DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 23, 2007.

The Department of Labor (DOL) hereby announces the submission the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: Carolyn Lovett, OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title: Report of Construction Contractor's Wage Rates.

OMB Control Number: 1215–0046.

Form Number: WD–10.

Estimated Number of Respondents: 22,000.

Total Estimated Annual Burden Hours: 22,000.

Total Estimated Cost Burden: $0.

Affected Public: Private Sector: Business or other for-profits.

Description: The Form WD–10 is used by the U.S. Department of Labor to elicit construction project data from contractor associations, contractors and unions. The wage data is used to determine locally prevailing wages under the Davis-Bacon and Related Acts.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title: Application for Continuation of Death Benefit for Student.

OMB Control Number: 1215–0073.

Form Number: LS–266.

Estimated Number of Respondents: 43.

Total Estimated Annual Burden Hours: 22.

Total Estimated Cost Burden: $0.

Affected Public: Private Sector: Business or other for-profits.

Description: The information collected by the Form LS–266 is used by the Department's Office of Workers' Compensation Programs to assure that a claimant receives all of the benefits under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 902 and 939) to which he/she may be entitled to receive. If the information were not collected, there would be no way to determine the proper status of a student and therefore his/her continued entitlement to benefits.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–21182 Filed 10–25–07; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions and Application Nos. Gastroenterology and Oncology Associates, P.A. Profit Sharing Plan and Trust (the Plan), D–11141; Wellington Management Company, LLP (Wellington Management), D–11343; GE Asset Management Incorporated, D–11389; Middleburg Trust Company (Middleburg), D–11405; and Citigroup, Inc. (Citigroup), D–11417

AGENCY: Employee Benefits Security 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 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

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

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. *Attention:* Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 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, 5 U.S.C. App. 1 (1996), 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.

Gastroenterology and Oncology Associates, P.A. Profit Sharing Plan and Trust (the Plan) Located in St. Petersburg, FL

[Application No. D–11141]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 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, will not apply to the proposed sale of certain shares of common stock (the Stock) issued by Alden Enterprises, Inc. (Alden), an unrelated party, by the individually directed account in the Plan (the Account) of Jayaprakash K. Kamath, M.D. (Dr. Kamath), to Geetha J. Kamath, M.D., (Mrs. Kamath), Dr. Kamath's spouse and a party in interest with respect to the Plan.

This proposed exemption is subject to the following conditions:

(a) The sale of the Stock by the Account to Mrs. Kamath is a one-time transaction for cash.

(b) The Stock is sold to Mrs. Kamath for a price that reflects the fair market value of the Stock, as determined by a qualified, independent appraiser (the Appraiser).

(c) The closing of the sale (the Closing Date) occurs at a time that is mutually agreed upon by Mrs. Kamath and the Plan trustees (the Trustees) within 30 days of the Department's approval of the final exemption.

(d) As of the Closing Date, the Appraiser reviews the assumptions previously made in determining the appraised value of the Stock to see whether there has been a 3% or more increase (Material Increase) in the fair market value of the Stock between December 31, 2006 (the Appraisal Date) and the Closing Date.

(e) If the Appraiser determines that there has been no Material Increase in the fair market value of the Stock on the Closing Date, the Appraiser issues a letter to the parties to the sale to such effect and the sale price of the Stock remains at the value determined on the Appraisal Date.

(f) If the Appraiser determines that there has been a Material Increase in the fair market value of the Stock, he advises the parties to the transaction, in writing, as to the increased value as of the Closing Date. Then, the sale price for the Stock is revised to reflect the increased value and the amount of such increase is paid to the Trustees by Mrs. Kamath following the receipt of the updated appraisal report from the Appraiser setting forth the increased value of the Stock.

(g) The sale proceeds from the transaction are credited to Dr. Kamath's Account simultaneously with the transfer of the Stock's title to Mrs. Kamath.

(h) The Account is not responsible for paying any fees, commissions, or other costs or expenses associated with the sale of the Stock.

(i) The terms and conditions of the Stock sale remain at least as favorable to the Account as the terms and conditions obtainable under similar circumstances negotiated at arm's length with an unrelated party.

Summary of Facts and Representations

1. Dr. Kamath is a gastroenterologist and oncologist and a 50% owner of Gastroenterology and Oncology Associates, P.A. (the Employer), the sponsor of the Plan. The Employer is a Florida corporation, which is located in St. Petersburg, Florida. The Employer is also owned 50% by Mrs. Kamath.

2. The Plan is a profit-sharing plan that was established by the Employer and provides for participant-directed investments. Dr. and Mrs. Kamath are the Plan Trustees. In addition, Dr. Kamath serves as the Plan Administrator. As of December 31, 2006, which is the most recent date Plan information is available, the Plan had 42 participants, one of whom included Dr. Kamath. Also as of December 31, 2006, the Plan had net assets available for benefits totaling $3,312,699. Of those assets, approximately $2,058,927 was held in Dr. Kamath's Account in the Plan.

3. Among the assets allocated to Dr. Kamath's Account are 42.84 shares of common stock, which constitute 14% of the issued and outstanding shares of Alden, a closely-held Florida corporation. Alden's primary business is the ownership and operation of a resort hotel on Florida's Gulf Coast. The property underlying the Stock consists of a 4.84 acre tract of land improved with 10 buildings that comprise the 142-unit beachfront hotel known as the ''Alden Beach Resort.'' The property is located at 5900 Gulf Boulevard, in the city of St. Pete Beach, Pinellas County, Florida.

None of the other shareholders of Alden are related to the Kamaths or the Employer. In addition, neither the Kamaths nor members of their family are officers or directors of Alden.

4. The Account acquired the Stock from Margaret Bradford, a retired, former Alden employee and an unrelated party, on September 15, 1983, for a cash purchase price of $150,000. The purchase price paid by the Account for the Stock was negotiated by the Trustees and Ms. Bradford. During its ownership of the Stock, the Account received $706,860 in dividends from 1983 until 2006. In addition, the Alden Beach Resort was refinanced in 1990, and the proceeds were distributed to the shareholders. The Account received $433,860 from the refinancing. The Account incurred no expenses or administrative costs in connection with its ownership of the Stock. As a result of the acquisition and holding of the Stock, the Account has experienced a

net gain of $990,720 [($706,860 + $433,860) − $150,000].

5. An administrative exemption is requested from the Department to allow Dr. Kamath's Account to sell the Stock to Mrs. Kamath. Following the sale, Mrs. Kamath proposes to transfer the Stock to a revocable trust for estate planning purposes. The sale price for the Stock will be based upon its independently appraised fair market value. The consideration for the Stock will be paid by Mrs. Kamath in cash. The Account will pay no fees or commissions in connection with the transaction.

6. The value of the Stock on December 31, 2006 was $899,640, according to a January 2, 2007 appraisal report that was prepared by Mr. James W. Brockardt, CBA, a qualified, independent appraiser. The Appraiser, who is the President of Brockardt Consulting Group, LLC, an independent appraisal firm located in Pennington, New Jersey, has worked in the area of securities valuation since 1975. The Appraiser represents that he is completely independent of the parties involved in the transaction and has no present or prospective interest in the Stock.

The Appraiser initially valued the Stock under both the Cost Approach and the Income Approach to valuation. Then, he determined a ''freely traded value'' based upon weighting 75% to the Cost Approach, and 25% to the Income Approach. This value was next discounted by 35% for lack of marketability. As a result of the calculation, the Appraiser determined that the Stock had an aggregate fair market value, on a minority interest basis, of $6,428,398, or a per share value, on a minority interest basis, of $21,000. Thus, the 42.84 shares of Stock held by Dr. Kamath's Account have a total fair market value of $899,640. In addition, the Stock represents approximately 25.74% of the Account's assets.

7. The proposed transaction is contingent upon the Department's issuance of a final exemption, on or before December 31, 2007, authorizing such transaction in accordance with an Agreement for Sale of Stock (the Stock Sale Agreement), to be entered into between Mrs. Kamath and the Trustees. In this regard, the Stock Sale Agreement provides that if the Department grants a final exemption approving the transaction, the closing of the transaction will occur within 30 days of such approval.

As of the Closing Date, the Appraiser will review the assumptions he previously made in determining the appraised value of the Stock to see whether there has been a 3% or more increase (i.e., a Material Increase) in the fair market value of the Stock between the Appraisal Date (i.e., December 31, 2006) and the Closing Date. If the Appraiser determines that there has been no Material Increase in the fair market value of the Stock on the Closing Date, he will issue a letter to Mrs. Kamath and the Trustees informing them that the sale price of the Stock will be the value determined on the Appraisal Date. On the other hand, if the Appraiser determines that there has been a Material Increase in the fair market value of the Stock, he will advise the parties to the transaction, in writing, as to the increased value as of the Closing Date. Then, the sale price for the Stock will be revised to reflect the increased value and the amount of such increase will be paid by Mrs. Kamath to the Trustees following the receipt of the updated appraisal report from the Appraiser. Mrs. Kamath will pay the Trustees for the Stock either in cash or by wire transfer.

If the Department does not grant a final exemption authorizing the proposed transaction by December 31, 2007, the transaction will be automatically rescinded and it will become null and void.

8. The Trustees represent that the transaction is in the best interest of the Account because the sale ensures that the Account will have greater liquidity and diversification since its assets will be invested in either marketable securities or assets that are traded on an established market. This will enable Dr. Kamath's interest to be rolled over to his individual retirement account upon his retirement. Also, given the lack of operating or financial control of a minority shareholder, such as the Account, the Trustees state that it would be difficult, if not impossible, to sell the Stock. Further, the Trustees explain that the transaction will enable Alden to make a Subchapter S corporation election.

9. It is represented that the transaction is protective of the Account because the fair market value of the property underlying the Stock will be updated on the Closing Date by the Appraiser. Further, the Account has not been required, nor will it be required, to pay any fees, commissions or other expenses or costs in connection with the subject transaction.

10. In summary, it is represented that the proposed transaction will satisfy the statutory requirements for an exemption under section 408(a) of the Act because:

(a) The sale of the Stock by the Account to Mrs. Kamath will be a one-time transaction for cash.

(b) The Stock will be sold to Mrs. Kamath for a price that reflects the fair market value of the Stock, as determined by the Appraiser on the Closing Date.

(c) The Closing Date of the transaction will occur at a time that is mutually agreed upon by Mrs. Kamath and the Trustees within 30 days of the Department's approval of the final exemption.

(d) The Appraiser will determine whether there has been a Material Increase in the fair market value of the Stock between the Appraisal Date and the Closing Date, and if so, he will make appropriate adjustments to the sale price in an updated appraisal report.

(e) Dr. Kamath's Account will not be responsible for paying any fees, commissions, or other costs or expenses associated with the sale of the Stock.

(f) The terms and conditions of the Stock sale will remain at least as favorable to the Account as the terms and conditions obtainable under similar circumstances negotiated at arm's length with an unrelated party.

Notice to Interested Persons

Because Dr. Kamath is the only participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Accordingly, comments and requests for a public hearing are due within thirty (30) days after the publication of the notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

Wellington Management Company, LLP (Wellington Management) and Its Subsidiaries (together, Wellington) Located in Boston, MA

[Application No. D–11343]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) and (D) of the Act and the sanctions

[1] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the code.

resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (D) of the Code, shall not apply (1) retroactively, from January 1, 2001 through December 31, 2003, and (2) prospectively, from the date the notice granting the final exemption is published in the **Federal Register**, to—

(A) The acquisition, from an offshore corporation (the Offshore Corporation) of certain non-voting equity securities (Shares), which represent interests in the economic value of the Offshore Corporation by an ERISA-covered client plan (the Client Plan), where the Offshore Corporation is a party in interest with respect to the Client Plan, due to the ownership of all of the voting equity shares (Manager Shares) of the Offshore Corporation by Wellington Global Administrator, Ltd. (Wellington Global Administrator), a subsidiary of Wellington Management, which is (or may become) a fiduciary and a service provider with respect to the Client Plan; and

(B) The redemption of the Client Plan's Shares by the Offshore Corporation either in cash or in kind.

Section II. Conditions

This proposed exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following conditions, which apply both retroactively and prospectively, unless otherwise excepted:

(a) All decisions to acquire or redeem Shares have been made or are made on behalf of the Client Plan by an authorized fiduciary, which is independent of Wellington and the applicable Offshore Corporation.

(b) At the time of acquisition of Shares from an Offshore Corporation, each Client Plan either had or has assets at least equal to $100 million.

(1) In the case of a master trust that holds assets of multiple related Client Plans maintained by a single employer or a controlled group of employers, as defined in section 407(d)(7) of the Act, this requirement is satisfied if the master trust has aggregate assets at least equal to $100 million (assuming the fiduciary responsible for making the investment decision is the Client Plan sponsor or an affiliate of the Client Plan sponsor).

(2) In the case of a pooled fund (e.g., a group trust) whose assets are ''plan assets'' subject to the Act, this requirement is satisfied as long as either (i) the pooled fund has at least $100 million in aggregate assets and the fiduciary making the investment decision is unrelated to Wellington and manages at least $200 million in assets (exclusive of the aggregate assets invested in the Offshore Corporations); or (ii) at least 50 percent of the units of beneficial interest in the pooled fund are held by Client Plans, each of which has total net assets of at least $100 million.

(c) Wellington has not provided and does not provide investment advice (within the meaning of 29 CFR 2510.3–21(c)), nor is it a fiduciary with respect to any Client Plan's investment in an Offshore Fund.

(d) All acquisitions and redemptions of Shares by a Client Plan have been made or are made for fair market value, determined as follows:

(1) Equity securities have been valued or are valued at their last sale price or official closing price on the market on which such securities primarily trade using sources independent of Wellington and the issuer. If no sales occurred on such day, equity securities are valued at the last reported independent ''bid'' price or, if sold short, at the last reported independent ''asked'' price.

(2) Fixed income securities have been valued or are valued on either the basis of ''firm quotes'' obtained at the time of the acquisition or redemption of Shares from U.S.-registered or foreign broker-dealers, which are registered and subject to the laws of their respective jurisdiction, which quotes reflect the share volume involved in the transaction, or on the basis of prices provided by independent pricing services that determine valuations based on market transactions for comparable securities and various relationships between such securities that are generally recognized by institutional traders.

(3) Options have been valued or are valued at the mean between the current independent ''bid'' price and the current independent ''asked'' price or, where such prices are not available are valued at their fair value in accordance with Fair Value Pricing Practices by Wellington Management's pricing committee, which utilizes a set of defined rules and an independent review process.

(4) If current market quotations are not readily available for any investments, such investments have been valued or will be valued at their fair value by Wellington Management's pricing committee in accordance with Fair Value Pricing Practices.

(e) A Client Plan's Shares have been redeemed or may be redeemed, in whole or in part, without the payment of any redemption fee or other penalty, on a pre-specified, periodic (not longer than semi-annual) basis, upon no more than 45 days' advance notice, except for a one-year lock-up period imposed on new investors.

(f) Redemptions of Shares in an Offshore Corporation by a Client Plan have been made or are made in cash unless:

(1) A Client Plan consents to such in kind redemption; or

(2) Wellington requires that such redemption be made in kind on a pro rata basis to protect the best interests of the Offshore Fund and the remaining investors, including other Client Plan investors.

(g) In advance of the initial investment by a Client Plan in an Offshore Corporation's Shares, the independent fiduciary of a Client Plan has received or receives—

(1) A copy of the proposed exemption and the final exemption. (This disclosure provision applies to the prospective exemptive relief described herein.)

(2) An offering memorandum describing the relevant Offshore Fund(s), as well as the relevant investment objectives, fees and expenses and redemption and valuation procedures; and

(3) All reasonably available relevant information as such independent fiduciary may request.

(h) On an ongoing basis, Wellington has provided or provides a Client Plan with the following information:

(1) Unaudited performance reports at the end of each month;

(2) Audited annual financial statements and access to a protected internet site; and

(3) Client services group assistance for any investor inquiries.

(i) No commission or sales charge has been assessed or is assessed against the Client Plan in connection with its acquisition of an Offshore Corporation's Shares.

(j) Not more than 10% of the assets of the Client Plan has been invested or is invested, in the aggregate, in Shares of all Offshore Corporations (determined at the time of any acquisition of such Shares) and not more than 5% of the assets of the Client Plan has been indirectly invested or is invested, in the aggregate, in any one offshore fund (the Offshore Fund), a separate collective investment vehicle underlying an Offshore Corporation, (also determined at the time of any acquisition of an interest in such Offshore Fund by such Client Plan).

(k) For prospective transactions only, each Offshore Corporation, each Offshore Fund, Wellington Management Investment, Inc. (Wellington

Management Investment), Wellington Global Holdings, Ltd. (Wellington Global Holdings), Wellington Hedge Management, LLC (Wellington Hedge Management), and Wellington Global Administrator—

(1) Has agreed to submit to the jurisdiction of the federal and state courts located in the Commonwealth of Massachusetts;

(2) Has agreed to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Has consented to service of process on the Process Agent; and

(4) Has agreed that any enforcement by a Plan of its rights pursuant to this exemption will, at the option of the Plan, occur exclusively in the United States courts.

(l) For prospective transactions only, Wellington maintains in the United States for a period of six years from the date of the covered transactions, such records as are necessary to enable the persons described in paragraph (m) of this Section II to determine whether the conditions of this exemption were met, except that:

(1) If the records necessary to enable the persons described in paragraph (m) to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of Wellington, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest other than Wellington 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 have not been maintained or are not available for examination as required by paragraph (m) below.

(m)(1) Except as provided in paragraph (m)(2) of this Section II and notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (l) of this Section II are unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

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

(ii) Any fiduciary of a Client Plan; or

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

(2) None of the persons described above in paragraphs (ii) and (iii) of this paragraph (m)(1)(ii) and (iii) of this Section II shall be authorized to examine trade secrets of Wellington, or any commercial or financial information, which is privileged or confidential.

Section III. Definitions

(a) The term ''Wellington'' means Wellington Management Company, LLP and its subsidiaries.

(b) An ''affiliate'' of Wellington means—

(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 ''Offshore Corporation'' means —

(1) WMIB;

(2) Any future expansion of WMIB that includes an additional class of securities or an additional Offshore Fund that is organized as a Bermuda limited partnership, which corresponds to the new WMIB class that is established by Wellington pursuant to the WMIB structure, and conforms to the same conditions, rules and regulations described in this exemption;

(3) Archipelago; or

(4) Any future ''fund of funds'' investment vehicle that is formed by Wellington under Bermuda law and is set up in substantially the same manner as Archipelago, with the same management structure, and conforms to the same conditions, rules and regulations described in this exemption.

(e) The term ''Offshore Fund'' means a collective investment vehicle that is organized as a Bermuda limited partnership, which corresponds to each class of WMIB securities. Each Offshore Fund invests primarily in publicly-traded securities, although up to 15% of each Offshore Fund may be invested in securities that are not readily marketable.

(f) The term ''U.S. broker-dealer'' means a broker-dealer registered in the United States under the Securities Exchange Act of 1934 (the 1934 Act) or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted government securities (as defined in section 3(a)(12) of the 1934 Act).

(g) The term ''foreign broker-dealer'' means a broker that has, as of the last day of its most recent fiscal year, equity capital that is the equivalent of not less than $200 million and is registered and regulated, under the relevant securities laws of a governmental entity of a country other than the United States, where such regulation and oversight by the governmental entities is comparable to regulatory regimes within the United States.

(h) ''Manager Shares'' refer to the equity securities of an Offshore Corporation that have voting rights and control the election of the Board of Directors of an Offshore Corporation. Manager Shares do not participate in the economic performance of the Offshore Corporation and are owned 100% by Wellington Global Administrator.

(i) ''Shares'' refer to the equity securities of an Offshore Corporation that do not have voting rights. Such shares represent substantially all of the economic value of the Offshore Corporation and are or will be directly linked either (i) by class to a corresponding Offshore Fund (in the case of WMIB) or (ii) to a mix of various WMIB classes (in the case of Archipelago or any other fund of funds entity).

Effective Date: If granted, this proposed exemption will be effective retroactively for the transactions involving Wellington and two Client Plans that occurred from January 1, 2001 until December 31, 2003. For prospective transactions involving Wellington and a Client Plan, this proposed exemption will be effective on the date the notice granting the final exemption is published in the **Federal Register**.

Summary of Facts and Representations

1. Wellington, or the applicant (the Applicant), is a Massachusetts limited liability partnership that is a federally registered investment adviser and a financial services organization. Wellington manages the assets of many individual and institutional clients. As of September 30, 2006, Wellington had over $544 billion in assets under management, including the assets of many ERISA-covered employee benefit plans.

2. Wellington currently sponsors two offshore, open-end limited liability investment companies (i.e., the Offshore Corporations)—Wellington Management Investors (Bermuda), Ltd. (WMIB) and Archipelago Holdings, Ltd. (Archipelago). Each Offshore Corporation was formed under the laws

of Bermuda. WMIB, which is a conduit vehicle and does not have an investment manager, is structured in a manner that is similar to a ''series fund.'' It presently has outstanding nine classes of equity interests, each of which is linked to a separate collective investment vehicle that is organized as a Bermuda limited partnership (i.e., the Offshore Funds). There is a separate Bermuda limited partnership that corresponds to each class of WMIB securities.[2] All amounts distributed to WMIB by a particular Offshore Fund are distributed to the holders of the corresponding class of WMIB securities. Each Offshore Fund invests primarily in publicly-traded securities, although up to 15% of such fund may be invested in securities that are not readily marketable.

Wellington Management Investment, a Delaware corporation, which is wholly owned by Wellington Management, does not have any contractual relationship with, or provide any services to, the Offshore Corporations or the Offshore Funds. Wellington Management Investment holds a 0.025% interest in Wellington Global Holdings, a 0.1% interest in Wellington Global Administrator and a 0.1% interest in Wellington Hedge Management. The remaining interests in each such entity are directly held by Wellington Management, so that all three entities are nearly 100% owned by Wellington Management.

Wellington Global Holdings serves as the investment general partner of each WMIB Offshore Fund and, in such capacity, has hired Wellington Management as the investment sub-adviser of each WMIB Offshore Fund. Wellington Global Holdings also serves as the investment manager of Archipelago. Wellington Global Administrator serves as the administrative general partner of each WMIB Offshore Fund and also as the administrative manager of Archipelago. Wellington Hedge Management serves as the general partner of the Wellington-sponsored domestic ''onshore'' hedge funds, but has no responsibility or relationship with respect to the Offshore Corporations or the Offshore Funds.

In the future, WMIB may be expanded by Wellington to include additional classes of equity interests and additional Offshore Funds, corresponding in each case to the new WMIB class of equity interest. The future classes of equity interests and Offshore Funds will be established pursuant to the WMIB structure.

3. Archipelago is a ''fund of funds'' in that all of its assets are invested in a mix of the WMIB classes and, as a result, indirectly in a mix of the Offshore Funds and other funds associated with those particular classes[3]. Archipelago operates as a conduit vehicle as well (in that the investments made by Archipelago (i.e., the WMIB asset classes) are, in most instances, pre-specified as are the specific percentages to be invested in each such class). Wellington Global Holdings serves as investment manager to Archipelago and has limited discretionary authority in that capacity.[4]

4. The Applicant explains that a Client Plan may choose to invest in Archipelago, rather than directly in the various classes of WMIB shares, because the amount it is investing may be too small to enable it to achieve the degree of diversification it desires among the various Offshore Funds. In particular, the WMIB classes typically require a minimum investment of $1–$3 million per class. For a relatively small investment (Archipelago's minimum investment is approximately $1 million), Archipelago represents an opportunity for greater diversification according to the Applicant.[5] On an annual basis, Archipelago automatically rebalances its investments in the underlying WMIB classes to maintain the pre-specified target allocations.

Wellington represents that it may in the future establish additional Offshore Corporations that are substantially similar to Archipelago. However, these future ''fund of funds'' investment vehicles will invest in a different mix of WMIB classes than Archipelago.

5. The Applicant explains that within the universe of hedge funds, WMIB and Archipelago are not considered highly leveraged, nor will any future Offshore Corporations be highly leveraged. The Applicant states that many other hedge funds are more highly leveraged than WMIB and Archipelago. The Applicant bases this opinion on the SEC's Staff Report, ''Implications of the Growth of Hedge Funds'' (September 2003), which noted that, if a leverage ratio is defined as the ratio of total absolute dollars invested to total dollars of equity, a leverage ratio of greater than 2 to 1 is considered ''high'' while a ratio of less than or equal to 2 to 1 is considered ''low.'' When applying this criterion to the Offshore Funds, the Applicant states that historically, in most instances, total leverage exposure of each Offshore Fund has been substantially less than 2 to 1, and is consistent with the SEC's view that the leverage ratio is low.

Further, each Offshore Corporation margins its long securities only through its prime broker, which is subject to the terms of Regulation T issued by the Board of Governors of the Federal Reserve System pursuant to the Securities Exchange Act of 1934. The Offshore Corporations are limited to 100% leverage with respect to long securities,[6] they may short sell

[2] WMIB actually has 11 classes of equity interests. However, two of these classes relate to funds that have different characteristics than those described herein, and such classes are not intended to be covered by this exemption. Therefore, the existence of these two classes (and the corresponding Offshore Funds) should be disregarded in this proposed exemption except for the fact that interests in these two classes are held by Archipelago.

[3] Archipelago initially invested in six WMIB classes. Over time, however, two of these original six WMIB classes have been closed to new investment by Archipelago and two different WMIB classes have been substituted for new investments. Although new investments into Archipelago are allocated among six WMIB classes, Archipelago's assets are still invested in eight WMIB classes. Two of these eight WMIB classes, including one to which new Archipelago investments are allocated, correspond with underlying Bermuda limited partnerships that are not ''Offshore Funds,'' as defined in this proposed exemption, due to the fact that each such limited partnership permits investment in illiquid private placements that are not readily marketable to exceed 15% and has certain restrictions on redemptions. Because these two WMIB classes are not Offshore Funds, as defined in this proposed exemption, no plans will be permitted to invest in these WMIB classes.

[4] For example, Wellington Global Holdings oversees annual rebalancings of the underlying WMIB classes held by Archipelago. In addition, Wellington Global Holdings may determine to direct Archipelago investments in different percentages among the six current WMIB classes or to different WMIB classes. However, in either event, notice of the proposed change would be given to all affected investors in advance of such change.

[5] The minimum investment can be waived by Wellington.

[6] The Applicant states that the reference to ''100% leverage'' with respect to its long securities is not inconsistent with its representation that the Offshore Funds are not highly leveraged. For one thing, the Applicant represents that this statement relates only to the limit imposed by Regulation T on an investor's ability to invest on margin (i.e., with funds borrowed from the relevant broker). The Applicant states that in fact, the Offshore Funds do not come close to approaching this limit. The Applicant further states that Regulation T would permit a maximum long exposure percentage of 200% (i.e. 100% leverage), whereas the long exposure number for the WMIB and Archipelago class funds never exceeds 150%.

In addition, the Applicant states that ''100% leverage'' with respect to its long securities'' means that the Offshore Fund could utilize $100 of its own capital to purchase long securities and an additional $100 of borrowed funds to purchase long securities yielding a total long security position of $200 of which 50% would be attributable to debt and 50% would be attributable to the investment of its own equity. This would be analogous to an investment in real estate in which a property is bought for $200 with a mortgage of $100 with the remaining $100 being derived from the investor's own capital.

Moreover, the Applicant explains that since a Plan is likely to invest a small percentage of its assets in any particular Offshore Fund it may well be completely prudent and appropriate for some plan assets to be invested in an Offshore Fund that securities, and may engage in derivative transactions. The derivative transactions are tracked daily and are not a significant source of leverage.

Moreover, the Applicant states that the Offshore Corporations are designed to provide absolute returns rather than to outperform a designated market.[7] Therefore, the Offshore Corporations do not utilize tracking errors as risk management tools.

6. Each Offshore Corporation has (or will have) two broad classes of equity securities—Manager Shares and Shares. Manager Shares are voting shares and hence control the election of the Board of Directors of an Offshore Corporation, but do not participate in the economic performance of the Offshore Corporation. Manager Shares are owned 100% by Wellington Global Administrator. Shares are non-voting but represent substantially all of the economic value of the Offshore Corporation and are or will be directly linked either (a) by class to a corresponding Offshore Fund (in the case of WMIB) or (b) to a mix of various WMIB classes (in the case of Archipelago or any other fund of funds entity). Shares are presently owned by numerous investors, primarily unrelated non-U.S. individuals and institutions and unrelated U.S. non-taxable investors, but not by any Client Plans.

In order to comply with National Association of Securities Dealers (NASD) rules (the ''new issues rules'') relating to the allocation of certain initial public offerings (IPOs), each Offshore Corporation offers three sub-classes of Shares: A Shares, which participate fully in initial public offering (IPO) allocations; C Shares, which participate only to a limited extent (i.e., only to the extent permitted by the applicable NASD rules) in IPO allocations; and E Shares, which do not participate to any extent in IPO allocations. In all other respects, these three sub-classes are identical. These NASD rules only impact investors that are professional money managers or broker-dealers as well as certain of their respective affiliates and related persons. All other investors would be required to invest in A Shares.[8]

Client Plans that are not ''restricted'' (as defined in NASD Rule 2790 [9]) would acquire Class A shares. Client Plans that are restricted would acquire Class C shares. Only Client Plans that are sponsored solely by a broker-dealer would be deemed to be ''restricted.''

In addition, each Share sub-class is further divided into a different series in order to account for different loss carryforwards associated with specific Shares held by investors depending upon their holding periods with respect to such Shares. According to the Applicant, the separate accounting and the resultant separate series are needed in order to reflect the correct incentive allocation amounts with respect to each investor. In this regard, the incentive allocation payable to Wellington Global Holdings, as the investment general partner, at the Offshore Fund level incorporates a ''high-water mark'' [10] concept. Application of that concept requires that investments made at different times be accounted for separately. The various series provide a mechanism for such separate accounting.

7. Each Offshore Corporation is exempt from registration under the Investment Company Act of 1940 (the 1940 Act) by reason of Section 3(c)(7) of the 1940 Act (i.e., all U.S. investors in the Offshore Corporation must be ''qualified purchasers''). In addition, the assets of each Offshore Corporation are not currently, and are not expected to be, ''plan assets'' subject to the Act because the aggregate interests of each class of equity securities issued by the Offshore Corporation that are held by ''benefit plan investors'' are currently, and are expected to be, less than 25% of the aggregate outstanding interests of such class (determined in accordance with the plan assets regulation).[11]

8. As an investment adviser registered under the Investment Advisers Act of 1940, Wellington Management is subject to the jurisdiction of the SEC. In this respect, the Applicant states that Wellington Management is subject to regulatory review and oversight by the SEC, which review encompasses all of Wellington Management's client relationships, including its relationships with the Offshore Corporations and the Offshore Funds. The sub-advisory agreement pursuant to which Wellington Management manages the assets of each Offshore Fund provides that such agreement is subject to the laws of Massachusetts (to the extent not preempted by applicable U.S. federal law). As a resident of Massachusetts, Wellington Management is subject to the jurisdiction of the state and federal courts in Massachusetts. Moreover, each Offshore Corporation, each Offshore Fund, Wellington Global Holdings and Wellington Global Administrator, will consent to the jurisdiction of such courts, and will appoint Wellington Management as its agent for service of process.

9. Wellington's compensation is paid exclusively at the Offshore Fund-level. Thus, Wellington will receive no duplicate fees from a Client Plan. In this

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is more highly leveraged and therefore more risky, when such investment is viewed in the context of the Plan's overall portfolio and the other relevant facts and circumstances applicable to the particular plan that would affect its appetite for risk. The Applicant believes these are factors that must be taken into account by the independent Plan fiduciary prior to investing in a particular Offshore Fund.

[7] Absolute return strategies are designed to move independently of the underlying markets and have lower correlations to the broader markets. During falling markets, the performance of a fund should stay independent from that of broader market movements, thus providing protection from those downward movements. In rising markets, funds employing absolute return strategies lag behind more traditional long-only investments. See ''Implications of the Growth of Hedge Funds,'' at 111.

[8] WMIB also offers S Shares with respect to classes that invest in underlying funds that are not intended to be covered by this exemption, except to the extent of Archipelago's interest therein.

[9] On October 24, 2003, the SEC approved new Rule 2790 (Restrictions on the purchase and sale of IPOs of equity securities), which replaces the Free-Riding and Withholding Interpretation (IM–2110–1). Rule 2790 prohibits a NASD member from selling a ''new issue'' to any account in which a ''restricted person'' has a beneficial interest. The term ''restricted person'' includes most associated persons of a member, most owners and affiliates of a broker-dealer, and certain other classes of persons. The Rule requires that a member, before selling a new issue to any account, meet certain ''preconditions for sale,'' which require the member to obtain a representation from the beneficial owner of the account that the account is eligible to purchase new issues in accordance with the Rule. The Rule also contains a series of general exemptions.

[10] The Applicant states that Wellington Global Holdings is entitled to an incentive allocation equal to a specified percentage (typically 20 percent) of the net profits during each fiscal year. However, the Applicant notes that if there is a loss in any fiscal year, then no incentive allocation will be made with respect to subsequent net profits allocable to shareholders who incurred the loss until the cumulative net loss has been fully offset by subsequent net profits allocable to such shareholders. The Applicant states that although this structure is often referred to as a high-water mark, it may be easier to understand as a loss carryforward.

[11] The Applicant states that its current intention is to keep investments by Client Plans, or ''benefit plan investors'' (as defined by section 3(42) of the Act), in each class of the Offshore Corporations' Shares below 25% and thereby avoid plan asset status. The Applicant represents that it monitors the level of investment by Client Plans each time there is any cash flow to make sure that the Offshore Corporations remain below the 25% threshold in each class. To the extent necessary, the Applicant explains that it may mandatorily redeem a Client Plan's Shares if necessary to remain below 25%. However, in the event benefit plan investors are allowed to exceed the 25% threshold and the underlying assets of the affected Offshore Corporations become plan assets, the Applicant states that it would comply with the applicable fiduciary obligations under the Act during any period that the assets being managed by Wellington include any plan assets. Under such circumstances, the Applicant states that it would provide advance notice to all investors in the affected entity and would not allow the 25% threshold to be exceeded until all such investors had an opportunity to redeem their Shares should they desire not to continue to invest in a plan assets vehicle.

regard, each Offshore Fund pays Wellington an aggregate annual management fee equal to one percent of the Offshore Fund's net assets. The management fee is paid quarterly in arrears and is calculated based on the value of the net assets of the Offshore Fund at the end of the quarter. Also, as discussed in Representation 6 and the footnote reference with respect thereto, each Offshore Fund allocates 20 percent of its net profits to Wellington Global Holdings on an annual basis or upon a full redemption by a Client Plan. There are no additional management fees incurred at the Offshore Corporation level.[12]

Wellington believes its compensation with respect to these entities is reasonable, within the meaning of section 408(b)(2) of the Act and the regulations promulgated thereunder, and consistent with (and in many cases lower than) the levels of compensation charged by other managers of comparable entities. In addition, Wellington states that the reasonableness of its compensation is further evidenced by the fact that substantially all of the investors in these entities are independent of Wellington and all investors have made their decisions to invest in such entities after full disclosure of the level of compensation to be charged.

10. The Applicant believes that certain of its clients may desire to invest in one or more Offshore Corporations. In particular, U.S. tax-exempt investors, including Client Plans, frequently invest in offshore funds structured as corporations (for U.S. tax purposes) in order to minimize the amount of unrelated business taxable income they incur as a result of certain investment strategies and activities. In effect, the Applicant states that the introduction of the Offshore Corporation shields the Client Plan from any unrelated business taxable income, thereby enhancing the after-tax investment return of the Client Plan. Because an investment in an Offshore Corporation would allow Client Plans to invest in these investment strategies and activities on the most tax efficient basis, the Applicant believes that it is in the best interest of Client Plans and their participants and beneficiaries, and also consistent with the requirements of section 408(a) of the Act, for the Department to grant an administrative exemption for the past and future acquisition and redemption of an Offshore Corporation's non-voting Shares by a Client Plan.

11. Accordingly, the Applicant requests an administrative exemption from the Department that would permit a Client Plan to acquire Shares from an Offshore Corporation. The exemption would also allow the Client Plan to redeem Shares from an Offshore Corporation, either in cash or in kind. An administrative exemption is required because Wellington Management is (or may become) a party in interest with respect to a Client Plan, as a fiduciary and a service provider under section 3(14)(A) and (B) of the Act. Wellington Management would also be considered a party in interest with respect to a Client Plan under section 3(14)(H) of Act because it owns directly 10% or more of Wellington Global Administrator, a service provider to a Client Plan. In this respect, Wellington Management owns more than 99% of the common stock of Wellington Global Administrator and indirectly, more than 99% of Manager Shares.

In addition, Wellington Global Administrator is a party in interest with respect to a Client Plan under section 3(14)(H) of the Act inasmuch as it is a 10% or more shareholder of an Offshore Corporation due to its ownership of 100% of Manager Shares.

Further, an Offshore Corporation would be considered a party in interest with respect to a Client Plan because under section 3(14)(G) of the Act, it is a corporation in which 50% of the combined voting power of all stock entitled to vote is owned directly by Wellington Global Administrator, a service provider, and indirectly by Wellington Management, a fiduciary and a service provider.

Therefore in the absence of an administrative exemption, the acquisition or redemption by a Client Plan of Shares from an Offshore Corporation would constitute a prohibited purchase and sale transaction between the Client Plan and a party in interest in violation of section 406(a)(1)(A) and (D) of the Act.

Because all decisions with respect to a Client Plan's acquisition or redemption of Shares would be (or have been made) by independent fiduciaries of Client Plans which are unrelated to Wellington, no exemption from section 406(b) of the Act is being requested by the Applicant.

If granted, the exemption would provide retroactive relief, effective from January 1, 2001 until December 31, 2003 for transactions involving two Client Plans that formerly invested in the Offshore Corporations. The exemption would also provide prospective relief that would be effective on the date the grant notice is published in the **Federal Register** for future investments by Client Plans in the Offshore Corporations.

The Applicant is aware that the prospective transactions described herein may be covered by the statutory exemption for service providers under section 408(b)(17) of the Act. Section 408(b)(17) of the Act requires that, in connection with transactions entered into pursuant to this statutory exemption, that a plan receive no less nor pay no more than ''adequate consideration.'' For purposes of the statutory exemption, the term ''adequate consideration'' means,

- In the case of a security for which there is a generally recognized market—
  - The price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, taking into account factors such as the size of the transaction and marketability of the security, or
  - If the security is not traded on a national securities exchange, a price not less favorable to the plan than the offering price for the security established by the current bid and asked prices quoted by persons independent of the issuer and of the party in interest, taking into account factors such as the size of the transaction and marketability of the security, and
- In the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary of Labor.

The Applicant is concerned about the requirement in section 408(b)(17) that the plan ''receives no less, nor pays no more, than adequate consideration.'' In this context, the Applicant explains that this provision means fair market value as determined in good faith by the relevant plan fiduciary in accordance with regulations prescribed by the Department. In the absence of such regulations, the Applicant states that the determination of what constitutes adequate consideration is unclear, particularly if the underlying assets of an Offshore Fund are invested in securities and other investments that are not publicly-traded. But for this concern, the Applicant states that the statutory relief provided under section 408(b)(17) of the Act would be adequate for prospective transactions.

12. The Applicant requests retroactive exemptive relief with respect to the

[12] Although the Applicant reserves the right to change its fee in the future, it states that in all cases, any such change would be fully disclosed to investors in advance. Any existing investors would then have an opportunity to withdraw from the affected Offshore Fund before the fee change became effective without penalty.

investment by two Client Plans in an Offshore Corporation. Specifically, the NCR Pension Plan (the NCR Plan) and the Lahey Clinic Pension Plan (the Lahey Plan) inadvertently acquired interests in an Offshore Corporation in January 1, 2001 and July 1, 2003, respectively. The NCR Plan invested $27,200,000 in the WMIB Offshore Corporation on January 1, 2001 in order to acquire Class A Shares. Based upon an available Form 5500, the NCR Plan had total assets of approximately $3 billion on December 31, 2000. Therefore, the NCR Plan's investment in WMIB represented approximately 1% of that Client Plan's assets. In addition, WMIB made no interim distributions to the NCR Plan during the Client Plan's ownership of Shares. On December 31, 2003, the NCR Plan redeemed its interest in WMIB partially in cash and partially in kind. As the redemption amount, the NCR Plan received $31,052,990.

The Lahey Plan invested $6 million in Archipelago on July 1, 2003 to acquire Class A Shares. Based upon an available Form 5500, the Lahey Plan had total assets of approximately $150 million as of September 30, 2003. Thus, the Lahey Plan's investment in Archipelago represented approximately 4% of that Client Plan's assets. During its ownership of the Class A Shares, Archipelago made no interim distributions to the Lahey Plan. On December 31, 2003, the Lahey Plan redeemed its interest in Archipelago in cash. The Lahey Plan received $6,712,168.

It is represented that Wellington did not provide investment advice (within the meaning of 29 CFR 2510.3–21(c)), nor was it a fiduciary, with respect to either the Lahey Plan's or the NCR Plan's investments in the Class A Shares. Rather, in each case, the decision to acquire Class A Shares was made by an authorized fiduciary of the Client Plan who was independent of Wellington. Neither the independent fiduciary of the Client Plan nor Wellington had any knowledge that such acquisition would give rise to a prohibited transaction under section 406(a) of the Act. This was because the parties were not aware that Wellington Management's 95% indirect ownership of Manager Shares in WMIB and Archipelago resulted in either Offshore Corporation becoming a party in interest with respect to the applicable Client Plan. When the prohibited transaction concern was identified, the Applicant states that each Client Plan redeemed its interest in the Offshore Corporation in December 2003, within a reasonable period of time after such discovery. In the case of the Lahey Plan, the redemption was made entirely in cash, while the NCR Plan requested, and was given, a redemption that was partially in cash and partially in kind. The NCR Plan was permitted to receive an in-kind redemption in part because it intended to reinvest its redemption proceeds in a parallel domestic fund, also managed by Wellington.[13] In view of this intent, the Applicant believes that it was more efficient and cost effective (i.e., by avoiding transaction costs) to effect a partial redemption in kind. Neither Client Plan incurred a loss as a result of its investment in the Offshore Corporation.

During their investment in the Offshore Corporations, both the Lahey Plan and the NCR Plan were provided with the opportunity to access, among other things, monthly unaudited performance reports and audited annual financial statements. Both the Lahey Plan and the NCR Plan were also able to access this information online or through paper mailings that were initially given to the sponsor of the NCR Plan. In addition, during the entire duration of their respective investments, both Client Plans had telephone access to the Wellington's Hedge Fund Group for assistance with any questions they may have had.

Neither the NCR Plan nor the Lahey Plan paid any sales or redemption fees or commissions in connection with their subscription and redemption of Class A Shares. Like all other investors, the Client Plans did indirectly bear the management fee and incentive allocation borne by the underlying partnerships to which their respective Class A Shares related.

13. With respect to the determination of fair market value for purposes of the redemption transactions relating to the NCR Plan and the Lahey Plan, the Applicant states that to the extent that any of the assets of an Offshore Fund consisted of publicly-traded securities or other assets for which independent market prices were available, the public market prices or independent pricing sources were utilized. The Applicant further states that to the extent that any of the assets of an Offshore Fund were not capable of being valued in this manner, Wellington Management's pricing committee, which is comprised of senior Wellington investment professionals, determined the fair value of such assets pursuant to its Fair Value Pricing Practices.[14] Wellington contemplates that not more than 5% of the securities held by an Offshore Fund which are not readily marketable will be subject to its Fair Value Pricing Practices.

14. Given that (a) there was no awareness of the technical prohibited transaction concern involved, (b) the investment decision was made by an independent fiduciary on the same terms as all other investors in the Offshore Corporation after receipt of an offering memorandum describing the details of the investment, (c) each of these two Client Plans had, at the time of investment, aggregate assets in excess of $100 million, (d) each Client Plan redeemed its entire interest in the Offshore Corporation within a reasonable period of time after the prohibited transaction concern was discovered, and (e) neither Client Plan incurred a loss on account of its investment in the Offshore Corporation, the Applicant believes that a retroactive exemption covering the acquisition and redemption of interests in the Offshore Corporations by these two Client Plans is appropriate. For these Client Plans, the exemption would be effective

[13] The Applicant states that the redemption proceeds received by the NCR Plan were invested in Quisset Partners, L.P. (the Domestic Fund), a private investment fund organized as a Delaware limited partnership that is sponsored and managed by Wellington in a substantially similar manner to the Offshore Fund from which the NCR Plan was redeemed. The Applicant further states that the decision to invest in the Domestic Fund was made by an independent fiduciary of the NCR Plan without any fiduciary involvement by Wellington or any of its affiliates. The Applicant confirms that the assets of the Domestic Fund are not plan assets subject to the Act due to the fact that the holdings of equity interests in the Domestic Fund are such that ownership by benefit plan investors is not significant within the meaning of section 3(42) of the Act. Nevertheless, the Department is not proposing, nor is the Applicant requesting, exemptive relief with respect to the NCR Plan's investment in the Domestic Fund.

[14] The Applicant states that a fair value pricing determination is intended to provide, on a best-efforts basis, the price at which the security could reasonably be expected to be sold in an arm's length transaction. The Applicant notes that a fair value determination does not contemplate the price at which the entire position would be sold; each situation is appraised individually and only a small percentage (typically in the range from 0–5%) of its holdings will be subject to fair value pricing at any one time. The Applicant considers the following factors in determining whether fair valuation is required: (a) Prices are unavailable on an exchange or market; (b) prices are unavailable from brokers/market makers; (c) a determination that prices from vendor/broker sources are stale or incorrect; (d) a private placement investment; (e) notice of default or the initiation of bankruptcy proceedings; (f) a determination that an investment has become worthless; (g) certain corporate reorganizations; (h) a ''significant event'' has occurred with respect to a security or market.

In making its fair value pricing determination, the Applicant represents that it utilizes a set of defined decision rules, which involve varying degrees of objectivity, an independent review process, and a continuing review of securities in fair value status. The valuation process is operated in a consistent manner over time as well as among investor accounts.

between January 1, 2001 and December 31, 2003.

15. The Applicant represents that the following safeguards for the prospective exemption will be in place:

• All decisions to acquire or redeem Shares will be made or are made on behalf of the Client Plan by an independent fiduciary.

• The Client Plan, either individually or through a pooled investment vehicle such as a master trust or a pooled fund, will have assets at least equal to $100 million. For example: (a) In the case of a master trust that holds assets of multiple related Client Plans maintained by a single employer or a controlled group of employers, as defined by section 407(d)(7) of the Act, this requirement will be satisfied if the master trust has aggregate assets at least equal to $100 million (assuming the fiduciary responsible for making the investment decision is the Client Plan sponsor or an affiliate of the Client Plan sponsor); or (b) in the case of a pooled fund (e.g., a group trust) whose assets are ''plan assets'' subject to the Act, this requirement will be satisfied as long as either (1) the pooled fund has at least $100 million in aggregate assets and the fiduciary making the investment decision is unrelated to Wellington and manages at least $200 million in assets (exclusive of the aggregate assets invested in the Offshore Corporations); or (2) at least 50 percent of the units of beneficial interest in the pooled fund are held by Client Plans, each of which has total net assets of at least $100 million.

• Wellington will not provide investment advice (within the meaning of 29 CFR 2510.3–21(c)), nor is it a fiduciary with respect to any Client Plan investment in an Offshore Fund.

• All acquisitions and redemptions of Shares by a Client Plan will be for fair market value, determined as follows: (a) equity securities will be valued at their last sale price or official closing price on the market on which such securities primarily trade using sources independent of Wellington and the issuer. If no sales occurred on such day, equity securities are valued at the last reported independent ''bid'' price or, if sold short, at the last reported independent ''asked'' price; (b) fixed income securities will be valued either on the basis of ''firm quotes'' obtained at the time of the acquisition or redemption of Shares from U.S.-registered or foreign broker-dealers, which are registered and subject to the laws of their respective jurisdiction, which quotes reflect the share volume involved in the transaction, or on the basis of prices provided by independent pricing services that determine valuations based on market transactions for comparable securities and various relationships between such securities that are generally recognized by institutional traders; (c) options will be valued at the mean between the current independent ''bid'' price and the current independent ''asked'' price or, where such prices are not available are valued at their fair value in accordance with Fair Value Pricing Practices by Wellington Management's pricing committee, which utilizes a set of defined rules and an independent review process; or (d) if current market quotations are not readily available for any investments, such investments will be valued at their fair value by Wellington Management's pricing committee, in accordance with Fair Value Pricing Practices.

• A Client Plan's Shares will be redeemed, in whole or in part, without the payment of any redemption fee or other penalty, on a pre-specified, periodic (not longer than semi-annual) basis, upon no more than 45 days' advance notice, except for a one-year lock-up period imposed on new investors. (If the Applicant extends the lock-up period to existing investors, such investors would receive advance notice and have an opportunity to withdraw from the affected Offshore Fund without penalty before the change become effective.)

• Redemptions of Shares in an Offshore Corporation by a Client Plan will be made in cash unless: (a) A Client Plan consents to such in kind redemption; or (b) Wellington requires that such redemption be made in kind on a pro rata basis to protect the best interests of the Offshore Fund and the remaining investors, including other Client Plan investors. (Each Offshore Corporation may redeem Shares in kind if deemed by the Board of Directors to be in the best interests of the Offshore Corporation. There is no threshold over which redemptions are automatically funded in kind, nor is there any minimum amount of redemption below which the redemption cannot be made in kind.)

• In advance of the initial investment by a Client Plan in an Offshore Corporation's Shares, the relevant independent fiduciary will receive: (a) A copy of the proposed and final exemption for prospective relief described herein; (b) an offering memorandum describing the relevant Offshore Fund(s), as well as the relevant investment objectives, fees and expenses and redemption and valuation procedures; and (c) all reasonably available relevant information as such independent fiduciary may request.

• On an ongoing basis, Wellington will provide a Client Plan with the following information: (a) Unaudited performance reports at the end of each month; (b) audited annual financial statements and access to a protected internet site; and (c) client services group assistance for any investor inquiries.

• No commission or sales charge will be assessed against the Client Plan in connection with its acquisition of an Offshore Corporation's Shares.

• Not more than 10% of the assets of the Client Plan will be invested, in the aggregate, in non-voting Shares of all Offshore Corporations (determined at the time of any acquisition of the Shares) and not more than 5% of the assets of the Client Plan will be invested, in the aggregate, in any one Offshore Fund (determined at the time of any acquisition of an interest in such Offshore Fund by such Client Plan).

• Each Offshore Corporation, each Offshore Fund, Wellington Management Investment, Wellington Global Holdings, Wellington Hedge Management, and Wellington Global Administrator will consent to the jurisdiction of the federal and state courts located in the Commonwealth of Massachusetts and has appointed Wellington Management as its agent for service of process.

• Wellington will maintain in the United States for a period of six years from the date of the covered transactions, such records as are necessary to enable any duly authorized employee or representative of the Department or the Service, any fiduciary of a Client Plan, or any participant or beneficiary of a Client Plan to determine whether the conditions of this exemption have been or are met.

16. In summary, the Applicant represents that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) All decisions to acquire or redeem such Shares have been or will be made on behalf of the Client Plan by an authorized fiduciary who is independent of Wellington and the applicable Offshore Corporation;

(b) At the time of acquisition of Shares from an Offshore Corporation, each Client Plan has had or will have assets at least equal to $100 million either individually or through a pooled arrangement.

(c) Wellington has not provided or will not provide investment advice (within the meaning of 29 CFR 2510.3–21(c)), nor is it a fiduciary with respect to any Client Plan's investment in an Offshore Fund.

(d) A Client Plan's Shares have been redeemed or will be redeemed, in whole or in part, without the payment of any redemption fee or other penalty, on a pre-specified, periodic (not longer than semi-annual) basis, upon no more than 45 days' advance notice, except for a one-year lock-up period imposed on new investors.

(e) All acquisitions and redemptions of Shares by a Client Plan have been made or will be made for fair market value or have been valued or will be valued by Wellington Management's pricing committee, which utilizes a set of defined rules and an independent review process, all in accordance with Fair Value Pricing Practices.

(f) Redemptions of interests in an Offshore Corporation by a Client Plan have been made or will be made in kind or cash unless: (1) A Client Plan consents to such in kind redemption; or (2) Wellington requires that such redemption be made in kind to protect the best interests of the Offshore Fund and the remaining investors, including other Client Plan investors.

(g) In advance of the initial investment by a Client Plan in an Offshore Corporation's Shares, the relevant independent fiduciary has received or will receive: (1) A copy of the proposed exemption and the final exemption (This disclosure provision applies to the prospective exemptive relief described herein.); (2) an offering memorandum describing the relevant Offshore Fund(s), as well as the relevant investment objectives, fees and expenses and redemption and valuation procedures; and (3) all reasonably available relevant information as such independent fiduciary may request.

(h) On an ongoing basis, Wellington has provided or will provide the independent fiduciary of a Client Plan with the following information: (1) Unaudited performance reports at the end of each month; (2) audited annual financial statements and access to a protected internet site; and (3) client services group assistance for any investor inquiries.

(i) No commission or sales charge has been assessed or will be assessed against the Client Plan in connection with its acquisition of an Offshore Corporation's Shares.

(j) Not more than 10% of the assets of the Client Plan has been invested or will be invested, in the aggregate, in non-voting Shares of all Offshore Corporations (determined at the time of any acquisition of such Shares) and not more than 5% of the assets of the Client Plan has been indirectly invested or will be invested, in the aggregate, in any one Offshore Fund (determined at the time of any acquisition of an interest in such Offshore Fund by such Client Plan).

(k) For prospective transactions only, each Offshore Corporation, each Offshore Fund, Wellington Management Investment, Wellington Global Holdings, Wellington Hedge Management, and Wellington Global Administrator will consent to the jurisdiction of the federal and state courts located in the Commonwealth of Massachusetts and has appointed Wellington Management as its agent for service of process.

(l) For prospective transactions only, Wellington will maintain in the United States for a period of six years from the date of the covered transactions, such records as are necessary to enable such persons as any duly authorized employee or representative of the Department or the Service, any fiduciary of a Client Plan, or any participant or beneficiary of a Client Plan, to determine whether the conditions of this exemption will be met.

17. The Department notes that the general standards of fiduciary conduct under the Act would apply to the transactions permitted herein, and that the satisfaction of the conditions of this exemption should not be viewed as an endorsement, by the Department, of investments in the Offshore Corporations by Wellington's Client Plans. Therefore, the Department believes that it would be helpful to provide general information regarding its views on the responsibilities of an independent fiduciary of a Client Plan in connection with such plan's investment in an Offshore Corporation.

As noted in the Department's Interpretive Bulletin, 29 CFR 2509.94–3(d) (59 FR 66736, December 28, 1994), apart from consideration of the prohibited transaction provisions, a Client Plan's independent fiduciary must determine that such plan's investment in an Offshore Corporation is consistent with the general standards of fiduciary conduct under section 404 of the Act. In this regard, section 404(a)(1)(A) and (B) of the Act requires that fiduciaries discharge their duties to a plan solely in the interests of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable administrative expenses, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In addition, section 404(a)(1)(C) of the Act requires that fiduciaries diversify plan investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

Accordingly, the independent fiduciary of a Client Plan must act ''prudently,'' ''solely in the interest'' of the Client Plan's participants and beneficiaries, and with a view to the need to diversify such plan assets when deciding whether to invest plan assets in Shares of an Offshore Corporation. If such investment is not ''prudent,'' or not ''solely in the interest'' of the participants and beneficiaries of the plan or would result in an improper lack of diversification of plan assets, the responsible fiduciary or fiduciaries of the plan would be liable for any losses resulting from such a breach of fiduciary responsibility.

The Department further emphasizes that it expects the independent fiduciary to fully understand the benefits and risks associated with the Client Plan's investment in an Offshore Corporation, following disclosure to such fiduciary of all relevant information, including the fees that are paid to Wellington. Further, such plan fiduciary must be capable, either directly or indirectly through the use of hired professional experts, of monitoring the investment, including any changes in the performance of the investment. Thus, in considering a Client Plan's investment in an Offshore Corporation, an independent fiduciary should take into account its ability to provide adequate oversight of the particular investment.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone number (202) 693–8556. (This is not a toll-free number.)

GE Asset Management Incorporated Located in Stamford, Connecticut

[Application No. D–11389]

Proposed Exemption

Section I—Exemption for In-Kind Redemption of Assets

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, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions in sections 406(a)(1)(A) through (D) and 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,[15] effective March 1, 2006, to certain in-kind redemptions (the Redemption(s)), by plans sponsored by the General Electric Company (GE) or an affiliate (the Plan(s)), of shares (the Shares) of certain proprietary mutual funds for which GE Asset Management Incorporated (GEAM) provides investment advisory and other services (the Mutual Fund(s)), provided that the following conditions are satisfied:

(A) The Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemption (other than customary transfer charges paid to parties other than GEAM and any affiliates thereof (GEAM Affiliates));

(B) The assets transferred to the Plan pursuant to the Redemption consist entirely of cash and Transferable Securities, as such term is defined in Section II, below;

(C) With certain exceptions described below, the Plan receives in any Redemption its pro rata portion of the securities that, when added to the cash received, is equal in value to the number of Shares redeemed, as determined in a single valuation performed in the same manner and as of 4 p.m. (local time for the New York Stock Exchange) on the same day, in accordance with Rule 2a–4 under the Investment Company Act of 1940, as amended (the 1940 Act), and the then-existing procedures established by the Board of Trustees of the Mutual Fund (using sources independent of GEAM and GEAM Affiliates). Notwithstanding the foregoing, Transferable Securities that are odd lot securities, fractional shares, and accruals on such securities may be distributed in cash;

(D) Neither GEAM, nor any affiliate thereof, receives any direct or indirect compensation, or any fees, including any fees payable pursuant to Rule 12b–1 under the 1940 Act, in connection with any Redemption of the Shares;

(E) Prior to a Redemption, GEAM provides in writing to an independent fiduciary, as such term is defined in Section II (Independent Fiduciary), a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written authorization for such Redemption to GEAM, such authorization being terminable at any time prior to the date of Redemption without penalty to the Plan;

(G) Before authorizing a Redemption, based on the disclosures provided by GEAM to the Independent Fiduciary, the Independent Fiduciary determines that the terms of the Redemption are fair to the Plan, and comparable to, and no less favorable than, terms obtainable at arm's length between unaffiliated parties, and that the Redemption is in the best interests of the Plan and its participants and beneficiaries;

(H) Not later than thirty (30) business days after the completion of a Redemption, the Mutual Fund will provide to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) The total number of Shares of the Mutual Fund and the percentage held by the Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held);

(ii) The identity (and related aggregate dollar value) of each security provided to the Plan pursuant to the Redemption, including each security valued in accordance with Rule 2a–4 under the 1940 Act and the then-existing procedures established by the Board of Trustees of the Mutual Fund (using sources independent of GEAM and GEAM Affiliates);

(iii) The current market price of each security received by the Plan pursuant to the Redemption; and

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

(I) The value of the securities received by the Plan for each redeemed Share, when added to the cash received, equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Mutual Fund at that time;

(J) Subsequent to a Redemption, within 180 days of the date of such Redemption, the Independent Fiduciary performs a post-transaction review that will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing;

(K) Each of the Plan's dealings with the Mutual Funds, the investment advisers to the Mutual Funds, the principal underwriter for the Mutual Funds, or any affiliated person thereof, are on a basis no less favorable to the Plan than dealings between the Mutual Funds and other shareholders holding shares of the same class as the Shares;

(L) GEAM will maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (M) below to determine whether the conditions of this exemption, if granted, have been met, except that (i) this recordkeeping condition shall not be violated if, due to circumstances beyond the control of GEAM, the records are lost or destroyed prior to the end of the six year period, (ii) no party in interest with respect to the Plan other than GEAM 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 such records are not maintained or are not available for examination as required by paragraph (M) below;

(M)(1) Except as provided in subparagraph (2) of this paragraph (M), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (L) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission (SEC), (ii) any fiduciary of the Plan or any duly authorized representative of such fiduciary, (iii) any participant, beneficiary, or union employee covered by the Plan or duly authorized representative of such participant, beneficiary, or union employee, (iv) any employer whose employees are covered by Plan and any employee organization whose members are covered by such Plan.

(2) None of the persons described in paragraphs (M)(1)(ii), (iii) and (iv) shall be authorized to examine trade secrets of GEAM or the Mutual Funds, or commercial or financial information that is privileged or confidential; and

(3) Should GEAM or the Mutual Funds refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (2) above, GEAM shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II—Definitions

(A) The term ''affiliate'' means:

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

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

(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.

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

(C) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Mutual Fund's prospectus and statement of additional information, and other assets belonging to the Mutual Fund, less the liabilities charged to each such Mutual Fund, by the number of outstanding shares.

(D) The term ''Independent Fiduciary'' means a fiduciary who is: (i) Independent of and unrelated to GEAM and its affiliates, and (ii) appointed to act on behalf of the Plan with respect to the in-kind transfer of assets from one or more Mutual Funds to, or for the benefit of, the Plan. For purposes of this proposed exemption, a fiduciary will not be deemed to be independent of and unrelated to GEAM if: (i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with GEAM, (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this proposed exemption (except that an independent fiduciary may receive compensation from GEAM in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision), and (iii) an amount equal to more than two percent (2%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid to such fiduciary by GEAM and its affiliates in such fiduciary's current tax year.

(E) The term ''Transferable Securities'' means securities that are traded on public securities markets or for which quoted bid and asked prices are available from persons independent of GEAM and would not include the following types of securities or assets: (a) Securities that would have to be registered under the Securities Act of 1933, as amended; (b) securities issued by entities in countries that restrict the holdings of securities by non-nationals, including investment vehicles such as the Mutual Funds, or otherwise limit the ability to transfer the security other than through a local securities exchange transaction; and (c) certain portfolio assets (such as forward currency contracts, futures and option contracts, swap transactions, and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities, or may be traded only with the counterparty to the transactions in order to effect a change in beneficial ownership.

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

Summary of Facts and Representations

1. GE Asset Management Incorporated (i.e., GEAM) is a direct, wholly-owned subsidiary of the General Electric Company (i.e., GE). GEAM serves as investment adviser to the GE Funds, an open-end management investment company registered under the 1940 Act that consists of a number of series (the Retail Funds). The Retail Funds generally offer four classes of shares: A, B, C, and Y. Class Y shares are held by various institutional investors. Investors in Class Y shares of the Retail Funds do not pay sales commissions or redemption fees in connection with the purchase or redemption of such shares, nor do they pay any 12b–1 or similar fees with respect to the distribution of such shares. Individual account plans maintained by GE and its affiliates (i.e., the Plans), subject to the Act and the Code, were, in the past, invested in Class Y shares of certain Retail Funds.[16] The Retail Funds in which the Plans have in the past invested include the following: The International Equity Fund, U.S. Equity Fund, Strategic Investment Fund, Small-Cap Value Equity Fund, Premier Growth Equity Fund, Value Equity Fund, and Fixed Income Fund.

2. GEAM also serves as investment adviser to GE Institutional Funds, an open-end management investment company registered under the 1940 Act that consists of a number of portfolios (the Institutional Funds). The Institutional Funds are designed primarily for institutional investors, such as corporations, foundations, endowments, and trusts, as well as charitable, religious, and educational institutions. Shares of the Institutional Funds are currently offered in two classes: the Investment Class (Class I) and Service Class. Purchasers of Class I shares do not pay any sales charges (including front-end, contingent deferred, or asset-based sales charges), nor do they pay shareholder service and distribution fees in connection with their investments in the Institutional Funds.

The applicant represents that certain Institutional Funds have the same investment objectives, investment strategies, and portfolio managers as corresponding Retail Funds, and therefore have substantially identical portfolio holdings as those corresponding Retail Funds.[17] However, the expense ratios of the Institutional Funds are lower than the expense ratios of the corresponding Retail Funds. The Institutional Funds that correspond to the Retail Funds in which the Plans have in the past invested include the following: the International Equity Fund, U.S. Equity Fund, Strategic Investment Fund, Small-Cap Value Equity Fund, Premier Growth Equity Fund, Value Equity Fund, and Fixed Income Fund.

3. Historically, the investor qualification requirements established by the Institutional Funds precluded the Plans from investing in them. As a result of recent changes to those investor eligibility requirements, however, the Plans may now invest in Class I shares of the Institutional Funds.[18] Certain Plans that previously invested in Retail Funds have chosen to invest in the Institutional Funds that correspond to those Retail Funds, given the lower expense ratios of the

[16] The applicant represents that the Plans were invested in the Retail Funds pursuant to the terms and conditions of Prohibited Transaction Exemption (PTE) 77–3. PTE 77–3 (42 Fed. Reg. 18734, April 8, 1977) is a class exemption that permits, under certain conditions, the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter. Thus, the applicant is not requesting exemptive relief with respect to the Plan's past investment in the Retail Funds. The Department expresses no opinion herein as to whether the terms and conditions of PTE 77–3 were satisfied.

[17] According to the applicant, where an Institutional Fund has a corresponding Retail Fund, such Institutional Fund invests in substantially identical underlying securities and substantially the same proportional amounts as its corresponding Retail Fund.

[18] The applicant represents that the changes to the Institutional Funds' investor qualification requirements became effective November 1, 2004. However, the Plans' desired investment changes could not be implemented until certain securities law issues under the 1940 Act were resolved with the no-action relief from the SEC with respect to the in-kind purchases of Institutional Funds shares discussed in Item 5. See GE Institutional Funds (pub. avail. December 21, 2005).

Institutional Funds and the substantial identity in investment objectives and policies between the Retail Funds and the corresponding Institutional Funds. This choice included a decision by the Plans to redeem Class Y Shares of the Retail Funds and to use the proceeds to purchase Class I shares of the corresponding Institutional Funds.

To facilitate investments by the Plans in the Institutional Funds, the Retail Funds and the Institutional Funds determined to permit simultaneous in-kind Redemption and in-kind purchase transactions where possible, and such transactions were effected in March 2006. The applicant represents that this approach benefited the Plans, as well as other shareholders of the Retail Funds and the Institutional Funds, by avoiding the significant brokerage costs that would have been incurred—if portfolio securities of the Retail Funds were sold to realize cash to pay redemption proceeds that were then used to acquire similar portfolio securities in corresponding Institutional Funds. The process of effecting the March 2006 Redemptions began with the commencement of a blackout period applicable to the relevant Plans upon the close of the New York Stock Exchange on March 15, and was completed when the blackout was lifted at 2:30 p.m., Eastern Time, on March 20.

4. With respect to prohibited transaction issues under the Act and the Code, the applicant has requested this exemption to cover the in-kind Redemptions effected in March 2006. Prior to March 2006, the applicant had discussions with the Department, through outside counsel, about obtaining individual retroactive relief for the contemplated Redemptions, modeled on similar prior individual exemptions. The applicant notes that PTE 77–3 provides an exemption for the sale of shares of a mutual fund by an employee benefit plan covering employees of the investment adviser for the mutual fund and its affiliates, subject to certain conditions. However, in several published exemptions, in which the Department has granted individual relief for the in-kind redemption of shares by plans of the investment advisers of mutual funds—*e.g.,* PTE 2003–01 (Northern Trust Company and Affiliates); PTE 2002–20 (Union Bank of California); and PTE 2001–46 (Bank of America Corporation)[19]—the exemption notices describe PTE 77–3 as being available for a redemption of shares for cash, implying that PTE 77–3 would not be available for an in-kind redemption.

The applicant requests retroactive relief for the March 2006 Redemptions and for any other in-kind Redemptions involving the Mutual Funds that are effected prior to the date that an exemption, if granted, is published in the **Federal Register**, as well as prospective relief for any in-kind Redemptions effected on or after that publication date, to be carried out in accordance with the conditions of the exemption.

The applicant is not requesting relief for the in-kind acquisitions of Institutional Funds shares effected in March 2006 (and, it is represented, in the future would be effected) in accordance with PTE 77–3, in reliance on Advisory Opinion 98–06A (July 30, 1998).

5. The applicant represent that, with respect to issues raised under the 1940 Act by the aforementioned transactions, the Retail Funds effected the March 2006 in-kind Redemptions in reliance upon the no-action relief granted by the SEC to Signature Financial Group, Inc. (pub. avail. Dec. 28, 1999) (the Signature Letter).[20] Further, the Institutional Funds obtained no-action relief from the SEC with respect to the in-kind purchases of Institutional Funds shares effected as part of the overall exchange. *See* GE Institutional Funds (pub. avail. December 21, 2005).

According to the applicant, the March 2006 Redemptions were effected pursuant to certain procedures adopted by the Board of Trustees of the Retail Funds, and the in-kind acquisitions were effected pursuant to corresponding procedures adopted by the Board of Trustees of the Institutional Funds. (The same persons serve as members of the Boards of both the Retail Funds and the Institutional Funds.) The securities and cash received by a Plan in an in-kind Redemption from a Retail Fund pursuant to such procedures were used only for the simultaneous purchase of shares of the corresponding Institutional Fund. Any in-kind Redemptions (and simultaneous in-kind acquisitions) occurring in the future would be effected pursuant to the same procedures (the Procedures).

6. Under the Procedures, each in-kind Redemption was effected at the current net asset value per Share of the relevant Retail Fund and was effected simultaneously with the in-kind acquisition of shares of the corresponding Institutional Fund. Pursuant to each in-kind Redemption, subject to the exceptions noted below, a Plan received a pro rata portion of securities of the Retail Fund that was equal in value to the number of Retail Fund Shares redeemed, as determined in a single valuation performed as of 4 p.m. Eastern Time (local time for the closing of the New York Stock Exchange) on the same day, in the same manner as such securities would be valued for purposes of computing the Retail Fund's net asset value per share in accordance with Rule 2a–4 under the 1940 Act and the procedures established by the Board of Trustees of the Retail Funds (using sources independent of GEAM and affiliates of GEAM).[21]

Securities for which quotations are readily available on a national securities exchange are valued at the last quoted sales price, or if there is no reported sale, the security is valued at the last quoted bid price. Certain fixed income securities are valued by a dealer or by a pricing service based upon a computerized matrix system, which considers market transactions and dealer supplied valuations. Valuations for municipal bonds are based on prices obtained from a qualified municipal bond pricing service, which prices are based on the mean of the bid and ask prices of the secondary market. The value of the securities received by the Plan, as determined by the Retail Fund for purposes of an in-kind Redemption, is the same value of such securities that is used in determining the number of Institutional Fund shares purchased by such Plan as a result of the in-kind

[19] The most recent example is PTE 2007–04 (Mellon Financial Corporation).

[20] In the Signature Letter, the Division of Investment Management of the SEC states that it will not recommend enforcement action pursuant to section 17(a) of the 1940 Act for certain in-kind distributions of portfolio securities to an affiliate of a mutual fund. Funds seeking to use this ''safe harbor'' must value the securities to be distributed to an affiliate in an in-kind distribution ''in the same manner as they are valued for purposes of computing the distributing fund's net asset value.''

The Signature Letter does not address the marketability of the securities distributed in kind. The range of securities distributed pursuant to this ''safe harbor'' may therefore be broader than the range of securities covered by SEC Rule 17a–7, 17 CFR 270.17a–7. In granting past exemptive relief with respect to in-kind transactions involving mutual funds, the Department has required that the securities being distributed in-kind fall within Rule 17a–7. One of the requirements of Rule 17a–7 is that the securities are those for which ''market quotations are readily available.'' SEC Rule 17a–7(a). Under this exemption request, exemptive relief also would be limited to in-kind distribution of securities for which market quotations are readily available. In addition, the Signature Letter requires pro rata distributions for any in-kind redemptions.

[21] The applicant further represents that, because each Retail Fund distributed a pro rata portion of every unique lot of every applicable security, the Plans received their proportionate share of each Retail Fund's high tax basis holdings as well as low tax basis holdings of each security distributed in kind. Accordingly, low-basis securities were not disproportionately allocated to the redeeming Plans to any material extent.

purchase that is effected simultaneously as part of the same Redemption/acquisition transaction (and such purchase is effected at the net asset value per share of such Institutional Fund determined as of the same time).

7. Furthermore, under the Procedures, securities received by a Plan pursuant to an in-kind Redemption are limited to securities that are traded on public securities markets or for which quoted bid and asked prices are available from persons independent of GEAM (*i.e.*, Transferable Securities) and do not include the following types of securities or assets: (a) Securities that would have to be registered under the Securities Act of 1933, as amended; (b) securities issued by entities in countries that restrict the holdings of securities by non-nationals, other than through qualified investment vehicles such as the Mutual Funds, or otherwise limit the ability to transfer the security other than through a local securities exchange transaction; and (c) certain portfolio assets (such as forward foreign currency contracts, futures and option contracts, and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities, or may only be traded with the counterparty to the transactions in order to effect a change in beneficial ownership. The applicant further represents that no Rule 144A securities were involved in the Redemptions.

In addition, under the Procedures, a Plan receives from the relevant Retail Fund (and deposits to the corresponding Institutional Fund) cash for the portion of the Retail Fund's assets represented by cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements). A Plan receives from the relevant Retail Fund (and deposits to the corresponding Institutional Fund) cash for other securities and assets that are not readily distributable (including securities and assets of the types described in (a), (b) and (c) of the preceding paragraph, receivables, and prepaid expenses) net of a pro rata portion of all liabilities (including accounts payable), and for those portfolio securities not amounting to round lots (e.g., 100 shares) (or would not amount to round lots if included in the in-kind Redemption and purchase) or fractional shares and accruals on these securities.

The applicant represents that the March Redemptions also satisfied the remaining conditions set forth in Section I not addressed above. Thus, for example, neither GEAM nor a GEAM Affiliate, received any fees (including any fees pursuant to Rule 12b–1 under the 1940 Act) in connection with any in-kind Redemption.

8. Further, the applicant retained U.S. Trust Company, N.A. (U.S. Trust), a national bank, to act as the Independent Fiduciary on behalf of the Plans with regard to the March 2006 Redemptions. It is represented that U.S. Trust is independent of, and unrelated to, GEAM and GEAM Affiliates and is qualified to perform the functions of the Independent Fiduciary. U.S. Trust has acknowledged that it is a fiduciary to the Plans, as defined in section 3(21) of the Act, and has represented that it understands and accepts the duties, responsibilities, and liabilities in acting as a fiduciary under the Act for the Plan, pursuant to the terms of an engagement letter, dated December 20, 2005, by and between GEAM and U.S. Trust.

As a condition of the proposed exemption, prior to any in-kind Redemption with respect to a Plan, GEAM and the Plan must provide the Independent Fiduciary with (or cause the Independent Fiduciary to be provided with) information necessary for the Independent Fiduciary to determine the fairness of the proposed in-kind Redemption. Before authorizing any in-kind Redemption, the Independent Fiduciary must determine, based on the information provided, that the terms of the in-kind Redemption are fair to the participants of the Plan and are comparable to, and no less favorable than, terms obtainable at arm's length between unaffiliated parties, and that the in-kind Redemption is in the best interests of the Plan and its participants and beneficiaries. If the Independent Fiduciary makes that determination, the Independent Fiduciary provides written authorization for such in-kind Redemption to GEAM. However, that authorization is terminable at any time prior to the date of the in-kind Redemption, without penalty to the Plan.

U.S. Trust also conducted a post-transaction review, summarized in a letter dated September 5, 2006, within 180 days of the date of the March 2006 Redemptions. The post-transaction review confirmed that the transfer was carried out in accordance with the required criteria and procedures, by testing a sampling of certain material aspects of the redemption transactions.[22] U.S. Trust states,

> In the Pre-Trade analysis performed by GEAM, the costs to redeem in cash and repurchase all of the securities from the Funds to the corresponding GE Institutional Funds were estimated to be $435,612.34 combined for commissions, spread, taxes and fees. By completing the redemption and reinvestment in kind rather than in cash these costs were avoided. The Plans were immediately reinvested after the in kind redemption; therefore, potential opportunity costs associated with reinvestment risk were eliminated. If the Plans had received cash instead of their pro rata portion of the assets in each of the Funds, they would have been forced to incur their pro rata portion of the sell side transactions costs, and they would have had to incur all of the buy side transactions costs when they reinvested the proceeds. Furthermore, there may have been a time lag from the date of the redemption request to the time the Plans had fully redeployed the proceeds. This time lag would have imposed an opportunity cost by not being invested in securities that would have had the potential to match the Plans [sic] stated objectives.

With respect to any future Redemptions, as a condition of the proposed exemption, the Independent Fiduciary will also perform such a post-transaction review within 180 days of the date of the Redemption.

9. In summary, the applicant represents that the Redemptions have satisfied, and will satisfy, the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(A) The Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemption (other than customary transfer charges paid to parties other than GEAM and GEAM Affiliates);

(B) The assets transferred to the Plan pursuant to the Redemption consist entirely of cash and Transferable Securities;

(C) With certain exceptions described below, the Plan receives in any Redemption its pro rata portion of the securities that, when added to the cash received, is equal in value to the number of Shares redeemed, as determined in a single valuation performed in the same manner and as of 4 p.m. (local time for the New York Stock Exchange) on the same day, in accordance with Rule 2a–4 under the 1940 Act, and the then-existing procedures established by the Board of Trustees of the Mutual Fund (using sources independent of GEAM and GEAM Affiliates). Notwithstanding the foregoing, Transferable Securities that are odd lot securities, fractional shares, and accruals on such securities may be distributed in cash;

(D) Neither GEAM, nor any GEAM Affiliate, receives any direct or indirect

[22] Condition (J) in Section I refers to testing "a sampling" of material aspects of the Redemptions by the Independent Fiduciary. The applicant represents, however, that U.S. Trust received and reviewed all of the data in connection with the Redemptions, thus reviewing 100% of the security transactions, not merely a sampling.

compensation, or any fees, including any fees payable pursuant to Rule 12b–1 under the 1940 Act, in connection with any Redemption of the Shares;

(E) Prior to a Redemption, GEAM provides in writing to an Independent Fiduciary a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written authorization for such Redemption to GEAM, such authorization being terminable at any time prior to the date of Redemption without penalty to the Plan;

(G) Before authorizing a Redemption, based on the disclosures provided by GEAM to the Independent Fiduciary, the Independent Fiduciary determines that the terms of the Redemption are fair to the Plan, and comparable to, and no less favorable than, terms obtainable at arm's length between unaffiliated parties, and that the Redemption is in the best interests of the Plan and its participants and beneficiaries;

(H) Not later than thirty (30) business days after the completion of a Redemption, the Mutual Fund will provide to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) The total number of Shares of the Mutual Fund and the percentage held by the Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held);

(ii) The identity (and related aggregate dollar value) of each security provided to the Plan pursuant to the Redemption, including each security valued in accordance with Rule 2a–4 under the 1940 Act and the then-existing procedures established by the Board of Trustees of the Mutual Fund (using sources independent of GEAM and GEAM Affiliates);

(iii) The current market price of each security received by the Plan pursuant to the Redemption; and

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

(I) The value of the securities received by the Plan for each redeemed Share, when added to the cash received, equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Mutual Fund at that time;

(J) Subsequent to a Redemption, within 180 days of the date of such Redemption, the Independent Fiduciary performs a post-transaction review that will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing;

(K) Each of the Plan's dealings with the Mutual Funds, the investment advisers to the Mutual Funds, the principal underwriter for the Mutual Funds, or any affiliated person thereof, are on a basis no less favorable to the Plan than dealings between the Mutual Funds and other shareholders holding shares of the same class as the Shares.

Notice To Interested Persons: Notice of the proposed exemption will be given to the relevant named fiduciary of each Plan and to the Independent Fiduciary representing the Plans by first class mail within 30 days from the date of publication of the proposed exemption in the **Federal Register**. Comments and requests for a hearing from all interested persons are due within 60 days from such date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693–8557. (This is not a toll-free number.)

Middleburg Trust Company (Middleburg) Located in Richmond, VA

[Application No. D–11405]

Proposed Exemption

The Department is considering granting an exemption under the authority of 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).[23]

If the exemption is granted, 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 past sale, on March 28, 2006, by the William T. Smith IRA (the IRA) of certain bonds (the Bonds) to Middleburg, a disqualified person with respect to the IRA.

This proposed exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following conditions:

(a) The sale was a one-time transaction for cash;

(b) The sale price for the Bonds was based on the Bonds' face value;

(c) The Bonds' face value was in excess of bids for the Bonds solicited from independent brokers and in excess of the price for the Bonds quoted by an independent valuation service for the date of the sale;

(d) Neither the IRA nor Mr. William T. Smith, the owner of the IRA, paid any fees, commissions, or other costs or expenses associated with the sale;

(e) The IRA received its portion of income and all interest accrued on the Bonds through the date of the sale;

(f) The terms and conditions of the sale were at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party; and

(g) Within 30 days of the publication of the grant notice in the **Federal Register**, Middleburg will pay the IRA $196.53 to make up for the loss sustained by the IRA as a result of the sale.

Effective Date: If granted, the proposed exemption will be effective as of March 28, 2006.

Summary of Facts and Representations

1. The plan to which the proposed exemption applies is an individual retirement account described under section 408(a) of the Code. The IRA is a ''traditional IRA'' in that the custodian, rather than the IRA account holder, makes the investment decisions for such plan. Mr. William T. Smith is the IRA account holder. As of February 28, 2006, the IRA had total assets having a fair market value of $578,193.89.

Middleburg,[24] an independent trust company, headquartered in Richmond, Virginia, formerly acted as the custodian and trustee of the IRA and had discretion over the IRA's assets. At no time did Mr. Smith ever serve as an officer, director, or employee of Middleburg or its affiliates or have any other relationship with these entities.

2. On June 28, 2005, Middleburg purchased 200 Federal Home Loan Bank (FHLB) bonds having a combined face value of $200,000.00.[25] Each Bond in the entire issue had a Committee on Uniform Securities Identification Procedures Number of 3133XB2C8. Middleburg paid a total purchase price of $201,600 for the Bonds. The seller of the Bonds was First Tryon Securities of Charlotte, North Carolina, an unrelated party. Each Bond was issued in denominations of $1,000. The Bonds carry interest at 5% and have a maturity date of March 28, 2008. The Bonds were

[23] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[24] Prior to its name change, which took effect on January 1, 2006, Middleburg was known as ''Tredegar Trust Company.''

[25] FHLB bonds are issued in denominations of $1,000 each, usually with minimum purchase amounts of 5 bonds ($5,000 face). Some FHLB bonds are issued for the institutional market, requiring a 100 bonds minimum ($100,000 face). The bonds normally pay a stated fixed coupon (interest) and will pay face value at maturity or at an optional call date.

divided among nine accounts (i.e., trust accounts and two IRAs, including the subject IRA) that needed fixed income exposure. Middleburg was the trustee for all nine accounts. Middleburg placed $25,200.00 of the Bond issue (or 25 Bonds) in the IRA. Thus, the Bonds represented approximately 4.3% of the IRA's assets. Middleburg allocated the Bonds among the remaining accounts based on a pro rata share of their fair market value, in conjunction with the need in the account portfolios for fixed income exposure.

3. In February 2006, Mr. Smith decided to move his IRA to another custodian. As a result, he requested that Middleburg liquidate all of his IRA holdings in order to transfer cash to the new custodian. While attempting to liquidate the Bonds held by the IRA, Middleburg discovered that the issue would trade only in $100,000.00 blocks. Middleburg represents that the salesman neglected to mention this limitation when the Bonds were first purchased. As a result, this limitation made the Bonds held in the IRA illiquid.

4. In order to satisfy Mr. Smith's request, Middleburg decided that it needed to make a market for the Bonds held in the IRA. To ensure that the transaction would occur on terms that were at least as favorable as an arm's length sale to a third party, Middleburg represents that it solicited bids as if it had $100,000.00 worth of the Bonds to sell. The bids from various independent dealers ranged from $99.50 to $99.80 per $100.00 of Bond value, or $99,500 to $99,800, respectively. In addition, Middleburg advertised the Bonds all day on March 28, 2006.

5. Middleburg decided that it would buy the Bonds held by the IRA at their full face value of $100 per $100 of Bond value, which exceeded the fair market value at the time. In this regard, the Bond's fair market value, as quoted by Bloomberg Fair Value Service on March 28, 2006, the trade date, was $99.87 per $100 of Bond value or $24,968 for the Bonds. Thus, Middleburg paid the IRA $25,000.00, plus accrued interest of $3.47, or a total purchase price of $25,003.47 for the Bonds. Middleburg did not charge the IRA any fees or commissions in connection with the transaction. Because the IRA sustained a loss as a result of the sale, Middleburg will pay the IRA $196.53 within 30 days of the publication of the grant notice in the **Federal Register**.

6. In summary, Middleburg represents that the subject transaction satisfied or will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code for the following reasons: (a) The sale was a one-time transaction for cash; (b) the sale price for the Bonds was based on the Bonds' face value; (c) the Bonds' face value was in excess of bids for the Bonds solicited from independent brokers and in excess of the price for the Bonds quoted by an independent valuation service for the date of the sale; (d) the IRA paid no fees, commissions, or other costs or expenses associated with the sale; (e) the IRA received its portion of income and all interest accrued on the Bonds through the date of the sale; (f) the terms and conditions of the sale were at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party; and (g) within 30 days of the publication of the grant notice in the **Federal Register**, Middleburg will pay the IRA $196.53 to make up for the loss sustained by the IRA as a result of the sale.

Notice to Interested Persons

Because Mr. Smith is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Therefore, comments and requests for a hearing must be received by the Department within 30 days of the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Blessed Chuksorji of the Department, telephone number (202) 693–8567. (This is not a toll-free number.)

Citigroup, Inc. (Citigroup) Located in New York, NY

[Application No. D–11417]

Proposed Exemption

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

Section I: Covered Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an IRA pursuant to section 408(e)(2)(A) of the Code, by reason of section 4975(c)(1)(D), (E) and (F) of the Code, shall not apply to the receipt of services at reduced or no cost by an individual for whose benefit an IRA or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from Citigroup pursuant to an arrangement in which the account value of, or the fees incurred for services provided to, the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided that each condition of Section II of this exemption is satisfied.

Section II: Conditions

(a) The IRA or Keogh Plan whose account value, or whose fees paid, are taken into account for purposes of determining eligibility to receive services under the arrangement must be established and maintained for the exclusive benefit of the participant covered under the IRA or Keogh Plan, his or her spouse or their beneficiaries.

(b) The services offered under the arrangement must be of a type that a qualified affiliate could offer consistent with all applicable federal and state banking laws and all applicable federal and state laws regulating broker-dealers.

(c) The services offered under the arrangement must be provided by a qualified affiliate in the ordinary course of its business as a bank or a broker-dealer to customers who qualify for reduced or no cost services, but do not maintain IRAs or Keogh Plans with a qualified affiliate.

(d) For the purpose of determining eligibility to receive services, the arrangement satisfies:

(i) Eligibility requirements based on the account value of the IRA or Keogh Plan are as favorable as any such requirement based on the value of any other type of account which the qualified affiliate includes to determine eligibility; and/or

(ii) Eligibility requirements based on the amount of fees incurred by the IRA or Keogh Plan, are as favorable as any requirements based on the amount of fees incurred by any other type of account which the qualified affiliate includes to determine eligibility.

(e) The combined total of all fees for the provision of services to the IRA or Keogh Plan is not in excess of reasonable compensation within the meaning of section 408(b)(2) of ERISA and section 4975(d)(2) of the Code.

(f) The investment performance of the investments made by the IRAs and/or Keogh Plans is no less favorable than the investment performance of identical investments that could have been made at the same time by a customer of Citigroup who is not eligible for (or who does not receive) reduced or no cost services.

(g) The services offered under the arrangement to the IRA or Keogh Plan customer must be the same as are offered to non-IRA or non-Keogh Plan customers of qualified affiliates with account values of the same amount or the same amount of fees generated.

Section III: Definitions

The following definitions apply to this exemption:

(a) The term ''bank'' means a bank described in section 408(n) of the Code.

(b) The term ''broker-dealer'' means a broker-dealer registered under the Securities Exchange Act of 1934, as amended.

(c) The term ''IRA'' means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b) or a Coverdell education savings account described in section 530 of the Code. For purposes of this exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

(d) The term ''Keogh Plan'' means a pension, profit-sharing, or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in section 401(c) of the Code. For purposes of this exemption, the term Keogh Plan shall not include a Keogh Plan which is an employee benefit plan covered by Title I of ERISA.

(e) The term ''account value'' means investments in cash or securities held in the account for which market quotations are readily available. For purposes of this exemption, the term cash shall include savings accounts that are insured by a federal deposit insurance agency and constitute deposits as that term is defined in 29 CFR 2550.408b–4(c)(3). The term account value shall not include investments that are offered by Citigroup (or a qualified affiliate) exclusively to IRAs and Keogh Plans.

(f) The term ''qualified affiliate'' means any person directly or indirectly controlling, controlled by, or under common control with Citigroup Inc. that is a bank or broker-dealer.

(g) The term ''members of his or her family'' refers to beneficiaries of the individual for whose benefit the IRA or Keogh Plan is established or maintained, who would be members of the family as that term is defined in Code section 4975(e)(6), or a brother, a sister, or a spouse of a brother or sister.

(h) The term ''service'' includes incidental products of a de minimis value which are directly related to the provision of services covered by the exemption.

(i) The term ''fees'' means commissions and other fees received by a broker-dealer from the IRA or Keogh Plan for the provision of services, including, but not limited to, brokerage commissions, investments management fees, investments advisory fees, custodial fees and administrative fees.

(j) The term ''Citigroup'' means Citigroup Inc. and any person directly or indirectly controlling, controlled by, or under common control with Citigroup Inc.

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

Effective Date: If granted, this proposed exemption will be effective as of March 1, 2007.

Summary of Facts and Representations

1. Citigroup, Inc. is a holding company whose businesses provide a broad range of financial services to consumer and corporate customers around the world. As of September 30, 2006, Citigroup and its subsidiaries had total consolidated assets of approximately $1.75 trillion. Citigroup's consumer and corporate banking business is a global franchise encompassing, among other things, branch and electronic banking, consumer lending services, investment services, and credit and debit card services. Citigroup also provides securities trading, research and brokerage services to consumer and corporate customers, primarily through its Smith Barney business. Smith Barney, a division of a subsidiary of Citigroup Inc., is a retail brokerage firm with more than 12,500 financial advisors who serve approximately 7.1 million client accounts, representing approximately $1.3 trillion in assets, and are located in approximately 600 offices across the United States. In the ordinary course of its business, Citigroup provides a range of financial services to IRAs and pension, profit sharing and stock bonus plans qualified under section 401(a) of the Code under which some or all of the participants are employees described in section 401(c) of the Code.

2. PTE 93–33 as amended (64 FR 11044, March 8, 1999), 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 Code by reason of section 4975(c)(1)(D), (E) and (F) of the Code, and permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained or by members of his or her family, from a bank pursuant to an arrangement in which the account balance of the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided the conditions of the exemption are met. PTE 93–33 permitted banks to offer its customers only those services that may be offered by banks under applicable federal and state banking laws.[26] In the case where the service is offered by an affiliate of the bank, the service must be of the type that the bank itself could offer customers.

PTE 97–11 as amended, (67 FR 76425, December 12, 2002) permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained or by members of his or her family, from a broker-dealer registered under the Securities Exchange Act of 1934 pursuant to an arrangement in which the account value of, or the fees incurred for services provided to, the IRA or Keogh Plan is/are taken into account for purposes of determining eligibility to receive such services, provided that certain conditions are met. Under PTE 97–11 relief is provided 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 Code by reason of section 4975(c)(1)(D), (E) and (F) of the Code. PTE 97–11 limits the services that may be offered by broker-dealers under a relationship brokerage program to those services that the broker-dealer itself may offer consistent with federal and state laws regulating broker-dealers.[27] Furthermore, in those

[26] In the notice of proposed exemption for PTE 93–2 (PTE 93–33 subsequently amended PTE 93–2) the following examples of relationship banking services were listed: free checking services, discounted safe deposit box rents, or free loan closing costs. (52 FR 8365 (February 28, 1992)). In addition, the Department notes that a bank may offer other services or benefits to customers as part of its relationship banking program. For example, under PTE 93–33 a bank may offer its relationship banking customers a higher interest rate on their investments, provided the conditions of the exemption are met.

[27] In the notice of proposed exemption for PTE 97–11 (61 FR 39996 (July 31, 1996), the following examples of relationship brokerage services were listed: financial planning services, direct deposit/debit and automatic fund transfer privileges, enhanced account statements, toll-free access to client service center, check writing privileges, debit/credit cards, special newsletter and reduced brokerage and asset management fees. In addition,

cases where the services are provided by an affiliate of the broker-dealer, the service must be the type that the broker-dealer itself could offer customers.

The applicant requests an exemption to permit both account balances of an IRA or Keogh Plan or fees incurred by the IRA or Keogh Plan with respect to a qualified affiliate that serves as trustee or custodian, to be taken into account by Citigroup in determining eligibility to receive reduced or no cost services that are provided by its qualified affiliates.

3. The applicant represents that the proposed exemption is necessary and appropriate because federal and state banking and securities laws have undergone changes since PTEs 93–33 and 97–11 were granted. In general, banks and broker-dealers are now permitted to offer services to its customers that integrate banking and broker-dealer type services. These services were traditionally provided either by a bank to its customers or by a broker-dealer to its customers. Specifically, PTEs 93–33 and PTE 97–11 were granted by the Department prior to the enactment of the Gramm-Leach-Bliley Act of 1999 (the ''GLBA''). According to the applicant, the GLBA altered the U.S. legal and regulatory framework governing the operations of U.S. bank holding companies such as Citigroup, the corporate parent of Citibank, N.A. (''Citibank'') and Citigroup Global Capital Markets Inc. (''CGMI''), the broker-dealer within which Smith Barney operates as a business division. The applicant represents that the GLBA permits bank holding companies that qualify as ''financial holding companies'' (''FHCs'')—including Citigroup—to affiliate broadly with various types of financial services firms, including full-service U.S. broker-dealers. Further, the enactment of the GLBA has greatly facilitated both financial services integration in the United States and the growth of bank-affiliated securities operations.

According to the applicant, a second significant U.S. regulatory development occurred in 1995 when the U.S. Federal Reserve Board (the FRB) adopted a rule regarding inter-affiliate combined balance discount service programs offered to individual customers of banks and bank affiliates.[28] In particular, the rule establishes a safe harbor (the ''Safe Harbor'') from the statutory restrictions on bank tying arrangements to allow banks greater flexibility to package products with their affiliates. The applicant states that the rule provided important validation of the ability of banks and their broker-dealer affiliates to offer to their customers' combined-balance discount programs meeting the requirements of the Safe Harbor. Furthermore, the applicant represents that in 1997, the FRB reaffirmed the Safe Harbor when it re-wrote its Regulation Y, which includes a section dealing with anti-tying restrictions. In this regard, the applicant represents that the reduced or no cost service program described in its exemption application meets the Safe Harbor.

In the context of the regulatory developments described above, the applicant states that Citigroup's decision to offer discount services as described in its application reflects the important changes in Citigroup's business model that have occurred since PTEs 93–33 and 97–11 were granted by the Department. The applicant states that in 1998, Citigroup was created through the acquisition of Citicorp, Citibank's corporate parent, by Travelers Group, to form Citigroup. As part of this transaction, Citibank became affiliated with Smith Barney (formerly, Salomon Smith Barney), which operates a significant retail securities brokerage business.[29] As a result, Citigroup developed programs that link retail banking activities with retail brokerage activities. Under these arrangements, qualified affiliates are able to take into account a customer's combined balance maintained with any of its affiliates in determining the customer's eligibility to receive reduced or no cost services that include bank and broker-dealer products and services.

4. The transactions covered by the proposed exemption are the receipt of services at reduced or no cost by an individual for whose benefit an IRA or, if self-employed, a Keogh Plan account, is established or maintained, or by members of his or her family, from Citigroup, pursuant to an arrangement in which the account balance of, or fees paid by, the IRA or Keogh Plan account is taken into account for purposes of determining eligibility to receive the reduced or no cost services. The proposed exemption does not apply to IRAs or Keogh Plans that are covered by Title I of ERISA except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions. The IRA or Keogh Plan account must be established or maintained for the exclusive benefit of the participant covered by the IRA or Keogh Plan, or his family members. The services must be of a type that either a bank or broker-Dealer could offer consistent with all federal and state laws applicable to their businesses. Citigroup provides such services to its customers, including customers who do not maintain IRAs or Keogh Plans with Citigroup, in the regular course of Citigroup's business. The account balance or fee level required for the receipt of reduced or no cost services is equal to the lowest level required for any other type of account which is used to determine eligibility to receive reduced or no cost services. The investment performance of the IRA or Keogh Plan account's investments is no less favorable than the investment performance of identical investments that could have been made at the same time by a customer who is not eligible for (or who does not receive) reduced or no cost services.

5. As part of its reduced or no cost service program, the applicant contemplates providing such services as: Reductions or waivers of fees for services such as checking, ATM, investment advisory and account opening or maintenance fees, preferred lending rates, premium interest crediting rates, credit or debit cards providing services such as enhanced mileage accumulation and reward points features and the provision of investment information and seminars that are available on an invitation-only basis. In this regard, the applicant offers the following example of a reduced or no cost service program:

An individual client of Citigroup is a beneficial owner of an IRA with assets of $250,000 and with respect to which Smith Barney is custodian. Un-invested cash in the IRA is swept into a bank deposit program (''BDP'') on a daily basis, pursuant to the client's instruction. Assume that the client also maintains a Smith Barney Financial Management Account (''FMA Account''), a securities brokerage account, with an asset balance of $200,000, as well as personal savings and checking accounts, with an aggregate asset balance of $100,000, at Citibank. Without the proposed exemption, the client is not eligible for ''Reserved'' status in regard to the relationship with his Smith Barney custodied accounts (FMA Account

the Department notes that a broker-dealer may offer its customers additional services and benefits as part of its relationship brokerage program. For example, under PTE 97–11, a broker-dealer may offer its relationship brokerage customers a higher interest rate on their investments, provided the conditions of the exemption are met.

[28] See 12 CFR 225.7(b)(2).

[29] The applicant states that Citibank's pre-GLBA-era securities businesses were principally institutional in nature (e.g., underwriting and dealing in certain securities subject to pre-GLBA restrictions and other wholesale capital markets activities).

and IRA), which status requires asset balances of at least $500,000. As a result, the client would be charged a $100 annual fee in respect of the FMA Account and a $40 annual fee in respect of the IRA. The IRA's BDP investments would receive interest at a rate applicable to accounts having asset balances between $250,000 and $500,000, which rate was 3.35% Annual Percentage Yield as of June 13, 2007.

If the proposed exemption is granted, Citigroup would be permitted to aggregate the client's accounts (in accordance with the conditions of the exemption), and the combined asset balance in excess of $500,000 would result in an elimination of the $100 and $40 annual fees. In addition, the BDP investments would be eligible for a higher interest rate, equal to 3.51% Annual Percentage Yield as of June 13, 2007. Further, as part of a Reserved relationship, Smith Barney would waive the following fees (among others) in the client's FMA Account: ATM fees, shipping costs for lost or stolen cards, fees for transferring securities, safekeeping fees for physically holding securities, Fed wire fees, fees charged for bounced checks, fees charged to stop payment on a check, and check reorder fees.

6. In summary, the Applicant represents that the transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) since, among other things:

(a) The IRA or Keogh Plan whose account value, or whose fees paid, are taken into account for purposes of determining eligibility to receive services under the arrangement will be established and maintained for the exclusive benefit of the participant covered under the IRA or Keogh Plan, his or her spouse or their beneficiaries.

(b) The services offered under the arrangement will be of a type that a qualified affiliate could offer consistent with all applicable federal and state banking laws and all applicable federal and state laws regulating broker-dealers.

(c) The services offered under the arrangement will be provided by a qualified affiliate in the ordinary course of its business as a bank or a broker-dealer to customers who qualify for reduced or no cost services, but do not maintain IRAs or Keogh Plans with a qualified affiliate.

(d) For the purpose of determining eligibility to receive services, the arrangement will satisfy:

(i) Eligibility requirements based on the account value of the IRA or Keogh Plan are as favorable as such requirements based on the value of any other type of account which the qualified affiliate includes to determine eligibility; and/or

(ii) Eligibility requirements based on the amount of fees incurred by the IRA or Keogh Plan, are as favorable as any requirements based on the amount of fees incurred by any other type of account which the qualified affiliate includes to determine eligibility.

(e) The combined total of all fees for the provision of services to the IRA or Keogh Plan will not be in excess of reasonable compensation within the meaning of section 408(b)(2) of ERISA and section 4975(d)(2) of the Code.

(f) The investment performance of the investments made by the IRAs and/or Keogh Plans will be no less favorable than the investment performance of identical investments that could have been made at the same time by a customer of Citigroup who is not eligible for (or who does not receive) reduced or no cost services.

(g) The services offered under the arrangement to the IRA or Keogh Plan customer will be the same as are offered to non-IRA or non-Keogh Plan customers of qualified affiliates with account values of the same amount or the same amount of fees generated.

Notice to Interested Persons

The Applicant represents that because those potentially interested persons cannot all be identified at the time this proposed exemption is published in the **Federal Register**, the only practical means of notifying the public is by publication of the notice of pendency in the **Federal Register**. Therefore, written comments and/or requests for a public hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Allison Padams-Lavigne, U.S. Department of Labor, telephone (202) 693–8564. (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 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.

Ivan Strasfeld,

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

[FR Doc. E7–20921 Filed 10–25–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,023]

Benchmark Electronics, Inc.

Loveland Division, Including On-Site Leased Workers of Volt Services Group Who Were Retained by Verigy US Development, Loveland, Colorado; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1074 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 27, 2006,