clarifications and updates to the Summary.

After giving full consideration to the entire record, including the written comments, the Department has decided to grant this exemption amending PTE 2010–08, as described above. The complete application file is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the proposed amendment, published in the **Federal Register** on March 15, 2011 at 76 FR 14074.

FOR FURTHER INFORMATION CONTACT: Warren Blinder of the Department, telephone (202) 693–8553. (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 8th day of June, 2011.

Ivan Strasfeld,

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

[FR Doc. 2011–14521 Filed 6–10–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D–11608, Russell Trust Company; and D–11659, Pacific Capital Bancorp Amended and Restated Incentive and Investment and Salary Savings Plan

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

ADDRESSES: Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No.____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

SUPPLEMENTARY INFORMATION:

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Russell Trust Company (RTC or the Applicant); Located in Seattle, Washington; [Exemption Application No. D–11608]

Proposed Exemption

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

Section I—Covered Transactions

If the proposed exemption is granted—

(a) The restrictions of sections 406(a)(1)(A), (a)(1)(B), (a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (c)(1)(B), (c)(1)(D), and (c)(1)(E) of the Code, shall not apply, between September 14, 2009 and September 10, 2010, inclusive, to an arrangement involving the following transactions:

(1) The extension of credit, through a revised capital support agreement, to certain employee benefit plans (the Plans) invested, directly or indirectly, in the Russell Securities Lending Short-Term Investment Fund (the SecLending Fund) by the Frank Russell Company (FRC), the parent company of RTC and a party in interest with respect to the Plans, in connection with the SecLending Fund's holding of certain notes (the Notes) issued by Lehman Brothers Holdings Inc. or its affiliates (the Revised SecLending Fund CSA);

(2) The extension of credit, through a revised capital support agreement, to certain Plans invested, directly or indirectly, in the RTC Russell Liquidity Fund (the Liquidity Fund) by FRC in connection with the Liquidity Fund's holding of the Notes (the Revised Liquidity Fund CSA);

(3) The provision of a revised guarantee to FRC by its parent company, the Northwest Mutual Life Insurance Company (NML), a party in interest with respect to the Plans, in order to ensure FRC's foregoing capital support obligation to the SecLending Fund (the Revised SecLending Fund Guarantee);

(4) The provision of a revised guarantee to FRC by NML in order to ensure FRC's foregoing capital support obligation to the Liquidity Fund (the Revised Liquidity Fund Guarantee);

(5) The accrual and periodic payment of certain supplemental yield contributions by FRC to the SecLending Fund (the SecLending Fund Supplemental Yield Contributions); and

(6) The accrual and periodic payment of certain supplemental yield contributions by FRC to the Liquidity Fund (the Liquidity Fund Supplemental Yield Contributions);

(b) The restrictions of sections 406(a)(1)(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) and (E) of the Code shall not apply to the September 10, 2010 cash sale (the Sale) of all of the Notes held by both the SecLending Fund and the Liquidity Fund (taken together, the Funds) to FRC; provided that all of the conditions set forth below in Section II are satisfied.

Section II—Conditions

(a) With respect to the arrangement involving (i) The Revised SecLending Fund CSA and the Revised Liquidity Fund CSA transactions (together, the Revised CSAs), (ii) the Revised SecLending Fund Guarantee and the Revised Liquidity Fund Guarantee transactions (together, the Revised Guarantees), and (iii) the SecLending Fund Supplemental Yield Contributions and the Liquidity Fund Supplemental Yield Contribution transactions (together, the Supplemental Yield Contributions):

(1) The decision to enter into each of these transactions was made on behalf of the Funds (and the employee benefit plans invested, directly or indirectly, in the Funds) by an independent fiduciary (the Independent Fiduciary), who reviewed their terms and conditions of each of the foregoing transactions and determined that they were protective of, and in the interest of, the Funds and the Plans investing therein;

(2) The foregoing transactions were entered into pursuant to written agreements that contained all of the relevant terms and conditions relating to such transactions; and

(3) The Funds did not pay any fees, commissions or other expenses in connection with the foregoing transactions;

(b) With respect to the Sale of the Notes by each Fund to FRC:

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

(2) In connection with the Sale, the applicable Fund received an amount which was equal to the greater of: (i) The market value of the Notes being sold on the date of the Sale; or (ii) the sum of the amortized cost of such Notes, plus any accrued but unpaid interest on such Notes through the earlier of the maturity date of the applicable Note or September 14, 2009, in each case calculated at the contract rate;

(3) The Funds did not pay any fees, commissions or other expenses in connection with the Sale;

(4) The decision to sell all of the Notes held by the Funds to FRC was made by an Independent Fiduciary, who determined that the Sale of the Notes was appropriate for, and in the best interests of, each of the Funds and the Plans invested, directly or indirectly, in the Funds, at the time of the Sale transaction;

(5) The Independent Fiduciary has taken all appropriate actions necessary to safeguard the interests of the Funds, and of the employee benefit plans invested, directly or indirectly, in the Funds, in connection with the transaction;

(6) If the exercise of any of FRC's rights, claims, or causes of action in connection with its ownership of the Notes results in recovering from the issuer of the Notes, or any third party, an aggregate amount that is in excess of the sum of: (i) The Sale price paid for the Notes by FRC; and (ii) interest on such Sale price paid from September 10, 2010 to September 14, 2010, inclusive, made by FRC to the Funds, then FRC will refund such excess amount promptly to the Fund (after deducting all reasonable expenses incurred in connection with the recovery);

(c) RTC and its affiliates, 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 person described below in paragraph (d)(1), to determine whether the conditions of this exemption have been met, except that:

(1) No party in interest with respect to a plan which engages in the covered transaction, other than FRC, RTC and their affiliates, 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 paragraph (d)(1);

(2) A separate prohibited transaction shall not be considered to have occurred solely because due to circumstances beyond the control of FRC, RTC or their affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period.

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

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission; or

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

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

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

(2) None of the persons described, above, in paragraph (d)(1)(B)–(D) shall be authorized to examine trade secrets of FRC, RTC or their affiliates, or commercial or financial information which is privileged or confidential; and

(3) Should RTC refuse to disclose information on the basis that such information is exempt from disclosure, RTC 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.

Summary of Facts and Representations

1. RTC is a trust company organized under the laws of the State of Washington that is subject to regulation by the Washington State Department of Financial Institutions. RTC provides a wide range of fiduciary and investment management services to a broad array of institutional clients, including employee benefit plans subject to the Act and the Code. RTC serves as discretionary trustee for several commingled employee benefit fund trusts. RTC has numerous affiliates and is a subsidiary of FRC, a Washington corporation. FRC, in turn, is a subsidiary of NML.

2. The Applicant represents that the SecLending Fund is a separate fund of the Russell Trust Company Commingled Employee Benefit Funds Trust (the Trust), a group trust that is exempt from federal income tax pursuant to Rev. Rul. 81–100. The SecLending Fund is used as an investment vehicle for cash collateral received in connection with securities lending activities. The Applicant also represents that, on all dates relevant to the requested exemption, the SecLending Fund had Plan investors who were subject to the Act and the Code. The Liquidity Fund (like its predecessor fund, the Russell Short-Term Investment Fund, or STIF Fund) is a cash sweep vehicle that does not engage in securities lending activities. The Applicant represents that, on all dates relevant to the requested exemption, the assets of both the Liquidity Fund and its predecessor, the STIF Fund, constituted “plan assets” subject to the Act because each of the foregoing funds were collective trust funds maintained by a bank, and included Plan investors who were subject to the Act and the Code. In this connection, the Applicant represents that, under 29 CFR section 2510.3–101(h)(1)(ii), when a plan acquires or holds an interest in such a common or collective fund of a bank, its assets are deemed to include an undivided interest in each of the underlying assets of such fund.

Each of the Funds is bank-maintained for purposes of the Act, and RTC serves as a discretionary trustee for each Fund. The Funds are short-term investment funds that seek to maintain a constant net asset value, or “NAV,” equal to $1.00 per unit. RTC has investment discretion with respect to the assets of the Funds, and makes all determinations with respect to the purchase, sale, and holding of the assets by the Funds (within the investment parameters established for each Fund).

3. The Applicant represents that, as of September 15, 2008, numerous collective investment funds maintained by RTC or its affiliates (the RTC CIFs) were direct investors in the STIF Fund. Further, numerous Plans were indirectly invested in the SecLending Fund and the STIF Fund through their investment in the RTC CIFs. One Plan sponsored by RTC or its affiliates had a direct (rather than an indirect) investment in the STIF Fund.

The Lehman Notes

4. On September 15, 2008, both the SecLending Fund and the STIF Fund held Notes issued by Lehman Brothers Holdings Inc. or its affiliates (the Lehman Issuers). The SecLending Fund acquired all of the Notes described in this proposed exemption between September of 2007 and March of 2008, while the STIF Fund acquired the Notes between September of 2007 and August of 2008. The decision both to acquire and to hold the Notes was made by RTC in its capacity as trustee and investment manager for each of the foregoing funds. Prior to investing in the Notes, the Applicant represents that RTC conducted an investigation of the potential investment, examining and considering the economic and other terms of the Notes. RTC represents that the investment in the Notes was consistent with the applicable investment policies and objectives of both the SecLending Fund and the STIF Fund. At the time they were acquired by the foregoing funds, the Notes were rated at least “A” or “A+” by both Moody’s and S&P rating agencies. Based on its consideration of the relevant facts and circumstances, RTC determined that it was prudent and appropriate to acquire the Notes.[1]

The Initial Capital Support Agreements and Guarantees

5. On September 15, 2008, each of the Lehman Issuers filed for Chapter 11 bankruptcy protection. As a consequence of the Lehman Issuers’ bankruptcy filing, the market value of the Notes decreased substantially and the market for the Notes became relatively illiquid, with prices for actual trades being substantially lower than the SecLending Fund’s and the STIF Fund’s amortized cost for the Notes. In this connection, the Applicant determined that FRC should immediately provide capital support to both the SecLending Fund and the STIF Fund in an amount sufficient to maintain a constant NAV of

[1] The Department is expressing no opinion herein regarding whether the acquisition and holding of the Notes on, before, or after September 15, 2008 by either the SecLending Fund or the STIF Fund (or its successor fund, the Liquidity Fund) violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan’s participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

Moreover, the Department is not providing any opinion herein as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration of those facts and circumstances that, given the scope of such fiduciary’s investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including a plan’s potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan’s portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a–1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan’s assets than other comparable investments offering a similar return or result.

$1.00 per unit for each of the foregoing funds.

Accordingly, on September 15, 2008, FRC entered into separate capital support agreements with both the SecLending Fund (the Initial SecLending Fund CSA) and the STIF Fund (the STIF Fund CSA). The Applicant explains that, pursuant to these agreements (which, taken together, constitute the Initial CSAs), FRC contractually agreed to provide on-going capital support to both the SecLending Fund and the STIF Fund with respect to the Notes, up to the lesser of: (a) An agreed upon "maximum contribution amount" ($75,000,000 for the STIF Fund and $70,000,000 for the SecLending Fund), which amounts equaled the aggregate par value of the Notes held by the SecLending Fund and the STIF Fund, as applicable, as of September 15, 2008; (b) the difference between the amortized cost of such Notes and any proceeds received by either the SecLending Fund or the STIF Fund as a result of the subsequent sale or other disposition of the Notes by either fund; or (c) the minimum capital contribution amount necessary for each of the foregoing funds to maintain an NAV of $0.995 per unit, after taking into account the market value of the Notes held or disposed of by such fund. On the same date, NML contracted to guarantee FRC's capital support obligations to both the SecLending Fund (under the Initial SecLending Fund Guarantee) and the STIF Fund (under the STIF Fund Guarantee). The Applicant represents that, at all times relevant to this exemption, NML has maintained a rating of AAA by Standard & Poor's.

The Applicant represents that each of the Initial CSAs, as well as the Initial SecLending Fund Guarantee and the STIF Fund Guarantee (which, taken together, constitute the Initial Guarantees) were set to expire on September 15, 2009 unless, prior to that date, the SecLending Fund and the STIF Fund received either full cash repayment of the Notes or capital contributions from FRC and NML equal to the respective maximum contribution amounts pursuant to the Initial CSAs. Each of the Initial CSAs and Initial Guarantees also contained a repayment provision stipulating that, in the event that either the SecLending Fund or the STIF Fund received a capital contribution from FRC (or from NML, as guarantor) with respect to a Note and subsequently received additional payments from or on behalf of the Lehman Issuer in respect of the Note, such fund would repay to FRC (if NML had received contributions equal to its capital contribution) the lesser of: (i) The amount of such capital contribution; or (ii) the amount of such subsequent payments, provided that in no event would such repayment cause the respective fund's NAV per share to fall below $0.995 or such greater amount as required by any nationally-recognized statistical rating organization (NRSRO).[2]

6. The Applicant represents that the decision to enter into the Initial CSAs was a fund-level decision made by RTC (similar to any decision to acquire or dispose of assets) that was intended to limit the downside risk for both the SecLending Fund and the STIF Fund with respect to the Notes, while preserving the upside potential for the foregoing funds, and that this determination did not represent any change to the funds' goals or investment strategies or any deviation from the funds' investment parameters. The Applicant further represents that the relative rights and interests of the Plans with respect to both the SecLending Fund and the STIF Fund (and the RTC CIFs having an interest in each fund) and the terms and conditions of any agreements between RTC and the Plans were not affected by this decision.

The Applicant maintains that the terms of the Initial CSAs and Initial Guarantees executed on September 14, 2008 to provide capital support to both the SecLending Fund and the STIF Fund constituted a lending of money or other extension of credit from a party in interest to an employee benefit plan that satisfied the conditions contained in a class exemption, Prohibited Transaction Exemption (PTE) 80–26; for this reason, the Applicant is not seeking an individual exemption for the period of time during which the Initial CSAs and Initial Guarantees were in force.[3]

Transfer of the Assets of the STIF Fund to the Liquidity Fund

7. On September 11, 2009, RTC reorganized the STIF Fund, and transferred all of the assets of the STIF, including the Notes held by the STIF Fund that were subject to the STIF Fund CSA, to the Liquidity Fund. In connection with this reorganization, the Liquidity Fund became the beneficiary of both FRC's capital support obligations under the STIF Fund CSA and of NML's guarantee of FRC's foregoing capital support obligation pursuant to the STIF Fund Guarantee.

The Retention of an Independent Fiduciary

8. As noted previously, the terms of both the Initial CSAs and the Initial Guarantees were set to expire on September 15, 2009. Expiration of the Initial CSAs, however, would have triggered a contractual obligation that the Funds liquidate the Notes in the market. The Applicant further represents that the Funds' liquidation of the Notes would, in turn, have triggered the payment of FRC's capital support obligations to the Funds. The Applicant states that the capital support payments required under the Initial CSAs represented the amount that would have been necessary to permit each Fund to maintain an NAV of $0.995 per unit. Accordingly, it is represented that, because both FRC and RTC did not believe that it would be in the best interest of either Fund to liquidate the Notes upon the expiration of the Initial CSAs on September 15, 2009, FRC and RTC determined to seek the amendment and extension of the Initial CSAs and the Initial Guarantees for one year, through an expiration date of September 15, 2010.

[2] The Department expresses no opinion herein as to the role of an NRSRO in determining whether a fund's net asset value per share has fallen below $0.9950.

[3] Section IV of PTE 80–26 (as amended at 71 FR 17920, Apr. 7, 2006) provides that, effective as of December 15, 2004, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only—

(1) For the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract, or

(2) For a purpose incidental to the ordinary operation of the plan;

(c) The loan or extension of credit is unsecured;

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan;

(e) The loan is not described in section 408(b)(3) of ERISA and the regulations promulgated thereunder (29 CFR 2550.408b–3) or section 4975(d)(3) of the Code and the regulations promulgated thereunder (26 CFR 54.4975–7(b)); and

(f) (1) Any loan described in section IV(b)(1) that is entered into on or after April 7, 2006 and that has a term of 60 days or longer must be made pursuant to a written loan agreement that contains all of the material terms of such loan.

(2) Any loan described in (b)(2) of this paragraph that is entered into for a term of 60 days or longer must be made pursuant to a written loan agreement that contains all of the material terms of such loan.

The Department offers no opinion herein as to whether each of the applicable conditions for exemptive relief contained in PTE 80–26 were satisfied in this particular instance.

When, in September 2009, RTC determined that it would be necessary and in the best interest of the Funds to extend the terms of the Initial CSAs, RTC considered that such amendments would not qualify for relief in reliance upon PTE 80–26. In this connection, the Applicant represents that, had the Initial CSAs not included termination dates (*i.e.,* September 15, 2009), RTC could have continued to rely upon the exemptive relief provided under PTE 80–26; however, given these fixed termination dates, the amendment and renewal of the terms of the Initial CSAs could have been interpreted as depriving the Funds of payments to which they were contractually entitled to receive. Alternatively, the Applicant represents that the delay of such payments could have been construed as an extension of credit from the Funds to FRC, which would not have been permitted under PTE 80–26 or any other class exemption.[4] In light of these assumptions, the Applicant engaged Fiduciary Counselors Inc. (hereinafter the Independent Fiduciary) to negotiate and approve, on behalf of each Fund (and the Plans invested, directly or indirectly, in each Fund) the amendment and extension of the term of the Initial CSAs for an additional 12 months; this engagement was formalized under a letter agreement dated August 25, 2009 (the Engagement Letter).

9. Pursuant to the Engagement Letter, the Independent Fiduciary was retained to represent the Funds through September 15, 2010. The Independent Fiduciary represents that it is both an "investment adviser" within the meaning of the Investment Advisers Act of 1940 and a "qualified professional asset manager" within the meaning of PTE 84–14. The Applicant further represents that the Independent Fiduciary has provided independent fiduciary services to clients since its incorporation in 1999.

Under the terms of the Engagement Letter, the Independent Fiduciary assumed responsibility for, among other things: (1) Negotiating, on behalf of each Fund, the terms of any amendments to the Initial CSAs on behalf of each Fund and determining that such terms were fair and reasonable to each Fund; (2) determining whether to enter into any amendments on behalf of each Fund and directing RTC to sign any such amendments; (3) monitoring the future capital support agreements on a going-forward basis, including negotiating the terms, and determining the fairness and reasonableness, of any modifications, extensions, or renewals thereof; and (4) determining on behalf of each Fund whether to liquidate the Notes, and determining the fairness and reasonableness of any proposed sale of the Notes to RTC or an affiliate of RTC. The Independent Fiduciary also assumed the same duties on behalf of the Funds with respect to the negotiation and approval of any extension to, and amendment of, the Initial Guarantees made by NML.

The 2009–2010 Payment of Supplemental Yield Contributions to the Funds

10. The Applicant represents that the Independent Fiduciary reviewed the terms of the Initial CSAs and Initial Guarantees in place at the time of its engagement, and the proceeds that each Fund would receive if these instruments expired as scheduled and were not extended. Upon reviewing the terms of the Initial CSAs, the Independent Fiduciary determined that it would be in the best interests of the investors in each Fund for FRC to make additional periodic cash contributions, or Supplemental Yield Contributions, to each Fund. By letter agreement dated September 14, 2009, FRC agreed, after negotiation with the Independent Fiduciary, to pay the Supplemental Yield Contributions to each Fund. The amount of such contributions would be determined by a mathematical formula. The first step of this formula would require computing the sum of (a) the amount of capital support that would have been required under the Initial CSAs as of September 14, 2009, had the Notes been sold by the Funds at the September 14, 2009 closing market price, and (b) the market value of the Notes as of September 14, 2009 based upon the closing market price on such date (the date prior to the date that accrual of such Supplemental Yield Contributions commenced). The sum resulting from the first step of the formula (*i.e.,* the Base Amount) would then be multiplied by an annual interest rate figure equal to (a) t he 3-month LIBOR (expressed as an annual rate) as quoted by Bloomberg at end of day print on September 14, 2009, and updated every three months thereafter, plus (b) 0.15 percent. If any Notes were sold by a Fund after September 14, 2009, the Supplemental Yield Contributions would be proportionately reduced based on the par value of such sold Notes as a proportion of the aggregate par value of the Notes. The Supplemental Yield Contributions would accrue daily beginning on September 15, 2009, and would be paid to the Funds in arrears on a monthly basis. The Supplemental Yield Contributions would also not reduce or offset any of FRC's obligations under the proposed revision of the capital support agreements. FRC's obligation to make Supplemental Yield Contributions to the Funds pursuant to the September 14, 2009 letter agreement would cease only upon the occurrence of a termination event under the proposed revision of the capital support agreements (such as the sale of all of the Notes held by the Funds). Because accrual of the Supplemental Yield Contributions would commence on September 15, 2009, the Independent Fiduciary determined that, in the event of such sale, RTC (or its affiliate) would not be required to pay interest for any purchased Notes with respect to the period following September 14, 2009.

11. The following chart documents the monthly payment of accrued Supplemental Yield Contributions that were made by FRC to the Funds during the years 2009 and 2010, pursuant to the foregoing contractual arrangements:

	Supplemental yield contributions to the SecLending fund	Supplemental yield contributions to the liquidity fund
September 2009 (9/14/09 through 9/30/09)	$13,910.18	$12,647.38
October 2009	25,365.61	23,062.88
November 2009	24,547.37	22,318.91
December 2009	24,000.34	21,821.54
January 2010	23,014.31	20,925.03
February 2010	20,787.12	18,900.02
March 2010	23,135.59	21,035.30
April 2010	22,485.94	20,444.63
May 2010	23,235.47	21,126.11
June 2010	31,220.59	28,386.33
July 2010	39,163.17	35,608.04
August 2010	39,163.17	35,608.04
September 2010 (9/1/10 through 9/14/10)	17,686.68	16,081.05
Total Supplemental Yield Contributions Paid by FRC to the Funds:	327,715.54	297,965.26

The 2009 Revision of the CSAs and the Guarantees

12. In addition to requiring FRC to make Supplemental Yield Contributions to the Funds, the Independent Fiduciary (in a letter to RTC dated September 14, 2009) directed RTC and FRC to execute,

[4] The Department offers no opinion herein concerning whether any exemptive relief for which the Applicant may have been eligible under PTE 80–26 on or before September 15, 2009 would have expired upon the termination of the Initial CSAs and the Initial Guarantees. Moreover, the Department offers no opinion herein concerning the Applicant's contention that the inclusion of termination dates in the Initial CSAs and the Initial Guarantees would have made the Applicant ineligible for exemptive relief under PTE 80–26 after September 15, 2009.

on behalf of each Fund, revised capital support agreements between FRC and each of the Funds (namely, the Revised CSAs), as well as revised guarantees by NML of FRC's capital support obligations to each of the Funds under the Revised CSAs (namely, the Revised Guarantees). Each of the foregoing contracts were executed on September 14, 2009. The Applicant represents that a new provision was included in each of the Revised CSAs stipulating that if all of the Notes were sold after September 14, 2009 (or another event occurs triggering FRC's capital support obligations under each of the Revised CSAs, the total amount of capital support payable to each Fund under each of the Revised CSAs would be no less than the Base Amount, minus the sum of (a) The proceeds actually received by the Fund from the disposition of the Notes, plus (b) all payments received by the Fund in respect of the Notes to the extent not already included in (a), and excluding the amount of any Supplemental Yield Contributions. The Independent Fiduciary determined that this provision, in conjunction with the Supplemental Yield Contributions, would help to ensure that each Fund's total recovery with respect to the Notes and the required capital support would not decline as a result of the adoption of the Revised CSAs.

Further, the Independent Fiduciary determined it to be appropriate and in the best interest of the Funds to include a new provision in each of the Revised CSAs stipulating that, in the event the Funds determined to sell some or all of the Notes to RTC or an affiliate of RTC (through either a single transaction or series of transactions with each Fund), the purchase price for such Notes would be equal to the greater of (a) The market value of such Notes on the date of any such transaction, or (b) the sum of (i) the amortized cost of such Notes to be sold in such transaction, plus (ii) any accrued but unpaid interest through the earlier of the maturity date of the applicable Note or September 14, 2009 (the date prior to the date that accrual of the Supplemental Yield Contributions commenced) calculated at the contract rate.

It is represented that each of the Revised CSAs, as well as the Revised SecLending Fund Guarantee and the Revised Liquidity Fund Guarantee (which, taken together, constitute the Revised Guarantees) were set to expire on September 15, 2010 (unless, prior to that date, the Funds received either full cash payment for the Notes or capital contributions from FRC and NML equal to their respective maximum contribution amounts under each of the Revised CSAs). It is further represented that the Funds paid no fees or commissions in connection with the negotiation of either the Revised CSAs and Guarantees or the payment of the Supplemental Yield Contributions, nor for the Independent Fiduciary's services relating to such matters.

13. The Applicant represents that the Revised CSAs and the Revised Guarantees, as well as the Supplemental Yield Contributions, benefitted the investors in the Funds because the Independent Fiduciary determined that they placed the Funds in a position that was at least as favorable as that which would have been obtained had the Initial CSAs and Guarantees expired by their terms on September 15, 2009 and FRC and NML had made payments to the Funds in satisfaction of its capital support obligations. The Applicant also represents that the Revised CSAs and the Revised Guarantees provided the Funds the opportunity to seek recovery of their amortized cost or the full par value of the Notes, either through recovery from the Lehman Issuers, liquidation on the market or a potential sale to RTC or its affiliate. The Supplemental Yield Contributions were intended to ensure that the Funds remained in a position that was at least as favorable as if FRC had satisfied its capital support obligations upon expiration of the Initial CSAs on September 15, 2009 and the proceeds were invested in instruments providing a comparable yield. The Applicant also states that the Revised CSAs contained new provisions ensuring that the Funds would receive an aggregate amount not less than the Base Amount in connection with any sale of the Notes (or other event that would otherwise trigger FRC's capital support obligations). The foregoing arrangements were negotiated by and determined to be fair, reasonable and in the best interest of each of the Funds by the Independent Fiduciary.

The 2010 Sale of the Notes to FRC by the Funds

14. At a meeting of its investment committee on September 2, 2010, the Independent Fiduciary discussed and approved the terms of a proposed sale of the Notes by the Funds to FRC. Pursuant to this determination, RTC and FRC negotiated the terms of the Sale of the Notes with the Independent Fiduciary. The Independent Fiduciary concluded that the Sale transaction would benefit the investors in the Funds because it would permit the Funds to recover an amount equal to or in excess of its amortized cost for each of the Notes and maintain an NAV per unit of at least $0.995, while also retaining a right to recover amounts received by FRC in excess of the sale price for the Notes. In addition, under the terms of the Sale negotiated by the Independent Fiduciary, each Fund would continue to earn interest under the Supplemental Yield Agreements until the settlement of the transaction, and would be entitled to additional amounts in the event that FRC subsequently recovered an amount greater than the sale price adjusted for interest accrued through the date of the refund to the relevant Fund.[5] Given these factors, the Independent Fiduciary determined that the terms of the Sale were fair and reasonable to each Fund. Accordingly, by the terms of a letter dated September 8, 2010, the Independent Fiduciary directed in writing that all of the Notes held by each of the Funds be sold to FRC.

15. In accordance with the Independent Fiduciary's direction, the Sale of all of the Notes from the Liquidity Fund to FRC was executed on September 10, 2010, and settled two business days later on September 14, 2010 for an aggregate price of $75,296,431; similarly, the Sale of all of the Notes from the SecLending Fund to FRC was executed on September 10, 2010, and settled two business days later on September 14, 2010 for an aggregate price of $70,436,820. The Applicant represents that the Sale resulted in an NAV for the Liquidity Fund of $1.0000 per unit and for the SecLending Fund of $0.9991 per unit.[6] For each Note, the foregoing amounts paid by FRC (which were computed in accordance with the formula specified in the Revised CSAs with each of the Funds) represented the sum of (i) The applicable Fund's amortized cost of the Note ($75,000,000 in the aggregate for the Liquidity Fund and $70,000,000 for the SecLending Fund), plus (ii) any accrued but unpaid interest on the

[5] In this connection, the Independent Fiduciary stipulated that should FRC, through the exercise of any of its rights, claims, or causes of action related to its ownership of any Notes after the Sale date, recover from the Lehman Issuers or any third party an aggregate amount that was in excess of the sum of (a) the purchase price paid for the Notes by FRC and (b) interest on such purchase price from and after the date of the Sale transaction (determined at the rate of interest equal to the rate of interest applicable to the Supplemental Yield Contributions), FRC would refund such excess promptly to the applicable Fund (after deducting all reasonable expenses incurred in connection with the recovery).

[6] The Applicant represents that as of the close of business on September 10, 2010, the net asset value of the Liquidity Fund's portfolio was approximately $2,137,000,000, or $1.0000 per unit. As of the close of business on September 10, 2010, the net asset value of the SecLending Fund's portfolio was approximately $1,767,000,000, or $0.9991 per unit.

Notes that was owed by the Lehman Issuers through the earlier of the maturity date of the applicable Note or September 14, 2009, calculated at the contract rate ($296,431 of aggregate interest for the Liquidity Fund, and $436,820 in aggregate interest for the SecLending Fund).[7] The following chart summarizes the par values and the September 10, 2010 sale prices[8] of the various Notes held by each of the Funds:

Fund	Lehman note	Aggregate par value	Acquisition price & date	Sale price
Liquidity Fund	Lehman Brothers Disc (52525MJF6) Maturity Date: 9/18/08; Face Interest Rate: 2.80%	$10,000,000	$9,981,000 (acquired 8/22/08)	$10,000,000
	Lehman Brothers V/R (52517P5C1) Maturity date: 9/26/08; Face Interest Rate: 3.75%	35,000,000	35,000,000 (acquired 8/28/07)	35,218,410
	Lehman Brothers V/R (52525KAB8) Maturity Date: 3/11/09; Face Interest Rate: 3.75%	30,000,000	30,000,000 (acquired 2/11/08)	30,078,021
Total		$75,000,000	$74,981,000	$75,296,431
SecLending Fund	Lehman Brothers V/R (52517P5C1) Maturity Date: 9/26/08; Face Interest Rate: 5.51%	$40,000,000	$40,000,000 (acquired 8/28/07)	$40,249,611
	Lehman Brothers V/R (52517P5C1) Maturity Date: 9/26/08; Face Interest Rate: 5.51%	30,000,000	30,000,000 (acquired 8/28/07)	30,187,209
Total		$70,000,000	$70,000,000	$70,436,820

16. The Applicant represents that, with the execution of the Sale on September 10, 2010, the terms of Revised CSAs, the Revised Guarantees, and the agreement concerning the accrual and payment of the Supplemental Yield Contributions each ceased to be effective as of that date. On September 14, 2010, the Sale transaction was settled when each of the Funds received the sale price of the Notes from FRC. The Applicant further represents that, while FRC's obligation to accrue the Supplemental Yield Contributions technically terminated on September 10, 2010, FRC and RTC (following discussions with the Independent Fiduciary) determined that these contributions would continue to accrue (and would be paid on) the date that the Sale settled. Accordingly, the final installment of the Supplemental Yield Contributions to the Funds was paid on the settlement date of September 14, 2010.

17. In summary, the Applicant represents that the transactions described herein satisfied the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The transactions were easily identifiable, have been completed, and will not require ongoing monitoring; (b) The Revised CSAs, the Revised Guarantees, and the Supplemental Yield Contributions were negotiated and documented, and were monitored by the Independent Fiduciary through their expiration; (c) The Sale was a one-time transaction for cash that was negotiated by the Independent Fiduciary, and neither of the Funds bore any brokerage commissions, fees or other expenses in connection with the Sale; (d) The transactions enabled the Funds, and the participating investors therein, including the Plans invested therein, to receive (i) Continued capital support from FRC with respect to the Notes under the Revised CSAs (guaranteed by NML) and (ii) periodic payment of the Supplemental Yield Contributions; (e) The Independent Fiduciary determined the foregoing arrangements placed the Funds in a position that was at least as favorable as the position they would have been in had the Initial CSAs and the Initial Guarantees expired by their terms; (f) The Revised CSAs and the Revised Guarantees provided the Funds the opportunity to seek recovery of their amortized cost, the full par value, or at least a greater portion of the par value of the Notes, either through recovery from the Lehman Issuers, liquidation on the market, or a potential Sale to RTC or its affiliates; and (g) the Independent Fiduciary determined that it would be in the best interests of the investors in each Fund for FRC to make Supplemental Yield Contributions to each Fund.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Applicant and the Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

For Further Information Contact: Mr. Mark Judge of the Department at (202) 693–8550 (This is not a toll-free number).

Pacific Capital Bancorp Amended and Restated Incentive and Investment and Salary Savings Plan (the Plan); Located in Santa Barbara, California; [Application No. D–11659]

Proposed Exemption

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

[7] Pursuant to the terms of the Revised CSAs, the one-time payment to the Funds of accrued but unpaid interest on the Notes owed by the Lehman Issuers was separate from, and in addition to, the accrual and payment of the Supplemental Yield Contributions to the Funds that commenced on September 15, 2009.

[8] The Applicant further represents that, prior to the consummation of the Sale, the Independent Fiduciary confirmed that the sale price calculated pursuant to the formula discussed above for each Note was greater than the market value of such Note as determined by reference to price quotes provided by two major investment brokers (since no transaction on the Notes was available through Bloomberg). Specifically, Barclays provided a quote of $19.25 (representing a bid price per unit received for each Note as of September 10, 2010), and J.P. Morgan provided a quote of $19.00 (representing the bid price per unit for each Note as of September 10, 2010). These prices reflect a decrease of approximately 81% from the par value of the Notes.

Section I: Transactions

If the proposed exemption is granted, effective October 27, 2010, the restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) 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)(E) of the Code,[9] shall not apply:

(1) To the acquisition of certain rights (the Rights) by the Plan in connection with an offering (the Offering) of shares of the common stock (the Stock) in Pacific Capital Bancorp (Bancorp) by Bancorp, a party in interest with respect to the Plan, and

(2) To the holding of the Rights received by the Plan during the subscription period of the Offering; provided that the conditions as set forth in section II of this proposed exemption were satisfied for the duration of the acquisition and holding.

Section II: Conditions

The relief provided in this exemption is conditioned upon adherence to the material facts and representations described, herein, and as set forth in the application file and upon compliance with the conditions, as set forth in this proposed exemption.

(1) The receipt of the Rights by the Plan occurred in connection with the Offering and was made available by Bancorp on the same terms to all shareholders of the Stock of Bancorp;

(2) The acquisition of the Rights by the Plan resulted from an independent act of Bancorp, as a corporate entity, and all holders of the Rights, including the Plan, were treated in the same manner with respect to the acquisition of such Rights;

(3) Each shareholder of the Stock, including the Plan, received the same proportionate number of Rights based on the number of shares of Stock of Bancorp held by such shareholder;

(4) The Board of Directors of Bancorp (the Board) decided that the Offering should be made available to all shareholders of the Stock, including the Plan, as record owner of the Stock held in the Plan on behalf of the accounts of the individual participants (the Invested Participants) all or a portion of whose accounts in the Plan are invested in the Stock, in accordance with provisions under such Plan for individually-directed investment of such accounts;

(5) The decision to exercise the Rights or to refrain from exercising the Rights was made by each of the Invested Participants in accordance with the provision under the Plan for individually-directed accounts; and

(6) No brokerage fees, commissions, subscription fees, or any other charges were paid by the Plan with respect to the Offering, and no brokerage fees, commissions, or other monies were paid by the Plan to any broker in connection with the exercise of the Rights.

Effective Date: This proposed exemption, if granted, will be effective, October 27, 2010, the date the Plan acquired the Rights.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan. Bancorp is the sponsor of the Plan. The Plan is intended to satisfy the requirements under section 401(a), 401(k) and 401(m) of the Code. The Plan is a participant directed account plan intended to satisfy the requirements of section 404(c) of the Act.

As of August 30, 2010, the Plan had approximately 1,417 participants. The fair market value of the total assets of the Plan, as of August 30, 2010, was $64,324,228.

The Compensation & Benefits Committee (the Committee) became the fiduciary responsible for Plan matters on October 2010. The Committee is comprised of non-employee members of the Board of Bancorp. It is represented the members of the Committee satisfy the independence requirements of NASDAQ, the Code, and various banking laws and regulations. As a fiduciary with respect to the Plan, the Committee is a party in interest to the Plan, pursuant to section 3(14)(A) of the Act.

On December 1, 2007, the Charles Schwab Trust Company (Charles Schwab Trust), a California chartered non-depository trust company, became the directed trustee for the Plan. Charles Schwab Trust also serves as custodian for the Plan. As custodian, Charles Schwab Trust executes investment directions in accordance with participants' written or electronic instructions. In addition Charles Schwab Corporate and Retirement Services (CSC) is the broker for the Plan. As service providers to the Plan, Charles Schwab Trust and CSC are parties in interest to the Plan, pursuant to section 3(14)(B) of the Act.

2. The Plan offers to participants the following permitted investment options in which to invest all or a portion of such participants' account balances: (a) The Stock, (b) a variety of money market funds, (c) common collective trusts, (d) mutual funds, and (e) self-directed accounts. Charles Schwab Stable Value Fund is the common collective trust fund in which Plan assets are invested. Certain Plan assets are also invested in mutual funds managed by an affiliate of Charles Schwab Trust.

3. The application was filed on behalf of Bancorp, a bank holding company, located in Santa Barbara, California. Pacific Capital Bank, National Association (the Bank) is a wholly-owned subsidiary of Bancorp. The Bank is a full-service, state-chartered commercial bank located in California whose deposits are insured by the Federal Deposit Insurance Corporation. As of June 30, 2010, the Bank had $7.1 billion in assets. The Bank, as an employer any of whose employees are covered by the plan, is a party in interest with respect to the Plan, pursuant to section 3(14)(C) of the Act. Substantially all of the activities of Bancorp are conducted through the Bank. Bancorp, as the parent of the Bank, is a party in interest with respect to the Plan, pursuant to section 3(14)(E) of the Act.

4. The Stock of Bancorp is listed for quotation on the NASDAQ Global Select Market under the symbol PCBC. The total number of shares of Stock outstanding, as of August 18, 2010, was 47,406,579. During the period beginning on October 19, 2010 and ending on November 15, 2010, the Stock was trading on the NASDAQ at prices ranging between $0.73 and $0.42 per share.

The Stock is a "qualifying employer security," as defined under section 407(d)(5) of the Act and 4975(e) of the Code.

5. On April 29, 2010, Bancorp and the Bank entered into an investment agreement with SB Acquisition Company LLC, a wholly-owned subsidiary of Ford Financial Fund, L.P. (the Investor) for the sale to the Investor of 225,000,000 shares of Stock at $0.20 per share and 455,000 shares of mandatorily convertible participating voting preferred stock at $1,000 per share. The aggregate consideration paid to Bancorp by the Investor for these securities was $500 million in cash. Before accounting for any issuance of Stock pursuant to the Offering, the Investor owned approximately 86 percent (86%) of the outstanding Stock.

As a condition of the investment agreement with the Investor, Bancorp agreed to commence the Offering, which is the subject of this proposed exemption, whereby shareholders of record would receive non-transferable rights to purchase a number of shares of

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

Stock equal to 20 percent (20%) of the then outstanding shares of Stock, at a purchase price equal to $0.20 per share. It is represented that the Rights were non-transferable to allow only legacy shareholders of the Stock the opportunity to purchase additional shares of the Stock to help offset the share dilution such shareholders incurred when the Stock was acquired by the Investor. Accordingly, Bancorp, as a corporate entity and issuer of securities, announced in connection with the Offering the issuance of up to 726,975,565 shares of Stock, as required by the investment agreement: (a) To raise equity capital; and (2) to provide existing shareholders the opportunity to purchase common stock at the same price per share paid by the Investor for the Stock. Bancorp intends to use the net proceeds from the Offering for general corporate purposes, including an investment in the Bank.

6. Under the terms of the Offering, all shareholders of the Stock of Bancorp, such as the Invested Participants, received at no charge the Rights to purchase, through the exercise of such Rights, the Stock being issued by Bancorp in connection with the Offering. With respect to the Rights, under the terms of the Offering, 15.335 Rights were issued for every share of the Stock held by each shareholder on August 30, 2010, (the Record Date). All Rights were rounded down to the nearest whole number for each shareholder. For example, an Invested Participant's account in the Plan that held 543 shares of Stock, as of the Record Date, would entitle such Invested Participant to 8,326 Rights ($15.335 \times 543 = 8{,}326.905$ rounded down to 8,326), pursuant to the Offering, which in turn would permit an Invested Participant to purchase 8,326 shares of Stock.

It is represented that the Rights were not listed, traded or quoted on NASDAQ or on any other stock exchange or trading market. Further, the terms of the Offering stipulated that the Rights could not be sold, assigned or transferred.

7. The Rights could only be exercised in whole numbers. Upon exercise, each of the Rights permitted a shareholder of the Stock of Bancorp to purchase one (1) additional share of Stock at a subscription price of $0.20 per share. A shareholder had the right to choose to exercise some, all, or none of his Rights. The exercise of any of the Rights was irrevocable. It is represented that there were no over-subscription rights associated with the Offering. The Rights could be exercised beginning October 18, 2010, the date of the issuance of the prospectus describing the Offering. The Offering closed with respect to the exercise of the Rights on November 19, 2010, at 5 p.m. New York City time. Pursuant to the terms of the Offering all unexercised Rights expired and became worthless after the closing of the Offering.

8. It is represented that on the Record Date, the Plan was the record owner of 1,573,450 shares of Stock which were allocated to the individual accounts of the 1,417 Invested Participants. The aggregate fair market value of the assets of the Plan invested in shares of the Stock, on the Record Date, based on a closing price of $0.859 on that date was $1,351,593.55. The approximate percentage of the fair market value of the Plan's total assets invested in the Stock is 2.1 percent (2.1%). As of the Record Date, 1,573,450 shares of Stock constituted approximately 3.32 percent (3.32%) of the 47,406,579 shares of Stock outstanding.

Based on the ratio of 15.335 Rights for each share of Stock held, the Plan acquired 24,128,855 Rights as a result of the Offering. It is represented that the Rights held by the Plan for the accounts of Invested Participants were plan assets. It is represented that 11,751,048 shares of Stock were subscribed for by the Plan. Of the Rights received by the Plan on behalf of accounts of the Invested Participants, all Rights were either exercised or expired.

It is represented that the Committee recommended to the Board that it was in the best interest of the Invested Participants to provide such Invested Participants with an opportunity to participate in (and the ability to make the decision not to participate in) the Offering which would prevent dilution of such Interested Participants' interest in Bancorp from the exercise of the Rights by other shareholders of Bancorp. Accordingly, the Board after considering the Committee's recommendation concluded, as a matter of California Corporations law and as a matter of fairness, that the Rights should be made available to all shareholders of Bancorp, including the Plan, as record owner of the Stock. In this regard, the Plan holds title to the Stock on behalf of the accounts of the Invested Participants, in accordance with provisions under such Plan for individually-directed investment of such accounts. The Offering was approved by the Board on April 28, 2010, August 18, 2010, and August 27, 2011. It is represented that all members of the Board participated in each vote to approve the Offering and each vote was unanimously approved by the Board.

On the dates of approval, the Board was comprised of eleven (11) individuals, two (2) of whom are employees of Bancorp or a subsidiary. The following table identifies the members of the Board and the Committee and each member's respective ownership interests in Bancorp, as of August 27, 2010:

Name	Number of shares owned	Ownership percentage [10]	Employed by Bancorp or subsidiary
Edward E. Birch	6,485	0.014	No.
H. Gerald Bidwell	0	0.000	No.
Richard S. Hambleton, Jr., Committee Member	6,485	0.014	No.
D. Vernon Horton	9,317	0.020	Yes. Mr. Horton provides services to Bancorp on a part-time basis.
S. Lachlan Hough	0	0.000	No.
Roger C. Knopf	363	0.001	No.
George S. Leis	6,318	0.013	Yes. Mr. Leis was the CEO of Bancorp at the time of the Offering and is currently the Chief Operating Officer of Bancorp.
William R. Loomis, Committee Member	0	0.000	No.
John R. Mackall	10,909	0.023	No.

[10] This ownership percentage is based on 47,406,579 common shares of Stock outstanding on August 18, 2010.

Name	Number of shares owned	Ownership percentage [10]	Employed by Bancorp or subsidiary
Richard A. Nightingale, Committee Member	15,204	0.032	No.
Kathy J. Odell, Committee Member	7,285	0.015	No.

9. Enclosed with a form letter mailed to each participant in the Plan, on October 19, 2010, Bancorp provided a copy of the prospectus which described the Offering, a document providing frequently asked questions and answers regarding the Offering for Plan participants, an election form for Plan participants, and a return envelope addressed to BNY Mellon Shareowner Services (BMSS), the subscription agent.

10. In order to exercise the Rights, Invested Participants had to complete an election form, deliver such form to BMSS, the subscription agent, liquidate sufficient existing investments in the Plan in order to generate the full subscription price in cash, transfer such cash to the Schwab Value Advantage Money Institutional Prime Shares Fund by the close of business on the fourth (4th) business day (November 15, 2010) prior to the expiration of the Offering on November 19, 2010. It is represented that the date, November 15, 2010, provided the third party administrator with four (4) days within which to compile the exercise elections of the Invested Participants, update the Plan records, and forward such exercise elections to the subscription agent.

It is represented that 404 Invested Participants out of 1,417 decided to exercise the Rights. In this regard, the Rights of such Invested Participants were executed on November 19, 2010.[11] It is represented that November 19, 2010, the last day of the Offering, was selected as the exercise date with respect to the Rights held under the Plan for the purpose of providing a protective cut-off date, where if on such date the exercise price of the Rights was greater than the trading price of the Stock, the election to exercise would not be honored and the Rights would be canceled. The Invested Participants exercised 11,751,048 Rights. As a result of this exercise, the Invested Participants received 11,751,048 shares of Stock. Accordingly, it is represented that the Plan received total gross proceeds of $2,350,209.60 as a result of participation in the Offering.

11. It is represented that no brokerage fees, commissions, subscription fees, or any other charges were paid by the Plan with respect to the Offering, and no brokerage fees, commissions, or other monies were paid by the Plan to any broker in connection with the exercise of the Rights. It is further represented that Bancorp did not charge any fees or sales commissions to issue the Rights or to issue the Stock upon the exercise of the Rights.

12. It is represented that, as soon as practicable after the expiration of the Offering, BMSS, as the subscription agent, arranged for the distribution of the Stock purchased as a result of the exercise of the Rights. It is further represented that the Stock purchased in connection with the Offering was eligible for trading on NASDAQ by the Invested Participants at any time after such Stock was credited to such participants' accounts.

13. Bancorp has requested an exemption with respect to the transactions which are the subject of this proposed exemption. In this regard, relief has been requested: (a) For the acquisition of the Rights by the Plan in connection with the Offering by Bancorp, and (b) for the holding of the Rights by the Plan during the subscription period of the Offering. It is represented that the Rights acquired by the Plan satisfy the definition of "employer securities," pursuant to section 407(d)(1) of the Act. As the Rights were not stock or a marketable obligation, such Rights do not meet the definition of "qualifying employer securities," as set forth in section 407(d)(5) of the Act. Accordingly, the subject transactions constitute an acquisition and holding on behalf of a plan, of an employer security which is not a qualifying employer security, in violation of section 407(a) of the Act, for which the applicant has requested relief from sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act. The subject transactions also raise conflict of interest issues by fiduciaries of the Plan for which relief from the prohibitions of section 406(b)(1) and 406(b)(2) of the Act has been requested.

14. It is represented that the subject transactions have already been consummated. In this regard, the Plan acquired the Rights pursuant to the Offering on October 27, 2010, and held such Rights pending the closing of the Offering on November 19, 2010. As there was insufficient time between the dates when the Plan acquired the Rights and when such Rights expired, to apply for and be granted an exemption, Bancorp is seeking a retroactive exemption to be granted, effective as of October 27, 2010, the date that the Plan acquired the Rights.

15. Bancorp represents that the proposed exemption is administratively feasible. In this regard, the acquisition and holding of the Rights by the Plan were one-time transactions that involved a distribution of the Rights to all shareholders at no cost. It is represented that it is customary for the industry involved to make a rights offering available to all shareholders.

16. Bancorp represents that the transactions which are the subject of this proposed exemption are in the interest of the Plan, because the subject transactions represented a valuable opportunity to the accounts of the Invested Participants in the Plan to buy the Stock at a discount. It is represented that this discount could be realized by selling the Stock immediately after the exercise of the Rights and investing the proceeds from such sale of the Stock in other investment options under the Plan. If the Plan had not participated in the Offering, the Invested Participants whose accounts in the Plan were invested in shares of the Stock on the Record Date would not have received the benefit all other shareholders of the Stock received.

Bancorp represents that denial of the requested exemption would result in the imposition of a tax to be paid by any disqualified person who participated in the prohibited transaction. Thus, the denial of the exemption would result in an economic loss to Bancorp, to its shareholders, and therefore to the Invested Participants.

17. Bancorp represents that the proposed exemption provides sufficient safeguards for the protection of the Plan and its participants and beneficiaries. In this regard, the participation in the Offering protected the accounts of the Invested Participants in the Plan from having their interest in the Stock being diluted as a result of the Offering.

It is further represented that the interests of the accounts of Invested Participants in the Plan were adequately

[11] It is represented that the Invested Participants rely on the relief provided by the statutory exemption, pursuant to section 408(e) of the Act for the exercise of the Rights. The Department is offering no view, as to whether the requirements of the statutory exemption provided in section 408(e) of the Act have been satisfied. Further, the Department, herein, is not providing any relief with respect to the exercise of the Rights.

protected in the decision for the Plan to acquire and hold the Rights in that such decision was made by the Board which was independent of management and Bancorp.

The accounts of Invested Participants in the Plan were protected against economic loss in that, if on November 15, 2010, the trading price of the Stock was not greater than $0.20 per share, all Rights that such Invested Participants had elected to exercise would be immediately cancelled.

18. In summary, Bancorp represents that the subject transactions satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The receipt by the Plan of the Rights occurred in connection with the Offering made available by Bancorp on the same terms to all shareholders of the Stock of Bancorp;

(b) The acquisition of the Rights by the Plan resulted from an independent act of Bancorp, as a corporate entity, and all holders of the Rights, including the Plan, were treated in the same manner with respect to the acquisition of such Rights;

(c) Each shareholder of the Stock, including the Plan, received the same proportionate number of Rights based on the number of shares of Stock of Bancorp held by such shareholder;

(d) The Board decided that the Offering should be made available to all shareholders of the Stock, including the Plan, as record owner of the Stock held in the Plan on behalf of the accounts of the Invested Participants, all or a portion of whose accounts in the Plan are invested in the Stock, in accordance with provisions under such Plan for individually-directed investment of such accounts;

(e) The decision to exercise the Rights or to refrain from exercising the Rights was made by each of the Invested Participants in accordance with the provision under the Plan for individually-directed accounts; and

(f) No brokerage fees, commissions, subscription fees, or any other charges were paid by the Plan with respect to the Offering, and no brokerage fees, commissions, or other monies were paid by the Plan to any broker in connection with the exercise of the Rights.

Notice to Interested Persons

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include current participants and beneficiaries, former participants and beneficiaries, who were participants and beneficiaries as of the Record Date, alternate payees, the Committee, the Board, and the administrator, all trustees of the plan, and any other parties determined to be "interested persons."

It is represented that each of these classes of interested persons will be notified of the publication of the Notice by first class mail, within fifteen (15) days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all interested persons of their right to comment and to request a hearing.

All written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

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

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

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

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

Signed at Washington, DC, this 8th day of June, 2011.

Ivan Strasfeld,

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

[FR Doc. 2011–14520 Filed 6–10–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Extended Benefits Program—Methodology for Calculating "on" or "off" Total Unemployment Rate Indicators for Purposes of Determining When a State Begins and Ends an Extended Benefit Period

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: UIPL 16–11 informs states of the methodology used to calculate the "on" or "off" total unemployment rate (TUR) indicators to determine when extended benefit (EB) periods begin and end in a state. UIPL 16–11 is published below to inform the public and is available at: *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3027*.

SUPPLEMENTARY INFORMATION:

UIPL 16–11: Federal-State Extended Benefits Program—Methodology for Calculating "on" or "off" Total Unemployment Rate Indicators for Purposes of Determining When a State Begins and Ends an Extended Benefit Period

1. *Purpose.* To inform states of the new methodology used to calculate the "on" or "off" total unemployment rate (TUR) indicators to determine when extended benefit (EB) periods begin and end in a state.

2. *References.* The Federal-State Extended Unemployment Compensation Act of 1970 (EUCA); Section 2005 of Division B, Title II, the Assistance for