

transaction records will be maintained. Furthermore, Bankers Trust states that each transaction should be viewed as being in the best interest of the Plans and their participants and beneficiaries because such transactions will provide for more efficient administration of the currency conversion process for such assets and increased value to the Plan's investments. Finally, Bankers Trust represents that the subject transactions will be protective of the Plans' participants and beneficiaries because each Plan will receive the par value for the Fractional Amounts during a time when any market that may develop for these interests will demand that they be sold at a discount.

7. In summary, Bankers Trust represents that the transactions will satisfy the statutory criteria of section 408(a) of the Act and section 4975 of the Code because:

(a) Each Sale involves a one time transaction for cash;

(b) The terms of each Sale are at least as favorable to the Plan as those terms which would be available in an arm's-length transaction with an unrelated party;

(c) The Plans receive an amount in cash which is not less than the par value for each of the Fractional Amounts;

(d) In the case of the Client Plans,

(1) each Sale is subject to the prior approval of an independent plan fiduciary;

(2) the independent fiduciary of each Plan is furnished written notice at least 60 days prior to the proposed Sale transaction, containing information relevant to the independent fiduciary's determination whether to approve the Sale transaction. The notice will inform the independent fiduciary that failure to respond within 45 days of receipt of the notice will constitute authorization of Bankers Trust to engage in the transaction. If the fixed income instruments are not redenominated within a year of provision of this notice, additional notice will be delivered to the independent fiduciaries each year notifying them of their right to not participate in this program;

(e) In the case of the BT Plans, Bankers Trust must purchase the Fractional Amounts from their Plans within 30 days of the date that Fractional Amounts are received from the issuer after the government of each respective country determines that redenomination shall commence;

(f) Neither Bankers Trust nor an affiliate has 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 these assets); and  
(g) The Plans do not incur any commissions or other expenses relating to the Sales.

**Notice to Interested Persons:** Because of the large number of interested persons, the Department and the applicant have agreed that notification through publication of the proposal in the **Federal Register** is sufficient.

**FOR FURTHER INFORMATION CONTACT:**

James Scott Frazier of the Department, phone number (202) 219-8881 (this is not a toll-free number).

**General Information**

The attention of interested persons is directed to the following:

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

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

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

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

transaction which is the subject of the exemption.

Signed at Washington, DC, this 15th day of October, 1998.

**Ivan Strasfeld,**

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

[FR Doc. 98-28215 Filed 10-20-98; 8:45 am]

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**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits  
Administration**

**[Prohibited Transaction Exemption 98-49;  
Exemption Application No. D-10349, et al.]**

**Grant of Individual Exemptions; Harris  
Trust & Savings Bank, 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, D.C. 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.

## Harris Trust & Savings Bank and its Affiliates (Harris Trust) Located in Chicago, IL

[Prohibited Transaction Exemption 98-49; Exemption Application No. D-10349]

## Exemption

### Section I—Exemption for Acquisition of Fund Shares With Assets Transferred in-kind from a CIF

The restrictions of sections 406(a) and 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) of the Code, shall not apply, as of March 21, 1997, to the acquisition by employee benefit plans (the Plans), including two plans sponsored by Harris Trust for its own employees (the In-house Plans), of shares of any open-end investment companies (the Funds) registered under the Investment Company Act of 1940 (the '40 Act) for which Harris Trust is an investment adviser and may provide other services, with Plan assets transferred in-kind to the Funds from certain collective investment funds maintained by Harris Trust (the CIFs), in connection with the termination of the CIFs, provided that the following conditions are satisfied:

(a) For each Plan, a second fiduciary who is unrelated to, and independent of, Harris Trust (the Independent Fiduciary) receives prior written notice of the in-kind transfer of Plan assets from a CIF to a Fund in exchange for shares of the Fund, as well as the disclosures described in Section II(f).

(b) On the basis of the information described in Section II(f), the Independent Fiduciary gives prior written approval for each acquisition of Fund shares with Plan assets transferred from a CIF and the fees to be received by Harris Trust in connection with its services to the Fund. Such approval must be consistent with the general fiduciary responsibility provisions

imposed on fiduciaries by Part 4 of Title I of the Act.

(c) No sales commissions are paid by the Plans in connection with the acquisition of Fund shares with Plan assets transferred from a CIF.

(d) All or a pro rata portion of the assets of a CIF are transferred in-kind to a Fund in exchange for shares of the Fund.

(e) Each Plan receives Fund shares having a total net asset value equal to the value of the Plan's pro rata share of the corresponding CIF's assets on the date of the in-kind transfer, based on the current market value of the CIF's assets as determined in a single valuation performed in the same manner and as of the close of business of the same day, using independent sources in accordance with Securities and Exchange Commission (SEC) Rule 17a-7\* of the '40 Act and the procedures established by the Fund pursuant to Rule 17a-7. Such procedures require that all securities for which a current market value cannot be obtained by reference to the last sales price for transactions reported on a recognized securities exchange or quoted in the NASDAQ system, must be valued based upon an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day preceding the in-kind transfer, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of Harris Trust;

(f) Within 30 days after completion of each acquisition of Fund shares with Plan assets transferred in-kind from a CIF, Harris Trust sends by regular mail to the Independent Fiduciary a written confirmation containing the following information:

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

(2) The market price, as of the date of the in-kind transfer, of each such security; and

(3) The identity of each pricing service or market-maker consulted in determining the value of such securities.

(g) Within 90 days after completion of each acquisition of Fund shares with Plan assets transferred in-kind from a CIF, Harris Trust sends by regular mail to the Independent Fiduciary a written confirmation containing the following information:

(1) The number of CIF units held by the Plan immediately before the in-kind transfer, the related per unit value, and

the total dollar amount of such CIF units; and

(2) The number of shares in the Funds that are held by the Plan immediately after the in-kind transfer, the related per share net asset value, and the total dollar amount of such shares.

(h) The conditions set forth in paragraphs (c), (d), (e), (f), (i), (o), (p), and (q) of Section II are satisfied.

### Section II—Exemption for Receipt of Fees From the Funds

The restrictions of sections 406(a) and 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) of the Code, shall not apply, as of March 21, 1997, to the receipt of fees by Harris Trust from the Funds for acting as an investment adviser for the Funds, as well as for acting as the custodian, transfer agent, sub-administrator for the Funds, or for providing any other "secondary service" (as defined in Section III(i), below) to the Funds, in connection with the investment in shares of the Funds by Plans for which Harris Trust is a fiduciary (the Client Plans), other than the In-house Plans, provided that the following conditions are satisfied:

(a) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds, and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the Funds.

(b) The price paid or received by a Client Plan for shares of a Fund is the net asset value per share, as defined in Section III(f), 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 Harris Trust nor an affiliate (including officers or directors, and other persons, as defined in Section III(b), below) purchases from or sells to the Client Plans shares of the Funds.

(d) For each Client Plan, the combined total of all fees received by Harris Trust for its services to the Client Plan, and in connection with its services to any of the Funds in which the Client Plan may invest, constitutes no more than "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(e) Harris Trust receives no fees payable pursuant to Rule 12b-1 under the 40 Act (12b-1 fees) in connection with the transactions.

(f) Prior to the initial investment by a Client Plan in any of the Funds, the Independent Fiduciary receives full and detailed written disclosure of

\* 17 CFR 270.17a-7.

information concerning the Fund, including, but not limited to

(1) A current prospectus for the Fund;

(2) A statement describing the fees for investment management, investment advisory, or other similar services, any fees for Secondary Services, as defined in Section III(i), and all other relevant fees to be paid by the Client Plan and by the Fund to Harris Trust, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why Harris Trust considers an investment in the Fund to be appropriate for the Client Plan;

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

(5) Upon request of the Independent Fiduciary, a copy of this notice of exemption (and a copy of the notice of proposed exemption), as published in the **Federal Register**.

(g) On the basis of the information described in paragraph (f), the Independent Fiduciary gives prior written authorization for

(1) The investment of assets of the Client Plan in shares of a Fund;

(2) The Funds in which the assets of the Client Plan may be invested; and

(3) The fees to be paid to Harris Trust in connection with its services to the Funds.

Such authorization by the Independent Fiduciary must be consistent with the general fiduciary provisions of Part 4 of Title I of the Act.

(h) The authorization described in paragraph (g) is terminable by the Independent Fiduciary at will without penalty to the Client Plan, upon written notice of termination to Harris Trust. Harris Trust shall effect such termination by selling the shares of the Fund held by the Client Plan by the close of the business day following the date of receipt by Harris Trust of the termination form (the Termination Form), as defined in Section III(j), or any other written notice of termination. However, if, due to circumstances beyond the control of Harris Trust, the sale cannot be executed within one business day, Harris Trust shall have one additional business day to complete such sale.

(i) Each Client Plan receives a credit, either through cash, or, if applicable, the purchase of additional shares of the Funds pursuant to an annual election made by the Client Plan (which may be revoked at any time), of such Client Plan's proportionate share of all investment advisory fees charged to the Funds by Harris Trust, including any

investment advisory fees paid by Harris Trust to third party sub-advisers, within one business day of the receipt of such fees by Harris Trust. The crediting of all such fees to the Client Plans by Harris Trust must be audited by an independent accounting firm at least annually to verify the proper crediting of the fees to each Client Plan.

(j) In the event of an increase in the rate of any fees paid by the Funds to Harris Trust for any investment management services, investment advisory services, or other similar services above the rate which has been approved previously by an Independent Fiduciary, in accordance with paragraph (g), Harris Trust will provide at least 30 days' written notice (separate from the Fund Prospectus) to each Client Plan invested in a Fund which is increasing such fees.

(k) In the event of an addition of a Secondary Service by Harris Trust to a Fund for which a fee is charged, or in the event of an increase in a fee paid by the Funds to Harris Trust for any Secondary Service (which may result from either an increase in the rate of such fee or a decrease in the number or kind of services performed for such fee) above the rate which has been approved previously by an Independent Fiduciary, in accordance with paragraph (g), Harris Trust will provide at least 30 days' written notice (separate from the Fund Prospectus) to each Client Plan invested in a Fund which is adding a service or increasing its fees. Such notice shall be accompanied by the Termination Form.

(l) The Independent Fiduciary is supplied with a Termination Form at the times specified in paragraphs (k), (l), and (m), which expressly provides an election to terminate the authorization described in paragraph (g), with instructions regarding the use of the Termination Form, including the following information:

(1) The authorization is terminable by the Independent Fiduciary at will without penalty to the Client Plan, upon written notice of termination to Harris Trust. Harris Trust shall effect such termination by selling the shares of the Fund held by the Client Plan by the close of the business day following the date of receipt by Harris Trust of the Termination Form, or any other written notice of termination. However, if, due to circumstances beyond the control of Harris Trust, the sale cannot be executed within one business day, Harris Trust shall have one additional business day to complete such sale; and

(2) Failure of the Independent Fiduciary to return the Termination Form will be deemed to be an approval

of the additional Secondary Service for which a fee is charged or an increase in the rate of any fees, if such Termination Form is supplied pursuant to paragraphs (k) and (l), and will result in continuation of authorization, as described in paragraph (g), for Harris Trust to engage in the transactions on behalf of the Client Plan.

(m) The Independent Fiduciary is supplied annually with a Termination Form during the first quarter of each calendar year, beginning with the calendar year immediately following the date of publication in the **Federal Register** of a notice of exemption for the subject transactions. However, the Termination Form need not be supplied to the Independent Fiduciary sooner than six months after it has been supplied pursuant to paragraphs (k) and (l), except to the extent required to disclose either an additional Secondary Service for which a fee is charged or an increase in fees.

(n)(1) With respect to each of the Funds in which a Client Plan invests, Harris Trust will provide the Independent Fiduciary of such Client Plan:

(A) at least annually, a copy of an updated prospectus of the Fund;

(B) upon the request of the Independent 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 Fund to Harris Trust; and

(2) With respect to each of the Funds in which a Client Plan invests, in the event such Fund places brokerage transactions with Harris Trust, Harris Trust, at least annually, will provide the Independent Fiduciary of such Client Plan with a statement specifying:

(A) the total dollar amount of brokerage commissions of each Fund's investment portfolio paid to Harris Trust by such Fund;

(B) the total dollar amount of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to Harris Trust;

(C) the average brokerage commissions per share, in cents per share, paid to Harris Trust by each portfolio of a Fund; and

(D) the average brokerage commissions per share, in cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to Harris Trust.

(o) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than

dealings between the Fund and its other shareholders holding shares of the same class as the Client Plans.

(p) Harris Trust maintains for a period of six years the records necessary to enable the persons described in paragraph (q) to determine whether the conditions of this exemption have been satisfied, except that

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

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

(q) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, Harris Trust makes the records referred to in paragraph (p) unconditionally available during normal business hours at their customary location to the following persons or a duly authorized representative thereof: (A) the Department or the Internal Revenue Service; (B) any fiduciary of a Client Plan with the authority to acquire or dispose of shares of the Funds owned by the Client Plan; and (C) any participant or beneficiary of a Client Plan. However, none of the persons described in (B) or (C) are authorized to examine the trade secrets of Harris Trust, or commercial or financial information which is privileged or confidential.

### Section III—Definitions.

For purposes of this proposed exemption:

(a) The term "Harris Trust" means Harris Trust & Savings Bank and any affiliate thereof, as "affiliate" is defined in paragraph (b).

(b) The term "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) The term "collective investment fund" or "CIF" means a common or collective trust fund or pooled investment fund maintained by Harris Trust.

(e) The term "Fund" or "Funds" means any diversified open-end management investment company or companies registered under the '40 Act for which Harris Trust serves as an investment adviser and may also provide custodial or other services approved by the Funds.

(f) The term "net asset value" per share means the amount which is calculated by dividing the value of all securities (determined by a method set forth in a Fund's prospectus and statement of additional information) and other assets belonging to each portfolio in the Fund, less the liabilities chargeable to each such Fund portfolio, by the number of outstanding shares.

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

(h) The term "Independent Fiduciary" means a fiduciary of a Plan who is unrelated to, and independent of, Harris Trust. For purposes of this proposed exemption, a Plan fiduciary will not be deemed to be unrelated to, and independent of, Harris Trust if

(1) such fiduciary directly or indirectly controls, is controlled by, or is under common control with Harris Trust;

(2) such fiduciary, or any officer, director, partner, employee, or relative of such fiduciary is an officer, director, partner, or employee of Harris Trust (or is a relative of such persons); or

(3) Such fiduciary directly or indirectly receives any compensation or other consideration from Harris Trust for his or her own personal account in connection with any transaction described in this proposed exemption. However, with respect to the In-house Plans, the Independent Fiduciary may receive compensation from Harris Trust in connection with the subject transactions, provided that the amount or payment of such compensation is not contingent upon, nor in any way affected by, the Independent Fiduciary's ultimate decision regarding the Plans' participation in the transactions.

With the exception of the In-house Plans, if an officer, director, partner or employee of Harris Trust (or relative of such persons) is a director of the Plan fiduciary and abstains from participation in (i) the choice of the Plan's investment adviser, (ii) the approval of any purchase or sale

between the Plan and the Funds, and (iii) the approval of any change in fees paid by the Plan in connection with any of the subject transactions, then paragraph (g)(2) shall not apply.

(i) The term "Secondary Service" means a service other than an investment management, investment advisory, or similar service, which is provided by Harris Trust to the Funds, including, but not limited to, custodial, accounting, transfer agent, administrative, brokerage, or any other service.

(j) The term "Termination Form" means the form supplied to the Independent Fiduciary, at the times specified in Section II(k), (l), and (m), which expressly provides to the Independent Fiduciary an election to terminate at will the authorization described in Section II(g) without penalty to the Plan. The Independent Fiduciary may use such Termination Form to provide written notice of termination to Harris Trust and instruct Harris Trust to effect the termination by selling the shares of a Fund held by the Plan by the close of the business day following the date of receipt by Harris Trust of the Termination Form. However, if, due to circumstances beyond the control of Harris Trust, the sale cannot be executed within one business day, Harris Trust shall have one additional business day to complete such sale.

(k) The term "security" shall have the same meaning as defined in section 2(36) of the '40 Act, as amended, 15 USC 80a-2(36) (1996).

**Effective Date:** The exemption is effective, as of March 21, 1997.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 6, 1998 at 63 FR 42068.

### Written Comments

The Department received one written comment with respect to the notice of proposed exemption (the Notice) and no requests for a hearing. The written comment was submitted by the applicant and concerns a clarification to the record.

Harris Trust notes that the Summary of Facts and Representations (the Summary) for the Notice, in Paragraph 6, the second subparagraph (see page 42073, column 1) inaccurately states, "All or a pro rata portion of the assets of a CIF are transferred in-kind to a Fund in exchange for shares of the Fund *distributed to the Plans*" [emphasis added]. Harris Trust wishes to clarify that the shares of the Fund were

actually issued by the Fund directly to the Plans, rather than to the CIF and then, in turn, distributed by the CIF to the Plans.

The Department notes the applicant's clarification to the written record, as stated in the Summary. Accordingly, the Department has determined to grant the exemption as proposed.

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

**John B. Vick, D.D.S., P.A. Pension Plan (the Plan) Located in Minneapolis, MN**

[Prohibited Transaction Exemption 98-50; Exemption Application Number D-10578]

**Exemption**

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 the cash sale (the Sale) of two promissory notes (the Notes) by the Plan to Dr. John B. Vick, a party in interest and disqualified person with respect to the Plan, provided the following conditions are met:

- (a) The Sale is a one-time transaction for cash;
- (b) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;
- (c) The Plan receives an amount equal to the fair market value of the Notes as determined by a qualified, independent appraiser as of the date of Sale; and
- (d) The Plan is not required to pay any commissions, costs or other expenses in connection with the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, please refer to the proposed exemption published on August 31, 1998 at 63 FR 46253.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Scott Frazier, telephone (202) 219-8881. (This is not a toll-free number).

**General Information**

The attention of interested persons is directed to the following:

- (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

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

Signed at Washington, D.C., this 15th day of October 1998.

**Ivan Strasfeld,**

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

[FR Doc. 98-28216 Filed 10-20-98; 8:45 am]

BILLING CODE 4510-29-P

**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits Administration**

[Application Number: D-10554]

**Proposed Amendment to Prohibited Transaction Exemption 97-11 (PTE 97-11) for the Receipt of Certain Investment Services by Individuals for Whose Benefit Individual Retirement Accounts or Retirement Plans for Self-Employed Individual Have Been Established or Maintained**

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

**ACTION:** Notice of proposed amendment to PTE 97-11.

**SUMMARY:** This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 97-11. PTE 97-11 is a class exemption that permits the receipt of services at reduced or no cost by an individual for whose benefit an individual retirement account (IRA) or, if self-employed, a

Keogh Plan, is established or maintained, or by members of his or her family, from a broker-dealer, provided that the conditions of the exemption are met. The proposed amendment, if adopted, would affect individuals with beneficial interests in such plans who receive such services as well as the broker-dealers who provide such services.

**DATES:** If adopted, the proposed amendment would be effective as of January 1, 1998. Written comments and requests for a public hearing should be received by the Department on or before December 7, 1998.

**ADDRESSES:** All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N-5649, 200 Constitution Ave, NW, Washington, DC 20210, (Attention: D-10554)

**FOR FURTHER INFORMATION CONTACT:** Ms. Allison Padams Lavigne, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 219-8971, (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 97-11 (62 FR 5855, February 7, 1997). PTE 97-11 provides relief from the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of sections 4975(a) and (b), 4975(c)(3) and 408(e)(2) of the Internal Revenue Code of 1986 (the Code) by reason of section 4975(c)(1)(D), (E) and (F) of the Code.<sup>1</sup> The amendment to PTE 97-11 was requested in an exemption application dated December 23, 1997 filed on behalf of the Securities Industry Association (SIA). The SIA is a securities industry trade association representing the business interests of more than 700 securities firms in North America which collectively account for ninety percent of the securities firm revenue in the United States. The members of the SIA are, among other things, engaged in the business of providing brokerage and investment advisory services to the public.

The application was filed pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set

<sup>1</sup> Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.