Plan or a pooled fund maintained or advised by Morgan Stanley, the decision to accept the Offer may be made by Morgan Stanley after Morgan Stanley has determined that such purchase is in the best interest of the Morgan Stanley Plan or pooled fund;<sup>4</sup>

(h) Except in the case of a Morgan Stanley Plan or a pooled fund maintained or advised by Morgan Stanley, neither Morgan Stanley nor any affiliate exercises investment discretion or renders investment advice [within the meaning of 29 CFR 2510.3-21(c)] with respect to the decision to accept the Offer or retain the Auction Rate Security;

(i) The Plan does not pay any commissions or transaction costs with respect to the Unrelated Sale;

(j) The Unrelated Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

<sup>4</sup> The Department notes that the Act's general standards of fiduciary conduct also apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the Auction Rate Security to Morgan Stanley for the par value of the Auction Rate Security. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any of the transactions, to fully understand the risks associated with this type of transaction following disclosure by Morgan Stanley of all relevant information.

(k) Morgan Stanley and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (l)(i), to determine whether the conditions of this exemption have been met, except that—

(i) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than Morgan Stanley and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (l)(i); and

(ii) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Morgan Stanley or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period;

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

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

(B) Any fiduciary of any Plan, including any IRA owner, that engages in an Unrelated Sale, or any duly authorized employee or representatives of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Unrelated Sale, or any authorized employee or representative of these entities;

(ii) None of the persons described above in paragraph (l)(i)(B)–(C) shall be authorized to examine trade secrets of Morgan Stanley, or commercial or financial information which is privileged or confidential; and

(iii) Should Morgan Stanley refuse to disclose information on the basis that such information is exempt from disclosure, Morgan Stanley shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

<sup>3</sup> For purposes of this exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

*Section III. Sales of Auction Rate Securities From Plans to Morgan Stanley: Related to a Settlement Agreement*

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective August 1, 2008, to the sale by a Plan of an Auction Rate Security to Morgan Stanley, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement Agreement, provided that the conditions set forth in section IV have been met.

*Section IV. Conditions Applicable to Transactions Described in Section III*

(a) The terms and delivery of the Offer are consistent with the requirements set forth in the Settlement Agreement;

(b) The Offer specifically describes, among other things:

(1) How a Plan may determine: The Auction Rate Securities held by the Plan with Morgan Stanley; the number of shares and par value of the Auction Rate Securities; the interest or dividend amounts that are due with respect to the Auction Rate Securities; purchase dates for the Auction Rate Securities; and (if reliable information is available) the most recent rate information for the Auction Rate Securities;

(2) The background of the Offer;

(3) That neither the tender of Auction Rate Securities nor the purchase of any Auction Rate Securities pursuant to the Offer will constitute a waiver of any claim of the tendering Plan;

(4) The methods and timing by which Plans may accept the Offer;

(5) The purchase dates, or the manner of determining the purchase dates, for Auction Rate Securities tendered pursuant to the Offer;

(6) The timing for acceptance by Morgan Stanley of tendered Auction Rate Securities;

(7) The timing of payment for Auction Rate Securities accepted by Morgan Stanley for payment;

(8) The methods and timing by which a Plan may elect to withdraw tendered Auction Rate Securities from the Offer;

(9) The expiration date of the Offer;

(10) The fact that Morgan Stanley may make purchases of Auction Rate Securities outside of the Offer and may otherwise buy, sell, hold or seek to restructure, redeem or otherwise dispose of the Auction Rate Securities;

(11) A description of the risk factors relating to the Offer as Morgan Stanley deems appropriate;

(12) How to obtain additional information concerning the Offer; and

(13) The manner in which information concerning material amendments or changes to the Offer will be communicated to the Plan.

(c) The terms of the Settlement Sale are consistent with the requirements set forth in the Settlement Agreement; and

(d) All of the conditions in section II have been met.

*V. Definitions*

For purposes of this exemption:

(a) The term "affiliate" means: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "control" means: The power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term "Auction Rate Security" means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) With an interest rate or dividend that is reset at specific intervals through a Dutch Auction process;

(d) A person is "Independent" of Morgan Stanley if the person is: (1) Not Morgan Stanley or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(e) The term "Plan" means: An individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section 3(3) of ERISA; or an entity holding plan assets within the meaning of 29 CFR 2510.3-101, as modified by ERISA section 3(42); and

(f) The term "Settlement Agreement" means: A legal settlement involving Morgan Stanley and a U.S. state or federal authority that provides for the purchase of an ARS by Morgan Stanley from a Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published in the **Federal Register** on February 25, 2009 at 74 FR 8580.

**FOR FURTHER INFORMATION CONTACT:**

Chris Motta of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

**The Bank of New York Mellon Corporation (BNYMC) and Its Affiliates (collectively, BNY Mellon); Located in New York, New York**

*Prohibited Transaction Exemption 2009-21; Exemption Application Number D-11523*

**Exemption**

*Section I. Transactions*

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective October 3, 2008, to the cash sale (the Sale) by a Plan (as defined in section II(d)) of certain Auction Rate Securities (as defined in section II(b)) to BNY Mellon, provided that the following conditions are met:

(a) The Sale was a one-time transaction for cash payment made on or before December 31, 2008 on a delivery versus payment basis in the amount described in paragraph (b);

(b) The Plan received an amount equal to the par value of the Auction Rate Securities (the Securities) plus accrued but unpaid income (interest or dividends, as applicable) as of the date of the Sale;

(c) The last auction for the Securities was unsuccessful;

(d) The Sale was made in connection with a written offer by BNY Mellon containing all of the material terms of the Sale;

(e) The Plan did not bear any commissions or transaction costs with respect to the Sale;

(f) A Plan fiduciary independent of BNY Mellon (in the case of a Plan that is an IRA, the individual for whom the IRA is maintained) determined that the Sale of the Securities was appropriate for, and in the best interests of, the Plan at the time of the transaction, and the Plan's decision to enter into the transaction was affirmatively made by such independent fiduciary on behalf of the Plan;

(g) BNY Mellon took all appropriate actions necessary to safeguard the interests of each Plan in connection with the Sale;

(h) The Plan does not waive any rights or claims in connection with the Sale;

(i) The Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(j) If the exercise of any of BNY Mellon's rights, claims or causes of action in connection with its ownership of the Securities results in BNY Mellon recovering from the issuer of the Securities, or any third party, an

aggregate amount that is more than the sum of:

(1) The purchase price paid to the Plan for the Securities by BNY Mellon; and

(2) the income (interest or dividends, as applicable) due on the Securities from and after the date BNY Mellon purchased the Securities from the Plan, at the rate specified in the respective offering documents for the Securities or determined pursuant to a successful auction with respect to the Securities, BNY Mellon will refund such excess amount promptly to the Plan (after deducting all reasonable expenses incurred in connection with the recovery);

(k) Neither BNYMC nor any affiliate exercises investment discretion or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the decision to accept the written offer or retain the Security;

(l) BNY Mellon maintains, or causes to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the person described below in paragraph (m)(i), to determine whether the conditions of this exemption have been met, except that—

(i) No party in interest with respect to a Plan which engages in the covered transactions, other than BNY Mellon, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (m)(i);

(ii) A separate prohibited transaction shall not be considered to have occurred solely because due to circumstances beyond the control of BNY Mellon, such records are lost or destroyed prior to the end of the six-year period.

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

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

(B) Any fiduciary of any Plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are

covered by a Plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan that engages in a covered transaction, or duly authorized employee or representative of such participant or beneficiary;

(ii) None of the persons described, above, in paragraph (m)(i)(B)–(D) shall be authorized to examine trade secrets of BNY Mellon, or commercial or financial information which is privileged or confidential; and

(iii) Should BNY Mellon refuse to disclose information on the basis that such information is exempt from disclosure, BNY Mellon shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

#### Section II. Definitions

(a) The term “affiliate” means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term “Auction Rate Security” or “Security” means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) with an interest rate or dividend that is reset at specific intervals through a “Dutch auction” process;

(c) The term “Independent” means a person who is not BNYMC or an affiliate (as defined in Section II(a)); and

(d) The term “Plan” means any plan described in section 3(3) of the Act and/or section 4975(e)(1) of the Code.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to the notice of proposed exemption published on May 6, 2009 at 74 FR 20987.

**DATES: Effective Date:** This exemption is effective from October 3, 2008 through December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or

disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

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

Signed at Washington, DC, this 16th day of July, 2009.

**Ivan Strasfeld,**

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

[FR Doc. E9–17468 Filed 7–23–09; 8:45 am]

**BILLING CODE 4510–29–P**

#### NATIONAL SCIENCE FOUNDATION

##### Agency Information Collection Activities: Comment Request

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB Review; Comment Request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 74 FR 24043, and one comment was received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: <http://www.reginfo.gov/public/do/PRAMain>.