DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption (PTE) 2009–24; Exemption Application No. D–11465]

United States Steel and Carnegie Pension Fund (the Applicant), Located in New York, NY

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

ACTION: Notice of technical correction.

On September 1, 2009, the Department published PTE 2009–24 in the **Federal Register** at 74 FR 45294. PTE 2009–24 permits transactions between parties in interest with respect to the Former U.S. Steel Related Plans, as defined in PTE 2009–24, and an investment fund in which such plans have an interest, provided that the Applicant or its successor has discretionary authority or control with respect to the plan assets involved in the transaction, and various enumerated conditions are satisfied.

Due to a technical error appearing in the final exemption, the Department is hereby making a revision to the document. On page 45298 of the grant notice, the first paragraph under the heading Temporary Nature of Exemption is revised to read as follows:

Temporary Nature of Exemption

The Department has determined that the relief provided by this exemption is temporary in nature. The exemption is effective February 15, 2003, and will expire on the day which is five (5) years from the first day of the first fiscal year of UCF after the date of the publication of the final exemption in the **Federal Register** (*i.e.,* September 1, 2009). Accordingly, the relief provided by this exemption will not be available upon the expiration of such five-year period for any new or additional transactions, as described herein, after such date, but would continue to apply beyond the expiration of such five-year period for continuing transactions entered into before the expiration of the five-year period. Should the Applicant wish to extend, beyond the expiration of such five-year period, the relief provided by this exemption to new or additional transactions, the Applicant may submit another application for exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department at (202) 693–8546. (This is not a toll-free number.)

Signed at Washington, DC, this 10th day of November 2009.

Ivan L. Strasfeld,

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

[FR Doc. E9–27403 Filed 11–13–09; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving: PTE 2009–29, Iron Workers Local 17 Pension Fun (the Plan), D–11432, et al.

PTE 2009–29, Iron Workers Local 17 Pension Fun (the Plan), D–11432;

PTE 2009–30, Urology Clinics of North Texas, P,A. 401(k) Profit Sharing Plan and Trust (The Plan), D–11483;

PTE 2009–31, Amendment to Prohibited Transaction Exemption (PTE) 96–22, 61 FR 14828 (April 3, 1996), as amended by PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (November 13, 2000), PTE 2002–41, 67 FR 54487 (August 22, 2002) and PTE 2007–05, 72 FR 13130 (March 20, 2007) as corrected at 72 FR 16385 (April 4, 2007) (PTE 2007–05), (PTE 96–22), Involving the Wachovia Corporation and its affiliates (Wachovia), the Successor of First Union Corporation and to PTE 2002–19, 67 FR 14979 (March 28, 2002), as amended by PTE 2007–05 and PTE 2009–16, 74 FR 30623 (June 26, 2009) (PTE 2002–19), Involving J.P. Morgan Chase & Company and Its Affiliates, D–11530;

PTE 2009–32, The Alaska Laborers-Construction Industry Apprenticeship Training Trust (the Plan), L–11482.

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

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

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Iron Workers Local 17 Pension Fund (the Plan) Located in Cleveland, Ohio

[Prohibited Transaction Exemption 2009–29; Exemption Application No. D–11432]

Exemption

The restrictions in sections 406(a)(1)(A), 406(a)(1)(D), and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and 4975(c)(1)(D) through (E) of the Code, shall not apply to the sale of a leasehold interest, which includes an office building (the Building) and certain rights pursuant to a ground lease, held by the Plan, to the Bridge, Structural and Ornamental Iron Workers Local Union No. 17 (the Union), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

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

(b) The Plan receives the greater of $285,000 or the fair market value of the

Building and lot on which the Building is located (the Lot), as of the date of the sale, as determined by a qualified, independent appraiser;

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

(d) The Plan pays no commissions, costs, or other expenses in connection with the sale (other than fees associated with the retention of a qualified, independent appraiser and the retention of a qualified, independent fiduciary);

(e) The Board of Trustees retains a qualified, independent fiduciary, who will review and approve the methodology used by the qualified, independent appraiser, will ensure that such methodology is properly applied in determining the fair market value of the Building and Lot as of the date of the sale, and will determine whether it is prudent to go forward with the proposed transaction; and

(f) Prior to the publication of this final exemption in the **Federal Register** regarding the subject transaction, the Union: (i) Filed Form 5330 (Return of Excise Taxes Related to Employee Benefit Plans) with the Internal Revenue Service (IRS) and paid all applicable excise taxes due by reason of its prohibited past leasing to the Plan of the Lot on which the subject Building was constructed by the Plan; and (ii) provided the Department with copies of Form 5330 and of the checks submitted to the IRS indicating that the taxes were correctly computed and paid.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 26, 2009 at 74 FR 30631.

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

Urology Clinics of North Texas, P.A. 401(k) Profit Sharing Plan and Trust (The Plan) Located in Dallas, TX

Prohibited Transaction Exemption 2009–30; [Application No. D–11483]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, will not apply to the proposed sale (the Sale) of a 2.52 percent ownership interest comprising 5.55 Class I Units issued by the Center for Pediatric Surgery (CPS) and a 2.52 percent ownership interest comprising 5.55 Class I Units of the Center of Pediatric Surgery, LLC (CPS LLC) (collectively the ''Units''), unrelated parties with respect to the Plan, by the individually directed account in the Plan (the Account) of David Ewalt, M.D. (Dr. Ewalt), to Dr. Ewalt, a party in interest with respect to the Plan.

This exemption is subject to the following conditions:

(a) The Sale is a one-time transaction for cash;

(b) the closing date of the Sale (the Closing Date) occurs within 60 days of the Department's publication of the grant of the final exemption in the **Federal Register**;

(c) the Units are sold to Dr. Ewalt at the greater of the fair market value of the Units as of the Closing Date, as determined by a qualified, independent appraiser or for $441,000 for the 2.52 percent ownership interest in CPS and the 2.52 percent ownership interest in CPS LLC;

(d) in addition to the sale price described above, the Account will have received $408,954.00 in consideration for the reduction of the Account's interest in CPS and CPS LLC as a result of an investment by Cook Children's Health Care System (Cook) in CPS and CPS LLC;

(e) the proceeds from the Sale are credited to the Account simultaneously with the transfer of the Units' title to Dr. Ewalt;

(f) neither the Plan nor the Account pay any fees, commissions, or other costs or expenses associated with the Sale; and

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

Effective Date: This exemption is effective as of the date of publication of this exemption in the **Federal Register**.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing. During the comment period, the Department received no requests for a hearing. The Department received comments from the Applicant dated July 24, 2009, August 21, 2009 and September 2, 2009. The Applicant cited the following issues with regard to the Notice.

In its July 24, 2009 and August 21, 2009 comments, the Applicant supplemented its original application with additional facts. First, the Applicant explained that in addition to its 2.52 percent ownership interest in CPS, the Account also held an identical 2.52 percent ownership interest in the Center for Pediatric Surgery, LLC, (CPS LLC) a Texas limited liability company which is the general partner of CPS. The Board of Managers of CPS LLC, in accordance with the governing documents of CPS, acts as the governing body for CPS and CPS LLC. In addition, the operative language of the final exemption now reflects the additional information submitted in the comments.

The Applicant submitted a supplemental appraisal from Vincent Kickirillo (the Appraiser) of VMG Health, LLC dated August 21, 2009. The Appraiser reviewed both the 2.52 percent interest in CPS and the 2.52 interest in CPS LLC and based his valuation on the division of income between CPS and CPS LLC. The income and profits generated by CPS' and CPS LLC's pediatric services remain unchanged from earlier valuations. CPS LLC, as a distinct legal entity, does not generate any income or losses. For tax purposes, CPS receives 99.55% and CPS LLC receives .45% of the total profits from their pediatric business. The Appraiser valued the 2.52 percent interest (or 5.55 Units in CPS) at $439,005.00 and the 2.52 percent interest (or 5.55 Units in CPS LLC) at $1,995.00. Therefore, the Appraiser represented that the Account's 2.52 interest in CPS and 2.52 percent interest in CPS LLC resulted in a value of $441,000.00.

Finally, on September 2, 2009, the Applicant clarified its application to note that in August 2008, the ownership of the CPS and CPS LLC was reorganized. The Account now owns a 2.52 percent ownership interest consisting of 5.55 Class I Units of CPS and a 2.52 percent ownership interest consisting of 5.55 Class I Units of CPS LLC instead of a 2.52 percent ownership interest consisting of 5 Class I Units of CPS and a 2.52 percent ownership interest consisting of 5 Class I Units of CPS LLC.

The operative language of the final exemption now reflects the additional information submitted by the Applicant. Also, the Department has revised paragraphs 7 and 8 as well as footnote 6 in the Notice.

Paragraph 7 of the Summary of Facts and Representations has been revised to read as follows:

On August 1, 2008, Cook completed a capital investment in CPS and CPS LLC that resulted in Cook's ownership of 51 percent of the aggregate ownership interest CPS and CPS LLC. Cook is not a party in interest to the Plan.

The Cook investment did not represent an actual purchase from the Account of any of the Units. Instead, the Cook investment represented an injection of capital into CPS

which resulted in the issuance of additional ownership units to Cook and dilution of the then existing investors of CPS and CPS LLC.

Paragraph 8 of the Summary of Facts and Representations has been revised to read as follows:

Prior to the investment by Cook, individual investors, including the Account, together held an 81 percent aggregate interest in CPS and CPS LLC, while the remaining 19 percent interest was held by Nuettera Holdings, LLC, (Nuettera) the entity providing business management services to CPS. Following the investment by Cook, the individual investors' aggregate interest in CPS and CPS LLC has been reduced to 44 percent respectively and the interest held by Nuettera Holdings, LLC has been reduced to five percent respectively.[6] Due to the Cook investment and the resulting dilution and reduction of the ownership of the individual investors, the Account's aggregate interest in CPS and CPS LLC decreased from 4.63 percent to 2.52 percent respectively. As consideration for this dilution of their ownership interest, the previous investors received a special cash distribution from CPS. The Account's share of this cash consideration was $408,954.00. This amount was deposited in the Account and invested in accordance with Dr. Ewalt's directions. Individual number of units in CPS and CPS LLC held by the Account increased from five to 5.55 units respectively as part of this transaction. The Applicant submitted a supplemental appraisal from the Appraiser dated August 21, 2009. The Appraiser used the division of income between CPS and CPS LLC as basis for his valuation. CPS receives 99.55% and CPS LLC receives .45% of the total profits from their pediatric business. Accordingly, the Appraiser valued the 2.52 percent interest or 5.55 Units in CPS at $439,005.00. The Appraiser valued the 2.52 percent interest or 5.55 Units in CPS LLC at $1,995.00. Finally, the Appraiser represented that the Account's 2.52 interest in CPS and 2.52 percent interest CPS LLC combined equaled $441,000.00.

Footnote 6 in the Summary of Facts and Representations has been revised to read as follows:

Nuetttera was engaged to provide management services for the surgery center. Nuettera held an ownership interest in CPS, but that interest was represented by units of a different class (Class II units) than those held by the physician practitioners who owned the remaining interests in CPS and CPS LLC (Class I units).

When Cook acquired its interest in CPS and CPS LLC in 2008, it acquired both Class I and Class II units. The dilution of Nuettera's interest in CPS and CPS LLC was proportionately greater than the dilution of the physicians' interests because Cook acquired seventy-five percent (75%) of the Class II units for CPS and CPS LLC. In contrast, the aggregate ownership of the physicians in CPS and CPS LLC was diluted by roughly fifty-four percent (54%) following the Cook investment. The reason the relative dilution of the two groups was different was a result of the fact that the two groups owned different classes of ownership units.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published in the **Federal Register** on June 26, 2009 at 74 FR 30634. Based on the entire record, the Department has determined to grant this exemption as revised herein.

For Further Information Contact: Anh-Viet Ly of the Department, telephone (202) 693–8648 (this is not a toll-free number).

Amendment to Prohibited Transaction Exemption (PTE) 96–22, 61 FR 14828 (April 3, 1996), as amended by PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (November 13, 2000), PTE 2002–41, 67 FR 54487 (August 22, 2002) and PTE 2007–05, 72 FR 13130 (March 20, 2007) as corrected at 72 FR 16385 (April 4, 2007) (PTE 2007–05), (PTE 96–22), Involving the Wachovia Corporation and its affiliates (Wachovia), the Successor of First Union Corporation and to PTE 2002–19, 67 FR 14979 (March 28, 2002), as amended by PTE 2007–05 and PTE 2009–16, 74 FR 30623 (June 26, 2009) (PTE 2002–19), Involving J.P. Morgan Chase & Company and Its Affiliates.

[Prohibited Transaction Exemption 2009–31; Exemption Application Number D–11530]

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), the Department amends Prohibited Transaction Exemption (PTE) 96–22, 61 FR 14828 (April 3, 1996), as amended by PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (November 13, 2000), PTE 2002–41, 67 FR 54487 (August 22, 2002) and PTE 2007–05, 72 FR 13130 (March 20, 2007) as corrected at 72 FR 16385 (April 4, 2007) (PTE 2007–05), (PTE 96–22) and PTE 2002–19, 67 FR 14979 (March 28, 2002) as amended by PTE 2007–05 and PTE 2009–16, 74 FR 30623 (June 26, 2009) (PTE 2002–19).

I. Transactions

A. Effective December 31, 2008, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

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

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

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective December 31, 2008, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

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

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in an Issuer containing assets sold or serviced

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

by the same entity.[2] For purposes of this paragraph (iv) only, an entity will not be considered to service assets contained in an Issuer if it is merely a Subservicer of that Issuer;

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

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

C. Effective December 31, 2008, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of an Issuer, including the use of any Eligible Swap transaction; or the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction, provided:

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

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer; [3] and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

D. Effective December 31, 2008, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

II. General Conditions

A. The relief provided under section I. is available only if the following conditions are met:

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

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories;

(4) The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter. For purposes of this requirement:

(a) The Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) Subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as the result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that:

(i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the date such Servicer became an Affiliate of the Trustee; and

(ii) Such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(c) [(d) of PTE 2002–19] Effective December 31, 2008 through June 30, 2009, Wells Fargo, N.A., the Trustee, shall not be considered to be an Affiliate of any member of the Restricted Group solely as the result of the acquisition of Wachovia Corporation and its affiliates (Wachovia) by Wells Fargo & Company and its subsidiaries (WFC), the parent holding company of Wells Fargo, N.A. (the Acquisition), which occurred after the initial issuance of the Securities, provided that:

(i) The Trustee, Wells Fargo, N.A., ceases to be an Affiliate of any member of the Restricted Group no later than June 30, 2009;

(ii) Any member of the Restricted Group that is an Affiliate of the Trustee, Wells Fargo, N.A., did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from December 31, 2008 through the date the member of the Restricted Group ceased to be an Affiliate of the Trustee, Wells Fargo, N.A.; and

(iii) In accordance with each Pooling and Servicing Agreement, the Trustee, Wells Fargo, N.A., appoints a co-trustee, which is not an Affiliate of Wachovia or any other member of the Restricted Group, no later than the earlier of (A) March 31, 2009 or (B) five business days after Wells Fargo, N.A. becomes aware of a conflict between the Trustee and any member of the Restricted Group that is an Affiliate of the Trustee. The co-trustee will be responsible for resolving any conflict between the Trustee and any member of the Restricted Group that has become an Affiliate of the Trustee as a result of the Acquisition; provided,

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

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to ''prospectus'' include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

that if the Trustee has resigned on or prior to March 31, 2009 and no event described in clause (B) has occurred, no co-trustee shall be required.[4]

(iv) For purposes of this subsection II.A.(4)(c) [subsection II.A.(4)(d) of PTE 2002–19], a conflict arises whenever (A) Wachovia, as a member of the Restricted Group, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Wells Fargo, N.A., as Trustee, or (B) Wells Fargo, N.A., as Trustee, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Wachovia, a member of the Restricted Group.

The time as of which a conflict occurs is the earlier of: The day immediately following the last day on which compliance is required under the relevant Pooling and Servicing Agreement; or the day on which a party affirmatively responds that it will not comply with a request for performance.

For purposes of this subsection II.A.(4)(c) [subsection II.A.(4)(d) of PTE 2002–19], the term ''conflict'' includes but is not limited to, the following: (1) Wachovia's failure, as Sponsor, to repurchase a loan for breach of representation within the time period prescribed in the relevant Pooling and Servicing Agreement, following Wells Fargo, N.A.'s request, as Trustee, for performance; (2) Wachovia, as Sponsor, notifies Wells Fargo, N.A., as Trustee, that it will not repurchase a loan for breach of representation, following Wells Fargo, N.A.'s request that Wachovia repurchase such loan within the time period prescribed in the relevant Pooling and Servicing Agreement (the notification occurs prior to the expiration of the prescribed time period for the repurchase); and (3) Wachovia, as Swap Counterparty, makes or requests a payment based on a value of the London Interbank Offered Rate (LIBOR) that Wells Fargo, N.A., as Trustee, considers erroneous.

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

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

(7) In the event that the obligations used to fund an Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations of the types specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for determining the eligibility of the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency.

Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations held by the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act;

(8) In order to insure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

[4] On May 7, 2009, Wells Fargo Bank, N.A. informed the Department that for all 39 of the transactions on the Securitization List at section III.KK [section III.LL of PTE 2002–19], the replacement trustees were in place as of March 31, 2009.

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A ''true sale'' of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon this Underwriter Exemption only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

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

III. Definitions

For purposes of this exemption:

A. ''Security'' means:

(1) A pass-through certificate or trust certificate that represents 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; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. ''Issuer'' means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consist solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and/or commercial real property (including obligations secured by leasehold interests on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(i)(2) [5]; and/or

[5] In ERISA Advisory Opinion 99–05A (Feb. 22, 1999), the Department expressed its view that

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B.(1).[6]

Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that: (i) The rights and interests evidenced by the Securities issued in such Designated Transactions (as defined in section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) The outstanding principal balance due under the obligation which is held by the Issuer and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

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

(3) (a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement; and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in paragraphs (a)–(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to securityholders occurring after the end of the Pre-Funding Period.

For purposes of this paragraph (c) of subsection III.B.(3), the term ''permitted investments'' means investments which: (i) Are either: (x) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (y) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and (iii) are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term ''Issuer'' does not include any investment pool unless: (i) The assets of the type described in paragraphs (a)–(f) of subsection III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption.

C.(1) ''Underwriter'' means:

(a) First Union;

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

(c) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1)(a) or (b) is a manager or co-manager with respect to the Securities.

(2) Effective December 31, 2008 through June 30, 2009, ''Underwriter'' means:

(a) Wachovia or J.P. Morgan Securities Inc.;

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

(c) Any member of an underwriting syndicate or selling group of which such firm or person described in subsections III.C.(2)(a) or (b) is a manager or co-manager with respect to the Securities.

D. ''Sponsor'' means:

(1) The entity that organizes an Issuer by depositing obligations therein in exchange for Securities; or

(2) Effective December 31, 2008 through June 30, 2009, for those transactions listed on the Securitization List at section III.KK. [section III.LL. of PTE 2002–19], Wachovia.

E. ''Master Servicer'' means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. ''Servicer'' means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. ''Trust'' means an Issuer which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. ''Trustee'' means the Trustee of any Trust which issues Securities and also includes an Indenture Trustee. ''Indenture Trustee'' means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the Servicer.

J. ''Insurer'' means the insurer or guarantor of, or provider of other credit

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mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation (''Farmer Mac'') meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR 2510.3–101(i)(2).

[6] It is the Department's view that the definition of Issuer contained in subsection III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the Underwriter Exemption generally provides relief only for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

support for, an Issuer. Notwithstanding the foregoing, a person is not an insurer solely because it holds Securities representing an interest in an Issuer which are of a class subordinated to Securities representing an interest in the same Issuer.

K. ''Obligor'' means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes Secured by Leases, ''Obligor'' shall also include any owner of property subject to any lease included in the Issuer, or subject to any lease securing an obligation included in the Issuer.

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

M. ''Restricted Group'' with respect to a class of Securities means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

(8) Any Affiliate of a person described in subsections III.M.(1)–(7).

N. ''Affiliate'' of another person includes:

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

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

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

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

P. A person will be ''independent'' of another person only if:

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

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

Q. ''Sale'' includes the entrance into a Forward Delivery Commitment, provided:

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

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

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

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

S. ''Reasonable Compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c–2.

T. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

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

(2) The Servicer may not charge the fee absent the act or failure to act referred to in subsection III.T.(1);

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

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as the Issuer would have if the equipment note were secured only by the equipment and not the lease.

V. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

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

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

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

W. ''Pooling and Servicing Agreement'' means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. ''Pooling and Servicing Agreement'' also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. ''Rating Agency'' means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.; Moody's Investors Service, Inc.; FitchRatings, Inc.; DBRS Limited, or DBRS, Inc.; or any successors thereto.

Y. ''Capitalized Interest Account'' means an Issuer account: (i) which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the interest rate payable under the Securities; and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

Z. ''Closing Date'' means the date the Issuer is formed, the Securities are first issued and the Issuer's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection II.A.(7)) are transferred to the Issuer.

AA. ''Pre-Funding Account'' means an Issuer account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in paragraph (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

BB. ''Pre-Funding Limit'' means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered, which is less than or equal to 25 percent.

CC. ''Pre-Funding Period'' means the period commencing on the Closing Date and ending no later than the earliest to occur of: (i) The date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement; or (iii) the date which is the later of three months or ninety days after the Closing Date.

DD. ''Designated Transaction'' means a securitization transaction in which the

assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. ''Ratings Dependent Swap'' means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a ''Non-Ratings Dependent Swap''. With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. ''Eligible Swap'' means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g., LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF.(1) through (4) without the consent of the Trustee.

GG. ''Eligible Swap Counterparty'' means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemption, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. ''Qualified Plan Investor'' means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemption, such a fiduciary is either:

(1) A ''qualified professional asset manager'' (QPAM),[7] as defined under Part V(a) of PTE 84–14, 49 FR 9494, 9506 (March 13, 1984), as amended by 70 FR 49305 (August 23, 2005);

(2) An ''in-house asset manager'' (INHAM),[8] as defined under Part IV(a) of PTE 96–23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. ''Excess Spread'' means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. ''Eligible Yield Supplement Agreement'' means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not ''leveraged'' as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)–(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which such agreement or arrangement

[7] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $85 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[8] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

KK. [LL. Of PTE 2002–19] Effective December 31, 2008 through June 30, 2009, ''Securitization List'' means:

Name	Issuance type	Wachovia role	Exemption
First Union Commercial Mortgage Trust FUNB Series 1999–C1.	CMBS	Master Servicer: First Union National Bank Sponsor: First Union National Bank Underwriter: First Union Capital Markets	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C6.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C8.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2004–C10.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2004–C11.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C23.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C25.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2002–C01.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: First Union Securities, Inc	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2002–C2.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C3.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C5.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C7.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2004–C15.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Banc of America Commercial Mortgage Trust, Series 2001–3.	CMBS	Master Servicer: First Union National Bank Sponsor: First Union National Bank Underwriter: First Union Securities, Inc	96–22
First Union Commercial Mortgage Trust, Series 2001–C4.	CMBS	Master Servicer: First Union National Bank Sponsor: First Union National Bank Underwriter: First Union Securities, Inc	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C4.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C9.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C16.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C17.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
COBALT CMBS Commercial Mortgage Trust, Series 2006–C1.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
COBALT CMBS Commercial Mortgage Trust, Series 2007–C2.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
COBALT CMBS Commercial Mortgage Trust, Series 2007–C3.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C27.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22

Name	Issuance type	Wachovia role	Exemption
Wachovia Bank Commercial Mortgage Trust, Series 2006–C29.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C32.	CMBS	Master Servicer: Wachovia Bank, N.A Swap Provider: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series, 2005–C22.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C33.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C34.	CMBS	Master Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
J.P. Morgan Chase Commercial Mortgage Securities Corp., Series 2002–C1.	CMBS	Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc. (but note that PTE 96–22 is not relied on in the disclosure document).	2002–19
Wachovia Bank Commercial Mortgage Trust, Series 2006 WHALE 7.	CMBS	Servicer: Wachovia Bank, N.A Special Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C21.	CMBS	Master Servicer: Wachovia Bank, N.A Swap Provider: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C19.	CMBS	Master Servicer: Wachovia Bank, N.A Swap Provider: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C26.	CMBS	Master Servicer: Wachovia Bank, N.A Swap Provider: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C28.	CMBS	Master Servicer: Wachovia Bank, N.A Swap Provider: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C30.	CMBS	Master Servicer: Wachovia Bank, N.A Swap Provider: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C31.	CMBS	Master Servicer: Wachovia Bank, N.A Swap Provider: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–ESH.	CMBS	Master Servicer: Wachovia Bank, N.A Special Servicer: Wachovia Bank, N.A Swap Provider: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–WHALE 6.	CMBS	Servicer: Wachovia Bank, N.A Special Servicer: Wachovia Bank, N.A Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC	96–22
First Union—Lehman Brothers Wells Fargo, Series 1998–C2.	CMBS	Master Servicer: First Union National Bank Sponsor: First Union National Bank Underwriter: First Union Capital Markets	96–22

Legend: CMBS = Commercial mortgage-backed securitizations.

Effective Date: This amendment was effective December 31, 2008.

For a more complete statement of the facts and representations supporting the Department's decision to amend PTE 96–22 and PTE 2002–19, refer to the notice of proposed exemption that was published on August 28, 2009 in the **Federal Register** at 74 FR 44387.

For Further Information Contact: Wendy M. McColough of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

The Alaska Laborers-Construction Industry Apprenticeship Training Trust (the Plan) Located in Seattle, WA

[Prohibited Transaction Exemption 2009–32; Exemption Application No. L–11482]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the purchase by the Plan of certain unimproved real property (the Property) from the Alaska Construction & General Laborers 942 Building Association, Inc. (the Building Association), an entity owned by Local 942, Laborers International Union of North America, a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The terms and conditions of the proposed transaction are no less favorable to the Plan than those which the Plan would receive in an arm's length transaction with an unrelated party.

(b) The purchase of the Property is a one-time transaction for cash.

(c) The Plan does not pay any real estate commissions, fees, or other similar expenses to any party as a result of the proposed transaction.

(d) The Plan purchases the Property from the Building Association for the lesser of (1) $62,791 or (2) the fair market value of the Property as determined on the date of such transaction by a qualified, independent appraiser.

(e) The proposed transaction is consummated only after an independent fiduciary (1) determines that proceeding with the transaction is in the best interests of the Plan and its participants and beneficiaries and (2) negotiates the relevant terms and conditions of such transaction.

(f) The independent fiduciary calculates, on the date of the transaction (using the applicable certificate of deposit rate in effect), the amount of interest owed to the Plan based upon its earnest money deposit for the Property.

(g) On the date of the transaction, the Plan's legal counsel pays all interest owed the Plan resulting from counsel's placement of the Plan's earnest money deposit for the Property in a non-interest bearing account.

(h) The independent fiduciary monitors the proposed transaction on behalf of the Plan to ensure compliance with the agreed upon terms.

Written Comments

In the notice of proposed exemption, the Department invited all interested persons to submit written comments and requests for a hearing with respect to the proposed exemption within (60) sixty days of the publication of the notice of pendency in the **Federal Register** on August 28, 2009. All comments and requests for a hearing were due by October 27, 2009.

During the comment period, the Department received one written comment from a Plan participant, who expressed approval of the proposed exemption, and no requests for a public hearing. The Department also received four telephone inquiries from participants concerning the substance of the proposed transaction and the effect the exemption might have on the participants' benefits.

Accordingly, the Department has considered the entire record and has determined to grant the exemption. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 28, 2009 at 74 FR 44396.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

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

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

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

Signed at Washington, DC, this 10th day of November 2009.

Ivan Strasfeld,

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

[FR Doc. E9–27405 Filed 11–13–09; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, November 19, 2009.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. NCUA's 2010/2011 Operating Budget.
2. NCUA's Overhead Transfer Rate.
3. NCUA's Operating Fee Scale.
4. Proposed Rule—Parts 704 and 747 of NCUA's Rules and Regulations, Corporate Credit Unions.
5. Final Rule—Parts 701 and 741 of NCUA's Rules and Regulations, National Credit Union Share Insurance Fund Premium and One Percent Deposit.
6. Insurance Fund Report.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, November 19, 2009.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Creditor Claim Appeals (2). Closed pursuant to Exemption (6).
2. Consideration of Supervisory Activities. Closed pursuant to Exemptions (8), (9)(A)(ii) and 9(B).
3. Personnel. Closed pursuant to Exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. E9–27591 Filed 11–12–09; 4:15 pm]

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NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–