

exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption (i.e., the Notice) and the prior grant notice for PTE 97-35, which are cited above.

Signed at Washington, D.C., this 1st day of July, 1998.

Ivan L. Strasfeld,

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

[FR Doc. 98-18011 Filed 7-7-98; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Withdrawal of Notice of Proposed Amendments to Prohibited Transaction Exemption (PTE 93-69) Involving the Navistar International Transportation Corporation (Navistar); Located in Chicago, IL and the Supplemental Program Committee of the Navistar International Transportation Corporation Retiree Health Benefit and Life Insurance Plan (Supplemental Program Committee) Located in Euclid, OH

[Exemption Application Nos. D-10470 and D-10576]

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: On June 19, 1998 the Department of Labor (Department) published a notice of proposed amendments (the Notice) to PTE 93-69 (63 FR 33732). The Notice concerned proposed amendments to PTE 93-69 to permit the Supplemental Benefit Program Trust (Trust) to sell Navistar International Corporation (NIC) common stock to either NIC or Navistar after the expiration of the lockup period (July 1, 1998) and to allow William Craig, a member of the Supplemental Program Committee, to serve on the NIC board of directors.

In a comment letter dated June 18, 1998, Navistar's representative informed the Department that the Trust sold all of the shares which would have been the subject of the amendments. Since the Trust no longer holds the stock it no longer has the right to appoint any

members of the board of directors of NIC.¹

Due to the above noted changes regarding the facts and representations contained in the applications, the Department has determined to withdraw this notice of proposed amendments from the **Federal Register**. Accordingly, this notice of pendency is hereby withdrawn.

Signed at Washington, DC this 30th day of June, 1998.

Ivan L. Strasfeld,

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

[FR Doc. 98-18009 Filed 7-7-98; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10438, et al.]

Proposed Exemptions; Toyota Motor Credit Corporation

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

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

Written Comments and Hearing Requests

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

¹ PTE 93-69 provided, in part, an exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 for the acquisition and holding by the Navistar International Transportation Corporation Retiree Health Benefit and Life Insurance Plan of shares of Class B common stock and Series A preference stock of NIC.

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

Notice to Interested Persons

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

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

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

Toyota Motor Credit Corporation and Certain of its Affiliates, Located in Torrance, California

[Application No. D-10438]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set

forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

A. If the proposed exemption is granted, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply as of September 1, 1997, to the following transactions involving trusts and certificates evidencing interests therein:

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

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

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

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

B. If the proposed exemption is granted, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply as of September 1, 1997, to:

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

(i) The plan is not an Excluded Plan;

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

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

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.² For purposes of this paragraph B.(1)(iv) only, an entity shall not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

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

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

C. If the proposed exemption is granted, the restrictions of sections 406(a), (b) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply as of September 1, 1997 to transactions in connection with the servicing, management and operation of a trust, provided;

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement; and

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they

purchase certificates issued by the trust.³

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

D. If the proposed exemption is granted, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply as of September 1, 1997, to any transaction to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider as described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

Section II—General Conditions

A. The relief provided under Section I will be available only if the following conditions are met:

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

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

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

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be

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

² For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

³ In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of the Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

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

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

(7) To the extent that the pool of leases used to create a portfolio for a trust is not closed on the date of the issuance of certificates by the trust, additional leases may be added during a period of no more than 15 consecutive months from the closing date used for the initial allocation of leases that was made to create such portfolio, provided that:

(a) all such additional leases meet the same terms and conditions for eligibility as the original leases used to create the portfolio (as described in the prospectus or private placement memorandum for such certificates), which terms and conditions have been approved by the Rating Agencies. Notwithstanding the foregoing, the terms and conditions for an "eligible lease" (as defined in Section III.X below) may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by the Rating Agencies; and

(b) such additional leases do not result in the certificates receiving a lower credit rating from the Rating Agencies, upon termination of the period during which additional leases may be added to the portfolio, than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(8) Any additional period described in Section II.A.(7) must be described in the prospectus or private placement memorandum provided to investing plans;

(9) The average annual percentage lease rate (the Average Lease Rate) for the pool of leases in the portfolio for the trust, after the additional period described in Section II.A.(7), shall not be more than 200 basis points greater than the Average Lease Rate for the original pool of leases that was used to create such portfolio for the trust;

(10) For the duration of the additional period described in Section II.A.(7), principal collections that are reinvested in additional leases are first reinvested in the "eligible lease contract" (as defined in Section III.X. below) with the earliest origination date, then in the "eligible lease contract" with the next earliest origination date, and so forth, beginning with any lease contracts that have been reserved specifically for such purposes at the time of the initial allocation of leases to the pool of leases used to create the particular portfolio, but excluding those specific lease contracts reserved for allocation to or allocated to other pools of leases used to create other portfolios;

(11) The trustee of the trust (or the agent with which the trustee contracts to provide trust services) is a substantial financial institution or trust company experienced in trust activities and is familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, enforces all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act;

(12) The Pooling and Servicing Agreement and other governing documents require that funds collected by the servicer with respect to trust assets be deposited on a monthly basis in a trust account, even though distributions on the certificates may be scheduled to be made less frequently than monthly, and invested in certain highly rated debt instruments known as "permitted investments"; and

(13) The Pooling and Servicing Agreement expressly provides that funds collected by the servicer with respect to trust assets are required to be deposited in a trust account within two business days after such collection, if TMCC's short-term unsecured debt is no longer rated P-1 by Moody's Investors Service and A-1 by Standard & Poor's Ratings Services (or successors thereto), unless such Rating Agencies accept an alternative arrangement.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision in Section II.A.(6) above is not satisfied for the acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees shall be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

C. Toyota Motor Credit Corporation (TMCC) and its Affiliates abide by all securities and other laws applicable to any offering of interests in securitized assets, such as certificates in a trust as described herein, including those laws relating to disclosure of material litigation, investigations and contingent liabilities.

Section III—Definitions

For purposes of this proposed exemption:

A. "Certificate" means:

(1) A certificate.

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

(b) That entitles the holder to pass-through payments of principal (except during the period described in Section II.A.(7), if any), interest, and/or other payments made in connection with the assets of such trust; or

(2) A certificate denominated as a debt instrument that is issued by and is an obligation of a trust;

With respect to certificates defined in Section III.A.(1) and (2) above, the underwriter shall be an entity which has received from the Department an individual prohibited transaction exemption relating to certificates which is substantially similar to this proposed exemption (as noted below in Section III.C.) and shall be either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

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

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

(1) Either.

(a) Qualified motor vehicle leases (as defined in Section III.T.); or

(b) Fractional undivided interests in a trust containing assets described in paragraph (a) of this Section III.B.(1), where such fractional interest is not subordinated to any other interest in the same pool of qualified motor vehicle leases held by such trust;⁴

(2) Property which has secured any of the obligations described in Section III.B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders, except during the period described in Section II.A.(7) above when temporary investments are made until such cash can be reinvested in additional leases described in paragraph (a) of this Section III.B.(1); and

(4) Rights of the trustee under the Pooling and Servicing Agreement, and rights under motor vehicle dealer agreements, any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements for any obligations described in Section III.B.(1).

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

plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means any investment banking firm that has received an individual prohibited transaction exemption from the Department that provides relief for so-called "asset-backed" securities that is substantially similar in format and structure to this proposed exemption (the Underwriter Exemptions);⁵ or any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such investment banking firm; and any member of an underwriting syndicate or selling group of which such firm or person described above is a manager or co-manager with respect to the certificates.

D. "Sponsor" means an entity affiliated with Toyota Motor Corporation that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means TMCC or an entity affiliated with TMCC that is a party to the Pooling and Servicing Agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means TMCC or an entity affiliated with TMCC which, under the supervision of and on behalf of the master servicer, services leases contained in the trust, but is not a party to the Pooling and Servicing Agreement.

G. "Servicer" means TMCC or an entity affiliated with TMCC which services leases contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means an entity that is independent of TMCC and its Affiliates which is the trustee of the trust. In the case of certificates which are denominated as debt instruments, "trustee" also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust. In addition, a person is not an insurer if such person merely provides: (1) property damage or liability insurance to an Obligor with respect to a lease or leased vehicle; or (2) property damage, excess liability or contingent

liability insurance to any lessor, sponsor or servicer, if such entities are included in the same insurance policy, with respect to a lease or leased vehicle.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments for a lease in the trust.

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

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

- (1) Each Underwriter;
- (2) Each Insurer;
- (3) The Sponsor;
- (4) The Trustee;
- (5) Each Servicer;
- (6) Any Obligor with respect to

obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust and at the end of the period described in Section II.A.(7); or

(7) Any Affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

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

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

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

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

O. A person shall be "independent" of another person only if:

(1) Such person is not an Affiliate of that other person; and

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

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

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

(2) The prospectus or private placement memorandum is provided to

⁴It is the Department's view that the definition of "Trust" contained in Section III.B. includes a two-tier trust structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues certificates that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

⁵For a listing of the Underwriter Exemptions, see the description provided in the text of the operative language of Prohibited Transaction Exemption (PTE) 97-34 (62 FR 39021, July 21, 1997).

an investing plan prior to the time the plan enters into the forward delivery commitment; and

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

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

R. "Reasonable Compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

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

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

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

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

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

T. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

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

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

(3) The trust's interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

U. "Pooling and Servicing Agreement" means, collectively, (i) the securitization trust agreement between a sponsor and the trustee establishing a trust, (ii) the trust and servicing agreement relating to an origination trust and the servicing supplement thereto, and (iii) the supplemental agreement establishing a beneficial interest in certain specified origination trust assets (referred to herein as a "special unit of beneficial interest" or "SUBI"). In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust

issuing such certificates and the indenture trustee.

V. "Lease Rate" means an implicit rate in each lease calculated as an annual percentage rate on a constant yield basis, based on the capitalized cost of the leased vehicle as determined under the particular lease contract for the vehicle. With respect to the determination of a "Lease Rate", each lease will provide for equal monthly payments such that at the end of the lease contract term the capitalized cost will have been amortized to an amount equal to the residual value of the leased vehicle established at the time of origination of such contract. The amount to which the capitalized cost has been amortized at any point in time will be the outstanding principal balance for the lease.

W. "Average Lease Rate" means the average annual percentage lease rate, as defined in Section III.V. above, for all leases included at any particular time in a portfolio used to create a trust from which certificates are issued.

X. "Eligible Lease" or "Eligible Lease Contract" means a Qualified Motor Vehicle Lease, as defined in Section III.T. above, which meets the eligibility criteria established for, among other things, the term of the lease, place of origination, date of origination, and provisions for default, as described in the particular prospectus or private placement memorandum for the certificates provided to investors, if such terms and conditions have been approved by the Rating Agencies prior to the issuance of such certificates.

Y. "Permitted Investments" means investments which: (i) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States, or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; are described in the pooling and servicing agreement; and are permitted by the Rating Agency.

The Department notes that this proposed exemption, if granted, will be included within the meaning of the term "Underwriter Exemption" as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95-60, 60 FR 35925).

Effective Date: This proposed exemption, if granted, will be effective

for all transactions described herein which occur on or after September 1, 1997.

Summary of Facts and Representations

1. TMCC is a California corporation that has 34 branches in various locations in the United States. TMCC's primary business is providing retail leasing, retail and wholesale financing and certain other financial services to authorized Toyota and Lexus vehicle and Toyota industrial equipment dealers and their customers in the United States (excluding Hawaii). TMCC is a wholly-owned subsidiary of Toyota Motor Sales, U.S.A., Inc. (TMS), which is primarily engaged in the wholesale distribution of automobiles, light duty trucks, industrial equipment and related replacement parts and accessories throughout the United States (excluding Hawaii). Substantially all of TMS's products are either manufactured by its Affiliates or are purchased from Toyota Motor Corporation (TMC), which indirectly wholly owns TMS, or its Affiliates.

Toyota Leasing, Inc. (TLI) will be formed as a California corporation, and will be a wholly-owned, special purpose subsidiary of TMCC.

2. TMCC and its Subsidiaries,⁶ including TLI (collectively, the Applicant) seek an exemption to permit employee benefit plans to invest in certificates indirectly representing undivided interests in a trust which contains motor vehicle leases and the motor vehicles related to those leases. The exemption TMCC seeks is substantially similar to the Underwriter Exemptions granted by the Department to various broker-dealers and banks to permit investments in, among other things, motor vehicle receivable investment trusts. In the exemption sought by TMCC, the primary asset of the trust in which investors have beneficial interests (i.e. the Securitization Trust) is a special unit of beneficial interest (SUBI) in a separate trust that actually holds the motor vehicle leases and related motor vehicles (i.e., the Origination Trust). The Underwriter Exemptions may also include such a two-tier trust structure (as noted above in Footnote 4). However, unlike the trusts described in the Underwriter Exemptions, the Securitization Trusts established by TMCC will not contain beneficial interests in fixed pools of assets (i.e. qualified motor vehicle leases and related motor vehicles) for at least a

⁶For purposes hereof, the term "Subsidiary" means any corporation, partnership or other business entity controlled by TMCC.

year, as discussed further below. TMCC states that the Securitization Trusts meet all other requirements of the Underwriter Exemptions. Such requirements include: (i) that investor certificates covered by the exemption have received a rating from one of the Rating Agencies that is in one of the three highest generic rating categories; (ii) that there be no subordination of investor certificates purchased by employee benefit plans to the rights and interests evidenced by other certificates of the same trust; and (iii) that there be a pass-through of principal, interest and other payments received by the trust relating to the receivables beneficially owned by the trust, less certain specified servicing fees which are disclosed and approved by the investors prior to the acquisition of any trust certificates.

3. The Origination Trust is formed pursuant to a trust agreement between the sponsor of the Origination Trust and its trustee (the Origination Trustee). The sponsor of the Origination Trust is currently TLI, but could be another entity affiliated with TMC. The Origination Trustee is a wholly-owned subsidiary of an independent entity qualified to provide trust services, and in fact provides such services to the Origination Trust under contract with its subsidiary (i.e. the Trust Agent). TMCC represents that the Trust Agent will be a financial institution that is not affiliated in any way with TMCC, other than as a service provider. TMCC or an Affiliate acts as servicer (the Servicer) for all of the leases and leased vehicles owned by the Origination Trust, pursuant to an amended and restated trust and servicing agreement (the Origination Trust Agreement) with the Origination Trustee and one or more servicing supplements to the Origination Trust Agreement (collectively, the Servicing Agreement).

4. The assets of the Origination Trust include retail closed-end automobile and light-duty truck lease contracts assigned to the Origination Trust by certain dealers, the automobiles and light duty trucks relating thereto, all proceeds thereof (including any sale of such vehicles), payments made under certain insurance policies relating to such leases or the related lessees or leased vehicles, and all security deposits with respect to such lease contracts to the extent due to the lessor thereunder. TMCC is the initial holder of a sole beneficial interest (i.e. the "Undivided Trust Interest" or "UTI") in the Origination Trust.

The Origination Trust is open-ended; that is, as leases are originated by dealers, they will be assigned by the

dealers directly to the Origination Trust and the Origination Trust will be listed as the owner of the related vehicles on the related certificates of title. When the aggregate dollar amount of leases and leased vehicles in the Origination Trust grows large enough to justify a securitization, TMCC, as holder of the UTI, may direct the trustee of the Origination Trust to segregate from among all the leases and leased vehicles within the Origination Trust a specified portfolio of leases and related leased vehicles. Pursuant to a supplement to the Origination Trust Agreement (known as a "SUBI" Supplement), the trustee then issues to TMCC a separate certificate representing a "Separate Unit of Beneficial Interest" or "SUBI" in that segregated portfolio. It is this SUBI that becomes the basis for a securitization and the creation of a separate Securitization Trust.

Any leases and leased vehicles held by the Origination Trust that are not included in a SUBI portfolio at the time of such segregation, as well as any new leases and related vehicles acquired subsequent to the specified date on which the new SUBI portfolio is identified, remain part of the UTI portfolio, and the original UTI continues to represent a beneficial interest therein.

New leases and related leased vehicles are added to the SUBI's segregated portfolio by TMCC in an aggregate amount approximately equal to principal collections on the leases and leased vehicles already allocated to the SUBI,⁷ for a fixed period (which will be no more than fifteen consecutive months) after the closing date used for the initial allocation of leases made to create the SUBI portfolio. (This period is referred to hereafter as the "revolving period"). The applicant represents that this fixed "revolving period" for principal collections on the leases and leased vehicles is established so that the investor certificates issued by the Securitization Trust are treated as debt for Federal and state income tax

⁷ TMCC represents that the aggregate amount of new leases added to a SUBI portfolio is approximately equal, rather than exactly equal, to principal collections on the existing leases because, when additional leases are added, the outstanding principal balance of the new leases is not always equal to the principal collections available for reinvestment. The uninvested principal amounts are held by the Securitization Trust in a cash account and temporarily invested in short-term investments, with interest thereon accruing to the Securitization Trust, until such amounts can be reinvested in additional leases for the SUBI portfolio. TMCC states that any uninvested principal amounts, and interest on such amounts, held by the Securitization Trust are distributed to the certificateholders once principal payments on the leases in the SUBI portfolio are passed-through to investors.

purposes, but does not affect the characterization of those certificates as beneficial interests in the Securitization Trust property for accounting and other state law purposes.

After the "revolving period", the pool of leases and leased vehicles allocated to the SUBI (i.e. the SUBI portfolio) remains fixed. Any leases which are added to the SUBI portfolio during the "revolving period" must meet the same terms and conditions for eligibility as the original leases in the portfolio, as described in the prospectus or private placement memorandum, which terms and conditions have been approved by the Rating Agencies prior to the "revolving period". However, TMCC states that the terms and conditions for an "eligible lease" (as defined in Section III.X above) may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by the Rating Agencies. Further, under the conditions of the proposed exemption, TMCC must ensure that the additional leases added to the SUBI portfolio do not result in the certificates receiving a lower credit rating from the Rating Agencies at the end of the "revolving period" than the rating that was obtained at the time of the initial issuance of the certificates by the trust (see Section II.A.(7)(b) above).

TMCC states that for the duration of the "revolving period", principal collections that are reinvested in additional leases are first reinvested in the "eligible lease contract" (as defined in Section III.X. above) with the earliest origination date, then in the "eligible lease contract" with the next earliest origination date, and so forth (i.e. on a "FIFO basis), beginning with any lease contracts that have been reserved by TMCC specifically for such purposes at the time of the initial allocation of leases to the particular SUBI portfolio. However, those lease contracts reserved for allocation to, or actually allocated to, other pools of leases (i.e. other SUBI portfolios used to create different trusts) will be excluded from the available additional leases to be added to the particular SUBI portfolio. TMCC states that no adverse selection procedures may be employed in selecting leases during the "revolving period". Thus, TMCC represents that it will not be able to manipulate the order in which leases are added to a particular SUBI portfolio during the "revolving period" in order to improve its economic position with respect to the assets held in a particular SUBI portfolio. TMCC states further that at all times there will be a clear identification within the Origination Trust of which leases and leased

vehicles belong in each SUBI portfolio and which belong in the UTI or "residual" portfolio. The holders of beneficial interests in each SUBI have also agreed in writing to rely solely upon the assets contained within their respective portfolios to satisfy any payment obligations.

This "revolving period" arrangement differs from the arrangements considered in the Underwriter Exemptions wherein each trust contains a "fixed pool" of assets and substitution of receivables by the trust sponsor is permitted only in the event of defects in documentation discovered within a limited time after the issuance of trust certificates. The Applicant states that during any "revolving period", the outstanding principal balance of the SUBI's portfolio of leases remains unchanged and the certificateholders receive only interest payments with respect to their certificates. Once the "revolving period" ends, principal payments are no longer reinvested but rather are paid out to certificateholders.

To the extent that leases added to the SUBI portfolio during the "revolving period" have a higher Lease Rate (as defined in Section III.V. above) than do the original leases in the SUBI portfolio at the time of the initial offering of the certificates to investors, total returns on the ultimate lease pool in excess of that promised to investors on the trust certificates may inure to affiliates of the Servicer. However, TMCC states that the Average Lease Rate (as defined in Section III.W. above) for the pool of leases allocated to a SUBI portfolio owned by a particular Securitization Trust, after accounting for all the leases added to the SUBI portfolio during the "revolving period", shall not be more than 200 basis points (i.e. 2 percent) greater than the Average Lease Rate for the leases in the SUBI portfolio on the closing date used for the initial allocation of leases to the SUBI portfolio owned by the Securitization Trust.

The Average Lease Rate for the leases in the trust at the time of the initial offering of the certificates is described in the prospectus or offering memorandum provided to investors. The Applicant represents that changes to the Average Lease Rate based on new leases added to a trust during the "revolving period" depend on current interest rates and market conditions as well as the amount of lessee prepayments and repossessions on the leased vehicles. Thus, potential plan investors at the time of the initial offering of trust certificates know the total dollar amount of leases in the trust, the Average Lease Rate on those leases, the fact that principal received by the

trust during the "revolving period" is used to invest in additional leases, and the length of the "revolving period". Under the terms of the proposed exemption, potential plan investors shall also be provided with a statement disclosing the fact that the relief provided by the exemption shall be available to the Servicer and its affiliates only if the additional leases do not cause the Average Lease Rate for the leases in the pool after the "revolving period" to increase by more than 200 basis points.

5. Pursuant to the Servicing Agreement, TMCC, acting as Servicer on behalf of the Origination Trustee, selects the assets to be represented by each SUBI (as discussed above). Certificates representing the entire beneficial interest in each SUBI are issued to the sponsor of the Securitization Trust. The sponsor will be TLI, or another wholly-owned subsidiary of TMC (or a limited liability company or partnership in which a TMC subsidiary is a member). The sponsor creates the Securitization Trust and transfers a certificate representing the beneficial interest in the SUBI to the Securitization Trust, pursuant to a trust agreement between the sponsor and the trustee of the Securitization Trust (the Securitization Trustee).⁸ The Securitization Trustee is an unrelated commercial institution with trust powers, meeting certain specified requirements. In addition, pursuant to the Securitization Trust Agreement, the Securitization Trust issues to its sponsor investor certificates representing fractional undivided interests in the Securitization Trust, the assets of which include the SUBI, which itself represents a beneficial interest in a portfolio of motor vehicle leases and related leased motor vehicles held by the Origination Trust.

6. The sponsor of the Securitization Trust sells the investor certificates to various outside investors, including employee benefit plans subject to the Act. In order to achieve the desired rating for such certificates, the sponsor may retain a subordinated interest in the Securitization Trust, as required by the Rating Agencies, so that unanticipated losses with the SUBI portfolio will first be borne by TMCC. With respect to the certificates sold to outside investors, there may be two or more classes of securities. The investor certificates are either publicly or privately offered.⁹

⁸ TMCC or an affiliate retains a de minimis interest in each SUBI portfolio, which represents a subordinated interest in the portfolio, under requirements established by the Rating Agencies, in order to meet certain Federal tax code objectives.

⁹ TMCC is not requesting an exemption for the purchase of any subordinated class of certificates by

Except under rare circumstances, physical certificates will not be issued to investors in a public senior class of certificates. Instead, the Securitization Trust will use a book-entry registration system through the Depository Trust Company (DTC), a limited-purpose trust company organized under New York law, which is a member of the Federal Reserve System, and a clearing agency under Section 17A of the Securities Exchange Act of 1934.

Investors are entitled to receive periodic payments of interest at a fixed certificate rate, and after the "revolving period" described above, payments of principal. Principal payments on the investor certificates will be made on each distribution date (i.e., monthly, quarterly, semi-annually or annually), based on formulas allocating among the classes of certificates the maximum amount distributable thereto on each such date and in each case subject to the amount actually collected on the receivables. All net collections collected for the assets underlying each SUBI, including all net proceeds from the sale of a vehicle upon repossession, early lease termination or maturity of the related lease, and, if so specified in the governing documents, earnings derived from temporary investment of trust funds prior to the next scheduled distribution date, are available to make payments on the investor certificates.

The price of the investor certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand. Certificate interest rates are set at the

employee benefit plans. However, the applicant is requesting relief for prohibited transactions that may occur as a result of the investments in a trust made by an insurance company's general account which are considered to be "plan assets" under the recent U.S. Supreme Court decision in *John Hancock Mutual Life Insurance Co. v. Harris Trust & Savings Bank*, 114 S.Ct. 517 (1993) (Harris Trust). As a result of the decision in *Harris Trust* and the Department's plan assets regulation (see 29 CFR 2510.3-101), an insurance company investing general account assets could be viewed as a "benefit plan investor" for purposes of calculating the 25 percent significant participation test in section 2510.3-101(f)(1) of the regulation.

The Department notes that Section III of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts (PTE 95-60, 60 FR 35925, July 12, 1995) provides an exemption for transactions in connection with the operation of asset pool investment trusts notwithstanding that the certificates acquired by the general account are subordinated to the rights and interests evidenced by other certificates of the same trust. In this regard, the Department has included a paragraph at the end of the operative language of the proposed exemption which states that this exemption, if granted, will be included within the definition of the term "Underwriter Exemption" under Section V(h) of PTE 95-60. Therefore, the exemptive relief provided by PTE 95-60 will be available for subordinated investments in a trust described herein by insurance company general accounts.

time of the pricing of each securitization. While the Average Lease Rate for the particular lease portfolio is a factor in the interest rates a Securitization Trust will be able to pay, the actual interest rate set for the certificates issued is determined by a combination of additional factors. Specifically, these factors include: (a) the then-current yields on U.S. Treasury Notes with a remaining term equivalent to the anticipated average life of the particular Securitization Trust, and (b) the then-current "spreads" on similarly-rated competitive investments available in the marketplace, as determined by the Rating Agencies. Once the certificate rate is set for the certificates issued by the Securitization Trust, that rate remains fixed for its duration, regardless of any changes to the Average Lease Rate of the SUBI portfolio occurring during the "revolving period". The price of an investor certificate and the certificate rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the certificate rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

7. TMCC represents that the certificates issued by a Securitization Trust may involve multi-class certificates. Such multi-class certificates may be one of two types: (i) "strip" certificates; and (ii) "fast-pay/slow-pay" certificates.

"Strip" certificates are a type of security in which the stream of interest payments on the underlying receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. The only difference between these multi-class certificates and the single-class certificates is the order in which distributions are made to certificateholders.

The Applicant represents that any "strip" or "fast-pay/slow-pay" certificates issued by a trust will be the same as the type described in the Underwriter Exemptions previously granted by the Department. TMCC emphasizes that the rights of a plan purchasing such certificates will not be subordinated to the rights of another certificateholder in the event of default on any payment obligations for the certificates. With respect to "fast-pay/slow-pay" certificates, TMCC states that

if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions would share in the amount distributed on a pro rata basis. Thus, if a trust issues subordinate certificates, holders of such subordinate certificates would not be able to share in the amount distributed on a pro rata basis.¹⁰

8. TMCC enters into arrangements with certain dealers allowing it to cause the assignment of leases and related vehicles originated by those dealers either directly to TMCC or to any other specified entity, including the Origination Trust. Once such leases and related vehicles are assigned to the Origination Trust for ultimate inclusion in a portfolio of SUBI assets for securitization as described above, TMCC is able to go to the capital markets directly for financing through the sale of certificates.

TMCC and/or one or more wholly-owned subsidiaries of TMCC, or limited liability companies or partnerships in which such a wholly-owned subsidiary is a member, are responsible for creating each SUBI, creating the Origination Trust and each Securitization Trust, and designating the Trust Agent and the Securitization Trustee.

The Trust Agent, its subsidiary the Origination Trustee, and the Securitization Trustee, are each independent entities, unrelated to TMCC, the underwriter or placement agent. The Origination Trustee is the legal owner of the motor vehicle leases and related leased motor vehicles allocated to a SUBI. The Securitization Trustee is the legal owner of the obligations in the Securitization Trust and is responsible for enforcing all the rights created thereby in favor of certificateholders, whether independently or through the

¹⁰In this regard, the Department notes that although it believes that either the "strip" or the "fast-pay/slow-pay" certificates described above are included within the scope of the proposed exemption, it further notes that no relief is provided under the exemption for plan investments in subordinate certificates (other than as permitted herein for certain insurance company general accounts). In addition, the Department notes that the conditions of the exemption would require that any "strip" or "fast-pay/slow-pay" certificates receive one of the three highest ratings available from the Rating Agencies and that such certificates not receive a lower credit rating upon termination of the period during which additional leases may be added to the SUBI portfolio.

The Department cautions plan fiduciaries to fully understand the risks involved with either "strip" or "fast-pay/slow-pay" certificates prior to any acquisitions of such certificates, and to make prudent determinations as to whether such certificates would adequately meet the investment objectives and liquidity needs of the plan.

Origination Trustee. The Applicant represents that each Securitization Trustee and Trust Agent are substantial financial institutions or trust companies experienced in trust activities. The Trust Agent and Securitization Trustee will receive a fee for their services, which will be paid out of assets of the Origination Trust or the Securitization Trust, as applicable. The method of compensating each for its service related to a SUBI is specified in the Servicing Agreement or Securitization Trust Agreement, as applicable, and disclosed in the prospectus or private placement memorandum relating to the offering of the investor certificates.

9. The Servicer administers the leases on behalf of the beneficial owners of the Origination Trust, including the holders of SUBI certificates and, indirectly, the holders of the investor certificates. The Servicer's functions involve monitoring of leases, maintenance of records, institution of proceedings in the event of default, and sale of vehicles after lease maturity, as well as certain functions relating to the qualifications and permits required to be obtained by the Origination Trustee.¹¹ The Servicer, the sponsor of the Origination Trust, and the sponsor of the Securitization Trust are unrelated to the underwriter and to DTC. DTC has public senior investor certificates registered in its name (or that of its nominee) and maintains procedures for the distribution of notices, reports, distributions and statements to certificateholders.

As compensation for performing its servicing duties for the Origination Trust, the Servicer is paid a fee equal to a specified percentage (usually no more than one percent) of the balance of the leases it services, including those leases allocated to the SUBI. The Servicer may receive additional compensation related to the SUBI in the form of interest on various accounts of the Origination Trust and/or the Securitization Trust containing proceeds of the leases and related leased motor vehicles allocated to each SUBI as well as interest on certain cash deposits. The Servicer is required to pay the administrative expenses of servicing the Origination Trust out of its servicing compensation.

The Servicer is also compensated to the extent it may provide credit enhancement to the Securitization Trust or otherwise arranges to obtain credit support from another party. This "credit support fee" may be aggregated with

¹¹TMCC states that these functions are necessary since, as noted in Paragraph 4 above, the Origination Trust is the owner of, and holds title to, the vehicle unless the lessee chooses to purchase such vehicle under the terms of the lease.

other servicing fees, and may be either paid out of the income received on the leases in excess of the certificate rate or paid in a lump sum at the time the Securitization Trust is established. The Servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor under a lease, provided that such fees are "qualified administrative fees" as defined under Section III.S. These administrative fees fall into four categories: (a) late payment fees; (b) acquisition fees; (c) deferral fees; and (d) other administrative fees or similar charges under the leases.

Payments on leases may be made by lessees to the Servicer at various times during the period preceding any date on which payments to the Origination Trust are due. In some cases, the Servicing Agreement may permit the Servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the Servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a lease and the date payment is due to the Origination Trust. Commingled payments may not be protected from the creditors of the Servicer in the event of the Servicer's bankruptcy or receivership. In those instances when payments on leases are held in non-interest bearing accounts or are commingled with the Servicer's own funds, the Servicer is required to deposit these payments into an Origination Trust account by a date specified in the Servicing Agreement. TMCC states that the Servicing Agreement will require that payments into an Origination Trust account will be made monthly, even in cases where the certificates provide for distributions to be made quarterly, semi-annually or annually. Once funds are deposited in the Origination Trust account, such funds are required to be invested in highly rated debt instruments of the type described in the governing documents as "permitted investments".

TMCC represents that the Pooling and Servicing Agreement used in the transactions described herein will require that in the event that the rating for TMCC's short-term debt is reduced below a level specified by the Rating Agencies after the sale of the certificates, TMCC (as servicer) will be required to commence depositing collections with respect to trust assets in a trust account on a daily basis within two business days after collection, unless the applicable Rating Agencies have agreed in writing to an alternative

arrangement to protect the interests of certificateholders.¹²

All compensation payable to the Servicer with regard to the leases allocated to a SUBI is set forth or referred to in the Servicing Agreement, and described in reasonable detail in the prospectus or private placement memorandum relating to the investor certificates.

10. Participating underwriters or placement agents receive a fee in connection with the securities underwriting or private placement of investor certificates. In a firm commitment underwriting, this fee would consist of the difference between what such underwriter receives for the certificates that it distributes and what it pays the sponsor of the Securitization Trust for those certificates.¹³ In a private placement, the fee normally takes the form of an agency commission paid by the sponsor of the Securitization Trust.

The arrangements among underwriters typically are set forth in an "Agreement Among Underwriters", which gives the managing underwriter, as lead manager of the offer, the authority to act on behalf of all the underwriters. This agreement also imposes customary restrictions on the underwriters' dealings in the offered securities as are necessary to comply with securities laws and to ensure the orderly distribution of the offered securities.

11. TMCC represents that as the principal amount of the leases allocated to a SUBI is reduced by payments thereon and recoveries on the disposition of leased vehicles, the cost of separately administering the assets allocated to that SUBI generally increases, making the servicing of those assets prohibitively expensive at some point. Consequently, the Securitization Trust Agreement generally provides that the sponsor of the Securitization Trust may repurchase the SUBI when the aggregate principal balance of the investor certificates is reduced to a specified percentage (usually between 5 and 10 percent) of the initial aggregate investor certificate balance. The terms of such repurchase are specified therein and are at least equal to the unpaid principal balance on the investor certificates plus accrued interest. The supplement to the Origination Trust Agreement generally provides that upon such a repurchase of the Securitization Trust's interest in the SUBI by its

sponsor, the Origination Trust may repurchase the entire SUBI from the sponsor and thereby terminate the SUBI. The terms of such repurchase are specified therein and generally are at least equal to the value of the pool of leases and leased vehicles allocated to the SUBI.

12. The senior class of investor certificates must receive a rating that is in one of the three highest generic rating categories available from one of the Rating Agencies. To attain the desired rating, the sponsor or its affiliates may establish a reserve fund for the benefit of certificateholders; retain or sell to third parties one or more classes of subordinated certificates; retain another subordinated interest in the trust; and/or obtain other forms of credit support from third parties. The amount of this credit support is set by the Rating Agencies at a level expected to be a multiple of the worst historical net credit loss experience for leases of automobiles and light-duty trucks such as those allocated to the SUBI.

TMCC states that the Rating Agencies, before granting AAA/Aaa ratings for the publicly issued securitization certificates, review the underlying portfolio of assets securing payment to the investors to determine, among other things, if (a) the principal value of the assets is sufficiently greater than the aggregate face amount of the investor certificates as to provide protection against defaults or losses, and (b) there is a sufficient "spread" between the overall yield, based on the Average Lease Rate (as adjusted by the discounting procedure described below), being earned on the portfolio and the certificate rate to cover servicing costs, expenses and losses. In the case of its public offerings of certificates, TMCC currently anticipates that (i) the face value of public investor senior certificates will not exceed a specified percentage (e.g. 92.5 percent) of the principal value of the underlying assets, and (ii) the "spread" between the overall yield, based on the Average Lease Rate (as adjusted by the discounting procedure described below), of the SUBI portfolio and the certificate rate will be approximately 100 to 300 basis points. Thus, for example, if the targeted "spread" were 200 basis points, a SUBI portfolio with a principal value of \$100,000,000 would support the issuance of certificates with a face value of only \$92,500,000, and a certificate rate of 6 percent per annum would require an overall yield, based on the Average Lease Rate (as adjusted by the discounting procedure described below), for that SUBI portfolio of approximately 8 percent per annum.

¹² TMCC states that its short-term unsecured debt is currently rated P-1 by Moody's Investors Service and A-1 by Standard and Poor's Ratings Services.

¹³ TMCC represents that a "best efforts" underwriting would not ordinarily be used for the investor certificates.

TMCC states that the Rating Agencies will always require a specific "spread" between the certificate rate and the overall yield for leases in the particular SUBI portfolio before providing their initial credit ratings for the certificates. TMCC must maintain this "spread" when leases are added to the SUBI portfolio during the "revolving period" or risk a lower credit rating for the certificates (see Section II.A.(7)(b) above).

For purposes of the securitization described above, TMCC represents that each individual lease should yield a rate of return, based on the Lease Rate (as defined in Section III.V. above), which is at least equal to the certificate rate plus the targeted spread. However, where the targeted spread is not met as to any lease based solely on the Lease Rate, the principal value of that lease will be discounted so that such lease is treated as having a "net investment value" less than its actual outstanding principal balance. In such instances, the lease is discounted to a level at which the actual lease charges to be collected under the lease (including expected principal payments) would yield, on a percentage basis, an overall rate of return which exceeds the certificate rate by the targeted spread. Thus, for each individual lease included in a securitization, its principal value is either: (a) its outstanding principal balance, if its Lease Rate is equal to or greater than the targeted spread; or (b) its discounted net investment value, if its Lease Rate is less than the targeted "spread".¹⁴ TMCC states that the use of discounted aggregate net investment values in measuring the ratio of certificate face values to the discounted principal balance of the SUBI portfolio can only further assure that investors

are paid interest and principal on their certificates on a timely basis.

13. In many cases, the Servicer may provide cash flow support to the trust pursuant to a contractual obligation to advance funds to the trust to the full extent that it determines that such advances are recoverable (a) out of late payments by the lessees, (b) from a permanent credit support provider (which may be itself) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates. The Servicer would advance such funds in a timely manner. When the Servicer temporarily advances funds, the amount so advanced is recoverable by the Servicer out of future payments on or for leases or leased vehicles allocated to the SUBI to the extent that such amounts are not covered by the other sources described above, including payments from a permanent credit support provider.

If the Servicer fails to advance funds to the extent required by the applicable agreements, fails to call upon a credit support mechanism to provide funds to cover defaulted payments, or otherwise fails in its duties, the Securitization Trustee would be required to enforce the investor certificateholders' rights, in its capacity as a third-party beneficiary of the Servicing Agreement, as owner of the estate of the Securitization Trust, and as an indirect beneficial owner of the Origination Trust assets allocated to a SUBI (including rights under any credit support mechanism). Therefore, the Securitization Trustee, who is independent of the Servicer, ultimately has the right to enforce any credit support arrangement.

14. TMCC represents that there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the leases allocated to a SUBI as payments for these leases and the related vehicles are used to make payments to the Securitization Trust, as holder of an interest in the SUBI, and then to investors. These safeguards include the following:

(a) There is a disincentive to postponing credit losses because the sooner repossession or sale activities are commenced, the more value generally will be realized on the leased vehicle.

(b) The Servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which a lessee's obligations ordinarily are deemed uncollectible. The Servicing Agreement requires the Servicer to follow its normal servicing

guidelines. In addition, the Servicing Agreement sets forth the Servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible.

(c) As frequently as payments are due on the investor certificates (monthly, quarterly, semi-annually, or annually, as set forth in the Securitization Trust Agreement), the Servicer is required to report to the Securitization Trustee the amount of all past-due payments and the amount of all Servicer advances, along with other current information as to collections on the leases, recoveries on the related leased vehicles, and draws upon the credit support. Further, the Servicer is required to deliver to the trustee annually a certificate from an executive officer of the Servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the Servicer has fulfilled all of its obligations under the Servicing Agreement or, if the Servicer has defaulted under any of its obligations, specifying any such default. The Servicer's reports are reviewed at least annually by independent accountants to ensure that the Servicer is following its normal servicing standards and that the reports conform to the Servicer's internal account records. The results of the independent accountants' review are delivered to the Securitization Trustee.

(d) In cases where the Servicer and an insurer providing credit support are affiliated or are the same entity, the credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the SUBI, whether due to Servicer advances or any other cause. The floor amount may be a fixed dollar amount or a specified formula amount. Once the floor amount has been reached, the Servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws on such amount. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the principal balance of the leases allocated to the SUBI. The Applicant states that where the floor is a fixed dollar amount, the amount of credit support ordinarily would increase as a percentage of the declining principal balance during the period that the floor is in effect.

15. In connection with the original issuance of investor certificates, a

¹⁴ For example, if the certificate rate for a transaction were 8 percent and the targeted spread were 200 basis points, then, in determining the aggregate face value amount of certificates that could be issued with respect to a given SUBI portfolio, TMCC could include each lease with a Lease Rate of 10 percent or more at its current outstanding principal balance without any discounting. However, if the portfolio included individual leases each with outstanding principal balances of \$20,000 and Lease Rates of only 5 percent, then TMCC would have to "discount" the value of each such lease for purposes of the securitization to a low enough net investment value (approximately \$18,000) so that the same overall monthly lease payment for each lease would now yield a Lease Rate of 10 percent. TMCC notes that any "discounting" of leases added to the SUBI portfolio during the "revolving period" will result in more leases being added to the portfolio in order to maintain a constant outstanding principal balance during such period. Thus, when interest rates used to determine the Lease Rate for leases added to a SUBI portfolio are declining, the "discounting" of leases adds more "collateral" to secure payments of the certificate rate.

prospectus or private placement memorandum is furnished to all investors including investing plans. The prospectus or private placement memorandum contains information material to a plan fiduciary's decision to invest in the certificates, including:

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

(b) A description of the Origination Trust and Securitization Trust as legal entities and a description of how they were formed by their respective sponsors;

(c) Identification of the Trust Agent, Origination Trustee and Securitization Trustee;

(d) A description of the leases and related leased vehicles allocated to each SUBI, including the diversification of the leases and vehicles, the principal terms of the leases, and their material legal aspects;

(e) A description of the sponsors of the Origination Trust and the Securitization Trust, and of the Servicer;

(f) A description of the servicing arrangements set forth in the Servicing Agreement, and the agreements governing the Origination Trust and the Securitization Trust, including a description of the Servicer's principal representations and warranties as to the leases and leased vehicles allocated to each SUBI and the remedies for any breach thereof;

(g) A description of the procedures for collection of payments on or for leases and related leased vehicles and for making distributions to the Securitization Trust, as holder of an interest in the SUBI, and then to investor certificateholders, and a description of the accounts into which such payments are deposited and from which such distributions are made;

(h) Identification of the servicing compensation and any fees for credit support that are deducted from payments on or for leases or related leased vehicles before distributions are made to investors;

(i) A description of periodic statements provided to the Securitization Trustee, and such statements that are provided or made available to investors by the Securitization Trustee;

(j) A description of the events that constitute events of default under the Servicing Agreement and a description of the Securitization Trustee's and the investors' remedies incident thereto;

(k) A description of any credit support;

(l) A general discussion of the principal Federal income tax consequences of the purchase, ownership and disposition of the investor certificates by a typical investor;

(m) A description of the underwriters' or placement agents' plan for distributing the certificates to investors; and

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

Reports indicating the amount of payments of principal and interest are provided to investors as frequently as distributions are made to investors. Investors are also provided with periodic information statements setting forth material information concerning the leases and related vehicles allocated to each SUBI, including information as to the amount and number of delinquent and defaulted leases.

16. In the case of the offer and sale of investor certificates in a registered public offering, the Securitization Trustee, the Servicer or the sponsor of the Securitization Trust will file periodic reports as required by the Securities Exchange Act of 1934 (the 1934 Act). A Securitization Trust and its sponsor may, in some cases, discontinue making filings under the 1934 Act if permitted to do so under the provisions of that Act by exemptions contained therein.

At the time distributions are made to certificateholders, a report is delivered to the trustee as to the status of the Securitization Trust and each SUBI, including the assets allocated to the SUBI. Such report contains information regarding, among other things, the leases and related vehicles allocated to the SUBI, payments received or collected by the Servicer, the amount of prepayments, delinquencies, Servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the Servicer. Such report is also delivered to or made available to the Rating Agency or Agencies that have rated the investor certificates. A statement based on this report is also provided to certificateholders either by the Securitization Trustee, the Servicer, or DTC as depository of the investor certificates, including a summary statement regarding the Securitization Trust and the assets allocated to the SUBI. The statement contains information regarding payments and prepayments, delinquencies, the remaining amount of credit support, a breakdown of payments between principal and interest and other

information concerning the leases and leased vehicles allocated to the SUBI.

With respect to payments on the certificates, TMCC states that such payments are legally obligated to be made by the Securitization Trustee to DTC, the record owner of the certificates. TMCC represents that DTC makes payments to the beneficial owners of the certificates as required by New York Stock Exchange Regulations, SEC Regulations and the rules of the U.S. Federal Reserve Board.

17. In general, it is the policy of many underwriters to make a market for securities for which they are the lead or co-managing underwriter. It is also the policy of many placement agents to facilitate sales by investors who purchase certificates if the placement agent has acted as a principal or agent in the original private placement of the certificates and if the investors request the placement agent's assistance. In this regard, TMCC anticipates that underwriters will make a secondary market in investor certificates of trusts that are sponsored by TMCC and its Subsidiaries.

18. TMCC and its Subsidiaries represent that they will abide by all securities and other laws applicable to any offering of interests in securitized assets, such as certificates in a trust as described herein, including those laws relating to disclosure of material litigation, investigations and contingent liabilities.

TMCC has requested the relief proposed herein because, under the Department's regulation defining "plan assets" for investment purposes (see 29 CFR 2510.3-101), there could be a "look-through" to the underlying assets of the trust issuing certificates purchased by employee benefit plans when there is significant participation by benefit plan investors in a particular offering and the certificates are not considered to be "publicly-offered" securities. In this regard, TMCC states that many certificates are held by investors in street or nominee name. Thus, TMCC states that it is not always possible to identify whether the percentage interest in a trust held by benefit plan investors is or is not "significant" (29 CFR 2510.3-101(f)). TMCC states further that these problems are compounded as transactions occur in the secondary market. In addition, with respect to the "publicly-offered security" exception contained in the Department's regulation (29 CFR 2510.3-101(b)), TMCC states that it is difficult to determine whether each purchaser of a certificate is independent of all other purchasers or whether there are at least 100 independent investors

which would make the certificates a "widely-held" class of securities (as required therein).

TMCC has requested that the proposed exemption be effective as of September 1, 1997, in order to cover any securitizations of motor vehicle leases and related vehicles since that time which may have involved significant participation by benefit plan investors.

19. In summary, the Applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act because:

(a) The Securitization Trust holds an interest in a SUBI, which generally represents beneficial interests in a "fixed pool" of leases and related leased vehicles, other than the obligation to reinvest principal collections on the leases and leased vehicles in additional qualifying leases and leased vehicles during a fixed "revolving period" of no more than 15 months.

(b) The Average Lease Rate for the leases in the portfolio used to create a trust, after accounting for all leases added to such portfolio during the "revolving period", will not exceed by more than 200 basis points the Average Lease Rate for the original portfolio of leases used to create the trust.

(c) Certificates in which employee benefit plans invest have been rated in one of the three highest rating categories by the Rating Agencies. To achieve the desired rating, one or more types of credit support are provided by the sponsor or its affiliates or are obtained from third parties. In addition, leases added to a trust portfolio during the "revolving period" will not result in the certificates receiving a lower credit rating from the Rating Agencies, at the end of the "revolving period", than the rating that was obtained at the time of the initial issuance of the certificates by the trust.

(d) All transactions for which TMCC seeks exemptive relief are governed by the Origination Trust Agreement, the SUBI Supplement, the Servicing Agreement and the Securitization Trust Agreement. These agreements as well as the prospectus or private placement memorandum are made available to plan fiduciaries for their review prior to the plan's investment in the certificates.

(e) The Pooling and Servicing Agreement expressly provides that funds collected by TMCC, as the servicer for trust assets, are required to be deposited in a trust account within two business days after such collection, if TMCC's short-term unsecured debt no longer continues to be rated P-1 by Moody's Investors Service and A-1 by Standard & Poor's Ratings Services (or

successors thereto), unless such Rating Agencies accept an alternative arrangement.

(f) Exemptive relief from sections 406(b) and 407(a) of the Act for sales to employee benefit plans is substantially limited.

(g) The Applicant anticipates that underwriters will make a secondary market in investor certificates sponsored by TMCC and its Subsidiaries.

For Further Information Contact: Mr. E. F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

**Kilpatrick Investment Company
Employee's Pension Plan (the Plan);
Located in Oklahoma City, Oklahoma**

[Application No.: D-10607]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale (the Sale) of improved real property (the Property) by the Plan to the Kilpatrick Investment Company (the Company), a party in interest with respect to the Plan provided the following conditions were met at the time of the Sale: (1) the terms of the Sale were at least as favorable as those the Plan could have obtained in an arm's length transaction with an unrelated party; (2) the fair market value of the Property was determined by an independent and qualified real estate appraiser; (3) the Sale price was equal to the greater of the fair market value of the Property at the time of the Sale or \$134,600 which represents the price the Plan originally paid for the Property plus the holding costs incurred by the Plan during the Plan's ownership of the Property; and (4) the Plan paid no commissions or expenses associated with the Sale.

Effective Date: If granted, this proposed exemption will be effective as of April 15, 1998.

Summary of Facts and Representations

1. The Plan is a defined benefit plan having six participants and beneficiaries as of February 19, 1998. The aggregate fair market value of the Plan's assets is \$884,543 which is based upon the 1996 Plan's actuarial report. John Kilpatrick

is the Plan trustee and owner of the Company.

2. The Property is a sixty year old industrial facility located on a 476,725 square foot site located at 800 N.W. 3rd Street, Moore, Oklahoma. The Plan purchased the Property from an unrelated third party on January 31, 1978 for \$95,000 representing land cost of \$15,000 and building cost \$80,000. Since this time, the Plan has paid approximately \$7,000 in land repairs, \$15,900 in improvements and \$16,555 ad valorem taxes. The warehouse portion of the Property has been leased to Show Productions, an unrelated third party for an annual rent of \$6,000.

3. On February 4, 1998, the Property was appraised by Stephen V. Greer Company, Real Estate Appraisers and Consultants. The fair market value of the Property was calculated to be \$78,500. In his appraisal report, Mr. Greer defined market value as the probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Mr. Greer noted that the overall quality of the building improvements of the Property is fair and the general condition of the Property is fair to poor. The useful economic life of these improvements is nearing its end. Redevelopment will be required to maximize the value of the site.

4. The Plan proposed to sell the Property in order to diversify its assets and invest in more liquid investments.¹⁵ In February 1998, the Company applied for an exemption to permit a proposed sale of the Property by the Plan to the Company at the fair market value of the Property. However, during the Department's consideration of the exemption request, it became apparent to the Plan trustee that the Plan had invested significantly more in the Property than its appraised value. Thus, the Company proposed to purchase the Property at a price greater than the fair market value of the Property which represented an amount equal to the Plan's acquisition cost plus the holding costs of the Property totaling \$134,600.

¹⁵ As of February 1998, the Plan's total investment in real estate accounted for 93% of the value of plan assets. The Department is expressing no opinion in this proposed exemption as to whether plan fiduciaries violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act in acquiring and holding such real estate. Section 404(a)(1)(C) states that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

The Company stated that it would be in the position to purchase the Property at this price due to the fact that the Company had recently sold another piece of property for \$150,000 with respect to which the Company was trying to complete a Code section 1031 like-kind exchange. The Company further states that based upon the section 1031 requirements, the like-kind exchange had to be completed by April 15, 1998, and the Company determined that due to the notice requirements of the exemption process, the exemption would not be granted before this date. Accordingly, the Company purchased the Property from the Plan on April 15, 1998. The applicant represents that the Sale was in the interest of the Plan because it permitted the Plan to fully recover the money it invested in the Property, and it appeared highly unlikely that the Plan could sell the Property to a third party in its current condition at such a price. In addition, the Plan incurred no expenses as a result of the Sale.

5. In summary, the applicant represents that the transaction satisfies the statutory criteria of the section 408(a) of the Act and section 4975(c)(2) of the Code because: (1) the Sale was a one-time transaction for cash; (2) the Plan paid no expenses associated with the Sale; and (3) the Plan received the greater of the fair market value as determined by an independent, qualified appraiser of the Property or \$134,600 which represents the Plan's total investment in the Property.

For Further Information Contact:
Allison Padams Lavigne of the Department, telephone (202)219-8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the

employees of the employer maintaining the plan and their beneficiaries;

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

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

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

Signed at Washington, DC, this 1st day of July, 1998.

Ivan Strasfeld,

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

[FR Doc. 98-18012 Filed 7-7-98; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Prohibited Transaction Exemption 98-32; Exemption Application No. D-10459, et al.; Grant of Individual Exemptions; Union Bank of Switzerland

AGENCY: Pension and Welfare Benefits 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 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations

contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type 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 exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Union Bank of Switzerland (UBS/Swiss) and UBS Securities, LLC (UBS Securities) Located in Zurich, Switzerland and New York, New York, Respectively

[Prohibited Transaction Exemption 98-32; Exemption Application Nos. D-10459 and D-10460]

Exemption

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the (1) lending of securities to UBS/Swiss, UBS Securities, UBS Ltd. (UBS/UK), UBS Securities Limited (UBS/Japan) and their successors in interest, which are or will