filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, American Institutes for Research, Washington, DC; Gwinnett County Public Schools, Suwanee GA; Instructure, Salt Lake City, UT; Kaltura Inc., New York, NY; and LearningMate Solutions, Inc., New York, NY, have been added as parties to this venture.

Also, IVIMEDS, Dundee, UNITED KINGDOM; Florida State College at Jacksonville, Jacksonville, FL; and Turning Technologies, Youngstown, OH, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on March 19, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 15, 2013 (78 FR 22297).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–14777 Filed 6–20–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—U.S. Photovoltaic Manufacturing Consortium, Inc.

Notice is hereby given that, on May 21, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), U.S. Photovoltaic Manufacturing Consortium, Inc. (''USPVMC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Esgee Technologies, Inc., Austin, TX; and Magnolia Solar, Albany, NY, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and USPVMC intends to file additional written notifications disclosing all changes in membership.

On November 14, 2011, USPVMC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 21, 2011 (76 FR 79218).

The last notification was filed with the Department on January 15, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 12, 2013 (78 FR 9939).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–14780 Filed 6–20–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sematech, Inc. D/B/A International Sematech

Notice is hereby given that, on May 21, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Sematech, Inc. d/b/a International Sematech (''SEMATECH'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Intermolecular, Inc., San Jose, CA; United Microelectronics Corp., Hsinchu, TAIWAN; Morgan Advanced Materials, Windsor, Berkshire, UNITED KINGDOM; Freescale Semiconductor, Inc., Austin, TX; and TriQuint Semiconductors, Inc., Richardson, TX, have been added as parties to this venture.

Also, 4DS, Fremont, CA; NEXX Systems, Billerica, MA; and SÜSS MicroTec, Garching, GERMANY, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SEMATECH intends to file additional written notifications disclosing all changes in membership.

On April 22, 1988, SEMATECH filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 19, 1988 (53 FR 17987).

The last notification was filed with the Department on March 7, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 28, 2013 (78 FR 19009).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–14776 Filed 6–20–13; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

RIN 1210–ZA18

[Application Number: D–11681]

Proposed Amendments to Class Prohibited Transaction Exemptions To Remove Credit Ratings Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of Proposed Amendments to Certain Class Exemptions.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of Proposed Amendments to Prohibited Transaction Exemption (PTE) 75–1 (40 FR 50845, October 31, 1975, as amended by 71 FR 5883, February 3, 2006); PTE 80–83 (45 FR 73189, November 4, 1980); PTE 81–8 (46 FR 7511, January 23, 1981, as amended by 50 FR 14043, April 9, 1985); PTE 95–60 (60 FR 35925, July 12, 1995); PTE 97–41 (62 FR 42830, August 8, 1997); and PTE 2006–16 (71 FR 63786, October 31, 2006). The proposed amendments relate to the use of credit ratings as standards of credit-worthiness

in such class exemptions. Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) requires the Department to remove any references to or requirements of reliance on credit ratings from its class exemptions and to substitute such standards of credit-worthiness as the Department determines to be appropriate. If adopted, the proposed amendments would affect participants and beneficiaries of employee benefit plans, fiduciaries of such plans, and the financial institutions that engage in transactions with, or provide services or products to, the plans.

DATES: Written comments and requests for a public hearing should be received by the Department on or before August 20, 2013. If adopted, the amendments would be effective 60 days after the date of publication of the final amendments with respect to PTE 75–1; PTE 80–83; PTE 81–8; PTE 95–60; PTE 97–41; and PTE 2006–16.

ADDRESSES: All written comments and requests for a public hearing concerning the proposed amendments should be sent to the Office of Exemption Determinations via email to: *e-OED@dol.gov,* or via the Federal eRulemaking Portal: *http://www.regulations.gov* at Docket ID number: EBSA–2012–0013 (follow the instructions for submitting comments). Interested persons may also submit written comments and hearing requests by letter addressed to: Employee Benefits Security Administration, Room N–5700, (Attention: Application No. D–11681), U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, or by fax to (202) 219–0204. All comments and hearing requests must be received by the end of the comment period. The comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Comments and hearing requests will also be available online at *www.regulations.gov,* at Docket ID number: EBSA–2012–0013 and *www.dol.gov/ebsa,* at no charge. All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want to be publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Warren M. Blinder, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Room N–5700, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–8553 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of proposed amendments to: PTE 75–1, Exemptions From Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers, Reporting Dealers and Banks; PTE 80–83, Class Exemption for Certain Transactions Involving Purchases of Securities Where Issuer May Use Proceeds to Reduce or Retire Indebtedness to Parties in Interest; PTE 81–8, Class Exemption Covering Certain Short-term Investments; PTE 95–60, Class Exemption for Certain Transactions Involving Insurance Company General Accounts; PTE 97–41, Class Exemption for Collective Investment Fund Conversion Transactions; and PTE 2006–16, Class Exemption To Permit Certain Loans of Securities by Employee Benefit Plans (collectively, the Class Exemptions). The Class Exemptions provide relief from certain of the restrictions described in section 406 of the Employee Retirement Income Security Act of 1974 (ERISA), and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(A) through (F) of the Code, provided that the conditions of the relevant exemption have been met. The Department is proposing to amend each of the Class Exemptions on its own motion, pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).[1]

A. Background

Dodd-Frank,[2] enacted in the wake of the financial crisis of 2008, was intended to, among other things, promote the financial stability of the United States by improving accountability and transparency in the financial system. Title IX, Subtitle C, of Dodd-Frank includes provisions regarding statutory and regulatory references to credit ratings in rules and regulations promulgated by Federal agencies, including the Department, which are designed ''[t]o reduce the reliance on ratings.'' [3]

Congress recognized the ''systemic importance of credit ratings and the reliance placed on credit ratings by individual and institutional investors and financial regulators.'' [4] Because credit rating agencies perform evaluative and analytical services on behalf of clients, much the same as auditors, securities analysts, and investment bankers do, Congress noted that ''the activities of credit rating agencies are fundamentally commercial in character and should be subject to the same standards of liability and oversight.'' [5] Furthermore, Congress observed that, in the recent financial crisis precipitating Dodd-Frank, credit ratings of certain financial products proved to be inaccurate, which ''contributed significantly to the mismanagement of risks by financial institutions and investors, which in turn adversely impacted the health of the economy in the United States and around the world.'' [6] As a result, Congress determined that ''[s]uch inaccuracy necessitates increased accountability on the part of credit rating agencies.'' [7]

Specifically, in section 939A of Dodd-Frank, Congress requires that the Department ''review any regulation issued by [the Department] that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings.'' [8] Once the Department has completed that review, the statute provides that the Department ''remove any reference to or requirement of reliance on credit ratings, and to substitute in such regulations such standard of credit-worthiness'' as the Department determines to be appropriate.[9]

Based on the Department's consideration of section 939A of Dodd-Frank, the Department believes that the Class Exemptions are ''regulations'' for purposes of section 939A and, therefore,

[1] Section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), generally transferred the authority of the Secretary of Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. For purposes of this exemption, references to specific provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] See Public Law 111–203, 124 Stat. 1376 (2010).

[3] See Joint Explanatory Statement of the Committee of Conference, Conference Committee Report No. 111–517, to accompany H.R. 4173, 864–879, 870 (Jun. 29, 2010).

[4] Public Law 111–203, Section 931(1).

[5] Public Law 111–203, Section 931(3).

[6] Public Law 111–203, Section 931(5).

[7] Id.

[8] Public Law 111–203, Section 939A(a)(1)–(2).

[9] Public Law 111–203, Section 939A(b).

are subject to its requirement to remove references to credit ratings. The process for proposing and granting class exemptions is similar to the regulatory process, and class exemptions generally apply to broad classes of transactions and/or parties.

Accordingly, the Department has conducted a review of its class exemptions as required by section 939A(a) of Dodd-Frank and identified the Class Exemptions as those including references to, or requiring reliance on, credit ratings. In this regard, in each of the Class Exemptions, the Department has conditioned relief on the financial instruments which are the subject of such exemptions, or an issuer of such a financial instrument, receiving a specified credit rating, issued by a credit rating agency. Credit ratings have been considered useful for fiduciaries of employee benefit plans in evaluating the credit quality of a particular financial instrument or issuer, as plan fiduciaries frequently do not possess the expertise or resources to engage in an analysis of the credit quality of a financial instrument or its issuer. This credit rating condition is one component of the safeguards established in each Class Exemption to protect the interests of plans, and their participants and beneficiaries, which enter into transactions covered by the Class Exemptions.

The credit ratings requirements found in the Class Exemptions range from a rating in one of the highest four generic categories of credit ratings to a rating in one of the highest two categories of credit ratings, from a nationally recognized statistical rating organization (NRSRO). In this regard, PTE 75–1 and PTE 80–83 require credit ratings in one of the four highest rating categories for non-convertible debt securities. PTE 2006–16 requires a credit rating of ''investment grade'' [10] or better for certain issuers of irrevocable letters of credit and a credit rating in one of the two highest rating categories for collateral which consists of foreign sovereign debt securities. PTE 81–8 utilizes a credit rating in one of the three highest rating categories for commercial paper. PTE 95–60 and PTE 97–41 do not require specific credit ratings, but instead refer generally to the credit ratings of certain financial instruments. Pursuant to Dodd-Frank, the Department is proposing herein to amend the Class Exemptions listed above to remove such references to credit ratings, and where applicable, substitute in their place alternative methods for determining credit quality which take into account the purpose and characteristics of each such Class Exemption.

B. Securities and Exchange Commission (SEC) Alternatives to Credit Ratings

In proposing these amendments to the Class Exemptions, the Department has considered alternatives to credit ratings set forth in three recent SEC releases (the SEC Releases). The first is a recent proposal (the Investment Company Proposal) released by the SEC in response to section 939A and section 939(c) of Dodd-Frank that relates to the use of credit ratings in rules and forms under the Investment Company Act of 1940 (the Investment Company Act).[11] The second is the adoption of a new rule 6a-5 implementing section 939(c) of Dodd-Frank.[12] Rule 6a-5 was initially proposed in the Investment Company Proposal and relates to the use of credit ratings in rules under the Investment Company Act (the Investment Company Final Rule, and together with the Investment Company Proposal, the Investment Company Releases). The third is the adoption of rule amendments (the 2009 NRSRO Rule Adopting Release) released by the SEC in 2009 on its own initiative regarding references to credit ratings of nationally recognized statistical rating organizations in certain rules under the Securities Exchange Act of 1934 (the Exchange Act) and the Investment Company Act.[13]

In the Investment Company Proposal, the SEC proposed alternatives to credit ratings in amendments to rules 2a–7, 5b–3, and in the Investment Company Final Rule, the SEC adopted an alternative to credit ratings in new rule 6a–5, each such rule under the Investment Company Act. In the 2009 NRSRO Rule Adopting Release, the SEC adopted an alternative to credit ratings in amendments to rule 10f–3 under the Investment Company Act. Among other provisions, the Investment Company Act regulates conflicts of interest in investment companies, requiring disclosure of material details about an investment company, and placing restrictions on certain mutual fund activities. The Department believes that the alternatives described in the SEC Releases referenced above are instructive in developing appropriate alternatives for credit ratings referenced in the Class Exemptions, in part because of the similar manner in which the SEC's rules and the Class Exemptions make use of such ratings, and also because of the similar standards of credit quality currently required in the rules and the Class Exemptions, or in the case of new rule 6a–5 and final rule 10f–3, required prior to their adoption.

In this regard, the Department considered new rule 6a–5 and final rule 10f–3 for purposes of proposing to amend PTE 75–1 and PTE 80–83, and considered new rule 6a–5 with respect to its proposed amendment of PTE 2006–16, in developing an alternative to a credit rating in one of the highest four rating categories, or ''investment grade.'' The Department also considered final rule 10f–3 and the proposed amendment to rule 2a–7 for purposes of proposing to amend PTE 81–8, in developing an alternative to a credit rating in one of the highest three rating categories. Finally, the Department also considered the proposed amendments to rules 2a–7 and 5b–3 for purposes of proposing to amend PTE 2006–16, in developing an alternative to a credit rating in one of the highest two rating categories.

1. New Rule 6a–5 and Final Rule 10f–3: Standard for Highest Four Ratings Categories or ''Investment Grade''; Standard for Highest Three Ratings Categories

Section 6(a)(5) of the Investment Company Act provides an exemption from certain of its provisions for business and industrial development companies (BIDCOs).[14] Under section 6(a)(5)(A)(iv) prior to its amendment by Dodd-Frank, BIDCOs seeking to rely on the exemption were limited in their purchases of securities issued by investment companies and private funds to:

> (I) any debt security that is rated investment grade by not less than 1 nationally recognized statistical rating organization; or (II) any security issued by a registered open-end investment company that is required by its investment policies to

[10] The Department understands that ''investment grade'' is the common term for a credit rating in the highest four rating categories issued by a credit rating agency.

[11] See References to Credit Ratings in Certain Investment Company Act Rules and Forms, Release Nos. 33–9193, IC–29592; 76 FR 12896 (March 9, 2011).

[12] See Purchase of Certain Debt Securities by Business and Industrial Development Companies Relying on an Investment Company Act Exemption, Release No. IC–30268; 77 FR 70117 (November 23, 2012).

[13] See References to Ratings of Nationally Recognized Statistical Rating Organizations, Release Nos. 34–60789, IC–28939; 74 FR 52358 (October 9, 2009).

[14] See 15 U.S.C. 80a–6(a)(5)(A). BIDCOs are companies that operate under state statute that provide direct investment and loan financing, as well as managerial assistance to state and local enterprises. Because BIDCOs invest in securities, they frequently meet the definition of ''investment compan[ies]'' under the Investment Company Act and would otherwise be required to register and be regulated under the Act in the absence of an exemption.

invest not less than 65 percent of its total assets in securities described in subclause (I) or securities that are determined by such registered open-end investment company to be comparable in quality to securities described in subclause (I).

The Department understands that an ''investment grade'' rating is a common term for a rating in one of the highest four rating categories by a credit rating agency.

Section 939(c) of Dodd-Frank amended section 6(a)(5)(A)(iv) of the Investment Company Act, effective July 21, 2012, to eliminate the reference to ''investment grade.'' As amended, the section references debt securities that meet ''such standards of credit-worthiness as the Commission shall adopt.'' Rule 6a-5 sets forth a credit-worthiness standard to replace the credit rating reference to ''investment grade'' that Dodd-Frank eliminated from section 6(a)(5)(A)(iv).

Under rule 6a–5, the requirements for creditworthiness under section 6(a)(5)(A)(iv)(I) would be satisfied if the board of directors or members of the BIDCO (or a delegate thereof) determines that the debt security is:

(a) subject to no greater than moderate credit risk and (b) sufficiently liquid that the security can be sold at or near its carrying value within a reasonably short period of time.

The determination is made at the time of the purchase.[15]

In the Investment Company Final Rule, the SEC stated that this standard is designed to limit purchases of securities to those of ''sufficiently high credit quality that they are likely to maintain a fairly stable market value and may be liquidated easily . . ..'' The SEC provided the following explanation of moderate credit risk:

Debt securities (or their issuers) subject to a moderate level of credit risk would demonstrate at least average credit-worthiness relative to other similar debt issues (or issuers of similar debt). Moderate credit risk would denote current low expectations of default risk associated with the security, with an adequate capacity for payment by the issuer of principal and interest.

The SEC noted further that in making such determinations, ''a BIDCO's board of directors or members (or its or their delegate) can also consider credit quality reports prepared by outside sources, including NRSRO ratings, that the BIDCO board or members conclude are credible and reliable for this purpose.''

[15] For purposes of the amendments to the Class Exemptions, the Department has interpreted carrying value as equivalent to fair market value.

In the Investment Company Final Rule, the SEC noted that the standard of credit-worthiness in rule 6a–5 is similar to that previously adopted for rule 10f–3 under the Investment Company Act, amended effective November 12, 2009, to remove references to NRSRO ratings. Section 10(f) of the Investment Company Act prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security for which a principal underwriter of the security has certain relationships with the registered investment company, such as an officer, director, or investment adviser. Rule 10f–3 contains a definition of ''eligible municipal securities'' with respect to securities that may be purchased during an affiliated underwriting under certain conditions. Prior to the amendment of the rule, such eligible municipal securities were required to have:

an investment grade rating from at least one NRSRO; provided, that if the issuer of the municipal securities, or the entity supplying the revenues or other payments from which the issue is to be paid, has been in continuous operation for less than three years, including the operation of any predecessors, the securities shall have received one of the three highest ratings from an NRSRO.

As amended, the definition of eligible municipal securities in rule 10f-3 requires that the securities:

are sufficiently liquid that they can be sold at or near their carrying value within a reasonably short period of time and either: i. Are subject to no greater than moderate credit risk; or ii. If the issuer of the municipal securities, or the entity supplying the revenues or other payments from which the issue is to be paid, has been in continuous operation for less than three years, including the operation of any predecessors, the securities are subject to a minimal or low amount of credit risk.

In the 2009 NRSRO Rule Adopting Release, the SEC noted that securities with a minimal or low credit risk ''would be less susceptible to default risk (i.e., have a low risk of default) than those with moderate credit risk. These securities (or their issuers) also would demonstrate a strong capacity for principal and interest payments and present above average creditworthiness relative to other municipal or tax exempt issues (or issuers).''

Thus, in both new rule 6a–5 and final rule 10f–3, the SEC set forth a standard to replace ''investment grade'' that requires that the security be:

- Sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time, and
- subject to no greater than moderate credit risk.

Additionally, with respect to a requirement that a security be rated in one of the three highest rating categories, the SEC in final rule 10f–3 created a standard of credit-worthiness that would require the security to be:

- Sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time, and
- subject to a minimal or low amount of credit risk.

The Department likewise proposes herein to adopt similar standards to replace references in the Class Exemptions to the highest four rating categories or ''investment grade,'' and the highest three rating categories.

2. Proposed Rule 2a–7: Standard for Highest Two Rating Categories

Investment Company Act rule 2a–7, which governs the operation of money market funds, exempts money market funds from certain of its provisions regarding the calculation of current net asset value per share.[16] A fund that relies on rule 2a–7 may use special valuation and pricing procedures that help the fund maintain a stable net asset value per share (typically $1.00). To facilitate maintaining a stable net asset value, among other conditions, rule 2a–7 limits money market funds to investing in debt obligations that are at the time of acquisition, ''eligible securities,'' meaning they have:

received a rating from the Requisite NRSROs[17] in one of the two highest short-term rating categories.[18]

Rule 2a–7 further requires that securities purchased by money market

[16] 17 CFR 270.2a–7.

[17] ''Requisite NRSROs'' are defined as any two nationally recognized statistical rating organizations that have issued a rating with respect to a security or class of debt obligations of an issuer or, if only one such organization has issued a rating with respect to such security or class of debt obligations of an issuer at the time the investment company acquires the security, that nationally recognized statistical rating organization. A Requisite NRSRO must also be a ''Designated NRSRO,'' which is generally any one of at least four nationally recognized statistical rating organizations that a money market fund's board of directors has designated for use, and determines at least annually issues credit ratings that are sufficiently reliable for the fund to use in determining whether a security is an eligible security. After enactment of Dodd-Frank, money market funds received SEC staff assurances that the staff would not recommend enforcement action if a money market fund board did not designate NRSROs (and did not make certain related disclosures) before the SEC made any modifications to rule 2a–7 as mandated by section 939A of Dodd-Frank. See Investment Company Institute, SEC No-Action Letter (Aug. 19, 2010).

[18] Eligible securities also must have a remaining maturity of 397 calendar days or less. Unrated securities of comparable credit quality can also meet the definition of ''eligible security.''

funds are those ''that the fund's board of directors determines present minimal credit risks (which determination must be based on factors pertaining to credit quality in addition to any rating assigned to such securities by a Designated NRSRO).'' [19]

In order to implement Section 939A of Dodd-Frank, the SEC proposed to amend rule 2a–7 of the Investment Company Act to remove the references to credit ratings discussed above and replace them with alternative standards of credit worthiness that are designed to achieve the same degree of credit quality as the ratings requirement currently in use. Under the proposed amendment, the requirement of rule 2a–7 regarding minimal credit risks would be moved into the definition of ''eligible security.'' Thus, an eligible security would be a security that:

> the fund's board of directors determines presents minimal credit risks (which determination must be based on factors pertaining to credit quality and the issuer's ability to meet its short-term financial obligations).

In the Investment Company Proposal, the SEC explained that an issuer that would satisfy the credit-worthiness requirement associated with an eligible security should have ''a very strong ability to repay its short-term debt obligations, and a very low vulnerability to default.''

Furthermore, in the Investment Company Proposal, the SEC noted that money market fund boards of directors ''would still be able to consider quality determinations prepared by outside sources, including NRSRO ratings, that fund advisers conclude are credible and reliable, in making credit risk determinations.'' However, the SEC observed further that fund advisers would be expected ''to understand the method for determining the rating and make an independent judgment of credit risks, and to consider an outside source's record with respect to evaluating the types of securities in which the fund invests.''

Thus, the SEC proposed to amend the requirement in rule 2a–7 that an ''eligible security'' has received a rating from certain NRSROs in one of the highest two rating categories with a standard of credit-worthiness that would require that the security:

- Present minimal credit risks based on factors pertaining to credit quality and the issuer's ability to meet its short-term financial obligations.

The Department likewise proposes herein to adopt a similar standard in order to replace references in the Class Exemptions to credit ratings in one of the highest two rating categories.

3. Proposed Rule 5b–3: Standard for Highest Two Rating Categories

Rule 5b–3 under the Investment Company Act permits funds to treat the acquisition of a repurchase agreement as an acquisition of securities collateralizing the repurchase agreement in determining whether the fund is in compliance with certain provisions of the Investment Company Act, if the obligation of the seller to repurchase the securities from the fund is ''collateralized fully.'' [20] In order for a repurchase agreement to be collateralized fully under rule 5b–3(c)(1), among other things, the collateral for the repurchase agreement must consist entirely of:

> (A) cash items; (B) government securities; (C) securities that at the time the repurchase agreement is entered into are rated in the highest rating category by the [r]equisite NRSROs; or (D) certain comparable unrated securities.

In response to section 939A of Dodd-Frank, the SEC has proposed to eliminate the credit ratings requirement in rule 5b–3(c)(1) and set forth a new standard of credit-worthiness applicable to collateral other than cash or government securities. Under the proposed amendment to rule 5b–3, the requirements for credit-worthiness under rule 5b–3(c)(1) would be satisfied if the fund's board of directors (or its delegate) determines that the purchased securities are:

> (i) Issued by an issuer that has the highest capacity to meet its financial obligations; and
>
> (ii) sufficiently liquid that they can be sold at approximately their carrying value in the ordinary course of business within seven calendar days.

The determination is made at the time the repurchase agreement is entered into.

In the Investment Company Proposal, the SEC stated that it designed ''the proposed amendments to retain a degree of credit quality similar to that under the current rule.'' The SEC provided the following description of an issuer with the ''highest capacity'' to meet its financial obligations:

> [an issuer with] an exceptionally strong capacity to repay its short or long-term debt obligations, as appropriate, the lowest expectation of default, and a capacity for repayment of its financial commitments that is the least susceptible to adverse effects of changes in circumstances.

The SEC further noted that in making such determinations, ''fund boards (or their delegates) would still be able to consider analysis provided by outside sources, including credit agency ratings, that they conclude are credible and reliable, for purposes of making these credit quality evaluations.''

The SEC observed in the Investment Company Proposal that, securities trading in a secondary market at the time of the acquisition of the repurchase agreement would satisfy the proposed liquidity standard.

In the Investment Company Proposal, the SEC explained that the proposed amendments were designed:

> to be clear enough to permit a fund board or fund investment adviser to make a determination regarding credit quality and liquidity that would achieve the same objectives that the credit rating requirement was designed to achieve, i.e., to limit collateral securities to those that are likely to retain a fairly stable market value and that, under ordinary circumstances, the fund would be able to liquidate quickly in the event of a counterparty default.

Thus, in the proposed amendment to rule 5b–3, the SEC proposed a new standard of credit-worthiness to replace the reference to a credit rating in the highest rating category that would require a security to be:

- Issued by an issuer that has the highest capacity to meet its financial obligations, and
- sufficiently liquid that it can be sold at approximately its carrying value in the ordinary course of business within seven calendar days.

The Department proposes herein to make use of certain portions of the standard set forth above, including that pertaining to the liquidity of the securities, to replace references in the

[19] Under rule 2a–7(a), an eligible security is generally either a ''first tier security'' or a ''second tier security.'' First tier securities are defined as (a) securities possessing a short-term rating from the requisite NRSROs in the highest short-term rating category for debt obligations, (b) comparable unrated securities, (c) securities issued by money market funds, or (d) government securities, as defined in the Investment Company Act. Second tier securities, in turn, are defined as any eligible securities that are not first tier securities. The Department has determined not to adopt the ''first tier'' and ''second tier'' labels utilized in Rule 2a–7 to describe securities rated in the highest and second highest rating categories, respectively, because such labels are unnecessary in the context of the Class Exemptions.

[20] The SEC explains in the Investment Company Proposal that a repurchase agreement functions economically as ''a loan from the fund to the counterparty, in which the securities purchased by the fund serve as collateral for the loan and are placed in the possession or under the control of the fund's custodian during the term of the agreement.'' Accordingly, the SEC notes that ''a fund investing in a repurchase agreement looks to the value and liquidity of the securities collateralizing the repurchase agreement rather than the credit quality of the counterparty for satisfaction of the repurchase agreement.''

Class Exemption to a credit rating in the highest rating category.

C. Class Exemptions

These proposed amendments to the Class Exemptions are designed to implement the mandate of section 939A(b) of Dodd-Frank to ''remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations.'' In this regard, the Department has designed the proposed amendments to retain the same degree of credit quality required under the Class Exemptions prior to the amendments, but without referencing or relying on credit ratings. The Department does not consider the changes proposed herein to be substantive in nature. Thus, for example, although the proposed amendment to PTE 75–1, Part III and Part IV, no longer refers to securities rated in one of the four highest rating categories, it is meant to capture securities that should generally qualify for that designation without relying on third-party credit ratings.

The Department recognizes that, where a fiduciary has neither the expertise nor the time to make an informed determination of credit quality, it may be appropriate as a matter of prudence for such fiduciary to seek out the advice and counsel of third parties. Furthermore, it should be noted that, while credit ratings may no longer serve as a basis, or threshold, of credit quality, section 939A of Dodd-Frank does not prohibit a fiduciary from using credit ratings as an element, or data point, in that analysis.

The Department notes that, in conducting an analysis of the credit quality of a particular financial instrument or person, a fiduciary should consider a variety of factors that may be applicable in making such determination. The following factors, derived from a recent SEC release regarding proposed changes to certain rules under the Securities Exchange Act of 1934 (the Exchange Act Proposal), may be considered relevant in assessing credit risk: [21]

- Credit spreads (i.e., the amount of credit risk a position in commercial paper and/or nonconvertible debt is subject to, based on the spread between the security's yield and the yield of Treasury or other securities, or based on credit default swap spreads that reference the security);
- Securities-related research (i.e., to what extent providers of securities-related research believe the issuer of the security will be able to meet its financial commitments, generally, or specifically, with respect to securities held);
- Internal or external credit risk assessments (i.e., whether credit assessments developed internally by a broker-dealer or externally by a credit rating agency, express a view as to the credit risk associated with a particular security);
- Default statistics (i.e., whether providers of credit information relating to securities express a view that specific securities have a probability of default consistent with other securities with a determined amount of credit risk);
- Inclusion on an index (i.e., whether a security, or issuer of the security, is included as a component of a recognized index of instruments that are subject to a determined amount of credit risk);
- Priorities and enhancements (i.e., the extent to which a security is covered by credit enhancements, such as overcollateralization and reserve accounts, or has priority under applicable bankruptcy or creditors' rights provisions);
- Price, yield and/or volume (i.e., whether the price and yield of a security or a credit default swap that references the security are consistent with other securities that the broker-dealer has determined are subject to a certain amount of credit risk and whether the price resulted from active trading); and
- Asset class-specific factors (e.g., in the case of structured finance products, the quality of the underlying assets).

The Department observes that the SEC's list above was not meant to be exhaustive or mutually exclusive, and that the range and type of specific factors considered would vary depending on the particular securities that are reviewed.

The Department notes further that in making a determination of the relative credit quality of a particular financial instrument or entity, as well as in assigning a relative value to a third party's advice or a credit rating, a plan fiduciary would continue to be subject to section 404 of ERISA. Moreover, such fiduciary would remain subject to the other conditions of relief as set forth in the Class Exemptions, including, but not limited to, any requirements regarding the maintenance of records which are necessary to enable the persons described therein to determine whether the conditions of such Class Exemption have been met.

1. PTE 75–1

PTE 75–1, granted soon after the enactment of ERISA, provides relief for certain transactions that were customary at the time between plans and broker-dealers or banks, including a plan's acquisition of securities from a member of an underwriting syndicate of which a plan fiduciary or its affiliate is a member, and an employee benefit plan's purchase or sale of securities for which the plan's fiduciary is a ''market maker,'' to or from such fiduciary or its affiliate.

Specifically, PTE 75–1, Part III, provides relief from the restrictions of section 406 of ERISA and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, for an employee benefit plan's acquisition of securities during the existence of an underwriting syndicate, from a person other than a fiduciary with respect to the plan, where a fiduciary of such employee benefit plan is a member of the underwriting syndicate. Section III(a) provides further that no fiduciary who is involved in any way in causing the plan to make such purchase may be a manager of such underwriting or selling syndicate. In this regard, section (a) defines a manager as any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the securities being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

Part IV of PTE 75–1 provides relief from the restrictions of section 406 of ERISA and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, for a plan's purchase or sale of securities from or to a ''market maker'' with respect to such security who is also a fiduciary with respect to the plan or an affiliate of such fiduciary. Part IV provides further that at least one person other than the fiduciary must be a market-maker in such securities, and the transaction must be executed at a net price to the plan for the number of shares or other units to be purchased or

[21] The factors listed below were published in the SEC's proposing release entitled, Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934, Release No. 34–64352; 76 FR 26550, at 26552–26553 (May 6, 2011). While such factors derive from the SEC's proposed amendment to Rule 15c3–1, which requires a broker-dealer to determine whether a security satisfies a ''minimal amount of credit risk,'' the Department believes that they may, where appropriate, be helpful in connection with a fiduciary's determination of credit quality under the amendments proposed herein.

sold in the transaction which is more favorable to the plan than that which such fiduciary, acting in good faith, reasonably believes to be available at the time of such transaction from all other market makers in such securities.

The relief afforded in Part III and Part IV of PTE 75–1 is also conditioned upon, among other things, the issuer of the securities having been in continuous operation for not less than three years, including the operations of any predecessors. However, several exceptions to this condition exist with respect to each exemption, including an exception for securities that are ''non-convertible debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization.''

The condition requiring the issuer of securities in an underwriting to have been in continuous operation for at least three years bolsters the quality of the underwritten securities, by ensuring that the issuer is an established entity that has been operating as a business for a continuous period of time. Securities issued by such an issuer should be more predictable in terms of price and trading volume stability than securities issued by unproven entities with shorter operating histories. Ostensibly, debt securities rated as investment grade or higher, by an unrelated third party in the business of evaluating credit quality, possess attributes of credit quality that provide more predictability in terms of price, volatility, and ultimate payment of principal. Thus, the Department is cognizant that any substitute for credit ratings must provide the same level of protection for plans entering into the transactions.

The Department is proposing to replace the references to credit ratings in Part III and Part IV of PTE 75–1 with the requirement that, ''[a]t the time of acquisition, such securities are non-convertible debt securities (i) subject to no greater than moderate credit risk and (ii) sufficiently liquid that such securities can be sold at or near their fair market value within a reasonably short period of time.'' Thus, as amended, condition (c)(1) of Part III and condition (a)(1) of Part IV, of PTE 75–1, would require securities to be issued by a person that has been in continuous operation for not less than three years, including the operations of any predecessors, unless, among other exceptions, the fiduciary directing the plan in such transaction has made a determination that, at the time they are acquired, such securities satisfy the new standard described above.

For purposes of this amendment, debt securities subject to a moderate level of credit risk should possess at least average credit-worthiness relative to other similar debt issues. Moderate credit risk would denote current low expectations of default risk, with an adequate capacity for payment of principal and interest.

The Department views the new proposed standard as reflecting the same level of credit quality as required prior to this amendment. The alternative standard described above is modeled on the SEC's new rule 6a–5 and final rule 10f–3 of the Investment Company Act. New rule 6a-5 and one element of the final amendments to rule 10f–3 each set forth a standard that replaced a reference to an ''investment grade'' rating, which the Department understands is the same as a reference to one of the four highest rating categories issued by at least one nationally recognized statistical rating organization. Furthermore, because PTE 75–1, Part III, and final rule 10f–3 involve the acquisition of securities in an underwriting where there is a relationship between the acquiring fund or entity and a member of the underwriting syndicate, it is relevant that the standard of credit quality required under each rule is similar.

The proposed standard is also appropriate for PTE 75–1, because it addresses concerns that an acquirer of securities might be harmed by a purchase of illiquid securities. In this regard, the proposed standard preserves the purpose of the original condition in paragraphs (c)(1) of Part III and (a)(1) of Part IV of PTE 75–1, by restricting fiduciaries' acquisitions to purchases of securities of sufficiently high credit quality. As stated above, in making these determinations, a fiduciary would not be precluded from considering credit quality reports prepared by outside sources, including credit ratings prepared by credit rating agencies, that they conclude are credible and reliable for this purpose.

2. PTE 80–83

PTE 80–83 generally provides relief for the purchase or acquisition in a public offering of securities by a fiduciary, on behalf of an employee benefit plan, solely because the proceeds from the sale may be used by the issuer of the securities to retire or reduce indebtedness owed to a party in interest with respect to the plan. Part C of the exemption provides relief from the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of ERISA and the taxes imposed by reason of section 4975(c)(1)(A) through (E) of the Code, for the purchase or acquisition in a public offering of securities, by a fiduciary which is a bank or affiliate thereof, on behalf of a plan solely because the proceeds of the sale may be used by the issuer of the securities to retire or reduce indebtedness owed to such fiduciary or an affiliate thereof. In the event that such fiduciary of the plan ''knows'' that the proceeds of the issue will be used in whole or in part by the issuer of the securities to reduce or retire indebtedness owed to such fiduciary or affiliate thereof, the relief in Part C is conditioned upon, among other things, the issuer of such securities having been in continuous operation for not less than three years, including the operations of any predecessors, unless such securities are non-convertible debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization.

As in PTE 75–1, Part III and Part IV, the three years continuous operation condition bolsters the quality of the underwritten securities by ensuring that the issuer is an established entity that has been operating as a business for a continuous period of time. In crafting an alternative to credit ratings to be used as an exception to the three years continuous operation condition, the Department has likewise employed an alternative that provides similar protection for plans entering into the transactions.

The Department is proposing to amend condition 3 of Part C of PTE 80–83 to replace the reference to credit ratings with a requirement that, ''at the time of acquisition, such securities are non-convertible debt securities (i) subject to no greater than moderate credit risk and (ii) sufficiently liquid that such securities can be sold at or near their fair market value within a reasonably short period of time.'' For purposes of this amendment, debt securities subject to a moderate level of credit risk should possess at least average credit-worthiness relative to other similar debt issues. Moderate credit risk would denote current low expectations of default risk, with an adequate capacity for payment of principal and interest.

The Department views the new proposed standard as reflecting the same level of credit quality as required prior to this amendment. It is appropriate that the proposed alternative is modeled on the SEC's new rule 6a–5 and final rule 10f–3 of the Investment Company Act. New rule 6a–5 and one element of the final amendments to rule 10f–3 each supplied a standard that replaced the reference to an ''investment grade'' rating, which the Department understands is the same as a reference to a rating in one of the four highest rating categories by at least one nationally recognized statistical rating organization. The alternative standard in the proposed amendment to PTE 80–83 also addresses concerns that an acquirer of securities might be harmed by such person's purchase of illiquid securities. The alternative preserves the level of protection afforded by the original standard, by requiring a fiduciary to make a prudent determination that a security acquired in an underwriting is of a sufficiently high credit quality. In making the proposed determination of credit quality, a fiduciary may consider information provided by third parties, including credit ratings issued by credit rating agencies.

3. PTE 81–8

PTE 81–8 provides exemptive relief from the restrictions of section 406(a)(1)(A), (B), and (D) of ERISA and the taxes imposed by reason of section 4975(c)(1)(A), (B), and (D) of the Code, for the investment of employee benefit plan assets which involve the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of an employee benefit plan of certain short-term investments issued by a party in interest, including commercial paper. As a condition of exemptive relief, paragraph II(D) requires that, with respect to an acquisition or holding of commercial paper, at the time it is acquired, such commercial paper must be ranked in one of the three highest rating categories by at least one nationally recognized statistical rating service. The original condition was incorporated into PTE 81–8 to allow fiduciaries who make investment decisions regarding the short-term investments of a plan to choose from a broad range of issues of commercial paper while assuring that the quality of the issue had been assessed by an independent third party.

The Department proposes to amend paragraph II(D) to delete the reference to the credit rating of commercial paper and replace it with the requirement that, ''at the time of acquisition, the commercial paper is (i) subject to a minimal or low amount of credit risk based on factors pertaining to credit quality and the issuer's ability to meet its short-term financial obligations, and (ii) sufficiently liquid that such securities can be sold at or near their fair market value within a reasonably short period of time.'' Commercial paper subject to a minimal or low credit risk would be less susceptible to default risk (i.e., have a low risk of default) than those with moderate credit risk. These instruments also would demonstrate a strong capacity for principal and interest payments and present above-average credit-worthiness relative to other issues of commercial paper.

The Department views the new proposed standard as reflecting the same level of credit quality required prior to this amendment. The ''minimal or low amount of credit risk'' standard in the proposed alternative is modeled on one element of the SEC's final rule 10f–3 of the Investment Company Act, described above, which was developed as an alternative to a credit rating in one of the highest three rating categories. In developing the alternative standard for PTE 81–8, as amended, the Department found it relevant that final rule 10f–3 provides an alternative to the same credit rating category that is currently in PTE 81–8.

In addition, the Department considered the language ''based on factors pertaining to credit quality and the issuer's ability to meet its short-term financial obligations'' from the SEC's proposed amendment to rule 2a–7. The Department understands rule 2a–7 to apply to mutual funds (more specifically, money market funds) that invest in high quality, short-term debt instruments. As commercial paper is a short-term debt instrument as well, the Department determined that it would be appropriate to include such language in its alternative credit standard to reflect an increased focus on the issuer's ability to meet its short-term obligations.

The Department notes that the preamble to PTE 81–8 (46 FR 7511 at 7512, January 23, 1981) states that, based on the record, the Department was unable to conclude that unrated issues of commercial paper sold in a private offering ''have such protective characteristics that affected plans would not need the independent safeguards that the rating condition is intended to provide,'' which may suggest that a credit rating by an independent third party is an important condition of the relief provided. Under section 939A of Dodd-Frank, the Department cannot continue to mandate that commercial paper acquired by a plan pursuant to PTE 81–8 must receive a specified credit rating. However, the Department also noted in PTE 81–8, that a determination whether an investment in commercial paper is appropriate for a plan should be determined ''by the responsible plan fiduciaries, taking into account all the relevant facts and circumstances.'' For purposes of this amendment, the Department believes that a fiduciary's determination of the credit quality of commercial paper according to the proposed standard should, as a matter of prudence, include the reports or advice of independent third parties, including where appropriate, such commercial paper's credit rating.

4. PTE 95–60

PTE 95–60 was granted in response to the Supreme Court's decision in *John Hancock Mutual Life Insurance Co.* v. *Harris Trust & Savings Bank (Harris Trust),*[22] holding that those funds allocated to an insurer's general account pursuant to a contract with a plan that vary with the investment experience of the insurance company are ''plan assets'' under ERISA. Harris Trust created uncertainty with respect to a number of exemptions previously granted by the Department in connection with the operation of asset pool investment trusts that issue asset-backed, pass-through certificates to plans. Specifically, the Department had previously granted PTE 83–1 (48 FR 895, January 7, 1983)[23] and the ''Underwriter Exemptions,''[24] which were conditioned, among other things, upon the certificates that were purchased by plans not being subordinated to other classes of certificates issued by the same trust. Because, in a typical asset pool investment trust, one or more classes of subordinated certificates are often purchased by life insurance companies, in holding that insurance company general accounts may be considered ''plan assets,'' Harris Trust raised the potential for servicers and trustees of pools to be engaging in prohibited transactions for the same acts involving the operation of trusts which would be exempt if the certificates were not subordinated.

PTE 95–60 provides exemptive relief for certain transactions engaged in by insurance company general accounts in which an employee benefit plan has an interest, if certain specified conditions are met. Under Section III, additional relief is provided from the restrictions of sections 406(a), 406(b) and 407(a) of ERISA and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code for certain

[22] 510 US 86 (1993).

[23] PTE 83–1 provides relief for the operation of certain mortgage pool investment trusts and the acquisition and holding by plans of certain mortgage-backed pass-through certificates evidencing interests therein.

[24] The Underwriter Exemptions are comprised of a number of individual exemptions in which credit ratings have been used extensively (e.g., PTE 2009–31 (74 FR 59003, November 16, 2009)), which provide relief for the operation of certain asset pool investment trusts and the acquisition and holding by plans of certain asset-based pass-through certificates representing interests in those trusts.

transactions entered into in connection with the servicing, management, and operation of a trust (a Trust), described in PTE 83–1 or in one of the Underwriter Exemptions, in which an insurance company general account has an interest as a result of its acquisition of certificates issued by the Trust.

Section III(a)(2) of PTE 95–60 requires that the conditions of either PTE 83–1 or an applicable Underwriter Exemption be met other than the requirements that the certificates acquired by the general account (A) not be subordinated to the rights and interests evidenced by other certificates of the same trust and (B) receive a rating that is in one of the three highest generic rating categories from an independent rating agency. Because PTE 83–1 only requires non-subordination with respect to the acquired certificates, and does not have a credit rating reference or requirement, the exception from the ratings requirement applies only to the Underwriter Exemptions.

The Department proposes to delete the reference in Section III(a)(2)(B) pertaining to the credit ratings of certificates acquired by a general account and replace it with a general reference to the credit quality of such certificates. Thus, Section III(a)(2) of PTE 95–60, as amended, would provide that ''[t]he conditions of either PTE 83–1 or the relevant Underwriter Exemption are met, except for the requirements that: (A) The rights and interests evidenced by the certificates acquired by the general account are not subordinated to the rights and interests evidenced by other certificates of the same Trust, and (B) the certificates acquired by the general account have the credit quality required under the relevant Underwriter Exemption at the time of such acquisition.''

The Department believes that this modification will bring PTE 95–60 into compliance with the mandate in section 939A of Dodd-Frank that any reference to or requirement of reliance on credit ratings be removed from the Department's rules and regulations. Because the Department has not proposed to amend the Underwriter Exemptions, this proposed amendment cannot refer to a specific alternative to credit ratings in such exemptions. Nevertheless, because Section III(a)(2), as amended, would state that the certificates are not required to meet the standard of credit quality referred to in the conditions of the Underwriter Exemptions, the Department believes that the amended requirement would be consistent with section 939A(b) of Dodd-Frank. Additionally, in the Department's view, there should not be any substantive distinction between a person's compliance with the condition in paragraph III(a)(2)(B) prior to or after this amendment takes effect.

5. PTE 97–41

Section II of PTE 97–41 provides relief from sections 406(a) and 406(b)(1) and (2) of ERISA and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, for the purchase, by an employee benefit plan, of shares of one or more mutual funds in exchange for the assets of the plan, transferred in-kind to the mutual fund from a collective investment fund (CIF) maintained by a bank or plan adviser where such bank or plan adviser is the investment adviser to the mutual fund and also a fiduciary of the plan, in connection with a complete withdrawal of the plan's assets from the CIF. Exemptive relief is conditioned upon, *inter alia,* Section II(c), the ''pro rata division rule,'' which provides that the transferred assets must constitute the plan's pro rata portion of the assets that were held by the CIF immediately prior to the transfer. However, Section II(c) provides further that, notwithstanding the foregoing, the allocation of fixed income securities held by a CIF among plans on the basis of each plan's pro rata share of the aggregate value of such securities will not fail to meet the requirements of the pro rata division rule if (1) the aggregate value of such securities does not exceed one percent of the total value of the assets held by the CIF immediately prior to the transfer, and (2) such securities have the same coupon rate and maturity, and at the time of transfer, the same credit ratings from nationally recognized statistical rating organizations.

The exception to the general pro rata division rule in Section II(c) ensures that plans can avoid the transaction costs involved in liquidating small positions in fixed-income securities that are not divisible, or that can be divided only at substantial cost, prior to their maturity. In these situations, equivalent, small investments of fixed-income securities are treated as fungible for allocation purposes if such securities have the same coupon rates, maturities and credit ratings at the time of the transaction. This requirement ensures that all plans receive securities that have equivalent terms and features and that such fixed-income securities will be allocated among the plans in a manner such that each plan receives its pro rata share of the value of such securities.

The Department is proposing to amend the exception found in Section II(c) by deleting the requirement found in subsection (2) that the securities transferred in-kind from a CIF to the mutual fund have the same credit ratings and replacing it with a requirement that such securities are of the same credit quality. Section II(c)(1) and (2), as amended, would provide that the allocation of fixed-income securities held by a CIF among the plans on the basis of each plan's pro rata share of the aggregate value of such securities will not fail to meet the requirements of Section II(c) if ''(1) the aggregate value of such securities does not exceed one percent of the total value of the assets held by the CIF immediately prior to the transfer, and (2) such securities have the same coupon rate and maturity, and at the time of transfer, the same credit quality.''

In making the determination as to the credit quality of fixed income securities for purposes of this condition, the Department notes that a fiduciary should, to the extent possible, engage in credit quality comparisons of securities using the same standards (e.g., employing the same metrics) for each set of securities. The Department believes that an ''apples to apples'' comparison of the credit quality of each security taking into account the same variables would comply with the proposed amendment to the condition set forth in Section II(c)(2). Furthermore, the Department notes that a fiduciary may rely on reports and advice given by independent third parties, including ratings issued by rating agencies.

6. PTE 2006–16

Sections I(a) and (b) of PTE 2006–16 provide exemptive relief from section 406(a)(1)(A) through (D) of ERISA and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code for the lending of securities that are assets of an employee benefit plan to certain banks and broker-dealers that are parties in interest with respect to the plan. Section I(c) of PTE 2006–16 provides exemptive relief from section 406(b)(1) of ERISA and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code for the payment to a fiduciary of compensation for services rendered in connection with loans of plan assets that are securities.

Section II(b) of PTE 2006–16 conditions the relief provided under Sections I(a) and (b) upon the plans' receipt from the borrower, by the close of the lending fiduciary's business on the day in which the securities lent are delivered to the borrower, of either ''U.S. Collateral,'' or ''Foreign Collateral,'' as such terms are defined in

Section V of the exemption. Section V(f)(2) defines ''Foreign Collateral'' to include ''foreign sovereign debt securities provided that at least one nationally recognized statistical rating organization has rated in one of its two highest categories either the issue, the issuer or guarantor.'' Section V(f)(4) defines ''Foreign Collateral'' to include ''irrevocable letters of credit issued by a [f]oreign [b]ank, other than the borrower or an affiliate thereof, which has a counterparty rating of investment grade or better as determined by a nationally recognized statistical rating organization.''

The Department is proposing to amend Section V(f)(2) to delete the reference to credit ratings and provide that ''Foreign Collateral'' will include ''foreign sovereign debt securities that are (i) subject to a minimal amount of credit risk, and (ii) sufficiently liquid that such securities can be sold at or near their fair market value in the ordinary course of business within seven calendar days.''

The credit risk associated with securities that present ''minimal credit risks'' would differ from that of the highest credit quality securities only to a small degree. Thus, an issuer that would satisfy the credit-worthiness requirement associated with foreign sovereign debt securities should have a very strong ability to repay its debt obligations, and a very low vulnerability to default. In addition, the SEC has indicated its expectation that securities that trade in a secondary market at the time of their acquisition would satisfy the ''seven calendar day'' liquidity standard.[25]

The Department views the new standard as reflecting the same level of credit quality required prior to this amendment. The alternative standard of credit quality proposed for Section V(f)(2) of PTE 2006–16 takes a similar approach to the SEC's proposed amendments to rule 2a–7, which governs the securities that certain money market funds may hold as investments, and proposed amendments to rule 5b–3, which relates to funds entering into repurchase agreements that are collateralized with certain high credit-quality securities, as described above.

The Department believes that the ''minimal'' credit risk standard in the proposed alternative to credit ratings in rule 2a–7 is an appropriate model for the alternative standard of credit quality proposed in Section V(f)(2) of PTE 2006–16, as the current level of credit worthiness required under both provisions reflects credit ratings in one of the two highest rating categories. However, the Department understands that, whereas rule 2a–7 currently utilizes a short-term rating, foreign sovereign debt securities described in Section V(f)(2) could comprise either long-term or short-term securities. Therefore, in formulating the proposed alternative standard of credit quality in Section V(f)(2), the Department did not include in its proposed standard the language ''based on factors pertaining to credit quality and the issuer's ability to meet its short-term financial obligations.'' However, in the case of a short-term foreign sovereign debt security used as collateral, fiduciaries may wish to include the issuer's ability to meet its short term obligations as a factor in its evaluation of the security's credit quality.

In addition to the ''minimal'' credit risk standard of the proposed amendment, the Department believes that the liquidity requirement proposed in rule 5b–3 (''sufficiently liquid that such securities can be sold at or near their fair market value in the ordinary course of business within seven calendar days'') is appropriate for inclusion in the alternative standard of credit quality proposed in Section V(f)(2) of PTE 2006–16, because the economic considerations and regulatory framework underpinning securities repurchase agreements is similar to that supporting securities lending transactions.

The Department is also proposing to amend Section V(f)(4) to delete the reference to credit ratings and provide that ''Foreign Collateral'' will include ''irrevocable letters of credit issued by a Foreign Bank, other than the borrower or an affiliate thereof, provided that, at the time the letters of credit are issued, the Foreign Bank's ability to honor its commitments thereunder is subject to no greater than moderate credit risk.'' The Department notes that, where a Foreign Bank's ability to honor its commitment under a letter of credit is subject to a moderate level of credit risk, such bank would demonstrate at least average credit-worthiness relative to other issuers of similar debt. Moderate credit risk would denote current low expectations of default risk, with an adequate capacity for payment of principal and interest.

The Department views the new standard as reflecting the same level of credit quality required prior to this amendment. The proposed alternative described for Section V(f)(4) is modeled after the SEC's new rule 6a–5 of the Investment Company Act, described above, which adopts an alternative to a credit rating of investment grade, or a credit rating in one the four highest rating categories.[26] In particular, the Department has modeled the new standard of credit quality for PTE 2006–16 on the credit quality element of the standard in rule 6a–5; as such, the proposed amendment focuses on the issuing bank's ability to honor its commitment under the letter of credit. Furthermore, in developing the alternative standard for Section V(f)(4) of PTE 2006–16, as amended, the Department found it relevant that the standards adopted in new rule 6a–5 and proposed in amendments to Section V(f)(4) of PTE 2006–16 are designed to reflect the same level of credit quality as the credit ratings they replaced in section 6(a)(5)(A)(iv) of the Investment Company Act and would replace in Section V(f)(4), respectively.

Finally, Lending Fiduciaries making determinations of credit quality under Sections V(f)(2) and V(f)(4) of PTE 2006–16 would still be able to consider credit quality determinations prepared by outside sources, including credit ratings issued by rating organizations, that such fiduciaries conclude are credible and reliable, in making determinations of credit worthiness.

7. Request for Comment Regarding Modifications to Class Exemptions

The Department is requesting comments regarding all aspects of these proposed amendments. In this regard, the Department specifically requests comments regarding whether the alternatives for credit ratings described herein represent adequate substitutes for credit ratings by rating organizations, taking into account the different Class Exemptions making use of such ratings, and the costs to comply with the alternatives, and invites comments on additional or alternative credit standards for consideration by the Department. As stated above, any suggested alternative to a credit rating should retain as close as possible the original intent of the standard in its related Class Exemption. Furthermore, the Department will consider the SEC's treatment of comments received in response to its proposals modifying the use of credit ratings as part of its compliance with section 939A and 939(c) of Dodd-Frank.

[25] See Investment Company Proposal, supra note 11, at text following n.54.

[26] As noted above, the SEC adopted rule 6a–5 under the Investment Company Act as directed by section 939(c) of Dodd-Frank, which eliminates a statutory condition requiring that certain securities have received a credit rating of investment grade, and instead requires that the securities ''meet such standards of creditworthiness as the Commission shall adopt.''

In addition to the comments requested above, the Department requests comments on guidance provided in connection with the term ''moderate credit risk'' as used in the proposed amendments to PTEs 75–1, 80–83, and 2006–16. Specifically, the Department solicits input on whether average credit-worthiness relative to other similar issues or issuers is an appropriate point of reference to associate with a moderate level of credit risk, as used in the Class Exemptions. The Department also requests comments regarding the inclusion of a liquidity requirement as part of its standard of credit-worthiness proposed for use in the Class Exemptions. In this regard, the Department is interested in commenters' views as to whether a liquidity requirement contributes to the protective characteristics of the relevant standard of credit-worthiness proposed for use in the applicable Class Exemptions, and invites comments on alternative liquidity requirements for consideration by the Department or whether the absence of such a requirement is more appropriate. Any comment received in this regard should explain in detail the commenter's rationale, including how the presence or absence of a liquidity requirement would be protective of plans, participants and their beneficiaries.

Finally, the Department requests comments regarding its use of ''fair market value'' for purposes of establishing a liquidity requirement in the proposed alternatives to credit ratings. Specifically, the Department requests comments concerning whether a different measure of value, such as ''carrying value'' or ''fair value,''[27] would be more appropriate for the proposed alternatives to credit ratings and offer greater protections for employee benefit plans and their participants and beneficiaries engaging in the covered transactions. Any comment received in this regard should explain in detail the suggested measure of value, including how it is determined and why it is appropriate for use in a Class Exemption.

8. Underwriter Exemptions

The Underwriter Exemptions are comprised of a number of individual exemptions in which credit ratings have been used extensively (e.g., PTE 2009–31 (74 FR 59003, November 16, 2009)), which provide relief for the operation of certain asset pool investment trusts and the acquisition and holding by plans of certain asset-based pass-through certificates representing interests in those trusts. It is the Department's view that the Underwriter Exemptions, as individual prohibited transaction exemptions, are not federal regulations, and therefore section 939A of Dodd-Frank does not require their review and modification.

Accordingly, notwithstanding the deadline for compliance with section 939A, the Underwriter Exemptions will remain in force with no modifications to their credit rating requirements.[28] The Department is cognizant, however, of the Congressional intent to reduce reliance on credit ratings and is considering alternative standards for use instead of, or in addition to, existing requirements for credit ratings in granted individual prohibited transaction exemptions. Thus, the Department is requesting comments regarding such alternatives in addition to any comments regarding the Class Exemptions.

9. Executive Order 12866 Statement

Under Executive Order 12866 (the Executive Order), the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a ''significant regulatory action'' is an action that is likely to result in a rule (1) having an effect on the economy of $100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this action is significant within the meaning of section 3(f)(4) of the Executive Order, and accordingly, OMB has reviewed these proposed amendments to PTE 75–1, PTE 80–83, PTE 81–8, PTE 95–60, PTE 97–41, and PTE 2006–16 pursuant to the Executive Order.

10. Paperwork Reduction Act

According to the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (the PRA), no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. See 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. See 44 U.S.C. 3512.

The Department has not made a submission to OMB at this time, because the proposed amendments do not revise the information collection requests contained in the following PTEs: PTE 75–1, which is approved by OMB under OMB Control Number 1210–0092; PTE 80–83, which is approved by OMB under OMB Control Number 1210–0064; PTE 81–8, which is approved by OMB under OMB Control Number 1210–0061; PTE 95–60, which is approved by OMB under OMB Control Number 1210–0114; PTE 97–41, which is approved by OMB under OMB Control Number 1210–0104; and PTE 2006–16, which is approved by OMB under OMB Control Number 1210–0065.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

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

[27] As stated in FASB Accounting Standards Codification Topic 820, *Fair Value Measurements and Disclosures* (ASC Topic 820).

[28] The Department notes that it recently proposed an amendment to the Underwriter Exemptions (the Underwriter Proposal) that modified the definition of ''Rating Agency'' to eliminate specific references to named credit rating agencies. Pursuant to the Underwriter Proposal, the term ''Rating Agency'' would be defined using a general framework of self-executing criteria based on both (i) SEC rules applicable to NRSROs and (ii) the Department's own ''seasoning'' requirement for credit rating agencies. The Underwriter Proposal makes no modifications to the use of credit ratings in the Underwriter Exemptions, including the requirement that securities available for purchase by Plans generally must be rated in one of the three highest rating categories (or four in the case of certain ''Designated Transactions''). See Notice of Proposed Amendment to Prohibited Transaction Exemption 2007–05, 72 FR 13130 (March 20, 2007), Involving Prudential Securities Incorporated, et al., To Amend the Definition of ''Rating Agency,'' 77 FR 76773 (December 28, 2012).

protective of the rights of participants and beneficiaries of such plan;

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

(3) If granted, the proposed amendments will be applicable to a particular transaction only if the conditions specified in the class exemption are met.

WRITTEN COMMENTS

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments and requests for a hearing will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the address set forth above.

PROPOSED AMENDMENT

Under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to amend the following class exemptions as set forth below:

1. PTE 75–1 is amended by making the following modifications:

(a) Part III, Paragraph (c)(1) is deleted in its entirety and replaced with the following: ''(1) At the time of acquisition, such securities are non-convertible debt securities (i) subject to no greater than moderate credit risk and (ii) sufficiently liquid that such securities can be sold at or near their fair market value within a reasonably short period of time.''

(b) Part IV, Paragraph (a)(1), is deleted in its entirety and replaced with the following: ''(1) At the time of acquisition, such securities are non-convertible debt securities (i) subject to no greater than moderate credit risk and (ii) sufficiently liquid that such securities can be sold at or near their fair market value within a reasonably short period of time.''

2. PTE 80–83 is amended by deleting Paragraph I(C)(3) in its entirety and replacing it with the following: ''(3) The issuer of such securities has been in continuous operation for not less than three years, including the operations of any predecessors, unless at the time of acquisition, such securities are non-convertible debt securities (i) subject to no greater than moderate credit risk and (ii) sufficiently liquid that such securities can be sold at or near their fair market value within a reasonably short period of time.''

3. PTE 81–8 is amended by deleting Paragraph II(D) in its entirety and replacing it with the following: ''(D) With respect to an acquisition or holding of commercial paper (including an acquisition by exchange) occurring on or after the effective date of this amendment, at the time of acquisition, the commercial paper is (i) subject to a minimal or low amount of credit risk based on factors pertaining to credit quality and the issuer's ability to meet its short-term financial obligations and (ii) sufficiently liquid that such securities can be sold at or near their fair market value within a reasonably short period of time.''

4. PTE 95–60 is amended by deleting Paragraph III(a)(2)(B) in its entirety and replacing it with the following: ''(B) the certificates acquired by the general account have the credit quality required under the relevant Underwriter Exemption at the time of such acquisition.''

5. PTE 97–41 is amended by deleting Paragraph (II)(c)(2) in its entirety and replacing it with the following: ''(2) such securities have the same coupon rate and maturity, and at the time of transfer, the same credit quality.''

6. PTE 2006–16 is amended by making the following modifications to the definition of ''Foreign Collateral'' in Section V(f):

(a) Paragraph V(f)(2) is deleted in its entirety and replaced with the following: ''(2) foreign sovereign debt securities that are (i) subject to a minimal amount of credit risk, and (ii) sufficiently liquid that such securities can be sold at or near their fair market value in the ordinary course of business within seven calendar days;'' and

(b) Paragraph V(f)(4) is deleted in its entirety and replaced with the following: ''(4) irrevocable letters of credit issued by a Foreign Bank, other than the borrower or an affiliate thereof, provided that, at the time the letters of credit are issued, the Foreign Bank's ability to honor its commitments thereunder is subject to no greater than moderate credit risk.''

Lyssa Hall,

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

[FR Doc. 2013–14790 Filed 6–20–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: Anderson Behavioral Health, Inc. Marshville, North Carolina.

Principal Product/Purpose: The loan, guarantee, or grant is for the construction of a 13,000 sq. ft. administration building, six residence cottages, water, waste, and road infrastructure. It will also be used to purchase furniture and equipment.

The NAICS industry code for this enterprise is 623220 and comprises establishments primarily engaged in providing residential care and treatment for patients with mental health and substance abuse illnesses.

DATES: All interested parties may submit comments in writing no later than July 5, 2013. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room S–4231, Washington, DC 20210; or email *Dais.Anthony@dol.gov;* or transmit via fax (202)693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202)693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to