Series, which does not differ materially from the 1997 Form 5500 Series. The ICR for the existing Form 5500 Series is approved under OMB Number 1210–0016 (PWBA). PBGC's ICR for the Form 5500 Series was previously approved under OMB Number 1212–0026. The International Revenue Service's (IRS) approval for the existing Form 5500 Series (OMB Number 1545–0710) does not expire until December 31, 1998 and the IRS's request for extension of its approval for the existing Form 5500 Series will be made separately. The Agencies have developed a revised Form 5500 for use beginning with plan years commencing in 1999. The 1999 Form 5500 has been approved under OMB numbers 1210–0110 (PWBA), 1545–1610 (IRS) and 1212–0057 (PBGC). Accordingly, the 1998 Form 5500 Series will be the last year for which the existing Form 5500 Series is used.

Agencies: Department of Labor, Pension and Welfare Benefits Administration; Pension Benefit Guaranty Corporation.

Title: Form 5500 Series.

Form Number: Form 5500, Form 5500–C/R and Schedules.

OMB Number: 1210–0016; 1212–0026.

Frequency: Annually.

Affected Public: Individuals or households; business or other for-profit; Not-for profit institutions.

Total Respondents: 816,709 (PWBA); 45,000 (PBGC).

Total Responses: 816,709 (PWBA); 45,000 (PBGC).

In a previous Notice published in the **Federal Register** on September 3, 1997, the Agencies requested comments on the burden hour estimates and the methodologies used to estimate burden for preparing and filing the Form 5500, and received comments generally indicating that the estimates were too low. In response to those comments the Agencies are conducting a study of the burden estimation methodologies for the purpose of developing a revised methodology. This ICR includes revised burden estimates, based on the preliminary results of that study, for PWBA's share and PBGC's share of the total 1998 Form 5500 burden. A description of the study and the revised burden estimates is included in the ICR submitted to OMB.

Estimated Burden Hours, Total Annual Burden: 1,752,874 hours (PWBA); 5,600 hours (PBGC).

Total annual cost (operating and maintenance): $459 million (PWBA); $3 million (PBGC).

Dated: October 1, 1998.

Todd R. Owen,

Departmental Clearance Officer, Department of Labor.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 98–26797 Filed 10–5–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10288, et al.]

Proposed Exemptions; Salomon Brothers Inc.

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

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing 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.

ADDRESS: 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, NW, Washington, DC 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, NW, Washington, DC 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.

Salomon Brothers Inc., Located in New York, New York

[Application No. D–10288]

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. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any purchase or sale of securities, including options on securities, between certain affiliates of Salomon Brothers Inc. (Salomon Bros.) which are foreign broker-dealers or banks (the Foreign

Affiliates, as defined below) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are parties in interest, provided that the following conditions, and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank;

(2) The terms of any transaction are at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party; and

(3) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, and the Foreign Affiliate is a party in interest or disqualified person with respect to the Plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections.

B. The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any extension of credit to the Plans by the Foreign Affiliates to permit the settlement of securities transactions, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts, provided that the following conditions and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate is not a fiduciary with respect to the Plan assets involved in the transaction, unless no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with any extension of credit; and

(2) Any extension of credit would be lawful under the Securities Exchange Act of 1934 (the 1934 Act) and any rules or regulations thereunder, if the 1934 Act, rules, or regulations were applicable.

C. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the lending of securities to the Foreign Affiliates by the Plans, provided that the following conditions, and the General Conditions of Section II, are satisfied:

(1) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(2) The Plan receives from the Foreign Affiliate (by physical delivery, by book entry in a securities depository, wire transfer, or similar means) by the close of business on the day the loaned securities are delivered to the Foreign Affiliate, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral shall be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and shall be held in the United States;

(3) The collateral has, as of the close of business on the preceding business day, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same);

(4) The loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains terms at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party;

(5) In return for lending securities, the Plan either (a) receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Foreign Affiliate, if such fee is not greater than what the Plan would pay in a comparable arm's length transaction with an unrelated party;

(6) The Plan receives at least the equivalent of all distributions on the borrowed securities made during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of applicable tax withholdings)[1] had it remained the record owner of such securities;

(7) If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate delivers additional collateral, by the close of the Plan's business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent;

(8) Before entering into a Loan Agreement, the Foreign Affiliate furnishes to the independent Plan fiduciary (a) the most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change.

(9) The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least;

(10) In the event that the loan is terminated and the Foreign Affiliate fails to return the borrowed securities, or the equivalent thereof, within the time described in paragraph 9, the Plan may purchase securities identical to the borrowed securities (or their equivalent

[1] The Department notes the applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that the Foreign Affiliate will always put the Plan back in at least as good a position as it would have been in had it not loaned the securities.

as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with the sale and/or purchase. The Foreign Affiliate is obligated to pay, under the terms of the Loan Agreement, and does pay, to the Plan the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary; and

(11) The independent Plan fiduciary maintains the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1.

If the Foreign Affiliate fails to comply with any condition of the exemption in the course of engaging in a securities lending transaction, the Plan fiduciary who caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the Foreign Affiliate's failure to comply with the conditions of the exemption.

Section II—General Conditions

A. The Foreign Affiliate is a registered broker-dealer or bank subject to regulation by a governmental agency, as described in Section III.B, and is in compliance with all applicable rules and regulations thereof in connection with any transactions covered by this exemption;

B. The Foreign Affiliate, in connection with any transactions covered by this exemption, is in compliance with the requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act, and Securities and Exchange Commission (S.E.C.) interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements;

C. Prior to any transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions;

D. The Foreign Affiliate maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction such records as are necessary to enable the persons described in paragraph E to determine whether the conditions of the exemption have been met, except that —

(1) a party in interest with respect to a Plan, other than the Foreign Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by paragraph E; and

(2) a prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the Foreign Affiliate's control, such records are lost or destroyed prior to the end of the six year period;

E. Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the Foreign Affiliate makes the records referred to in paragraph (d) unconditionally available during normal business hours at their customary location to the following persons or a duly authorized representative thereof: (1) the Department, the Internal Revenue Service, or the S.E.C.; (2) any fiduciary of a Plan; (3) any contributing employer to a Plan; (4) any employee organization any of whose members are covered by a Plan; and (5) any participant or beneficiary of a Plan. However, none of the persons described in (2) through (5) of this subsection are authorized to examine the trade secrets of the Foreign Affiliate or commercial or financial information which is privileged or confidential.

Section III—Definitions

A. The term ''affiliate'' of another person shall include: (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, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (3) any corporation or partnership of which such other person is an officer, director or partner. For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual;

B. The term ''Foreign Affiliate'' shall mean an affiliate of Salomon Brothers Inc. that is subject to regulation as a broker-dealer or bank by (1) the Ontario Securities Commission and the Investment Dealers Association in Canada; (2) the Securities and Futures Authority in the United Kingdom; (3) the Deutsche Bundesbank and the Federal Banking Supervisory Authority, i.e., der Bundesaufsichtsamt fuer das Kreditwesen (the BAK) in Germany; or (4) the Ministry of Finance and the Tokyo Stock Exchange in Japan;

C. The term ''security'' shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term ''security'' does not include swap agreements or other notional principal contracts.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of June 7, 1996.

Summary of Facts and Representations

1. Salomon Bros., a broker-dealer registered with the S.E.C., is a full-line investment services firm which is a member of the New York Stock Exchange and other principal securities exchanges in the United States and a member of the National Association of Securities Dealers. Salomon Bros. is one of the largest investment services firms in the United States. Salomon Inc., the parent corporation of Salomon Bros., had approximately $194.88 billion in assets and $4.86 billion in stockholders' equity, as of December 31, 1996.

On November 28, 1997, Salomon Inc., merged with a wholly owned subsidiary of Travelers Group Inc. (Travelers). Travelers, a diversified financial services holding company, had approximately $387 billion in assets and $21 billion in stockholders' equity at the time of the merger. Salomon Inc. was the surviving corporation of this merger and was renamed Salomon Smith Barney Holdings Inc. (Salomon Smith Barney). Immediately thereafter, Smith Barney Holdings Inc., another wholly owned subsidiary of Travelers, was merged into Salomon Smith Barney.

Salomon Bros., which will be merged in the future with another Smith Barney affiliate of Travelers, has several foreign affiliates which are broker-dealers or banks. Those covered by the proposed exemption (i.e., the Foreign Affiliates), and their respective regulating entities, are as follows:

(a) Salomon Bros. Canada Inc., located in Toronto, is subject to regulation in Canada by the Ontario Securities Commission, as well as the Investment Dealers Association, a self-regulatory organization.

(b) Salomon Bros. U.K. Limited, Salomon Bros. U.K. Equity Limited, and Salomon Bros. International Limited, all located in London, are subject to

regulation in the United Kingdom by the Securities and Futures Authority.

(c) Salomon Bros. AG, located in Frankfurt, is subject to regulation in Germany by the Deutsche Bundesbank and the Bundesaufsichtsamt fuer das Kreditwesen (i.e., the BAK).

(d) Salomon Bros. Asia Limited branch, located in Tokyo, is subject to regulation in Japan by the Ministry of Finance and the Tokyo Stock Exchange.

Salomon Bros. requests an individual exemption to permit the Foreign Affiliates identified above, as well as those others who, in the future, may be subject to governmental regulation in Canada, the United Kingdom, Germany, or Japan, to engage in the securities transactions described below with employee benefit plans (i.e., the Plans). The proposed exemption is necessary because the Foreign Affiliates may be parties in interest with respect to the Plans under the Act, by virtue of being a fiduciary (for assets of the Plans other than those involved in the transactions) or a service provider to such Plans, or by virtue of a relationship to such fiduciary or service provider.

2. Salomon Bros. represents that the Foreign Affiliates are subject to regulation by a governmental agency in the foreign country. Salomon Bros. further represents that registration of a foreign broker-dealer or bank with the governmental agency in these cases addresses regulatory concerns similar to those concerns addressed by registration of a broker-dealer with the S.E.C. under the 1934 Act. The rules and regulations set forth by the above-referenced agencies and the S.E.C. share a common objective: the protection of the investor by the regulation of securities markets.

Canada, the United Kingdom, and Japan all have comprehensive financial resource and reporting/disclosure rules concerning broker-dealers. Broker-dealers are required to demonstrate their capital adequacy. The reporting/disclosure rules impose requirements on broker-dealers with respect to risk management, internal controls, and records relating to counterparties. All such records must be produced at the request of the agency at any time. The agencies' registration requirements for broker-dealers are enforced by fines and penalties and thus constitute a comprehensive disciplinary system for the violation of such rules.

With respect to Germany, the BAK, an independent federal institution with ultimate responsibility to the Ministry of Finance, in cooperation with the Deutsche Bundesbank, the central bank of the German banking system, provides extensive regulation of the banking sector. The BAK insures that Salomon Bros. AG has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards, such as requirements regarding adequate internal controls, oversight, administration and financial resources. The BAK reviews compliance with these limitations on operations and internal control requirements through an annual audit performed by the year-end auditor and through special audits, e.g., on specific sections of the Banking Act, as ordered by the BAK and the respective State Central Bank auditors. The BAK obtains information on the condition of Salomon Bros. AG, and its branches in Tokyo and Milan, by requiring submission of periodic, consolidated financial reports and through a mandatory annual report prepared by the auditor. The BAK also receives information regarding capital adequacy, country risk exposure, and foreign exchange exposure from Salomon Bros. AG. German banking law mandates penalties to insure correct reporting to the BAK. The auditors face penalties for gross violation of their duties in auditing, for reporting misleading information, omitting essential information from the audit report, failing to request pertinent information, or failing to report to the BAK.

Salomon Bros. represents that, in connection with the transactions covered by this proposed exemption, the Foreign Affiliates' compliance with any applicable requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act (as discussed further in Paragraph 6, below), and S.E.C. interpretations thereof, providing for foreign affiliates a limited exemption from U.S. registration requirements, will offer additional protections to the Plans.

Principal Transactions

3. Salomon Bros. represents that the Foreign Affiliates operate as traders in dealers' markets wherein they customarily purchase and sell securities for their own account in the ordinary course of their business as broker-dealers or banks and engage in purchases and sales of securities, including options on securities, with their clients. Such trades are referred to as principal transactions. Salomon Bros. represents that the role of a broker-dealer in a principal transaction in the subject foreign countries is virtually identical to that of a broker-dealer in a principal transaction in the United States.

Salomon Bros. requests an individual exemption to permit the Foreign Affiliates to engage in principal transactions with the Plans under terms and conditions equivalent to those required in Prohibited Transaction Class Exemption 75–1 (PTCE 75–1, 40 FR 50845, October 31, 1975), Part II.[2] Salomon Bros. states that because PTCE 75–1 provides an exemption only for U.S. registered broker-dealers and U.S. banks, the principal transactions at issue would fall outside the scope of relief provided by PTCE 75–1.[3]

4. Salomon Bros. represents that like the U.S. dealer markets, international equity and debt markets, including the options markets, are no less dependent on a willingness of dealers to trade as principals. Over the past decade, Plans have increasingly invested in foreign equity and debt securities, including debt securities issued by foreign governments. Thus, Plans seeking to enter into such investments may wish to increase the number of trading partners available to them by trading with the Foreign Affiliates.

5. Under the conditions of this proposed exemption, as in PTCE 75–1, Part II, the Foreign Affiliate must customarily purchase and sell securities for its own account in the ordinary course of its business as a broker-dealer or bank. The terms of any principal transaction will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. Neither the Foreign Affiliate nor an affiliate thereof will have discretionary authority or control with respect to the investment of the Plan assets involved in the principal transaction, or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets. In addition, the Foreign Affiliate will be a party in interest or disqualified person with respect to the Plan assets involved in the principal transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code (i.e., a service provider to the Plan), or by reason of a relationship to such a person as described in such sections.

6. Salomon Bros. represents that Rule 15a–6 of the 1934 Act provides an exemption from U.S. registration

[2] The Department notes that the proposed principal transactions are subject to the general fiduciary responsibility provisions of Part 4 of Title I in the Act. Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently and solely in the interest of the plan and its participants and beneficiaries, when making investment decisions on behalf of the plan.

[3] PTCE 75–1, Part II, provides an exemption, under certain conditions, from section 406(a) of the Act and section 4975(c)(1)(A) through (D) of the Code, for principal transactions between employee benefit plans and U.S. registered broker-dealers or U.S. banks that are parties in interest with respect to such plans.

requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a ''U.S. institutional investor'' or a ''U.S. major institutional investor,'' provided that the foreign broker-dealer, among other things, enters into these principal transactions through a U.S. registered broker or dealer intermediary.

The term ''U.S. institutional investor,'' as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if:

(a) The investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or

(b) The employee benefit plan has total assets in excess of $5 million, or

(c) The employee benefit plan is a self-directed plan with investment decisions made solely by persons that are ''accredited investors,'' as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended.

The term ''U.S. major institutional investor,'' as defined in Rule 15a–6(b)(4), includes a U.S. institutional investor that has total assets in excess of $100 million. Salomon Bros. represents that the intermediation of the U.S. registered broker or dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

Salomon Bros. represents that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major institutional investor in accordance with Rule 15a–6 must, among other things:

(a) Provide written consent to service of process for any civil action brought by or proceeding before the S.E.C. or a self-regulatory organization;

(b) Provide the S.E.C. with any information or documents within its possession, custody or control, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the S.E.C. requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker or dealer through which the principal transactions with the U.S. institutional and major institutional investors are effected, among other things, for:

(1) effecting the transactions, other than negotiating their terms;

(2) issuing all required confirmations and statements;

(3) as between the foreign broker-dealer and the U.S. registered broker or dealer, extending or arranging for the extension of any credit in connection with the transactions;

(4) maintaining required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;[4]

(5) receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or U.S. major institutional investor in compliance with Rule 15c3–3 (Customer Protection—Reserves and Custody of Securities) of the 1934 Act; and

(6) Participating in all oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor, other than a U.S. major institutional investor.

Extensions of Credit

7. Salomon Bros. represents that a normal part of the execution of securities transactions by broker-dealers on behalf of clients, including employee benefit plans, is the extension of credit to clients so as to permit the settlement of transactions in the customary three-day settlement period. Such extensions of credit are also customary in connection with the writing of option contracts.

Salomon Bros. requests that the proposed exemption include relief for extensions of credit to the Plans by the Foreign Affiliates in the ordinary course of their purchases or sales of securities, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts. In this regard, an exemption for such extensions of credit is provided under PTCE 75–1, Part V, only for transactions between plans and U.S. registered broker-dealers and U.S. banks.[5]

8. Under the conditions of this proposed exemption, as in PTCE 75–1, Part V, the Foreign Affiliate may not be a fiduciary with respect to the Plan assets involved in the transaction. However, an exception to such condition would be provided herein, as in PTCE 75–1, if no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with any such extension of credit. In addition, the extension of credit must be lawful under the 1934 Act and any rules or regulations thereunder, if the 1934 Act rules or regulations were applicable. If the 1934 Act would not be applicable, the extension of credit must still be lawful under applicable foreign law, in the country where the particular Foreign Affiliate is domiciled.

Securities Lending

9. The Foreign Affiliates, acting as principals, actively engage in the borrowing and lending of securities, typically foreign securities, from various institutional investors, including employee benefit plans.

Salomon Bros. requests an exemption for securities lending transactions between the Foreign Affiliates and the Plans under terms and conditions equivalent to those required in Prohibited Transaction Class Exemption 81–6 (PTCE 81–6, 46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987).[6] Because PTCE 81–6 provides an exemption only for U.S. registered broker-dealers and U.S. banks, the securities lending transactions at issue would fall outside the scope of relief provided by PTCE 81–6.

10. The Foreign Affiliates utilize borrowed securities either to satisfy their own trading requirements or to re-lend to other broker-dealers and entities which need a particular security for a certain period of time. As described in the Federal Reserve Board's Regulation T, borrowed securities are often used to meet delivery obligations in the case of short sales or the failure to receive securities that a broker-dealer is required to deliver. Salomon Bros. represents that foreign broker-dealers are those broker-dealers most likely to seek to borrow foreign securities. Thus, the requested exemption will increase the lending demand for such securities, providing the Plans with increased securities lending opportunities, which will earn such Plans additional rates of

[4] Salomon Bros. represents that all such requirements relating to record-keeping of principal transactions would be applicable to any Foreign Affiliate in a transaction that would be covered by this proposed exemption.

[5] PTCE 75–1, Part V, provides an exemption, under certain conditions, from section 406 of the Act and section 4975(c)(1) of the Code, for extensions of credit, in connection with the purchase or sale of securities, between employee benefit plans and U.S. registered broker-dealers or U.S. banks that are parties in interest with respect to such plans.

[6] PTCE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to U.S. registered broker-dealers and U.S. banks that are parties in interest with respect to such plans.

return on the borrowed securities (as discussed below).

11. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities, (e.g., from the receipt of any interest, dividends, or other distributions due on those securities and from any appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized, and the collateral usually is in the form of cash, irrevocable bank letters of credit, or high quality liquid securities, such as U.S. Government or Federal Agency obligations.

12. With respect to the subject securities lending transactions, neither the Foreign Affiliate nor an affiliate of the Foreign Affiliate will have discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

13. By the close of business on the day the loaned securities are delivered, the Plan will receive from the Foreign Affiliate (by physical delivery, book entry in a securities depository, wire transfer, or similar means) collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral will be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and will be held in the United States. The collateral will have, as of the close of business on the business day preceding the day it is posted by the Foreign Affiliate, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same).

14. The loan will be made pursuant to a written Loan Agreement, which may be in the form of a master agreement covering a series of securities lending transactions between the Plan and the Foreign Affiliate. The terms of the Loan Agreement will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. The Loan Agreement will also contain a requirement that the Foreign Affiliate pay all transfer fees and transfer taxes relating to the securities loans.

15. In return for lending securities, the Plan will either (a) receive a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) have the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Foreign Affiliate, if such fee is not greater than what the Plan would pay in a comparable arm's length transaction with an unrelated party.

Earnings generated by non-cash collateral will be returned to the Foreign Affiliate. The Plan will be entitled to at least the equivalent of all distributions on the borrowed securities made during the term of the loan. Such distributions will include cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of any applicable tax withholdings) had it remained the record owner of such securities.

16. If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate will deliver additional collateral, by the close of the Plan's business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent.

17. Before entering into a Loan Agreement, the Foreign Affiliate will furnish to the independent Plan fiduciary (a) the most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change.

18. The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate will deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within (a) the customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least. In the event that the Foreign Affiliate fails to return the securities, or the equivalent thereof, within the designated time, the Plan will have certain rights under the Loan Agreement to realize upon the collateral. The Plan may purchase securities identical to the borrowed securities, or the equivalent thereof, and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with replacing the borrowed securities. The Foreign Affiliate is obligated to pay to the Plan the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate as determined in accordance with an independent market source. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary.

19. The independent Plan fiduciary will maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act[7] and the regulations promulgated under 29 CFR 2550.404(b)–1.

20. In summary, the applicant represents that the subject transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) With respect to the principal transactions effected by the Foreign Affiliates, the proposed exemption will enable the Plans to realize the same benefits of efficiency and convenience which such Plans could derive from principal transactions with U.S. registered broker-dealers or U.S. banks, pursuant to PTCE 75–1, Part II;

(b) With respect to extensions of credit in connection with purchases or sales of securities, the proposed exemption will enable the Foreign Affiliates and the Plans to extend credit in the ordinary course of the Foreign

[7] Section 404(b) of the Act states that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, except as authorized by regulation by the Secretary of Labor.

Affiliate's business to effect agency or principal transactions within the customary three-day settlement period, or in connection with the writing of option contracts, for transactions between plans and U.S. registered broker-dealers or U.S. banks, pursuant to PTCE 75–1, Part V;

(c) With respect to securities lending transactions effected by the Foreign Affiliates, the proposed exemption will enable the Plans to realize a low-risk return on securities that otherwise would remain idle, as in securities lending transactions between plans and U.S. registered broker-dealers or U.S. banks, pursuant to PTCE 81–6; and

(d) The proposed exemption will provide the Plans with virtually the same protections as those provided by PTCE 75–1 and PTCE 81–6.

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

Citizens Bank New Hampshire Located in Manchester, New Hampshire

[Application No. D–10352]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Exemption for In-Kind Transfers of CIF Assets

If this exemption is granted, the restrictions of sections 406(a) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, effective October 11, 1996, to the past in-kind transfer of assets of employee benefit plans (the Client Plans) for which Citizens Bank New Hampshire (the Bank) serves as fiduciary, other than plans established and maintained by the Bank, that are held in a portfolio of a collective investment fund maintained by the Bank (the CIF), in exchange for shares of the Berger/BIAM International Institutional Fund (the B/B Fund), an open-end investment company registered under the Investment Company Act of 1940 (the 1940 Act), the investment adviser and investment sub-adviser of which are BBOI Worldwide LLC (BBOI) and Bank of Ireland Asset Management Limited (BIAM), respectively, which are related to the Bank; provided the following conditions and the general conditions of Section III below are met:

(A) No sales commissions or other fees were paid by the Client Plans in connection with the purchase of B/B Fund shares through the in-kind transfer of CIF assets and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the B/B Fund;

(B) Each Client Plan received shares of the B/B Fund which had a total net asset value that is equal to the value of the Client Plans' pro rata share of the assets of the CIF on the date of the transfer, as determined in a single valuation performed in the same manner at the close of the same business day, using an independent source in accordance with Rule 17a–7(b) issued by the Securities and Exchange Commission under the 1940 Act and the procedures established by the B/B Fund pursuant to Rule 17a–7(b) for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on the current market value of the assets of the CIF, as objectively determined by an independent principal pricing service (the Principal Pricing Service).

(C) A second fiduciary who is independent of and unrelated to the Bank (the Second Fiduciary) received advance written notice of the in-kind transfer of assets of the CIF and full written disclosure of information concerning the B/B Fund and, on the basis of such information, authorized in writing the in-kind transfer of the Client Plan's CIF assets to the B/B Fund in exchange for shares of the B/B Fund. The full written disclosure referred to in this paragraph (C) of Section I included the following information:

(1) A current prospectus for the B/B Fund;

(2) A description of the fees for investment advisory or similar services that are to be paid (directly or indirectly) by the B/B Fund to BBOI and BIAM, the fees paid to the Bank for Secondary Services, as defined in Section IV below, and all other fees to be charged to or paid by the Client Plan and the B/B Fund directly or indirectly to BBOI, BIAM, the Bank, or unrelated third parties, including the nature and extent of any differential between the rates of the fees;

(3) The reasons for the Bank's determination that the Client Plan's investment in the B/B Fund is appropriate;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of the Client Plan may be invested in the B/B Fund and, if so, the nature of such limitations;

(D) On the basis of the information described in paragraph (C) of this Section III, the Second Fiduciary authorized in writing the investment of assets of the Client Plans in shares of the Fund and the fees received by the Advisers in connection with their services to the B/B Fund. Such authorization by the Second Fiduciary is consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(D) The Bank sent by regular mail to the Second Fiduciary no later than 150 days after the completion of the transfer a written confirmation that contained the following information:

(a) the identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4);

(b) the price of each such security involved in the transaction;

(c) the identity of the pricing service consulted in determining the value of such securities;

(d) the number of CIF units held by the Client Plan immediately before the transfer, the related per-unit value, and the total dollar amount of such CIF units; and

(e) the numbers of shares in the B/B Fund that are held by the Client Plan following the transfer, the related per-share net asset value, and the total dollar amount of such shares.

(E) The Bank did not and will not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(F) On an ongoing basis, for the duration of a Client Plan's investment in the B/B Fund, the Bank provides the Second Fiduciary with the following information:

(1) At least annually, a copy of an updated prospectus of the B/B Fund; and

(2) Upon request, a report or statement containing a description of all fees paid to the Bank, BBOI, BIAM, and their affiliates by the B/B Fund and the Berger/BIAM International Portfolio, the master fund with respect to the B/B Fund pursuant to a ''master/feeder'' structure.

(G) Neither the Bank nor the Advisers nor any affiliate thereof, including any officer or director thereof, purchases shares of the B/B Fund from any of the Client Plans for its own account or sells shares of the B/B Fund to any of the Client Plans from its own account.

(H) The requirements of Section II of this exemption are met with respect to all arrangements under which investment advisory fees are paid by Client Plans to the Bank and any other party in interest with respect to the Client Plans in connection with Client Plan assets invested in the B/B Fund.

Section II—Exemption for Receipt of Fees from Funds

The restrictions of section 406(a) of the Act and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) through (F) of the Code, shall not apply, effective October 11, 1996, to the receipt of fees from the B/B Fund and/or the B/B Portfolio by the Bank, BBOI Worldwide LLC (BBOI) and Bank of Ireland Asset Management (U.S.) Limited (BIAM; collectively, the Advisers) for acting as the investment adviser, subadviser, custodian, subadministrator, or provider of other services which are not investment advisory services (Secondary Services) for the B/B Fund in connection with the investment in the B/B Fund by employee benefit plans (the Client Plans) for which the Bank acts as a fiduciary, provided the following conditions and the general conditions of Section III below are met:

(A) No sales commissions are paid by the Client Plans in connection with purchases or sales of shares of the B/B Fund and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the B/B Fund;

(B) The price paid or received by the Client Plans for shares in the B/B Fund is the net asset value per share, as defined in paragraph (E) of Section IV, at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time;

(C) Neither the Advisers nor the Bank nor an affiliate thereof, including any officer or director thereof, purchases from or sells to any of the Client Plans shares of the B/B Fund or the B/B Portfolio;

(D) As to each individual Plan, the combined total of all fees received by the Advisers for the provision of services to the Plan, and in connection with the provision of services to the B/B Fund and the B/B Portfolio with respect to the Plan's investment in the B/B Fund, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act;

(E) The Advisers do not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions;

(F) The Client Plans are not sponsored by the Advisers;

(G) A Second Fiduciary who is acting on behalf of each Plan and who is independent of and unrelated to the Advisers, as defined in paragraph (H) of Section IV below, receives in advance of the investment by the Plan in the B/B Fund a full and detailed written disclosure of information concerning the B/B Fund (including, but not limited to, a current prospectus for the B/B Fund in which such Plan's assets will be invested and a statement describing the fee structure and, upon request by the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, once such documents become available);

(H) On the basis of the information described in paragraph (G) of this Section II, the Second Fiduciary authorizes in writing the investment of assets of the Client Plans in shares of the Fund and the fees received by the Advisers in connection with their services to the B/B Fund. Such authorization by the Second Fiduciary will be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(I) The authorization described in paragraph (H) of this Section II is terminable at will by the Second Fiduciary of a Plan, without penalty to such Plan. Such termination will be effected within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption;

(J) Client Plans do not pay any Plan-level investment management fees, investment advisory fees, or similar fees to the Bank with respect to any of the assets of such Client Plans which are invested in shares of the B/B Fund. This condition does not preclude the payment of investment advisory fees or similar fees by the B/B Fund or the B/B Portfolio to the Advisers under the terms of an investment advisory agreement adopted in accordance with section 15 of the 1940 Act or other agreement between the Advisers and the B/B Fund or the B/B Portfolio;

(K) In the event of an increase in the rate of any fees paid by the B/B Fund or the B/B Portfolio to any of the Advisers regarding any investment management services, investment advisory services, or fees for other services that any of the Advisers provide to the B/B Fund or the B/B Portfolio over an existing rate for such services that had been authorized by a Second Fiduciary, in accordance with paragraph (H) of this Section II, the Second Fiduciary is provided, at least 30 days in advance of the implementation of such increase, a written notice (which may take the form of a proxy statement, letter or similar communication that is separate from the prospectus of the B/B Fund and which explains the nature and amount of the increase in fees), and approves in writing the continued holding of B/B Fund shares acquired prior to such change (Such approval may be limited solely to the investment advisory and other fees paid by the BB/Fund in relation to the fees paid by the plan and need not relate to any other aspects of such investment);

(L) With respect to the B/B Fund, the Bank will provide the Second Fiduciary of each Plan:

(a) At least annually with a copy of an updated prospectus of the B/B Fund and the B/B Portfolio; and

(b) Upon the request of such Second Fiduciary, with a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the B/B Fund and the B/B Portfolio to the Advisers;

(M) All dealings between the Client Plans and the B/B Fund are on a basis no less favorable to such Client Plans than dealings between the Funds and other shareholders holding the same class of shares as the Client Plans.

Section III—General Conditions

(A) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (B) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (B) below.

(B)(1) Except as provided in paragraph (B)(2) and notwithstanding

any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (A) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of a Client Plan who has authority to acquire or dispose of shares of the B/B Fund owned by the Client Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Client Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (B)(1)(ii) and (iii) shall be authorized to examine trade secrets of the Advisers, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this exemption:

(A)(1) The term ''Bank'' means Citizens Bank New Hampshire;

(2) The term ''BIAM'' means Bank of Ireland Asset Management;

(3) The term ''BBOI'' means BBOI Worldwide LLC;

(B) An ''affiliate'' of a person includes:

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

(2) Any officer, director, employee, relative, or partner in any such person; and

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

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

(D)(1) The terms ''Fund'' and ''B/B Fund'' mean the Berger/BIAM International Institutional Fund, an open-end investment company registered under the 1940 Act, one of a series of investment portfolios which are distinct investment vehicles referred to as ''feeder'' funds, with respect to which BBOI and BIAM may provide Secondary Services.

(2) The terms ''Portfolio'' and ''B/B Portfolio'' mean the Berger/BIAM International Portfolio, an open-end investment company registered under the 1940 Act, the master fund with respect to the B/B Fund pursuant to a ''master/feeder'' arrangement, with respect to which BBOI and BIAM serve as investment adviser and investment sub-adviser, respectively.

(E) The term ''net asset value'' means the amount for purposes of pricing all purchases, sales and redemptions of shares of the Berger/BIAM International Institutional Fund (the B/B Fund) calculated by dividing the total value of such Fund's assets, determined by a method set forth in the B/B Fund's prospectus and statement of additional information, less the liabilities chargeable to the B/B Fund, by the number of outstanding shares.

(F) The term ''Principal Pricing Service'' means an independent, recognized pricing service that has determined the aggregate dollar value of marketable securities involved in the transfer of CIF assets.

(G) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(H) The term ''Second Fiduciary'' means a fiduciary of a Plan who is independent of and unrelated to the Bank, BIAM and BBOI. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank, BIAM and BBOI if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank, BIAM or BBOI;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary, is an officer, director, partner or employee of the Bank, BIAM or BBOI (or is a relative of such persons); or

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner or employee of the Bank, BIAM or BBOI (or relative of such persons) is a director of such Second Fiduciary, and if he or she abstains from participation in the choice of a Plan's investment adviser, the approval of any such purchase or sale between a Plan and the B/B Fund, the approval of any change of fees charged to or paid by the Plan, the B/B Fund or the B/B Portfolio, and the transactions described in Sections I and II above, then paragraph (H)(2) of this section shall not apply.

(I) The term ''Secondary Service'' means a service, other than investment advisory or similar service, which is provided by the Bank, BIAM or BBOI to the B/B Fund.

EFFECTIVE DATE: This exemption, if granted, will be effective as of October 11, 1996.

Summary of Facts and Representations

1. The Bank, formerly named First NH Bank and the successor by merger to First NH Investment Services Corp., is a New Hampshire guaranty savings bank with its principal offices in Manchester, New Hampshire. The Bank is wholly owned by Citizens Financial Group, Inc., which is 23½ percent owned by the Bank of Ireland (BI), a publicly traded, diversified financial services group managing assets in excess of $16 billion worldwide. The Bank represents that it serves a number of employee benefit plan clients (the Plans) in the capacity of trustee, investment adviser, and/or custodian. At least a portion of the assets of the Plans are invested in the NH Pooled Employee Benefit Trust (the CIF), a collective investment fund organized as a group trust pursuant to Internal Revenue Service Revenue Ruling 81–100 (1981–1 C.B. 326) established and trusteed by the Bank. One of the investment portfolios of the CIF is the First International Equity Fund (the FIEF Portfolio), which is the subject of this proposed exemption. As of August 31, 1996, the Bank had approximately $6 million of Plans assets under management in the FIEF Portfolio. The Bank is the investment adviser of the FIEF Portfolio, and the sub-adviser is Bank of Ireland Asset Management (U.S.) Limited (BIAM), which is a second-tier subsidiary of BI.

2. The Bank represents that in some cases it has full or joint investment discretion over the assets of a Plan, and in other cases the Plan's participants direct the Bank as to which portfolios in the CIF their accounts are to be invested in. With respect to some Plans for which the Bank holds investment discretion, the Bank has chosen to invest a portion of such Plans' assets in the FIEF Portfolio. With respect to Plans providing for participant-directed investment of individual accounts, some participants in the Plans have chosen to direct the Bank to invest a portion of their accounts in the FIEF Portfolio. The Bank states that in either case it is more than merely a nondiscretionary fiduciary of the Plan since it has responsibility for the management of the Plan's assets that are invested in the FIEF Portfolio (hereinafter, Plans with assets invested in the FIEF Portfolio are referred to as Client Plans). As investment sub-adviser to the FIEF

Portfolio, BIAM is also a fiduciary with respect to Client Plans.

3. The B/B Fund is the Berger/BIAM International Institutional Fund, a no-load, open-end management investment company organized as a diversified series of a trust known as the Berger/BIAM Worldwide Funds Trust. The B/B Fund invests all of its assets which are available for investment in the Berger/BIAM International Portfolio (the B/B Portfolio) as part of a so-called ''master-feeder'' structure, under which the B/B Portfolio is the master fund and the
B/B Fund is the feeder fund. The B/B Portfolio is an open-end management investment company organized as a diversified series of a trust known as the Berger/BIAM Worldwide Portfolios Trust. The investment adviser of the B/B Portfolio is BBOI Worldwide LLC, which is 50 percent owned by a wholly-owned subsidiary of BI. The investment sub-adviser of the B/B Portfolio is Bank of Ireland Asset Management (BIAM), a wholly-owned subsidiary of BI.[8]

4. The Bank represents that it determined in 1996 to convert the FIEF Portfolio into shares of the B/B Fund. In this regard, on October 11, 1996, the Bank accomplished this conversion by means of the in-kind transfer of Client Plans' assets to the B/B Fund in exchange for the Client Plans' receipt of shares of the B/B Fund. The Bank represents that it determined to cause the Client Plans to transfer securities to the B/B Fund, rather than cash, in order to avoid the additional costs and risks to the Client Plans of disposing of and reacquiring securities through the open securities markets. For this past in-kind transfer of Client Plans' assets to the B/B Fund in exchange for shares of the B/B Fund, the Bank is requesting an exemption under the terms and conditions described herein.

5. The Bank represents that the Client Plans consist of pension and profit-sharing plans, including plans with cash or deferred arrangements under section 401(k) of the Internal Revenue Code of 1986, as amended (the Code), and that some of the Client Plans are participant-directed individual account plans. The Bank states that as a custodian or participant-directed trustee of a plan, it has custody of the plan's assets and is responsible for collecting all income, performing bookkeeping and accounting, generating periodic statements of account activity and other reports, and making payments or distributions from the plan as directed. When serving as a custodian or directed trustee, the Bank represents that it has no investment discretion over the assets involved and no duty to review investments or make investment recommendations, acting only as directed by plan participants. However, some participants in such plans have directed the Bank to invest at least a portion of their accounts in the FIEF Portfolio. With respect to these Client Plans, the Bank is a fiduciary with investment discretion over plan assets to the extent the Bank is investment adviser of the FIEF Portfolio. With respect to plans for which the Bank serves as a discretionary trustee or investment manager, the Bank represents that it generally invests the assets of such plans in the CIF, and within the CIF, the Bank invests some of the assets of such plans in the FIEF Portfolio.

6. The Bank represents that it determined that it would be in the best interests and protective of the participants and beneficiaries of the Client Plans to convert such Plans' interests in the FIEF Portfolio entirely to shares of the B/B Fund for the following reasons:

(a) As an open-end investment management company, the B/B Fund's registration with the SEC requires greater participant disclosure than that required by bank regulators and provides an enhanced mechanism for review of disclosure documentation;

(b) Sponsors and directing participants of Client Plans will be able to monitor more easily the performance of their investment since it is anticipated that information concerning the investment performance of the B/B Fund will be available in daily newspapers of general circulation, upon the achievement of certain size requirements;

(c) The B/B Fund will be valued on a daily basis, whereas the FIEF Portfolio has been valued only monthly. The daily valuation permits (i) immediate investment of Plan contributions in the B/B Fund, (ii) greater flexibility in transferring assets from the B/B Fund to another type of investment, and (iii) daily redemption of investments in the B/B Fund for purposes of making distributions; and

(d) Unlike investments in the FIEF Portfolio, shares of the B/B Fund can be given directly to plan participants in benefit distributions, thus avoiding the expense and delay of liquidating plan investments and facilitating rollovers into individual retirement accounts.

7. The Bank represents that the securities held in the FIEF Portfolio on behalf of the Client Plans were transferred to the B/B Fund in kind in order to preserve the values of the Client Plans' interests in the FIEF Portfolio and to avoid potentially large transaction costs and market risks that would be incurred by the Client Plans in a total liquidation of the securities and by the B/B Fund in reacquisition of the securities in the open market. The Bank states that the conversion of the FIEF Portfolio occurred as follows: After receipt of the appropriate approvals, discussed below, the Bank transferred the FIEF Portfolio assets to the B/B Fund, pursuant to an asset transfer procedure discussed below, and, in exchange, the B/B Fund transferred to the FIEF Portfolio an appropriate number of shares of the B/B Fund. The Bank represents that these B/B Fund shares had an aggregate value equal to the aggregate value of the assets of the FIEF Portfolio that were transferred. After the transfer, the Bank dissolved the FIEF Portfolio and distributed the newly-acquired B/B Fund shares pro rata to the Client Plans.

8. Prior to the conversion of the FIEF Portfolio into shares of the B/B Fund, the Bank obtained the affirmative written approval of an independent second fiduciary of each Invested Plan (the Second Fiduciary), who generally was the Plan's named fiduciary, trustee (other than the Bank), or sponsoring employer. The Bank provided each Second Fiduciary with a prospectus for the B/B Fund and a written statement giving full disclosure of the information required under Prohibited Transaction Class Exemption 77–4 (PTE 77–4, 42 FR 18732, April 8, 1977), including an explanation of why the Bank believed that the investment of a portion of the assets of the Plan in the B/B Fund was appropriate. On the basis of such information, the proposed conversion of the Plan's investment in the FIEF Portfolio to investment in the B/B Fund

[8] The Bank represents that a master-feeder structure is a two-tiered fund structure in which all the assets of two or more feeder funds are invested in a single master fund, which has an identical investment objective and identical policies and limitations as the investing feeder funds. Shares of the feeder funds are offered to investors in the target market for which the feeder fund and its fee structure are designed (for example, the retail market or the institutional market). Interests in the master fund are sold only to feeder funds. Feeder funds may be mutual funds, bank collective trusts or common trusts, or other types of investing entities. Advisory services are rendered at the master level, while shareholder services and administrative services are rendered largely at the feeder level. In this regard, the Bank represents that the fees paid at the master fund and feeder fund levels are paid for separate, specific services provided to the respective fund, and that any such payment does not result in the double payment of fee for the same service by any shareholder. The Bank represents that the master-feeder structure is aimed at achieving economies of scale and lower overall expense ratios not generally achievable in a traditional, single-tier structure.

was submitted for approval by the Second Fiduciary.

9. Asset transfer procedure: After the Second Fiduciary of each Invested Plan approved the Invested Plan's participation in the conversion of the FIEF Portfolio to shares in the B/B Fund, the asset transfer procedure began. The transfer occurred on October 11, 1996, and the following steps constituted the procedure utilized by the Bank in effecting the conversion:

(A) Shortly prior to the transfer, the assets of the FIEF Portfolio were reviewed to determine whether they were appropriate investments for the B/B Fund, consistent with the B/B Fund's investment objective and policies and the applicable requirements under the Investment Company Act of 1940 (the 1940 Act) and the Code. Assets that were not appropriate investments for the B/B Fund were liquidated prior to the transfer date in the open market, without the involvement of any broker affiliated with the Bank.

(B) For purposes of the transfer, the values of the FIEF Portfolio assets were determined on the basis of market values as of the close of business on the day of the transfer. Values were determined in a single valuation using the valuation procedures described in Rule 17a–7(b) under the Investment Company Act (17 CFR § 270.17a–7(b)), as such rule has been interpreted by the Securities and Exchange Commission. Specifically, the securities in the FIEF Portfolio were valued as follows:

(1) The securities valued were ones for which market quotations are readily available.

(2) The values of the securities were the ''independent current market prices'' of the securities, as required by Rule 17a–7(b), as of close of business on the day of the transfer, which was a Friday. The Bank states that Rule 17a–7(b) specifically defines ''current market price'' for different types of securities that were in the FIEF Portfolio:

(a) If the security was a ''reported security'' as defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (the 1934 Act), the last sale price with respect to such security reported in the consolidated transaction reporting system for that day, or the average of the highest independent bid and lowest independent offer for such security (reported pursuant to Rule 11Ac1–1 under the 1934 Act) as of the close of business on that day if there are no reported transactions in the consolidated system on that day; or

(b) If the security was not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange on that day or the average of the highest independent bid and lowest independent offer on such exchange as of the close of business on that day if there are no reported transactions on such exchange on that day; or

(c) If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest independent bid and lowest independent offer reported on Level 1 of NASDAQ as of the close of business on that day;[9] or

(d) For all other securities, the average of the highest independent bid and lowest independent offer, as of the close of business on the same day, determined on the basis of reasonable inquiry from at least three sources that are either broker-dealers or pricing services independent of the Bank.

(C) After approval by the Second Fiduciaries of the transfer and conversion, the securities and cash in the FIEF Portfolio were transferred to the B/B Fund in exchange for shares of the B/B Fund. The FIEF Portfolio assets transferred to the B/B Fund were in turn transferred by the B/B Fund, as a feeder fund, to the B/B Portfolio master fund. The Bank represents that the in-kind purchase of B/B Fund shares was effected in accordance with the procedures described in the prospectus for the B/B Fund, which provide that the securities being transferred to the B/B Fund need to be eligible for purchase by the B/B Portfolio (consistent with the investment policies and restrictions of the B/B Fund and the B/B Portfolio) and must have a readily ascertainable market value.

(D) The Bank represents that the securities received by the B/B Fund were valued by the B/B Fund for purposes of the transfer transaction in the same manner as the assets were valued by the FIEF Portfolio, and the per-share value of the B/B Fund shares issued were based on the B/B Fund's then-current net asset value. Accordingly, the Bank states that the value of a Plan's investment in the B/B Fund as of the start of business on the Monday following the Friday transfer was the same as the value of its investment in the FIEF Portfolio as of the close of business on the Friday of the transfer.

No brokerage commission or other fee or expense was charged to the FIEF Portfolio or the B/B Fund in the transfer of assets from the FIEF Portfolio to the B/B Fund. The Bank represents that the transfer transactions were in fact ministerial actions, performed in accordance with prescribed, objective procedures. The Bank represents that the pricing of the securities transferred was accomplished by reference to independent sources, and the Client Plans, following the transfer transactions, hold B/B Fund shares of value equal to that of their former units in the FIEF Portfolio.

10. Paragraph (D) of Section I of the exemption describes certain information which the Bank provided to the Second Fiduciary of each Client Plan no later than 150 days after the completion of the transfer transactions. The Bank represents, however, that prior to the Bank's provision of these detailed disclosures, each Second Fiduciary was notified shortly after the October 11, 1996 conversion that the transfer transactions had occurred, with a statement indicating the transaction, the account(s) affected, the date of the trade, the dollar amount of the transaction, the B/B Fund share price, and the total number of shares acquired. The Bank states that this confirmation notice was sent to the Client Plans at various times, depending on the particular plan's reporting cycle: Some of the Client Plans received the confirmation as early as seven to ten days after the end of October 1996, some seven to ten days after the end of November 1996, and others seven to ten days after the end of December 1996.

11. Fee arrangements: The Client Plans pay fees to the Bank in accordance with fee schedules negotiated with the Bank. The Bank represents that individual schedules vary depending on the particular arrangements between the Bank and the Plan fiduciary, the competitive forces in the market and the desires of the Plan sponsor. The Bank states that the annual charge for accounts for which Plan assets are invested in the CIF is based on a percentage of the aggregate market value of the Plan's assets. All fees are charged at least annually, and may be billed as frequently as monthly or quarterly.

BBOI charges an investment advisory fee to the B/B Portfolio in accordance with an investment advisory agreement between the B/B Portfolio and BBOI. This fee is borne indirectly by the B/B Fund as a feeder fund in the master/feeder structure. BBOI in turn contracts with BIAM for investment sub-advisory

[9] The applicant represents that Level 1 of NASDAQ provides the best bid-and-ask quotations for each NASDAQ security that has a minimum of two registered market makers providing quotations. Level 2 provides the current bid-and-ask prices for each market maker in any available NASDAQ security, not only the best prices. Level 3 allows for market makers instantaneously to insert new quotations into the system, and is generally only used by market makers and traders.

services.[10] BBOI has also entered into an administrative services agreement with the B/B Fund under which it is responsible for administering all aspects of the B/B Fund's day-to-day operations. Accordingly, BBOI is responsible for furnishing all administrative services reasonably necessary for the operation of the B/B Fund, including recordkeeping and pricing services, custodian services, transfer agency and dividend distribution services, tax and audit services, legal services, insurance, communications, and other administrative and recordkeeping services.

The Bank has entered into an administrative services agreement with the Berger/BIAM Worldwide Funds Trust and BBOI, as administrator of the B/B Fund, under which the Bank will perform various administrative services for the B/B Fund in return for a fee payable by BBOI. Those services will include providing necessary personnel and facilities to establish and maintain certain shareholder accounts and records; assisting in processing purchase and redemption requests from Client Plans or their participants; aggregating and processing purchase and redemption requests from Client Plans or their participants and placing net purchase and redemption orders with the B/B Fund's transfer agent; transmitting and receiving funds in connection with Plan orders to purchase or redeem shares; providing information periodically to Client Plans or their participants indicating their balance in shares of the B/B Fund, share prices, dividends paid, and/or dividend payment dates; responding to inquiries from the Plans or their participants relating to the B/B Fund, the services performed by the Bank, or the account balances of the Client Plans or their participants; providing subaccounting with respect to shares of the B/B Fund beneficially owned by Client Plans or their participants; forwarding shareholder communications from the B/B Fund (such as proxies, shareholder reports, annual and semi-annual financial statements and dividend and distributions notices) to Client Plans or their participants; and providing such other similar services as BBOI or the Berger/BIAM Worldwide Funds Trust may reasonably request, in accordance with applicable statutes, rules and regulations.

The Bank states that it receives a bundled fee from the Plans for its administrative and investment management services to the Plans. The Bank represents that it has determined, and that the Second Fiduciary of each Invested Plan has agreed, that one-third of this bundled fee is attributable to the investment management services provided by the Bank. The Bank has amended it bundled fee arrangement so that with respect to the Plan assets invested in the B/B Fund shares, one-third of the bundled fee will not be charged. Accordingly, the Bank represents that pursuant to the requirements of PTE 77–4, the Bank will not receive any investment management fee for the portion of a Plan's assets that are invested in the B/B Fund.

12. In summary, the Bank represents that the in-kind transfer transaction described herein satisfies the criteria of section 408(a) of the Act for the following reasons:

(a) On behalf of each Client Plan a Second Fiduciary authorized in writing such in-kind transfer prior to the transaction and only after such Second Fiduciary received full written disclosure of information concerning the B/B Fund.

(b) Each Client Plan received shares of the B/B Fund in connection with the in-kind transfer of assets from the FIEF Portfolio to the B/B Fund which were equal in value to the Plan's allocable share of assets that had been invested in the FIEF Portfolio on the date of the transfer as determined in a single valuation performed in the same manner and at the close of the business day, using independent sources in accordance with procedures established by the B/B Fund which complied with Rule 17a–7(b) of the 1940 Act, as amended, and the procedures established by the B/B Fund pursuant to Rule 17a–7 for the valuation of such assets.

(c) Following the completion of the in-kind transfer transaction, the Bank provided the Second Fiduciary of each Client Plan with written confirmation containing (1) the identity of the security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) of the 1940 Act, (2) the price of the security involved in the transaction; (3) the identity of the pricing service consulted in determining the value of such securities; (4) the number of FIEF Portfolio units held by the Plan immediately before the transfer, and the related per unit value and total dollar amount of such FIEF Portfolio units; and (5) the number of shares in the B/B Fund held by the Plan following the purchase and the liquidation of the FIEF Portfolio, and the related per share net asset value and total dollar amount of such shares.

(d) As to each Invested Plan, no investment management fee is or will be paid to the Bank with respect to Plan assets invested in shares of the B/B Fund.

(e) No sales commissions were paid by an Invested Plan in connection with the acquisition of shares in the B/B Fund.

(f) With respect to investments in the B/B Fund by the Client Plans, each Second Fiduciary received full and detailed written disclosure of information concerning the B/B Fund, including a current prospectus and a statement describing the fee structure, and such Second Fiduciary authorized, in writing, the investment of the Plan's assets in the B/B Fund and the fees payable to the Bank; and

(g) The Bank will provide ongoing disclosures to Second Fiduciaries of Client Plans to verify the fees charged to the Bank by the B/B Fund.

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

Barclays Bank PLC (Barclays) Located in London, England

[Application No. D–10486]

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).[11]

Section I. Covered Transactions

A. The restrictions of section 406(a)(1)) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective July 31, 1997, to any purchase or sale of a security between Barclays or any affiliate of Barclays which is a bank or a broker-dealer subject to British law (the Foreign Affiliate), and employee

[10] The Bank represents that because BI, the parent corporation of BBOI and BIAM, has only a 23.3% ownership interest in the Bank, BBOI and BIAM do not appear to be ''affiliates'' of the Bank for purposes of Prohibited Transaction Exemption 77–4 (PTE 77–4, 42 FR 18732, April 8, 1977) and, accordingly, the exemption provided by PTE 77–4 does not appear to be available with respect to fees paid by the B/B Fund to BBOI and BIAM. For this reason, the Bank has requested that the exemption proposed herein include exemptive relief for the payment of investment advisory fees, as well as fees for any Secondary Service, to BBOI and BIAM for such services to the B/B Fund, under conditions which are virtually identical to those contained in PTE 77–4.

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

benefit plans (the Plans) with respect to which Barclays or the Foreign Affiliate is a party in interest, including options on securities written by the Plan, Barclays or the Foreign Affiliate, provided that the following conditions and the General Conditions of Section II, are satisfied:

(1) Barclays or the Foreign Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer.

(2) The terms of any transaction are at least as favorable to the Plan as those which the Plan could obtain in a comparable arm's length transaction with an unrelated party.

(3) Neither Barclays, the Foreign Affiliate, nor any of their affiliates thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to those assets, and Barclays or the Foreign Affiliate is a party in interest or disqualified person with respect to the Plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, Barclays or the Foreign Affiliate shall not be deemed to be a fiduciary with respect to Plan assets solely by reason of providing securities custodial services for a Plan.

B. The restrictions of sections 406(a)(1) (A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply, effective July 31, 1997, to any extension of credit to a Plan by Barclays or the Foreign Affiliate to permit the settlement of securities transactions or in connection with the writing of options contracts or the purchase or sale of securities, provided that the following conditions and the General Conditions of Section II are satisfied:

(1) Barclays or the Foreign Affiliate is not a fiduciary with respect to any Plan assets, unless no interest or other consideration is received by Barclays, the Foreign Affiliate, or any of their affiliates in connection with such extension of credit.

(2) Any extension of credit would be lawful under the Securities Exchange Act of 1934 (the 1934 Act) and any rules or regulations thereunder if such Act, rules or regulations were applicable and would be lawful under applicable foreign law.

C. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective July 31, 1997, to the lending of securities that are assets of a Plan to Barclays or the Foreign Affiliate, provided that the following conditions and the General Conditions of Section II are satisfied:

(1) Neither Barclays, the Foreign Affiliate nor any of their affiliates thereof has discretionary authority or control with respect to the investment of Plan assets involved in the transaction, or renders investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to those assets.

(2) The Plan receives from Barclays or the Foreign Affiliate, either by physical delivery or by book entry in a securities depository located in the United States, by the close of business on the day on which the securities lent are delivered to Barclays or the Foreign Affiliate, collateral consisting of U.S. currency, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by persons other than Barclays or the Foreign Affiliate (or any of their affiliates), or any combination thereof, having, as of the close of business on the preceding business day, a market value (or, in the case of letters of credit, a stated amount) equal to not less than 100 percent of the then market value of the securities lent. (The collateral referred to in this Section I(c)(2) must be in U.S. dollars or dollar-denominated securities or United States bank letters of credit and must be held in the United States.)

(3) The loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains terms at least as favorable to the Plan as those the Plan could obtain in an arm's length transaction with an unrelated party.

(4) In return for lending securities, the Plan either (i) receives a reasonable fee which is related to the value of the borrowed securities and the duration of the loan, or (ii) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to Barclays or the Foreign Affiliate, if such fee is not greater than the Plan would pay an unrelated party in a comparable arm's length transaction with an unrelated party.

(5) The Plan receives at least the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities that the Plan would have received (net of tax withholdings)[12] had it remained the record owner of such securities.

(6) If the market value of the collateral on the close of trading on a business day falls below 100 percent of the market value of the borrowed securities at the close of trading on that day, Barclays or the Foreign Affiliate delivers additional collateral, by the close of business on the following business day, to bring the level of the collateral back to at least 100 percent of the market value of all the borrowed securities as of such preceding day. Notwithstanding the foregoing, part of the collateral may be returned to Barclays or the Foreign Affiliate if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities.

(7) Prior to the making of any securities loan, Barclays or the Foreign Affiliate furnishes to the independent fiduciary for the Plan who is making decisions on behalf of the Plan with respect to the lending of securities: (i) the most recently available audited and unaudited statements of its financial condition; and (ii) a representation by Barclays or the Foreign Affiliate that, as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished financial statement that has not been disclosed to the Plan fiduciary.

(8) The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon Barclays or the Foreign Affiliate delivers certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Plan within (i) the customary delivery period for such securities; (ii) five business days; or (iii) the time negotiated for such

[12] The Department notes the applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that Barclays or the Foreign Affiliate will always put the Plan back in at least as good a position as it would have been in had it not lent the securities.

delivery by the Plan and Barclays (or the Plan and the Foreign Affiliate), whichever is lesser, or, alternatively such period as permitted by Prohibited Transaction Exemption (PTE) 81–6 (43 FR 7527, January 23, 1981) as it may be amended.

(9) In the event that the loan is terminated and Barclays or the Foreign Affiliate fails to return the borrowed securities or the equivalent thereof within the time described in paragraph (8) above, then the Plan may purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of Barclays or the Foreign Affiliate under the Loan Agreement, and any expenses associated with the sale and/or purchase. Barclays or the Foreign Affiliate shall indemnify the Plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date the loan is declared in default, together with expenses not covered by the collateral plus applicable interest at a reasonable rate.

(10) The Plan maintains the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1. However, Barclays or the Foreign Affiliate shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the Plan fails to comply with the requirements of 29 CFR 2550.404(b)–1.

If Barclays or the Foreign Affiliate fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the Plan fiduciary which caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the failure on the part of Barclays or the Foreign Affiliate to comply with the conditions of the exemption.

Section II. General Conditions

(a) Barclays is subject to regulation by the Bank of England.

(b) The Foreign Affiliate—

(1) Is subject to regulation by the Bank of England, or

(2) Is a registered broker-dealer subject to regulation by the Securities and Futures Authority of the United Kingdom (the UK SFA) and is in compliance with all applicable rules and regulations thereof.

(c) Barclays and the Foreign Affiliate are in compliance with all requirements of Rule 15a–6 (17 CFR 240.15a–6), which provides foreign broker-dealers a limited exemption from U.S. broker-dealer registration requirements, and Securities and Exchange Commission (the SEC) interpretations and amendments thereof to Rule 15a–6 under the 1934 Act, to the extent applicable.

(d) Prior to the transaction, Barclays or the Foreign Affiliate enters into a written agreement with the Plan in which Barclays or the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions.

(e) Barclays or the Foreign Affiliate maintains, or causes to be maintained, within the United States for a period of six years from the date of such transaction such records as are necessary to enable the persons described in paragraph (f) of this Section II to determine whether the conditions of this exemption have been met except that—

(1) A party in interest with respect to a Plan, other than Barclays or the Foreign Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) or (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph (e) of this Section II; and

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of Barclays or the Foreign Affiliate, such records are lost or destroyed prior to the end of such six year period.

(f) Notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, Barclays or the Foreign Affiliate makes the records referred to above in paragraph (e) of this Section II, unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(1) The Department, the Internal Revenue Service or the SEC;

(2) Any fiduciary of a participating Plan;

(3) Any contributing employer to a Plan;

(4) Any employee organization any of whose members are covered by a Plan; and

(5) Any participant or beneficiary of a Plan. However, none of the persons described above in paragraphs (f)(2)–(f)(5) of this Section II shall be authorized to examine trade secrets of Barclays or the Foreign Affiliate, or any commercial or financial information which is privileged or confidential.

(g) Prior to any Plan's approval of any transaction with Barclays or the Foreign Affiliate, the Plan is provided copies of the proposed and final exemptions covering the exemptive relief described herein.

Section III. Definitions

For purposes of this proposed exemption,

(a) The term ''Barclays,'' means ''Barclays Bank PLC'' which is subject to regulation by the Bank of England.

(b) The term ''Foreign Affiliate'' means any affiliate of Barclays which is subject to regulation by the Bank of England or the UK SFA.

(c) The term ''affiliate'' of another person shall include:

(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, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner. (For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(d) The term ''security'' includes equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term ''security'' does not include swap agreements or other notional principal contracts.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of July 31, 1997.

Summary of Facts and Representations

1. Barclays, one of the largest full-line investment service firms in the world, is an authorized institution under the Banking Act of 1987 of the United Kingdom and is regulated by the Bank of England. As of June 30, 1998, Barclays had approximately £249 billion ($405.9 billion) in assets and £7.9 billion ($12.9 billion) in stockholder's equity.[13]

2. Barclays Capital Securities Limited (BCSL) is a foreign broker-dealer

[13] A conversion ratio of $1.63 per British Pound Sterling was used to determine the applicable dollar amounts.

affiliate of Barclays. Located in London, BCSL is subject to regulation in the United Kingdom by the UK SFA. As of December 31, 1997, BCSL had total assets of $36.5 billion.

3. Barclays requests exemptive relief from the Department to permit it and any Foreign Affiliate that is subject to British law, to engage in (a) purchases and sales of securities and (b) extensions of credit in connection with such purchases and sales. Such transactions are currently being executed between a Plan and Barclays or a Plan and the Foreign Affiliate in transactions which generally meet the applicable requirements of PTE 75–1, Part II (involving Principal Transactions) and Part V (involving Extensions of Credit) (40 FR 50845, October 31, 1975). However, unlike PTE 75–1, the parties in interest involved in the Principal Transactions that are described herein are not broker-dealers registered under the 1934 Act, reporting dealers which make primary markets in securities of the United States Government and report daily to the Federal Reserve Bank its positions with respect to Government securities and borrowings thereon, or banks supervised by the United States or a State. Similarly, with respect to Extensions of Credit Transactions that are described herein, the parties in interest involved in this proposed exemption are not brokers or dealers registered under the 1934 Act.

Further, Barclays requests exemptive relief with respect to the lending of securities that are assets of a Plan to it or to the Foreign Affiliate. While such transactions would generally meet the applicable requirements of PTE 81–6, as amended, supplemented or superseded, in the present case, again the parties in interest involved herein are not broker-dealers registered under the 1934 Act or exempted from registration under section 15(a)(1) of the 1934 Act as dealers in exempted Government securities, as defined in section 3(a)(12) of the 1934 Act or U.S. banks.

Finally, Barclays requests that the exemptive relief described above apply to its other Foreign Affiliates which, may in the future, be subject to similar regulation by the Bank of England or the UK SFA.

If granted, the exemption will be effective as of July 31, 1997.

4. Barclays represents that it is regulated by the Bank of England whose powers include licensing banks in the United Kingdom, issuing directives to address violations by or irregularities involving such banks, requiring information from a bank or its auditor regarding supervisory matters and revoking bank licenses. Barclays also states that the Bank of England ensures that it has procedures for monitoring and controlling its worldwide activities through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight, administration and financial resources. Barclays further states that it is required to provide the Bank of England on a recurring basis with information regarding capital adequacy, country risk exposure and foreign exchange exposures as well as periodic, consolidated financial reports on the financial condition of Barclays and its affiliates.

5. Barclays represents that although the Foreign Affiliate will not be registered with the SEC, its activities are governed by the rules, regulations and membership requirements of the UK SFA. In this regard, Barclays states that the Foreign Affiliate is subject to the UK SFA rules relating to, among other things, minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules, and books and records requirements with respect to client accounts. Barclays represents that the rules and regulations set forth by the UK SFA and the SEC share a common objective: the protection of the investor by the regulation of the securities industry. Barclays notes that the UK SFA rules require each firm which employs registered representatives or registered traders to have positive tangible net worth and to be able to meet its obligations as they may fall due, and that the UK SFA rules set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. In addition, to demonstrate capital adequacy, Barclays states that the UK SFA rules impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and recordkeeping requirements. In this regard, required records must be produced at the request of the UK SFA at any time. Barclays further states that the rules and regulations of the UK SFA for broker-dealers are backed up by potential fines and penalties as well as rules which establish a comprehensive disciplinary system.

6. Barclays represents that in addition to the protections afforded by the Bank of England and the UK SFA, compliance by it and the Foreign Affiliate with the requirements of Rule 15a–6 (and the amendments and interpretations thereof) will offer further protections to Plans.[14] Rule 15a–6 provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a ''U.S. institutional investor'' or a ''U.S. major institutional investor,'' provided that the foreign broker dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term ''U.S. institutional investor,'' as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment advisor, or (b) the employee benefit plan has total assets in excess of $5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are ''accredited investors'' as defined in Rule 501(a)(1) of Regulation D of the Securities Exchange Act of 1933, as amended. The term ''U.S. major institutional investor'' is defined as a person that is a U.S. institutional investor that has total assets in excess of $100 million or accounts managed by an investment adviser registered under section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.[15] Barclays represents that the intermediation of the U.S. registered broker-dealer imposes upon the foreign broker-dealer the requirement that the securities

[14] According to Barclays, section 3(a)(4) of the 1934 Act defines ''broker'' to mean ''any person engaged in the business of effecting transactions in securities for the account of others, but it does not include a bank.'' Section 3(a)(5) of the 1934 Act provides a similar exclusion for ''banks'' in the definition of the term ''dealer.'' However, section 3(a)(6) of the 1934 Act defines ''bank'' to mean a banking institution organized under the laws of the United States or a State of the United States. Further, Rule 15(a)(6)(b)(2) provides that the term ''foreign broker or dealer'' means ''any non-U.S. resident person * * * whose securities activities, if conducted in the United States, would be described by the definition of ''broker'' or ''dealer'' in sections 3(a)(4) or 3(a)(5) of the [1934] Act.'' Therefore, the test of whether an entity is a ''foreign broker'' or ''dealer'' is based on the nature of such foreign entity's activities and, with certain exceptions, only banks that are regulated by either the United States or a State of the United States are excluded from the definition of the term ''broker'' or ''dealer.'' Thus, for purposes of this exemption request, Barclays is willing to represent that it will comply with the applicable provisions and relevant SEC interpretations and amendments of Rule 15a–6.

[15] See SEC No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997, expanding the definition of ''Major U.S. Institutional Investor'' (the April 9, 1997 No-Action Letter).

transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

Barclays represents that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major institutional investor in accordance with Rule 15a–6 [16] must, among other things:

(a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer through which the transactions with the U.S. institutional and major institutional investors are effected to (among other things):

(1) Effect the transactions, other than negotiating their terms;

(2) Issue all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;

(4) Maintain required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;

(5) Receive, deliver, and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or U.S. major institutional investor in compliance with Rule 15c3–3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities); [17] and

(6) Participate in certain oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor (not the U.S. major institutional investor), and accompany the foreign associated person on certain visits with both U.S. institutional and major institutional investors. Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. Institutional Investor. (See April 9, 1997 SEC No-Action Letter.)

[16] If it is determined that applicable regulation under the 1934 Act does not require Barclays or the Foreign Affiliate to comply with Rule 15a–6, both entities will, nevertheless, comply with paragraphs (a) and (b) above.

[17] Under certain circumstances described in the April 9, 1997 No-Action Letter (e.g., clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and Barclays or between a Plan and the Foreign Affiliate. Barclays notes that in such situations, the U.S. registered broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

7. In addition to the protections cited above, Barclays represents that prior to a transaction described herein, it or the Foreign Affiliate will enter into a written agreement with the Plan whereby it or the Foreign Affiliate will consent to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of such transaction. Further, Barclays or the Foreign Affiliate will maintain, or cause to be maintained, within the United States for a period of six years, from the date of a transaction such records as are necessary to enable the Department and others to determine whether the conditions of the exemption have been met.

Principal Transactions

8. Barclays represents that both it and the Foreign Affiliate operate as traders in dealers' markets wherein they customarily purchase and sell securities for their own account in the ordinary course of their business and engage in purchases and sales of securities, including options on securities written by the Plan, Barclays or the Foreign Affiliate with their clients. Such trades are referred to as principal transactions. Barclays states that the role of a bank or a broker-dealer engaged in a principal transaction in the subject foreign countries is virtually identical to that of a bank or a broker-dealer engaged in a principal transaction in the United States. Therefore as noted above, Barclays requests an individual exemption, effective July 31, 1997, to permit it and Foreign Affiliate to engage in principal transactions with the Plans under the terms and conditions equivalent to those of Part II of PTE 75–1. As previously stated, because PTE 75–1 provides an exemption for U.S. registered broker-dealers and U.S. banks, the principal transactions may fall outside the scope of relief provided therein.

9. Barclays represents that like the U.S. dealer markets, international equity and debt markets, including the options markets, are no less dependent on a willingness of dealers to trade as principals. Over the past decade, Plans have increasingly invested in foreign equity and debt securities, including foreign government securities. Thus, Barclays notes that Plans seeking to enter into such investments may wish to increase the number of trading partners available to them by trading with it or the Foreign Affiliate.

10. Barclays represents that the terms of any principal transaction will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm' length transaction with an unrelated party. In addition, Barclays states that neither it, the Foreign Affiliate nor any of their affiliates thereof will have discretionary authority or control with respect to the investment of the Plan assets involved in the principal transaction or render investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to those assets. Further, Barclays represents that it or the Foreign Affiliate will be a party in interest with respect to those Plan involved in a principal transaction by reason of providing services to a Plan under section 3(14) of the Act or by reason of a relationship to such service provider. However, Barclays maintains that it or the Foreign Affiliate will not be deemed to be a fiduciary with respect to Plan assets solely by reason of providing securities custodial services for a Plan.

Extensions of Credit

11. Barclays represents that a normal part of the execution of securities transactions by broker-dealers on behalf of customers, including Plans, is the extension of credit to customers so as to permit the settlement of transactions in the customary settlement period. Such extensions of credit are customary in connection with the buying and writing of option contracts. Therefore, Barclays requests, effective July 31, 1997, exemptive relief for extensions of credit between it and a Plan or between the Foreign Affiliate and a Plan in the ordinary course of their purchases or sales of securities, regardless of whether they are effected on an agency or a principal basis. Although an exemption for such extensions of credit is provided under Part V of PTE 75–1 for U.S. registered broker-dealers, it is not available for Barclays or for the Foreign Affiliate which are or will be domiciled in the United Kingdom.

12. As in PTE 75–1, Barclays or the Foreign Affiliate may not be a fiduciary with respect to Plan assets involved in the transaction unless no interest or other consideration is received by Barclays, the Foreign Affiliate or any of their affiliates thereof, in connection with any extension of credit. The extension of credit also must be lawful under applicable foreign law.

Securities Lending

13. In addition to exemptive relief for principal transactions and extensions of credit in connection with the purchase or sale of securities, Barclays requests exemptive relief, effective July 31, 1997, for the lending of securities, equivalent to that provided under the terms and conditions of PTE 81–6, a class exemption to permit certain loans of

securities by employee benefit plans. Under such circumstances, Barclays or the Foreign Affiliate, acting as principals, actively engage in the borrowing and lending of securities, typically foreign securities from institutions, including employee benefit plans. Because PTE 81–6 provides an exemption for U.S. registered broker-dealers and U.S. banks, the securities lending transactions at issue herein may, as briefly noted above, fall outside the scope of relief provided by PTE 81–6.

14. It is represented that Barclays and the Foreign Affiliate utilize borrowed securities to satisfy their own trading requirements or to re-lend to other affiliates and entities which need a particular security for a certain period of time. As described in the Federal Reserve Board's Regulation T, borrowed securities are often used to meet delivery obligations in the case of short sales or the failure to receive securities that Barclays or the Foreign Affiliate is required to deliver. Barclays also represents that foreign broker-dealers are the most likely entities that seek to borrow foreign securities. Thus, the exemption will increase the lending demand for such securities and provide the Plans with increased securities lending opportunities.

15. It is represented that an institutional investor, such as a pension plan, lends securities in its portfolio to Barclays or the Foreign Affiliate in order to earn a fee while continuing to enjoy the benefits of owning securities (e.g., from the receipt of any interest, dividends or other distributions due on those securities and from any appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized and the collateral usually is in the form of U.S. currency, irrevocable U.S. bank letters of credit issued by a bank other than Barclays, or high-quality liquid securities such as U.S. Government or Federal Agency obligations. When cash is the collateral, the lender invests the cash and rebates a previously-agreed upon amount to Barclays or the Foreign Affiliate. The ''fee'' received by the lender as compensation for the loan of its securities then consists of the excess, if any, of the earnings on the collateral over the amount of the rebate. When the collateral consists of obligations other than cash, Barclays or the Foreign Affiliate pays a fee directly to the lender.

16. Neither Barclays, the Foreign Affiliate nor any of their affiliates thereof will have discretionary authority or control with respect to the investment of Plan assets involved in the transaction or render investment advice, within the meaning of 29 CFR 2510.3–21(c) with respect to those assets.

17. By the close of business on the day the loaned securities are delivered to Barclays or the Foreign Affiliate, the Plan will receive, from Barclays or the Foreign Affiliate, (by physical delivery, book entry in a U.S. securities depository, wire transfer or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies, irrevocable U.S. bank letters of credit issued by persons other than Barclays, the Foreign Affiliate, or any of their affiliates, or any combination thereof, having, as of the close of trading on the preceding business day, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same). All collateral posted by Barclays or the Foreign Affiliate will be in U.S. dollars or dollar-denominated securities or U.S. bank irrevocable letters of credit and will be held in the United States.

18. The loan will be made pursuant to a written Loan Agreement which may be in the form of a master agreement covering a series of securities lending transactions. The terms of the Loan Agreement will be at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party. The Loan Agreement will also contain a requirement that the Barclays or the Foreign Affiliate pay all transfer fees and transfer taxes relating to the securities loans.

19. In return for lending securities, the Plan will either (a) receive a reasonable fee which is related to the value of the borrowed securities and the duration of the loan or (b) have the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to Barclays or the Foreign Affiliate if such fee is not greater than what the Plan would pay in a comparable arm's length transaction with an unrelated party.

Under this fee arrangement, earnings generated by non-cash collateral will be returned to Barclays or the Foreign Affiliate. The Plan will be entitled to at least the equivalent of all distributions on the borrowed securities made during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities that the Plan would have received (net of tax withholdings) had it remained the record owner of such securities.

20. If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, Barclays or the Foreign Affiliate will deliver additional collateral, by the close of business on the following business day, to bring the level of the collateral back to at least 100 percent. Notwithstanding the foregoing, part of the collateral may be returned to Barclays or the Foreign Affiliate if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities. Matters relating to the return of the collateral, the substitution of collateral or the termination of loans, will be determined by applicable provisions of the Loan Agreement.

21. Before entering a Loan Agreement, Barclays or the Foreign Affiliate will furnish to the Plan the most recently available audited and unaudited statements of such entity's financial condition. In addition, Barclays or the Foreign Affiliate will represent that as of each time such entity borrows securities there has been no material change in the financial condition of such entity since the date of the most recently-furnished financial statement that has not been disclosed to the Plan.

22. The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon Barclays or the Foreign Affiliate will deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of a reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Plan within the time period specified by PTE 81–6 as it may be amended. In the event that Barclays or the Foreign Affiliate fails to return the borrowed securities, or the equivalent thereof, within the designated time, the Plan will have certain rights under the Loan Agreement to realize upon the collateral. The Plan may purchase securities identical to the borrowed securities, or the equivalent thereof, and may apply the collateral to the payment of the purchase price, any other obligations of Barclays or the Foreign Affiliate under the Loan Agreement and any expenses associated with replacing the borrowed securities. Barclays or the Foreign Affiliate will indemnify the Plan with respect to the difference, if any, between the

replacement cost of the borrowed securities and the market value of the collateral on the date the loan is declared in default, together with expenses not covered by the collateral plus applicable interest at a reasonable rate. If replacement securities are not available, Barclays or the Foreign Affiliate will pay the Plan an amount equal to (a) the value of the securities as of the date such securities should have been returned to the Plan plus (b) all the accrued financial benefits derived from the beneficial ownership of such loan securities as of such date, plus (c) interest from such date through the date of payment.

23. The Plan will maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements of section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1. However, Barclays or the Foreign Affiliate will not be subject to the civil penalty which may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code, if the Plan fails to comply with the requirements of 29 CFR 2550.404(b)–1.

24. In summary, it is represented that the proposed transactions have satisfied and will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) With respect to principal transactions effected by Barclays or the Foreign Affiliate, the exemption has enabled and will enable Plans to realize the same benefits of efficiency and convenience which derive from principal transactions executed pursuant to Part II of PTE 75–1 by U.S. registered broker-dealers and U.S. banks.

(b) With respect to extensions of credit by Barclays and the Foreign Affiliate in connection with purchases or sales of securities, the exemption has enabled and will enable the Plans and Barclays or the Plans and the Foreign Affiliate to extend credit in the ordinary course of Barclays's or the Foreign Affiliate's business so as to effect the transactions within the customary settlement period or in connection with the buying and writing of options contracts or in connection with short sales, as permitted by Part V of PTE 75–1, for U.S. registered broker-dealers.

(c) With respect to securities lending transactions effected by Barclays or the Foreign Affiliate, the exemption has enabled and will enable Plans to realize a low-risk return on securities that otherwise would remain idle, as in securities lending transactions executed pursuant to PTE 81–6 by U.S. registered broker-dealers and U.S. banks.

(d) The proposed exemption will provide Plans with virtually the same protections and benefits as those provided by PTE 75–1 and PTE 81–6.

Notice to Interested Persons

The applicant represents that because those Plans that will be potentially interested in the transactions cannot be identified at this time, the only practical means of notifying Plan fiduciaries is by the publication of the notice of proposed exemption in the **Federal Register**. Therefore, comments and requests for a hearing must be received by the Department not later than 30 days from the date of the publication of this proposed exemption in the **Federal Register**.

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

The Millcraft Industries Salaried Employees Pension Plan (the Salaried Plan) and The Millcraft Products, Inc. Hourly Employees Pension Plan and Trust Agreement (the Hourly Plan) (collectively, the Plans) Located in Canonsburg, PA

[Exemption Application Numbers D–10608 and D–10609]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to three cash sales (the Sales) of certain shares of stock (the Stock) by the Plans to Millcraft Industries, Inc. (Millcraft Industries), a party in interest and disqualified person with respect to the Plans, provided the following conditions were met:

(a) The terms of the Sales were at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party;

(b) The Sales were one-time transactions for cash;

(c) The Plans paid no commissions or expenses relating to the Sales; and

(d) The Sales were for no less than the fair market value of the Stock as determined by a qualified, independent appraiser.

Effective Date: If granted, the proposed exemption will be effective as of November 15, 1996.

Summary of Facts and Representations

1. The applicant describes the Plans as follows:

a. The Salaried Plan was originally established by Millcraft Industries on August 28, 1972 and has since been amended and restated effective November 1, 1989. At the time of the transactions, the Salaried Plan had 86 participants and held assets valued at approximately $1.8 million.

b. The Hourly Plan was originally established by Millcraft Products, Inc. (Millcraft Products) on November 1, 1963 and has since been amended and restated effective November 1, 1989. At the time of the transactions, the Hourly Plan had 216 participants and held assets valued at approximately $1.95 million.

At all times relevant to the transactions in question, Jack B. Piatt, Jack B. Piatt, II, Rodney L. Piatt, and Charles D. Boehm served as trustees (the Trustees) for the Plans, and Merrill Lynch, Pierce, Fenner & Smith, Incorporated (Merrill Lynch) served as broker for both Plans.

2. Millcraft Industries, the sponsor and administrator of the Salaried Plan, is a Pennsylvania corporation located at 400 Southpointe Boulevard, Suite 400, Canonsburg, Pennsylvania. Millcraft Industries is a holding and management corporation engaged, through subsidiaries, in the manufacturing and marketing of specialized equipment for the steel-making industry and the development of real estate.

Millcraft Products, sponsor and administrator of the Hourly Plan, is a wholly-owned subsidiary of Millcraft Industries that is also located in Pennsylvania. Millcraft Products is a manufacturing, continuous caster repair, machinery, and fabricating company that provides parts, services, and equipment for the steel-making industry.

3. Among the assets of the Plans are certain shares of Stock in the Community Bank, NA, (the Bank) a publicly traded corporation located in Pennsylvania. Except for approximately 3.3% of the outstanding Stock of the Bank held by the Plans and approximately 4.4% of the outstanding Stock of the Bank held by Millcraft Industries at the time of the transaction, the Bank was otherwise unrelated to Millcraft Industries, Millcraft Products and the Plans.

The Stock is a thinly-traded security with quotes available only via the National Quotation Bureau's ''pink

sheets.'' From 1985 through 1989, the Hourly Plan purchased 2,926 shares of the Stock from the Bank. The purchase price of these shares varied between $53 and $65 per share. As the result of a two-for-one stock split on April 10, 1986, and a four-for-one stock split on May 1, 1994, the Hourly Plan obtained an additional 12,778 shares of the Stock.

From 1988 through 1993, the Salaried Plan purchased 2,300 shares of the Stock from the Bank. The purchase price of these shares varied between $47 and $53 per share. The Salaried Plan obtained an additional 6,900 shares of Stock as a result of the May 1, 1994 stock split.

4. According to the applicant, the Trustees originally purchased the Stock on behalf of the Plans in the mid-1980's in response to the increasing number of bank mergers in western Pennsylvania and in anticipation that this trend would continue.

However, in the months preceding the consummation of the transactions, the Trustees concluded that the period of speculation on local bank mergers had ended. The Trustees decided that the assets of the Plans would have greater long-term profit potential if they were placed with a professional asset management company.

When Millcraft Industries expressed interest in purchasing the Stock, the Trustees decided to sell the shares at the prevailing market value. Accordingly, on November 15, 1996, the Trustees authorized Merrill Lynch to sell 1,200 shares of the Stock from the Salaried Plan to Millcraft Industries for $30,900, or $25.75 per share. Then, on November 20, 1996, the Trustees authorized Merrill Lynch to sell an additional 8,000 shares of the Stock to Millcraft Industries from the Salaried Plan for $206,000, or $25.75 per share. Finally, also on November 20, 1996 the Trustees authorized Merrill Lynch to sell 15,704 shares of the Stock to Millcraft Industries from the Hourly Plan for $404,378, or $25.75 per share.

As of November 20, 1996, the Plans had sold a total of 24,904 shares of the Stock to Millcraft Industries at $25.75 per share. According to the applicant, the Salaried Plan earned a profit of $116,800, or an average of $12.70 per share, and the Hourly Plan earned a profit of $237,300, or an average of $15.11 per share. In addition, the applicant represents that the Plans incurred no brokerage commissions or other charges as a result of the above transactions.

5. The applicant requests retroactive relief for the aforementioned transactions involving the Sales of stock from the Plans. The applicant represents that at the time of the transactions, the Trustees and Millcraft Industries were not aware that the transactions were prohibited under ERISA and the Code and that they would not have engaged in these transactions had they been aware of this fact.

6. Prior to executing these transactions, Millcraft Industries employed Parker/Hunter, Inc. (Parker/Hunter), a market maker in the Stock, to ascertain the fair market value of the shares. Parker/Hunter, a member of the New York Stock Exchange and the Securities Investors Protection Corporation, is a full service brokerage and investment banking firm headquartered in Pittsburgh, Pennsylvania with 300 employees in 21 offices throughout Pennsylvania, Ohio and West Virginia. The firm is independent of the Plans, Millcraft Industries and Millcraft Products. In providing the pricing information to Millcraft Industries, Parker/Hunter used data from the most recent sales of the Stock to determine that the fair market value of the Stock on November 15, 1996 and November 20, 1996 was $25.75 per share.

7. Upon discovering in August 1997 that its purchases of the Stock from the Plans were prohibited, Millcraft Industries promptly sought legal advice as to the steps needed to correct these violations. On October 31, 1997, Millcraft Industries represents that it reversed the transactions in accordance with 26 CFR 53.4941(e)–1(c) of the Treasury Department Regulations by instructing Merrill Lynch to transfer 9,200 shares of the Stock to the Salaried Plan and transfer 15,704 shares of Stock to the Hourly Plan.[18] At the same time, the Trustees instructed the Plans' broker to transfer $236,900, or $25.75 per share, from the Salaried Plan to Millcraft Industries and $404,378, or $25.75 per share, from the Hourly Plan to Millcraft Industries.[19] The applicant represents that no commissions were charged with respect to the correction.[20]

8. The applicant represents that the Sales were administratively feasible in that each involved a one-time transaction for cash. Furthermore, the applicant states that the transactions were in the interests of the Plans and their participants and beneficiaries because the Stock was sold in an attempt to facilitate investment in assets achieving a higher a rate of return, and were conducted in such a manner as to ensure that the Plans received a return on the Stock in excess of their original investment. Finally, the applicant represents that the transactions were protective of the rights of the participants and beneficiaries because the Plans received the fair market value of the Stock as determined by a qualified, independent appraiser.

9. In summary, the applicant represents that the subject transaction satisfied the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code for the following reasons: (a) The terms of the Sales were at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party; (b) The Sales were one-time transactions for cash; (c) The Plans paid no commissions or expenses relating to the Sales; and (d) The Sales were for no less than the fair market value of the Stock as determined by a qualified, independent appraiser.

Notice to Interested persons

Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due on or before November 20, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier of the Department, telephone (202) 219–8881 (this is not a toll-free number).

[18] The Department expresses no opinion regarding whether the corrective actions taken by the applicant were done in accordance with 26 CFR 53.4941(e)–1(c) of the Treasury Regulations.

[19] Prior to reversing the transactions, Millcraft consulted Parker/Hunter to determine the fair market value of the Stock. Parker/Hunter determined that the fair market value of the Stock as of October 31, 1997 would be in excess of $25.75 per share. Merrill Lynch account statements for October 1997 confirm that the estimated market price of the Stock was $31.50 per share at the time of the reversal transaction.

[20] The applicant also wishes to note that while holding the Stock, Millcraft Industries received $12,950.08 in dividends. Pursuant to 26 CFR 53.4941(e)–1(c)(2) of the Treasury Regulations, a disqualified person must pay to the plan any income derived by him from the property he received from the original prohibited sale to the extent such income exceeds the income derived by the plan from the cash which the disqualified person originally paid to the plan. The applicant represents that the Plans invested the $641,278 received from Millcraft Industries in the transactions, and on these various investments earned an estimated $125,000. Because this amount substantially exceeds the $12.950.08 in dividends received by Millcraft Industries while in possession of the Stock, Millcraft Industries determined that it was not required to remit an amount equal to the dividends to the Plans.

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 accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

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

Ivan Strasfeld,

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

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98–46; Exemption Application No. D–10503, et al.]

Grant of Individual Exemptions; Sanwa Bank California, et al.

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.

Sanwa Bank California (Sanwa Bank), Located in Los Angeles, CA

[Prohibited Transaction Exemption 98–46; Exemption Application No. D–10503]

Exemption

Section I. Exemption for the In-Kind Transfers of Assets

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (F) shall not apply, effective October 31, 1997, to the purchase, by an employee benefit plan established and maintained by parties other than Sanwa Bank (the Client Plan) or by Sanwa Bank (the Bank Plan)[1] of shares of one or more open-end management investment companies (the Fund or Funds), registered under the Investment Company Act of 1940, as amended (the 1940 Act), in exchange for assets of the Plan transferred in-kind to the Fund by a collective investment fund (the CIF) maintained by Sanwa Bank, where Sanwa Bank is the investment adviser and may provide other services to the Fund (the Secondary Services), as defined in Section III(i), and where Sanwa Bank is also a fiduciary of the Plan.

This exemption is subject to the following conditions:

(a) A fiduciary (the Second Fiduciary), as defined in Section III(h), which is acting on behalf of each affected Plan and which is independent of and unrelated to Sanwa Bank, receives advance written notice of the in-kind transfer of assets of the CIFs in exchange for shares of the Funds and full written disclosures of information concerning the Funds which includes the following:

(1) A current prospectus for each Fund in which the Client Plan may invest;

[1] Unless otherwise noted, the Client Plans and the Bank Plans are collectively referred to as the Plans.