the presentation. Requesters will ordinarily be allowed up to 15 minutes to present a topic.

Dates and Times: The Council will meet in open session from 9 a.m. until 5 p.m., on November 19–20, 2008.

ADDRESSES: The meeting will take place at the Hyatt Regency La Jolla at Aventine, 3777 La Jolla Village Drive, San Diego, California, telephone (858) 552–1234.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mr. Gary S. Barron, FBI Compact Officer, Compact Council Office, Module D3, 1000 CusterHollow Road, Clarksburg, West Virginia 26306, telephone (304) 625–2803, facsimile (304) 625–2868.

Dated: September 25, 2008.

Robert J. Casey,

Section Chief, Liaison, Advisory, Training and Statistics Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. E8–24096 Filed 10–9–08; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11453]

Notice of Proposed Individual Exemption Involving BlackRock, Inc. (BlackRock), and the PNC Financial Services Group, Inc. (PNC) (Collectively, the Applicants) Located in New York, NY

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

ACTION: Notice of proposed individual exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and the Internal Revenue Code of 1986 (the Code). If granted, the proposed exemption would permit the purchase of certain securities (the Securities), during the existence of an underwriting or selling syndicate with respect to such Securities, by PNC or BlackRock or a related entity (collectively, a PNC/BlackRock Related Entity), which is acting as a fiduciary (Asset Manager) on behalf of certain employee benefit plans (Client Plans and In-House Plans), including such plans invested in pooled funds, from any person other than such Asset Manager or any other PNC/BlackRock Related Entity, under the following circumstances: (a) Where a related broker-dealer (a PNC/BlackRock Related Broker-Dealer) is a manager or member of such syndicate (AUT)); or (b) where a PNC/BlackRock Related Broker-Dealer is a manager or member of such syndicate and an affiliated servicer (Affiliated Servicer) serves as servicer of a trust that issued the Securities (whether or not debt securities) (AUT and AST); or (c) where an Affiliated Servicer serves as servicer of a trust that issued the Securities (whether or not debt securities) (AST); provided certain conditions as set forth below are satisfied. The proposed exemption, if granted, would affect Client Plans and In-House Plans and their participants and beneficiaries.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of the date the final exemption is published in the **Federal Register**.

DATES: Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department November 24, 2008.

ADDRESSES: All written comments and requests for a public hearing concerning the proposed exemption should be sent to the Office of Exemptions Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D–11453. Alternatively, interested persons are invited to submit comments or hearing requests to the Department by e-mail to *moffitt.betty@dol.gov* or by facsimile at (202) 219–0204.

SUPPLEMENTARY INFORMATION: This document contains a notice of proposed individual exemption from the restrictions of section 406 of the Act and section 4975(c)(1)(A)–(F) of the Code. The proposed exemption has been requested in an application filed by PNC and BlackRock, pursuant to 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, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is being issued solely by the Department.

The application pertaining to the proposed exemption contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

Summary of Facts and Representations

1. BlackRock, based in New York, NY, is a publicly traded investment management firm. BlackRock, through its investment advisor subsidiaries registered with the Securities and Exchange Commission (SEC), currently manages assets for institutional and individual investors worldwide through a variety of equity, fixed income, cash management, and alternative investment products. As of September 30, 2007, BlackRock, through its advisor subsidiaries, had approximately $1.3 trillion in assets under management. Furthermore, BlackRock's asset managers satisfy the definition of the term Asset Manager, as set forth in Section IV(f) of this proposed exemption.

PNC, based in Pittsburgh, PA, is a diversified financial services company, with $131.4 billion in assets as of September 30, 2007. PNC engages in retail banking, institutional banking, asset management, broker-dealer, and global fund processing services and providing related products through its bank and non-bank subsidiaries. Its principal subsidiary bank, PNC Bank, National Association (PNC Bank), located in Pittsburgh, PA has branches in the District of Columbia, Florida, Indiana, Kentucky, Maryland, New Jersey, Ohio, Pennsylvania, and Virginia. PNC also has two other subsidiary banks, which are located, and have branches, in Delaware and Pennsylvania, as well as a number of non-bank subsidiaries. As of September 30, 2007, PNC had approximately $77 billion in assets under management. Furthermore, PNC's asset managers satisfy the definition of the term Asset Manager, as set forth in Section IV(f) of this proposed exemption.

2. On September 29, 2006, Merrill Lynch & Co. (Merrill Lynch) combined its asset management business with BlackRock (the Merger). The resulting entity retained the BlackRock name and continues to trade on the New York Stock Exchange under the symbol ''BLK''. Prior to the Merger, PNC owned approximately 70.6 percent (70.6%) of BlackRock. As a result of the Merger, Merrill Lynch now owns a 50.3 percent (50.3%) economic interest and an approximate 45 percent (45%) voting interest in BlackRock, and PNC's ownership interest has been reduced to approximately 34 percent (34%) of BlackRock. The remaining interest in BlackRock is owned by the public and by BlackRock employees.

Merrill Lynch and PNC each have two seats on the Board of Directors of BlackRock, as a result of the Merger. The remaining seats on the Board of Directors, which include a majority of the total board seats, are held by independent directors. The Applicants represent that each of Merrill Lynch and PNC has agreed to vote all of its shares of BlackRock stock on all matters, including the election of directors, in accordance with the recommendations of the Board of Directors of BlackRock so long as voting in such a manner is consistent with the terms of the respective stockholder agreements between BlackRock and each of Merrill Lynch and PNC.

3. It is represented that the BlackRock Related Entities, as defined in Section IV(d), below, and the PNC Related Entities, as defined in Section IV(e), below, to which the proposed exemption applies are regulated by federal government agencies, such as the SEC, as well as state government agencies and industry self-regulatory organizations (*e.g.*, the Financial Industry Regulatory Authority).

4. The Applicants request an individual administrative exemption that would permit the purchase of securities, including Rule 144A Securities, by an Asset Manager acting as a fiduciary on behalf of Client Plans, as defined in Section IV(h), below, and In-House Plans, as defined in Section IV(o), below, including such plans invested in Pooled Funds, from any person other than the Asset Manager or PNC/BlackRock Related Entities, as defined in Section IV(c), below, during the existence of an initial offering of such Securities in which a PNC/BlackRock Related Broker-Dealer, as defined in Section IV(b), below, is a member or a manager of the underwriting syndicate for such Securities. Such a transaction is described, herein, as an AUT. A PNC/BlackRock Related Broker-Dealer would receive no selling concessions in connection with the Securities sold to such plans.

In addition, the Applicants seek an exemption to deal with the situation where a PNC/BlackRock Related Broker-Dealer is a manager or member of such syndicate and an Affiliated Servicer, as defined in Section IV(p), below, serves as servicer of a trust that issued the Securities (whether or not debt securities). Such transaction is described, herein, as an AUT and AST. Further, the Applicants have requested an exemption where an Affiliated Servicer serves as servicer of a trust that issued the Securities (whether or not debt securities) and whether or not a PNC/BlackRock Related Entity is a manager or member of the syndicate. Such transaction is described, herein, as an AST.

5. With regard to the Asset Managers under the control of BlackRock and Asset Managers under the control of PNC, the Applicants represent that since the effective date of the Merger, BlackRock has had a general policy with respect to Client Plans not to purchase securities, including Rule 144A Securities, from underwriting or selling syndicates with respect to which a PNC/BlackRock Related Broker-Dealer is a member or manager out of concern that such purchases may give rise to prohibited transactions under the Act. After the Merger, notwithstanding PNC's sizable equity stakes in BlackRock, it is not clear that PNC or any subsidiaries of PNC will be considered ''affiliates'' of BlackRock. Among the reasons for this uncertainty are the stockholder agreements between BlackRock and PNC and BlackRock and Merrill Lynch, each of which severely restricts the ability of Merrill Lynch and PNC, individually or in combination, to control the activities of BlackRock. For example, Merrill Lynch and PNC each has agreed to vote all of its shares of BlackRock stock on all matters, including the election of directors, in accordance with the recommendations of the Board of Directors of BlackRock, so long as voting in such a manner is consistent with the terms of the respective stockholder agreements between BlackRock and Merrill Lynch and BlackRock and PNC. In addition, PNC and its affiliates are permitted to hold no more than the *greater of*: (i) 35% of the total voting power of BlackRock issued and outstanding; and (ii) the ownership of PNC immediately after the closing of the Merger. Merrill Lynch has agreed to cap its ownership in BlackRock such that it is permitted to hold no more than 45 percent (45%) of the voting shares of BlackRock. Therefore, an argument can be made that neither Merrill Lynch nor PNC are or will be in a position to ''control'' BlackRock. Nevertheless, when an Asset Manager is a fiduciary with investment discretion with respect to a Client Plan, and such Asset Manager is deciding whether to purchase securities in an underwriting or selling syndicate in which a PNC/BlackRock Related Broker-Dealer is a manager or member, it might be argued that the ownership interest of PNC in BlackRock could affect such Asset Manager's best judgment as a fiduciary, raising issues under section 406(b) of the Act. Accordingly, the Applicants seek the requested relief to cover PNC/BlackRock Related Broker-Dealers. The Applicants represent that the failure to provide the requested relief will result in Client Plans being unfairly precluded from participating in a significant amount of investment opportunities.

6. With regard to the Asset Manager under the actual control of PNC, the Applicants represent that, in accordance with Prohibited Transaction Class Exemption 75–1, 40 FR 50845 (Oct. 31, 1975) (PTE 75–1), such Asset Managers may purchase underwritten securities for plans when a broker-dealer that is a PNC Related Entity is a member of the underwriting or selling syndicate. In this regard, Part III of PTE 75–1 provides limited relief from the prohibited transaction provisions of the Act for plan fiduciaries that purchase securities from an underwriting or selling syndicate with respect to which the fiduciary or an affiliate is a member. However, such relief is not available if the affiliated broker-dealer is a manager of the underwriting or selling syndicate. Further, PTE 75–1 does not provide relief for the purchase of unregistered securities. Unregistered securities include securities purchased by a broker-dealer for resale to a ''qualified institutional buyer'' (QIB) pursuant to the SEC's Rule 144A under the 1933 Act. It is represented that Rule 144A is commonly utilized in connection with sales of debt securities issued by domestic and foreign corporations and equity securities issued by foreign corporations to U.S. investors that are QIBs. The Applicants represent that many plans have expanded their investment portfolios in recent years to include securities sold under Rule 144A. Notwithstanding the unregistered status of such securities, it is represented that syndicates selling Rule 144A Securities are the functional equivalent of syndicates selling registered securities.

7. The Applicants represent that PNC/BlackRock Related Broker-Dealers regularly serve as managers of underwriting or selling syndicates for registered securities, and as managers or members of underwriting or selling syndicates for Rule 144A Securities. Accordingly, Asset Managers are currently refraining from purchasing on behalf of Client Plans securities where a PNC/BlackRock Related Broker-Dealer is the manager of the underwriting or selling syndicate, including Rule 144A Securities sold in such offerings, resulting in such Client Plans being unable to participate in significant investment opportunities.

8. The Applicants represent that Asset Managers make their respective investment decisions on behalf of, or render investment advice to, Client Plans pursuant to the governing document of the particular Client Plan or pooled fund and the investment guidelines and objectives set forth in the management or advisory agreement. Because the Client Plans are covered by Title I of the Act, such investment decisions are subject to the fiduciary responsibility provisions of the Act.

9. The Applicants state, therefore, that the decision to invest in a particular offering is made on the basis of price, value, and the investment criteria of a Client Plan, not on whether the securities are currently being sold through an underwriting or selling syndicate. The Applicants further state that, because an Asset Manager's compensation for its services is generally based upon assets under management, such Asset Manager has little incentive to purchase securities in an offering in which a PNC/BlackRock Related Broker-Dealer is an underwriter unless such a purchase is in the interests of Client Plans. If the assets under management do not perform well, the Asset Manager will receive less compensation and could lose clients, costs which far outweigh any gains from the purchase of underwritten securities. The Applicants point out that under the terms of the proposed exemption, a PNC/BlackRock Related Broker-Dealer may receive no selling concessions, direct or indirect, that are attributable to the amount of securities purchased by the Asset Manager on behalf of Client Plans.

10. The Applicants state that the Asset Managers generally purchase securities in large blocks because the same investments will be made across several accounts. If there is a new offering of an equity or fixed income security that an Asset Manager wishes to purchase, it may be able to purchase the security through the offering syndicate at a lower price than it would pay in the open market, without transaction costs and with reduced market impact if it is buying a relatively large quantity. This is because a large purchase in the open market can cause an increase in the market price and, consequently, in the cost of the securities. Purchasing from an offering syndicate can thus reduce the costs to Client Plans.

11. The Applicants point out that absent this proposed exemption, if a PNC/BlackRock Related Broker-Dealer is a manager of a syndicate that is underwriting an offering of securities, the Asset Managers will be foreclosed from purchasing any securities on behalf of Client Plans from that underwriting syndicate. In this regard, an Asset Manager would have to purchase the same securities in the secondary market. In such a circumstance, the Client Plans may incur greater costs both because the market price is often higher than the offering price, and because there are transaction and market impact costs. In turn, this will cause the Asset Manager to forego other investment opportunities because the purchase price of the underwritten security in the secondary market exceeds the price that the Asset Manager would have paid to the selling syndicate.

12. The Applicants, by letter, dated August 13, 2008, amended their exemption application to request clarification from the Department that PNC's origination of a loan in a commercial mortgage-backed securities (CMBS) [1] pool or the servicing of a loan in a CMBS pool by Midland Loan Services, Inc. (Midland), a PNC Related Entity, will not prevent a PNC/BlackRock Related Entity from purchasing securities issued by the CMBS pool for a Client Plan. Specifically, the Applicants assert that the timing of events relating to the formation of the pool and the marketing of the securities is such that a plan fiduciary purchaser could not provide additional income or otherwise confer any additional benefit on PNC or Midland. The Applicants observed that these issues can arise both in situations that happen to need an AUT exemption (*i.e.,* where the Asset Manager is related to a managing underwriter or member of the syndicate and a servicer of the CMBS pool), as well as in situations where the AUT issue was not present (*i.e.,* where the Asset Manager is not related to a managing underwriter or member of the syndicate but is related to a servicer of the CMBS pool).

In this regard, the Applicants discussed with the Department whether there was a need for additional relief from the Department for situations in which the Asset Manager, a PNC/BlackRock Related Entity, wishes to purchase, on behalf of Clients Plans, investment grade securities backed by commercial mortgages originated or serviced by any PNC/BlackRock Related Entity if such purchases meet the conditions of an exemption substantially identical to PTE 2007–05, 72 FR 13130 (March 20, 2007) (an Underwriter Exemption(s)). The Applicants stated that the CMBS are not sold to plans unless an individual Underwriter Exemption is complied with.[2] The Underwriter Exemptions require that any CMBS purchased for plans be investment grade at the time of purchase. Consequently, for these transactions, no below-investment grade securities are purchased on behalf of plans.

The Applicants affirmed to the Department that only investment grade CMBS are purchased for ERISA plans and that the ERISA plan fiduciary purchasers of securities issued by a CMBS pool do not affect the selection or compensation of a servicer of the loans in the CMBS pool. Moreover, the process of setting fees for the various parties to a CMBS transaction is not influenced by the fiduciary of an ERISA plan purchasing CMBS in the issuance.

The Applicants provided a timeline to the Department, which demonstrated that pool formation, selection of the servicers and details of the servicers' compensation were finalized before the printing of the preliminary offering materials and, thus, before solicitations were made to potential purchasers of the higher rated classes of securities that plans can purchase under an

[1] Commercial mortgage-backed securities are non-convertible debt securities, pass-through certificates or trust certificates that represent a beneficial ownership interest in the assets of an issuer which is a trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such trust and the corpus or assets of which consist solely of obligations that bear interest or are purchased at a discount and which are secured by commercial real property including obligations secured by leasehold interests on commercial real property that are rated in one of the four highest rating categories by the Rating Organizations (such CMBS are described as ''investment grade'').

[2] The Applicant notes that this is true for primary and secondary market purchases and regardless of whether or not the Asset Manager buying on behalf of the plan is related to an underwriter. In primary market transactions, the Asset Manager/underwriter relationship would necessitate compliance with the proposed exemption, if granted by the Department. If the Asset Manager/underwriter relationship did not exist but an Asset Manager/servicer relationship were present, only the provisions of the proposed exemption applicable to such a relationship would apply.

Underwriter Exemption. In other words, the timing of purchases of CMBS on behalf of plans is beyond the point where such purchases could affect either the choice of loans for the securitization pool or the choice of or compensation of any servicer. Thus, the Applicants maintained that, in these CMBS transactions, there is no opportunity, except as explained in footnote 3, below, for a buyer of an investment grade tranche of CMBS to influence the selection of loans in a pool, the appointment of a master, primary or special servicer, or the compensation of a master, primary or special servicer.

The Applicants noted that although the steps necessary to form a CMBS pool generally ensure that the above timeline is accurate, there are rare cases where even the most junior tranches are investment grade and could in theory be purchased on behalf of plans.[3] In this instance, the Applicant stated that both PNC and BlackRock have indicated that they do not purchase such junior tranches on behalf of ERISA plan clients and do not intend to do so in the future in such circumstances.

Based on these facts, the Department believes that no additional relief is needed for PNC or BlackRock to purchase investment-grade CMBS securities on behalf of plans during the existence of an underwriting syndicate, solely due to PNC's or BlackRock's relationship to an originator of one or more loans in the CMBS pool if, once the loan originator has transferred the loans to the pool, the loan originator has no other responsibilities to the pool other than a limited repurchase obligation.[4] Based upon the information provided by the Applicants, the Department has determined to provide limited additional relief, subject to modified conditions described in this proposed exemption, for transactions where a PNC/BlackRock Related Entity is a servicer of loans in the CMBS pool.

Registered Securities Offerings

13. The Applicants represent that PNC/BlackRock Related Broker-Dealers currently manage and participate in firm commitment underwriting syndicates for registered offerings of both equity and debt securities. While equity and debt underwritings may operate differently with regard to the actual sales process, the basic structures are the same. In a firm commitment underwriting, the underwriting syndicate purchases the securities from the issuer and then resells the securities to investors.

14. The Applicants represent that while, as a legal matter, a selling syndicate assumes the risk that the underwritten securities might not be fully sold, as a practical matter, this risk is reduced in marketed deals, through ''building a book'' (*i.e.,* taking indications of interest from potential purchasers) prior to pricing the securities. Accordingly, there is generally no incentive for the underwriters to use their discretionary accounts (or the discretionary accounts of their affiliates) to buy up the securities as a way to avoid underwriting obligations.

15. It is represented that each selling syndicate has one or more lead managers, who are the principal contact between the syndicate and the issuer and who are responsible for organizing and coordinating the syndicate. The syndicate may also have co-managers, who generally assist in distributing the underwritten securities. While equity syndicates may include additional underwriters that are not managers, more recently, membership in many debt syndicates has been limited to lead and co-managers.

16. It is represented that if more than one underwriter is involved in a selling syndicate, the lead manager and the underwriters enter into an ''Agreement among Underwriters'' in the form designated by one of the lead managers selected by the issuer. Most lead managers have a standing form of agreement. This master agreement is then commonly supplemented for the particular deal by sending an ''invitation wire'' or ''terms telex'' that sets forth particular terms to the other underwriters.

17. The arrangement between the syndicate and the issuer of the underwritten securities is embodied in an underwriting agreement, which is signed on behalf of the underwriters by one or more of the managers. In a firm commitment underwriting, the underwriting agreement provides, subject to certain closing conditions, that the underwriters are obligated to purchase all of the underwritten securities from the issuer in accordance with their respective commitments, if any securities are not purchased. This obligation is met by using the proceeds received from investors purchasing securities in the offering, although there is a risk that the underwriters will have to pay for a portion of the securities in the event that not all of the securities are sold or an investor defaults on its obligation.

18. The Applicants represent that, generally, it is unlikely that in marketed deals all offered securities will not be sold. In marketed deals, the underwriting agreement is not executed until after the underwriters have obtained sufficient indications of interest to purchase the securities from a sufficient number of investors to assure that all the securities being offered will be acquired by investors. Once the underwriting agreement is executed, the underwriters promptly begin contacting the investors to confirm the sales, at first by oral communication and then by written confirmation. Sales may be finalized within hours and sometimes minutes, but in any event prior to the opening of the market for trading the next day. In registered transactions, the underwriters have a strong interest in completing the sales as soon as possible because, until they ''break syndicate,'' they cannot recommence normal trading activity, which includes buying and selling the securities for their customers or own account.

19. The Applicants represent that the process of ''building a book'' or soliciting indications of interest occurs in a registered equity offering, after a registration statement is filed with the SEC. While it is under review by the SEC staff, representatives of the issuer of the securities and the selling syndicate managers conduct meetings with potential investors, who learn about the company and the underwritten securities. Potential investors also

[3] The Applicants state that this special case is the type of transaction where all classes of offered securities are investment grade. This somewhat unusual situation comes about from having a transaction done with a small number of loans that are themselves highly rated by a rating agency. A tranche's rating is a function of (a) the ratings of the loans and (b) the position of the tranche (in terms of subordination) within the structure of the transaction. When all of the loans in a transaction receive investment grade ratings, all of the tranches, including the controlling classes, will be rated investment grade. Thus, in this special case, under the Underwriter Exemptions and the AUT exemptions, fiduciaries theoretically could buy such controlling classes on behalf of plans. Nonetheless, the Applicants assert that as a matter of policy, they do not buy first-loss pieces for plans. Further, the Applicants state that the subordinate classes are usually too small in size to be a useful purchase for plan fiduciaries.

[4] *See,* March 11, 2008 Department letter to Barbara D. Klippert. In an Information letter, the Department noted that a mortgage loan originator would not be considered a sponsor of the trust in an Underwriter Exemption transaction if the originator has no responsibility for the organization of the issuer, does not deposit the mortgage obligations in the issuer in exchange for securities, and is not a signatory to the Mortgage Loan Sale and Assignment Agreement and the related Trust Agreement. Similarly, a mortgage loan originator does not become a ''sponsor'' of the issuer merely because the originator makes representations and warranties and incurs repurchase obligations in a mortgage loan purchase agreement with the sponsor or an affiliate, or because the rights to enforce such representations, warranties and obligations are assigned into an issuer.

receive a preliminary prospectus. The underwriters cannot make any firm sales until the registration statement is declared effective by the SEC. Prior to the effective date, while the investors cannot become legally obligated to make a purchase, such investors indicate whether they have an interest in buying, and the lead managers compile a ''book'' of investors who are willing to ''circle'' a particular portion of the issue. Although investors cannot be legally bound to buy the securities until the registration statement is effective, investors generally follow through on their indications of interest.

20. Assuming that the marketing efforts have produced sufficient indications of interest, the Applicants represent that the issuer of the securities, after consultation with the lead manager, will set the price of the securities upon being declared effective by the SEC. After the registration statement has been declared effective by the SEC and the underwriting agreement is executed, the underwriters contact those investors that have indicated an interest in purchasing securities in the offering to execute the sales. The Applicants represent that offerings are often oversubscribed, and many have an over-allotment option that the underwriters can exercise to acquire additional shares from the issuer. Where an offering is oversubscribed, the underwriters decide how to allocate the securities among the potential purchasers. However, if the offering is an initial public offering of an equity security, then the underwriters may not sell the securities to (among others) any person that is a broker-dealer, an associated person of a broker-dealer, a portfolio manager, or an owner of a broker-dealer. Additionally, underwriters may not withhold for their own account any initial public offering of an equity security.

21. The Applicants represent that debt offerings and certain equity offerings may be ''negotiated'' offerings, ''competitive bid'' offerings, or ''bought deals.'' ''Negotiated'' offerings are conducted in the same manner as marketed equity offerings with regard to when the underwriting agreement is executed and how the securities are offered. ''Competitive bid'' offerings, in which the issuer determines the price for the securities through competitive bidding rather than negotiating the price with the underwriting syndicate, are often performed under ''shelf'' registration statements pursuant to the SEC's Rule 415 under the 1933 Act (Rule 415) (17 CFR 230.415).[5]

22. In a competitive bid offering, prospective lead underwriters will bid against one another to purchase debt securities, based upon their determinations of the degree of investor interest in the securities. Depending on the level of investor interest and the size of the offering, a bidding lead underwriter may bring in co-managers to assist in the sales process. Most of the securities are frequently sold within hours, or sometimes even less than an hour, after the securities are made available for purchase.

23. It is represented that because of market forces and the requirements of Rule 415, the competitive bid process is generally, though not exclusively, available only to issuers who have been subject to the reporting requirements of the 1934 Act for at least one (1) year.

24. Occasionally, underwriters ''buy'' the entire deal off of a ''shelf registration'' or in a Rule 144A offering before obtaining indications of interest. These ''bought'' deals involve issuers whose securities enjoy a deep and liquid secondary market, such that an underwriter has confidence without pre-marketing that it can identify purchasers for the securities.

Information Barriers

25. Prior applicants for similar relief have represented that there are internal policies in place that restrict contact and the flow of information between investment management personnel and non-investment management personnel in the same or affiliated financial service firms. The Applicants represent that, notwithstanding the concerns raised herein pertaining to the level of ownership in BlackRock by PNC, the firms are independent businesses, each with policies restricting the distribution of proprietary and other non-public information, and each subject to restrictions on disclosure under the U.S. securities laws. Further, each has a fiduciary obligation not to share proprietary and non-public information outside the firm. PNC and BlackRock also represent that they do not share information with each other which is not generally available to the public that may affect the market price of securities, although it should be noted that PNC does notify BlackRock when it is going to be a manager or a member of an underwriting syndicate at a time that such information may not be publicly known.[6]

26. Prior applicants for substantially similar relief have further represented that their business separation policies and procedures are also structured to restrict the flow of any information to or from the Asset Manager that could limit its flexibility in managing client assets, and of information obtained or developed by the Asset Manager that could be used by other parts of the organization, to the detriment of the Asset Manager's clients. Because BlackRock and PNC are independent businesses, no such policies are required.[7]

27. The Applicants represent that major clients of PNC/BlackRock Related Broker-Dealers include investment management firms that are competitors of the Asset Manager. Similarly, an Asset Manager deals on a regular basis with broker-dealers that compete with PNC/BlackRock Related Broker-Dealers. If special consideration was shown to a PNC/BlackRock Related Broker-Dealer, such conduct would likely have an adverse effect on the relationships of the Asset Manager with firms that compete with such PNC/BlackRock Related Broker-Dealer. Each of the prior applicants for similar relief have represented that a goal of its business separation policies is to avoid any possible perception of improper flows of information in order to prevent any adverse impact on client and business relationships. Because BlackRock and PNC are independent businesses, it is represented that no such policies are required.

Underwriting Compensation

28. The Applicants represent that the underwriters are compensated through the ''spread,'' or difference, between the price at which the underwriters purchase the securities from the issuer and the price at which the securities are sold to the public. The spread is divided into three components.

[5] The Applicants maintain that Rule 415 permits an issuer to sell debt as well as equity securities under an effective registration statement previously filed with the SEC by filing a post-effective amendment or supplemental prospectus.

[6] This procedure was put into place by PNC and BlackRock in order to facilitate BlackRock's affiliated investment advisers' compliance with certain provisions of the 1940 Act, as amended. These provisions permit such investment advisers to purchase securities for registered investment companies they advise in underwritten offerings in which a PNC/BlackRock Related Broker-Dealer is acting as a co-manager or otherwise participating so long as an order is not directed to a PNC/BlackRock Related Broker-Dealer.

[7] The Applicants represent that no BlackRock Related Entity is currently in the business of underwriting or placing securities for third parties. In the event a BlackRock Related Entity engages in such activities, the Applicants represent that appropriate business separation policies and procedures would be instituted.

29. The first component includes the management fee, which generally represents an agreed upon percentage of the overall spread and is allocated among the lead manager and co-managers. Where there is more than one managing underwriter, the way the management fee will be allocated among the managers is generally agreed upon between the managers and the issuer prior to soliciting indications of interest. Thus, the allocation of the management fee is not reflective of the amount of securities that a particular manager sells in an offering.

30. The second component is the underwriting fee, which represents compensation to the underwriters (including the non-managers, if any) for the risks they assume in connection with the offering and for the use of their capital. This component of the spread is also used to cover the expenses of the underwriting that are not otherwise reimbursed by the issuer of the securities.

31. The first and second components of the ''spread'' are received without regard to how the underwritten securities are allocated for sales purposes or to whom the securities are sold. The third component of the spread is the selling concession, which generally constitutes 60 percent (60%) or more of the spread. The selling concession compensates the underwriters for their actual selling efforts. The allocation of selling concessions among the underwriters generally follows the allocation of the securities for sales purposes. However, a buyer of the underwritten securities may designate other broker-dealers (selling group members) to receive the selling concessions arising from the securities they purchase.

32. Securities are allocated for sales purposes into two categories. The first and larger category is the ''institutional pot,'' which is the pot of securities from which sales are made to institutional investors. Selling concessions for securities sold from the institutional pot are generally designated by the purchaser to go to particular underwriters or other broker-dealers. If securities are sold from the institutional pot, the selling syndicate managers sometimes receive a portion of the selling concessions, referred to as a ''fixed designation'' or an ''auto pot split'' attributable to securities sold in this category, without regard to who sold the securities or to whom they were sold. For securities covered by this proposed exemption, however, a PNC/BlackRock Related Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designation generated by purchases of securities by an Asset Manager on behalf of its Client Plans.

33. The second category of allocated securities is ''private client'' or ''retail,'' which are the securities retained by the underwriters for sale to their customers. The underwriters receive the selling concessions from their respective retail retention allocations. Securities may be shifted between the two categories based upon whether either category is oversold or undersold during the course of the offering.

34. The Applicants represent that the inability of a PNC/BlackRock Related Broker-Dealer to receive any selling concessions, or any compensation attributable to the fixed designations generated by purchases of securities by an Asset Manager on behalf of Client Plans, removes the primary economic incentive for an Asset Manager to make purchases that are not in the interests of such Client Plans from offerings for which a PNC/BlackRock Related Broker-Dealer is an underwriter.

Rule 144A Securities

35. The Applicants represent that a number of the offerings of Rule 144A Securities in which a PNC/BlackRock Related Broker-Dealer participates represent good investment opportunities for the Asset Manager's Client Plans. Particularly with respect to foreign securities, a Rule 144A offering may provide the least expensive and most accessible means for obtaining these securities. However, as discussed above, PTE 75–1, Part III, does not cover Rule 144A Securities. Therefore, absent an exemption, the Asset Manager is foreclosed from purchasing such securities for its Client Plans in offerings in which a PNC/BlackRock Related Broker-Dealer participates.

36. The Applicants state that Rule 144A acts as a ''safe harbor'' exemption from the registration provisions of the Securities Act of 1933 (the 1933 Act) for re-sales of certain types of securities to QIBs. QIBs include several types of institutional entities, such as employee benefit plans and commingled trust funds holding assets of such plans, which own and invest on a discretionary basis at least $100 million in securities of unaffiliated issuers.

37. Any securities may be sold pursuant to Rule 144A except for those of the same class or similar to a class that is publicly traded in the United States, or certain types of investment company securities. This limitation is designed to prevent side-by-side public and private markets developing for the same class of securities and is the reason that Rule 144A transactions are generally limited to debt securities.

38. Buyers of Rule 144A Securities must be able to obtain, upon request, basic information concerning the business of the issuer and the issuer's financial statements, much of which is the same information as would be furnished if the offering were registered. This condition does not apply, however, to an issuer filing reports with the SEC under the Securities Exchange Act of 1934 (the 1934 Act), for which reports are publicly available. The condition also does not apply to a ''foreign private issuer'' for whom reports are furnished to the SEC under Rule 12g3–2(b) of the 1934 Act (17 CFR 240.12g3–2(b)), or to issuers who are foreign governments or political subdivisions thereof and are eligible to use Schedule B under the 1933 Act (which describes the information and documents required to be contained in a registration statement filed by such issuers).

39. Sales under Rule 144A, like sales in a registered offering, remain subject to the protections of the anti-fraud rules of federal and state securities laws. These provisions include section 10(b) of the 1934 Act and Rule 10b–5 thereunder (17 CFR 240.10b–5) and section 17(a) of the 1933 Act (15 U.S.C. 77a). Through these and other provisions, the SEC may use its full range of enforcement powers to exercise its regulatory authority over the market for Rule 144A Securities, in the event that it detects improper practices.

40. The Applicants represent that this potential liability for fraud provides a considerable incentive to the issuer of the securities and the members of the selling syndicate to insure that the information contained in a Rule 144A offering memorandum is complete and accurate in all material respects. Among other things, the lead manager typically obtains an opinion from a law firm, commonly referred to as a ''10b–5'' opinion, stating that the law firm has no reason to believe that the offering memorandum contains any untrue statement of material fact or omits to state a material fact necessary in order to make sure the statements made, in light of the circumstances under which they were made, are not misleading.

41. The Applicants represent that Rule 144A offerings generally are structured in the same manner as underwritten registered offerings. They may be ''negotiated'' offerings, ''competitive bid'' offerings or ''bought deals.'' One difference is that a Rule 144A offering uses an offering memorandum rather than a prospectus that is filed with the SEC. The marketing process is substantially

similar, except that the selling efforts are limited to contacting QIBs and there are no general solicitations for buyers (*e.g.*, no general advertising). In addition, contracts for sale may be entered into with investors and securities may be priced before a selling agreement is executed (and this is typically the case with respect to sales of asset-backed securities). Further, generally, there are no non-manager members in a Rule 144A selling syndicate. The Applicants nonetheless request that the proposed exemption extend to authorization for situations where a PNC/BlackRock Related Broker-Dealer acts as manager or as a member.

42. The proposed exemption is administratively feasible. In this regard, compliance with the terms and conditions of the proposed exemption will be verifiable and subject to audit.

43. The Applicants represent that the proposed exemption is in the interest of participants and beneficiaries of Client Plans that engage in the covered transactions. In this regard, it is represented that the proposed exemption will increase the investment opportunities and will reduce administrative costs for Client Plans.

Further, the Applicants represent that the proposed exemption is protective of the rights of participants and beneficiaries of affected Client Plans. In this regard, the notification provisions and other requirements in the proposed exemption are similar to the conditions set forth in other exemptions published by the Department in similar circumstances.

44. In summary, it is represented that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The Client Plans will gain access to desirable investment opportunities; (b) in each offering, an Asset Manager will purchase the Securities for its Client Plans from an underwriter or broker-dealer other than a PNC/BlackRock Related Entity; (c) conditions of the proposed exemption will restrict the types of Securities that may be purchased, the types of underwriting or selling syndicates and issuers involved, and the price and timing of the purchases; (d) the amount of Securities that an Asset Manager may purchase on behalf of Client Plans will be subject to percentage limitations; (e) a PNC/BlackRock Related Broker-Dealer will not be permitted to receive, either directly, indirectly or through designation, any selling concession with respect to the Securities sold to an Asset Manager on behalf of an account of a Client Plan; (f) prior to any purchase of Securities, an Asset Manager will make the required disclosures to an Independent Fiduciary of each Client Plan and obtain authorization in accordance with the procedures in the proposed exemption; (g) an Asset Manager will provide regular reporting to an Independent Fiduciary of each Client Plan with respect to all Securities purchased pursuant to the proposed exemption, if granted; (h) each Client Plan will be subject to net asset requirements, with certain exceptions for Pooled Funds; and (i) an Asset Manager must have total assets under management in excess of $5 billion and shareholders' or partners' equity in excess of $1 million, in addition to qualifying as a QPAM, pursuant to Part V(a) of PTE 84–14.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the Applicants 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).

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 does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act, 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 require, among other things, a fiduciary to discharge his or her 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;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act;

(3) Before an exemption can be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions. 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.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments and/or requests for a public hearing on the pending exemption to the address, as set forth below, within the time frame, as set forth below. All comments and requests for a public hearing will be made a part of the record. Comments and hearing requests should state the reasons for the writer's interest in the proposed exemption. A request for a public hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. Comments and hearing requests received will also be available for public inspection with the referenced application at the address, as set forth below.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act or ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) as follows:

Section I—Covered Transactions

If the proposed exemption is granted, the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the purchase of certain securities (the Securities), as defined, below in Section IV(k), by an Asset Manager, as defined, below, in Section IV(f), from any person other than the Asset Manager or PNC/BlackRock Related Entities, as defined, below, in Section IV(c), during the existence of an underwriting or selling syndicate with respect to such Securities, where the Asset Manager purchases such Securities, as a fiduciary on behalf of an employee benefit plan or employee benefit plans (Client Plan(s)), as defined, below, in Section IV(h); or on behalf of Client Plans, and/or In-House Plans, as defined, below, in

Section IV(o), which are invested in a pooled fund or in pooled funds (Pooled Fund(s)), as defined, below, in Section IV(i) under the following circumstances:

(a) Where a PNC/BlackRock Related Broker-Dealer, as defined, below, in Section IV(b), is a manager or member of such syndicate (an affiliated underwriter transaction (AUT)); or

(b) Where a PNC/BlackRock Related Broker-Dealer, as defined, below, in Section IV(b), is a manager or member of such syndicate and an Affiliated Servicer, as defined below in Section IV(p), serves as servicer of a trust that issued the Securities (whether or not debt securities) (an affiliated servicer transaction (AUT and AST); or

(c) Where an Affiliated Servicer serves as servicer of a trust that issued the Securities (whether or not debt securities) (AST).

This proposed exemption applies to transactions, as described, above, in Section I(a) and (b) of this exemption only if the applicable conditions as set forth, below, in Section II, are satisfied. This proposed exemption applies to the transaction, as described, above, in Section I(c) of this exemption, only if all of the conditions, as set forth, below, in Section III are satisfied.

Section II—Conditions for Transactions Described in Section I(a) and (b)

The proposed exemption is conditioned upon satisfaction of the following requirements:

(a)(1) The Securities to be purchased are either—

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a et seq.). If the Securities to be purchased are part of an issue that is exempt from such registration requirement, such Securities:

(A) Are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States,

(B) Are issued by a bank,

(C) Are exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or

(D) Are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding twelve (12) months; or

(ii) Part of an issue that is an Eligible Rule 144A Offering, as defined in SEC Rule 10f–3 (17 CFR 270.10f 3(a)(4)). Where the Eligible Rule 144A Offering of the Securities is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) The Securities to be purchased are purchased prior to the end of the first day on which any sales are made, pursuant to that offering, at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities, except that—

(i) If such Securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such Securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable debt securities offered to the public subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the debt Securities being purchased; and

(3) The Securities to be purchased are offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the Securities being offered, except if—

(i) Such Securities are purchased by others pursuant to a rights offering; or

(ii) Such Securities are offered pursuant to an over-allotment option.

(b) The issuer of the Securities to be purchased pursuant to this proposed exemption must have been in continuous operation for not less than three (3) years, including the operation of any predecessors, unless the Securities to be purchased—

(1) are non-convertible debt securities rated in one of the four highest rating categories by Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings, Inc., DBRS Limited, DBRS, Inc., or any successors thereto (collectively, the Rating Organizations); provided that none of the Rating Organizations rates such securities in a category lower than the fourth highest rating category; or

(2) are debt securities issued or fully guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(3) are debt securities which are fully guaranteed by a person (the Guarantor) that has been in continuous operation for not less than three (3) years, including the operation of any predecessors, provided that such Guarantor has issued other securities registered under the 1933 Act; or if such Guarantor has issued other securities which are exempt from such registration requirement, such Guarantor has been in continuous operation for not less than three (3) years, including the operation of any predecessors, and such Guarantor:

(A) Is a bank, or

(B) Is an issuer of securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(C) Is an issuer of securities that are the subject of a distribution and are of a class which is required to be registered under section 12 of the 1934 Act (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such securities and that has filed all reports required to be filed hereunder with the SEC during the preceding twelve (12) months.

(c) The aggregate amount of Securities of an issue purchased, pursuant to this proposed exemption, by the Asset Manager with: (i) The assets of all Client Plans; and (ii) the assets, calculated on a *pro rata* basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the Asset Manager; and (iii) the assets of plans to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3 21(c) does not exceed:

(1) 10 percent (10%) of the total amount of the Securities being offered in an issue, if such Securities are equity securities;

(2) 35 percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in one of the four highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(3) 25 percent (25%) of the total amount of the Securities being offered in an issue, if such Securities are debt

securities rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the sixth highest rating category; and

(4) The assets of any single Client Plan (and the assets of any Client Plans and any In-House Plans investing in Pooled Funds) may not be used to purchase any Securities being offered, if such Securities are debt securities rated lower than the sixth highest rating category by any of the Rating Organizations;

(5) Notwithstanding the percentage of Securities of an issue permitted to be acquired, as set forth in Section II(c)(1), (2), and (3), above, of this proposed exemption, the amount of Securities in any issue (whether equity or debt securities) purchased, pursuant to this proposed exemption, by the Asset Manager on behalf of any single Client Plan, either individually or through investment, calculated on a *pro rata* basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Securities being offered in such issue, and;

(6) If purchased in an Eligible Rule 144A Offering, the total amount of the Securities being offered for purposes of determining the percentages, described, above, in Section II(c)(1)–(3) and (5), is the total of:

(i) The principal amount of the offering of such class of Securities sold by underwriters or members of the selling syndicate to ''qualified institutional buyers'' (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class of Securities in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan in purchasing any Securities which are the subject of this proposed exemption, including any amounts paid by any Client Plan or In-House Plan in purchasing such Securities through a Pooled Fund, calculated on a *pro rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan or In-House Plan prior to such transaction.

(e) The covered transactions are not part of an agreement, arrangement, or understanding designed to benefit any PNC/BlackRock Related Entity.

(f) If the transaction is an AUT, no PNC/BlackRock Related Broker-Dealer receives, either directly, indirectly, or through designation, any selling concession, or other compensation or consideration that is based upon the amount of Securities purchased by any single Client Plan, or that is based on the amount of Securities purchased by Client Plans or In-House Plans through Pooled Funds, pursuant to this proposed exemption. In this regard, a PNC/BlackRock Related Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designations generated by purchases of the Securities by the Asset Manager on behalf of any single Client Plan or any Client Plan or In-House Plan in Pooled Funds.

(g)(1) If the transaction is an AUT, the amount a PNC/BlackRock Related Broker-Dealer receives in management, underwriting, or other compensation or consideration is not increased through an agreement, arrangement, or understanding for the purpose of compensating such PNC/BlackRock Related Broker-Dealer for foregoing any selling concessions for those Securities sold pursuant to this proposed exemption. Except as described above, nothing in this Section II(g)(1) shall be construed as precluding a PNC/BlackRock Related Broker-Dealer from receiving management fees for serving as manager of an underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other compensation or consideration that is not based upon the amount of Securities purchased by the Asset Manager on behalf of any single Client Plan, or on behalf of any Client Plan or In-House Plan participating in Pooled Funds, pursuant to this proposed exemption; and

(2) Each PNC/BlackRock Related Broker-Dealer shall provide to the Asset Manager a written certification, signed by an officer of such PNC/BlackRock Related Broker-Dealer, stating the amount that each such PNC/BlackRock Related Broker-Dealer received in compensation or consideration during the past quarter, in connection with any offerings covered by this proposed exemption, was not adjusted in a manner inconsistent with Section II(e), (f), or (g) of this proposed exemption.

(h) The covered transactions are performed under a written authorization executed in advance by an independent fiduciary of each single Client Plan (the Independent Fiduciary), as defined, below, in Section IV(j).

(i) Prior to the execution by an Independent Fiduciary of a single Client Plan of the written authorization described, above, in Section II(h), the following information and materials (which may be provided electronically) must be provided by the Asset Manager to such Independent Fiduciary:

(1) A copy of the Notice of Proposed Exemption (the Notice) and a copy of the final exemption (the Grant) as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously; and

(2) Any other reasonably available information regarding the covered transactions that such Independent Fiduciary requests the Asset Manager to provide.

(j) Subsequent to the initial authorization by an Independent Fiduciary of a single Client Plan permitting the Asset Manager to engage in the covered transactions on behalf of such single Client Plan, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary requests the Asset Manager to provide.

(k)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this proposed exemption, unless the Asset Manager provides the written information, as described, below, and within the time period described, below, in this Section II(k)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund).

(2) The following information and materials, (which may be provided electronically) shall be provided by the Asset Manager not less than 45 days prior to such Asset Manager engaging in the covered transactions on behalf of a Pooled Fund, pursuant to this proposed exemption; and provided further that the information described, below, in this Section II(k)(2)(i) and (iii) is supplied simultaneously:

(i) A notice of the intent of such Pooled Fund to purchase Securities pursuant to this proposed exemption, a copy of this Notice, and a copy of the Grant, as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously;

(ii) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the Asset Manager to provide; and

(iii) A termination form expressly providing an election for the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that such plan (or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund for a period of no more than 30 days after such plan's (or such In-House Plan's) receipt of the initial notice of intent, described, above, in Section II(k)(2)(i), and that the failure of the Independent Fiduciary of such plan (or fiduciary of such In-House Plan) to return the termination form to the Asset Manager in the case of a plan (or In-House Plan) participating in a Pooled Fund by the specified date shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in the covered transactions as an investor in such Pooled Fund.

Further, the instructions will identify the Asset Manager and the PNC/BlackRock Related Broker-Dealer and the Affiliated Servicer, if applicable, and will provide the address of the Asset Manager. The instructions will state that this proposed exemption may be unavailable, unless the fiduciary of each plan participating in the covered transactions as an investor in a Pooled Fund is, in fact, independent of the PNC/BlackRock Related Entities. The instructions will also state that the fiduciary of each such plan must advise the Asset Manager, in writing, if it is not an ''Independent Fiduciary,'' as that term is defined, below, in Section IV(j).

For purposes of this Section II(k), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this proposed exemption for each plan be independent of the PNC/BlackRock Related Entities shall not apply in the case of an In-House Plan.

(l)(1) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this proposed exemption to engage in the covered transactions, the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the fiduciary of such In-House Plan, as the case may be), following the receipt by such Independent Fiduciary of such plan (or by the fiduciary of such In-House Plan, as the case may be) of the written information described, above, in Section II(k)(2)(i) and (ii); provided that the Notice and the Grant, described, above, in Section II(k)(2)(i) are provided simultaneously.

(2) For purposes of this Section II(l), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this proposed exemption for each plan proposing to invest in a Pooled Fund be independent of the PNC/BlackRock Related Entities shall not apply in the case of an In-House Plan.

(m) Subsequent to the initial authorization by an Independent Fiduciary of a plan (or by a fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary of such plan (or the fiduciary of such In-House Plan, as the case may be) requests the Asset Manager to provide.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the Asset Manager shall furnish:

(1) In the case of each single Client Plan that engages in the covered transactions, the information described, below, in this Section II(n)(3)–(7), to the Independent Fiduciary of each such single Client Plan.

(2) In the case of each Pooled Fund in which a Client Plan (or in which an In-House Plan) invests, the information described, below, in this Section II(n)(3)–(6) and (8), to the Independent Fiduciary of each such Client Plan (and to the fiduciary of each such In-House Plan) invested in such Pooled Fund.

(3) A quarterly report (the Quarterly Report) (which may be provided electronically) which discloses all the Securities purchased pursuant to this proposed exemption during the period to which such report relates on behalf of the Client Plan, In-House Plan, or Pooled Fund to which such report relates, and which discloses the terms of each of the transactions described in such report, including:

(i) The type of Securities (including the rating of any Securities which are debt securities) involved in each transaction;

(ii) The price at which the Securities were purchased in each transaction;

(iii) The first day on which any sale was made during the offering of the Securities;

(iv) The size of the issue of the Securities involved in each transaction;

(v) The number of Securities purchased by the Asset Manager for the Client Plan, In-House Plan, or Pooled Fund to which the transaction relates;

(vi) The identity of the underwriter from whom the Securities were purchased for each transaction;

(vii) The underwriting spread in each transaction (*i.e.*, the difference, between the price at which the underwriter purchases the securities from the issuer and the price at which the securities are sold to the public);

(viii) The price at which any of the Securities purchased during the period to which such report relates were sold;

(ix) The market value at the end of the period to which such report relates of the Securities purchased during such period and not sold; and

(x) In the case of an AST, the basis upon which the Affiliated Servicer is compensated;

(4) The Quarterly Report contains:

(i) A representation that the Asset Manager has received a written certification signed by an officer of each PNC/BlackRock Related Broker-Dealer, as described, above, in Section II(g)(2), affirming that, as to each AUT covered by this proposed exemption during the past quarter, such PNC/BlackRock Related Broker-Dealer acted in compliance with Section II(e), (f), and (g) of this proposed exemption. In the case of an AST, a representation of the asset Manager affirming that, as to each AST, the transaction was not part of an arrangement or understanding designed to benefit the Affiliated Servicer; and

(ii) A representation that copies of such certifications will be provided upon request;

(5) A disclosure in the Quarterly Report that states that any other reasonably available information regarding a covered transaction that an Independent Fiduciary (or fiduciary of an In-House Plan) requests will be provided, including, but not limited to:

(i) The date on which the Securities were purchased on behalf of the Client Plan (or the In-House Plan) to which the disclosure relates (including Securities purchased by Pooled Funds in which such Client Plan (or such In-House Plan) invests;

(ii) The percentage of the offering purchased on behalf of all Client Plans (and the *pro rata* percentage purchased on behalf of Client Plans and In-House Plans investing in Pooled Funds); and

(iii) The identity of all members of the underwriting syndicate;

(6) The Quarterly Report discloses any instance during the past quarter where the Asset Manager was precluded for any period of time from selling Securities purchased under this proposed exemption in that quarter because of its relationship to a PNC/BlackRock Related Broker-Dealer or of an Affiliated Servicer and the reason for this restriction;

(7) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each single Client Plan that engages in the covered transactions that the authorization to engage in such covered transactions may be terminated, without penalty to such single Client Plan, within five (5) days after the date that the Independent Fiduciary of such single Client Plan informs the person identified in such notification that the authorization to engage in the covered transactions is terminated; and

(8) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each Client Plan (and to the fiduciary of each In-House Plan) that engages in the covered transactions through a Pooled Fund that the investment in such Pooled Fund may be terminated, without penalty to such Client Plan (or such In-House Plan), within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans, after the date that the Independent Fiduciary of such Client Plan (or the fiduciary of such In-House Plan, as the case may be) informs the person identified in such notification that the investment in such Pooled Fund is terminated.

(o) For purposes of engaging in covered transactions, each Client Plan (and each In-House Plan) shall have total net assets with a value of at least $50 million (the $50 Million Net Asset Requirement). For purposes of engaging in covered transactions involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be) (the $100 Million Net Asset Requirement).

For purposes of a Pooled Fund engaging in covered transactions, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets with a value of at least $50 million. Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets with a value of at least $50 million, the $50 Million Net Asset Requirement will be met, if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which has total net assets with a value of at least $50 million. For purposes of a Pooled Fund engaging in covered transactions involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be). Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or In-House Plan, as the case may be), the $100 Million Net Asset Requirement will be met if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be), and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset requirements described, above, in this Section II(o), where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 Million Net Asset Requirement (or in the case of an Eligible Rule 144A Offering, the $100 Million Net Asset Requirement) may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes in a single master trust.

(p) No more than 20 percent of the assets of a Pooled Fund, at the time of a covered transaction, are comprised of assets of In-House Plans for which the Asset Manager, a PNC/BlackRock Related Entity or the Affiliated Servicer exercises investment discretion.

(q) The Asset Manager and the PNC/BlackRock Related Broker-Dealer, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons, described, below, in Section II(r), to determine whether the conditions of this proposed exemption have been met, except that—

(1) No party in interest with respect to a plan which engages in the covered transactions, other than the Asset Manager, and the PNC/BlackRock Related Broker-Dealer or Affiliated Servicer, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by Section II(r); and

(2) A prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of the Asset Manager, or the PNC/BlackRock Related Broker-Dealer, or the Affiliated Servicer, as applicable, such records are lost or destroyed prior to the end of the six year period.

(r)(1) Except as provided, below, in Section II(r)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in Section II(q) are unconditionally available at their customary location for examination during normal business hours by—

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

(ii) Any fiduciary of any plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in Section II(r)(1)(ii)–(iv) shall be authorized to examine trade secrets of the Asset Manager, or the PNC/BlackRock Related Broker-Dealer, or the Affiliated Servicer, or commercial or financial information which is privileged or confidential; and

(3) Should the Asset Manager, or the PNC/BlackRock Related Broker-Dealer or the Affiliated Servicer refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to Section II(r)(2), above, the Asset Manager 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 III—Conditions for Transactions Described in Section I(c)

The proposed exemption is conditioned upon satisfaction of the following requirements:

(a) The Securities to be purchased are pass-through certificates or trust certificates that represent a beneficial ownership interest in the assets of an issuer which is a trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such trust and the corpus or assets of which consist solely of obligations that bear interest or are purchased at a discount and which are secured by commercial real property (including obligations secured by leasehold interests on commercial real property) that are rated in one of the four highest rating categories by the Rating Organizations; provided that none of the Rating Organizations rates such securities in a category lower than the fourth highest rating category (CMBS).

(b) The purchase of the CMBS meets the conditions of an applicable underwriter exemption (the Underwriter Exemption(s)). The Underwriter Exemptions are a group of individual exemptions granted by the Department to provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding, and disposition by plans of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The most recent amendment to the Underwriter Exemptions is PTE 2007–05, 72 FR 13130 (March 20, 2007), Technical Correction at 72 FR 16385 (April 4, 2007) (PTE 2007–05).

(c)(1) The aggregate amount of CMBS of an issue purchased, pursuant to this proposed exemption, by the Asset Manager with:

(i) The assets of all Client Plans; and

(ii) The assets, calculated on a *pro rata* basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the Asset Manager; and

(iii) The assets of plans to which the Asset Manager renders investment advice within the meaning of 29 CFR § 2510.3–21(c) does not exceed 35 percent (35%) of the total amount of the CMBS being offered in an issue.

(2) Notwithstanding the percentage of CMBS of an issue permitted to be acquired, as set forth in Section III(c)(1) of this proposed exemption, the amount of CMBS in any issue purchased, pursuant to this proposed exemption, by the Asset Manager on behalf of any single Client Plan, either individually or through investment, calculated on a *pro rata* basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such CMBS being offered in such issue, and;

(3) If purchased in an Eligible Rule 144A Offering, the total amount of the CMBS being offered for purposes of determining the percentages, described in this Section III(c), is the total of:

(i) The principal amount of the offering of such class of CMBS sold by underwriters or members of the selling syndicate to QIBs; plus

(ii) The principal amount of the offering of such class of CMBS in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan in purchasing any CMBS which are the subject of this proposed exemption, including any amounts paid by any Client Plan or In-House Plan in purchasing such CMBS through a Pooled Fund, calculated on a *pro rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan or In-House Plan prior to such transaction.

(e) The covered transactions are not part of an agreement, arrangement, or understanding designed to benefit any PNC/BlackRock Related Entity.

(f) The covered transactions are performed under a written authorization executed in advance by an Independent Fiduciary of each single Client Plan, as defined, below, in Section IV(j).

The written authorization requirement of this paragraph shall be deemed satisfied with respect to the covered transactions involving ASTs if the Asset Manager provides to the Independent Fiduciary the materials described in Section III(g), below, together with a termination form expressly providing an election for the Independent Fiduciary to terminate the authorization with respect to the covered transactions and a statement to the effect that the Asset Manager proposes to engage in the covered transactions on a specified date (that shall be not less than 45 days after the notice is sent to the Independent Fiduciary) unless the Independent Fiduciary signs and returns the termination form to the Asset Manager prior to such date.

(g) The following information and materials (which may be provided electronically) must be provided by the Asset Manager to the Independent Fiduciary not less than 45 days prior to such Asset Manager engaging in the covered transactions pursuant to this proposed exemption:

(1) A notice of the intent of the Asset Manager to purchase CMBS pursuant to Section I(c) of this exemption, a copy of the Notice, and a copy of the Grant, as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously;

(2) A notice describing the relationship of the Affiliated Servicer to the Asset Manager.

(3) The basis upon which the Affiliated Servicer is compensated and a representation by the Asset Manager affirming that, the transaction was not part of an agreement, arrangement, or understanding designed to benefit the Affiliated Servicer; and

(4) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests the Asset Manager to provide.

(h) Subsequent to the initial authorization by an Independent Fiduciary of a single Client Plan permitting the Asset Manager to engage in the covered transactions on behalf of such single Client Plan, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests the Asset Manager to provide.

(i)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to Section I(c) of this proposed exemption, unless the Asset Manager provides the written information, as described, below, and within the time period described, below, in this Section III(i)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund).

(2) The following information and materials, (which may be provided electronically) shall be provided by the Asset Manager not less than 45 days prior to such Asset Manager engaging in the covered transactions on behalf of a Pooled Fund, pursuant to this proposed exemption; and provided further that the information described, below, in this Section III(i)(2)(i) and (iii) is supplied simultaneously:

(i) A notice of the intent of such Pooled Fund to purchase CMBS pursuant to this proposed exemption, a copy of this Notice, and a copy of the Grant, as published in the **Federal Register**;

(ii) A notice describing the relationship of the Affiliated Servicer to the Asset Manager;

(iii) Information on the basis upon which the Affiliated Servicer is compensated and a representation by the Asset Manager affirming that the transaction was not part of an agreement, arrangement, or understanding designed to benefit the Affiliated Servicer; and

(iv) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the Asset Manager to provide; and

(v) A termination form expressly providing an election for the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that such plan (or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund for a period of no more than 30 days after such plan's (or such In-House Plan's) receipt of the initial notice of intent, described, above, in Section III(i)(2)(i), and that the failure of the Independent Fiduciary of such plan (or fiduciary of such In-House Plan) to return the termination form to the Asset Manager in the case of a plan (or In-House Plan) participating in a Pooled Fund by the specified date shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in the covered transactions as an investor in such Pooled Fund.

Further, the instructions will identify the Asset Manager and the Affiliated Servicer and will provide the address of the Asset Manager.

For purposes of this Section III(i), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I(c) of this proposed exemption for each plan be independent of the PNC/BlackRock Related Entities shall not apply in the case of an In-House Plan.

(j)(1) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this proposed exemption to engage in the covered transactions, the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the fiduciary of such In-House Plan, as the case may be), following the receipt by such Independent Fiduciary of the plan (or by the fiduciary of the In-House Plan, as the case may be) of the written information described, above, in Section III(i)(2); provided that the Notice and the Grant, described, above, in Section III(i)(2)(i) are provided simultaneously. The written authorization requirement of this paragraph shall be deemed satisfied with respect to the covered transactions involving ASTs if the Asset Manager provides to the Independent Fiduciary the materials described in Section III(i)(2) above, together with a termination form expressly providing an election for the Independent Fiduciary to terminate the authorization with respect to the covered transactions and a statement to the effect that the Asset Manager proposes to engage in the covered transactions on a specified date (that shall be not less than 45 days after the notice is sent to the Independent Fiduciary) unless the Independent Fiduciary signs and returns the termination form to the Asset Manager prior to such date.

(2) For purposes of this Section III(j), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I(c) of this proposed exemption for each plan proposing to invest in a Pooled Fund be independent of the PNC/BlackRock Related Entities shall not apply in the case of an In-House Plan.

(k) Subsequent to the initial authorization by an Independent Fiduciary of a plan (or by a fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary of such plan (or the fiduciary of such In-House Plan, as the case may be) requests the Asset Manager to provide.

(l) The requirements of Section II(o), (p) and (q) are met.

Section IV—Definitions

(a) The term, ''the Applicants,'' means BlackRock Inc. and the PNC Financial Services Group, Inc.

(b) The term, ''PNC/BlackRock Related Broker-Dealer,'' means any broker dealer that is a PNC/BlackRock Related Entity that meets the requirements of this proposed exemption. Such PNC/BlackRock Related Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member. The term, ''manager,'' means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the Securities, as defined, below, in Section IV(k), being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term, ''PNC/BlackRock Related Entity(s)'' includes all entities listed in this Section IV(c)(i) and (ii):

(i) PNC and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with PNC, and

(ii) BlackRock and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with, BlackRock. For purposes of this proposed exemption, the definition of a PNC/BlackRock Related Entity shall include any entity that satisfies such definition in the future.

(d) The term, ''BlackRock Related Entity'' or ''BlackRock Related Entities,'' means BlackRock and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with BlackRock.

(e) The term, ''PNC Related Entity'' or ''PNC Related Entities,'' means PNC and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with PNC.

(f) The term, ''Asset Manager,'' means a BlackRock Related Entity, as defined, above, in Section IV(d) or a PNC Related Entity, as defined above, in Section IV(e). For purposes of this proposed exemption, the Asset Manager must qualify as a ''qualified professional asset manager'' (QPAM), as that term is defined under section V(a) of PTE 84–14. In addition to satisfying the requirements for a QPAM under section V(a) of PTE 84–14, (49 FR 9494 (Mar. 13, 1984), as amended, 70 FR 49305 (Aug. 23, 2005)), the Asset Manager must also have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million.

(g) The term, ''control,'' means the power to exercise a controlling influence over the management or

policies of a person other than an individual.

(h) The term, ''Client Plan(s),'' means an employee benefit plan or employee benefit plans that are subject to the Act and/or the Code, and for which plan(s) an Asset Manager exercises discretionary authority or discretionary control respecting management or disposition of some or all of the assets of such plan(s), but excludes In-House Plans, as defined, below, in Section IV(o).

(i) The term, ''Pooled Fund(s),'' means a common or collective trust fund(s) or a pooled investment fund(s):

(1) In which employee benefit plan(s) subject to the Act and/or Code invest,

(2) Which is maintained by an Asset Manager, and

(3) For which such Asset Manager exercises discretionary authority or discretionary control respecting the management or disposition of the assets of such fund(s).

(j)(1) The term, ''Independent Fiduciary,'' means a fiduciary of a plan who is unrelated to, and independent of any PNC/BlackRock Related Entity. For purposes of this proposed exemption, a fiduciary of a plan will be deemed to be unrelated to, and independent of any PNC/BlackRock Related Entity, if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for the transactions described, above, in Section I of this proposed exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of any PNC/BlackRock Related Entity, and represents that such fiduciary shall advise the Asset Manager within a reasonable period of time after any change in such facts occurs.

(2) Notwithstanding anything to the contrary in this Section IV(j), a fiduciary of a plan is not independent:

(i) If such fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with any PNC/BlackRock Related Entity;

(ii) If such fiduciary directly or indirectly receives any compensation or other consideration from any PNC/BlackRock Related Entity for his or her own personal account in connection with any transaction described in this proposed exemption;

(iii) If any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager responsible for the transactions described, above, in Section I of this proposed exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the sponsor of a plan or of the fiduciary responsible for the decision to authorize or terminate authorization for the transactions described, above, in Section I. However, if such individual is a director of the sponsor of a plan or of the responsible fiduciary, and if he or she abstains from participation in: (A) The choice of such plan's investment manager/adviser; and (B) the decision to authorize or terminate authorization for transactions described, above, in Section I, then Section IV(j)(2)(iii) shall not apply.

(3) The term, ''officer,'' means a president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), or any other officer who performs a policy-making function for a PNC/BlackRock Related Entity.

(k) The term, ''Securities,'' shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a 2(36) (1996)). For purposes of this proposed exemption, mortgage-backed or other asset backed securities rated by one of the Rating Organizations, as defined, below, in Section IV(n), will be treated as debt securities.

(l) The term, ''Eligible Rule 144A Offering,'' shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270.10f–3(a)(4)) under the 1940 Act.

(m) The term, ''qualified institutional buyer,'' or the term, ''QIB,'' shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(n) The term, ''Rating Organizations,'' means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings Inc., DBRS Limited, or DBRS, Inc., or any successors thereto.

(o) The term, ''In-House Plan(s),'' means an employee benefit plan(s) that is subject to the Act and/or the Code, and that is sponsored by:

(1) A PNC Related Entity, as defined, above, in Section IV(e), or

(2) A BlackRock Related Entity, as defined, above, in Section IV(d), for their respective employees.

(p) The term ''Affiliated Servicer'' means a PNC/BlackRock Related Entity that serves as a servicer of one or more of the commercial mortgage loans in a Pooled Fund that issues commercial mortgage-backed securities.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

Signed at Washington, DC, this 6th day of October 2008.

Ivan L. Strasfeld,

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

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,758]

Lear Corporation, Quality Control and Inspection Department, 950 Loma Verde Drive, El Paso, Texas; Notice of Affirmative Determination Regarding Application for Reconsideration

In an application post-marked September 4, 2008 a worker requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of Lear Corporation, Quality Control and Inspection Department, located at 950 Loma Verde Drive, El Paso, Texas (subject firm).

The negative determination was issued on August 21, 2008. The Department's Notice of determination was published in the **Federal Register** on September 3, 2008 (73 FR 51530). Workers performed testing and inspection of component parts (terminals, connectors, wires, and grommets) for wire harnesses. The determination stated that the subject firm does not produce an article within the meaning of Section 222(a)(2) of the Act. The determination further stated that because the subject workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

The request for reconsideration stated that subject firm ''held two very different departments * * * the Quality Control and Inspection Dept. * * * and the other one was the PPAP Dept. (Production Part Approval Process). The