

pollutants, including dioxins and furans, hydrogen chloride, particulate matter, and hydrocarbons. The Plaintiffs' complaint, filed concurrently with the Consent Decree, alleges that Defendants violated Section 112 of the Clean Air Act, 42 U.S.C. 7412; the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Secondary Aluminum Production, codified at 40 CFR part 63, Subparts A and RRR; and related provisions of Kentucky law at three of its aluminum production facilities. Specifically, the complaint alleges that Defendant failed to demonstrate compliance with emission standards through valid performance testing, to design and install adequate capture and collection systems, to correctly establish and monitor operating parameters, and to comply with recordkeeping and reporting requirements.

The Consent Decree would require Defendants to retest emission units using model test protocols, adopt new monitoring practices, correct deficiencies in recordkeeping and reporting documents, shut down certain emission units, and apply for new operating permits at its facilities. The Consent Decree would also provide for an \$80,000 civil penalty, with \$50,000 paid to the United States and \$30,000 paid to the Commonwealth of Kentucky, based on a limited ability to pay as determined by the United States' review of Defendant's financial information.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States et al. v. J.L. French LLC, et al.*, D.J. Ref. No. 90-5-2-1-08881/1.

The Consent Decree may be examined at the United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone

confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$16.00 for a copy of the complete Consent Decree (25 cents per page reproduction cost), payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions From Certain Prohibited Transaction Restrictions

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). This notice includes the following: [D-11513, 2011-18 Northern Trust Corporation; D-11576, 2011-19 Bank of America, NA et al.; and D-11659, 2011-20 Pacific Capital Bancorp Amended and Restated Incentive and Investment and Salary Savings Plan (the Plan)].

SUPPLEMENTARY INFORMATION: 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.

Northern Trust Corporation Located in Chicago, IL

[Prohibited Transaction Exemption 2011-18; Exemption Application No. D-11513]

Exemption

Section I. Transactions

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of ERISA and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective October 31, 2008, to the sale (the Sale) by a Plan (as defined in Section III(e)) of an Auction Rate Security (ARS, as defined in Section III(c)) to Northern Trust Corporation or an affiliate thereof (Northern), if the conditions of Section II are met.¹

Section II. Conditions

(a) The Plan acquired the ARS in connection with brokerage or advisory services provided by Northern to the Plan;

(b) The last auction for the ARS was unsuccessful;

(c) The Sale is made pursuant to a written offer by Northern (the Offer) containing all of the material terms of the Sale, in which the Plan would have

¹ For purposes of this exemption, references to section 406 of ERISA should be read to refer also to the corresponding provisions of section 4975 of the Code.

the opportunity to sell the ARS but would be under no obligation to do so, and would include but is not limited to the following:

(i) Northern will distribute each Offer to its eligible customers, marked, or otherwise prepared in a manner reasonably designed to prominently indicate to the recipient the subject matter, importance, and time-sensitivity of the information provided;

(ii) Acceptance of an Offer would cause Northern to purchase the eligible ARS at the next applicable coupon interest payment date as described therein. Purchase dates may vary depending on when an Offer is accepted and when the next coupon interest payment date for such eligible ARS occurs;

(iii) Acceptance of the Offer could be withdrawn at any time until three business days prior to the payment date; and

(iv) The Offer will comply with "plain English" standards and will include: A reference to a Web site containing a description of the eligibility criteria used by Northern; a reference to where the Plan fiduciary can find a list of eligible ARS held in the account (including the amount and other identifying information); the background of the Offer; the methods and timing by which eligible customers may accept the Offer; the manner of determining the purchase dates for eligible ARS pursuant to the Offer; the timing of payment for eligible ARS purchased pursuant to the Offer; the methods and timing by which a customer may elect to withdraw its acceptance of the Offer; the expiration date of the Offer; a suggestion that eligible customers consult their tax advisors to determine the tax consequences, if any, of accepting the Offer and to ensure that accounting and financial reporting complies with applicable accounting guidance; and how to obtain additional information concerning the Offer;

(d) The Sale is a one-time transaction for no consideration other than cash payment against prompt delivery of the ARS;

(e) The sales price for the ARS is equal to the par value of the ARS, plus any accrued but unpaid interest or dividends as applicable, as of the date of the Sale;

(f) The Plan does not waive any rights or claims in connection with the Sale;

(g) The decision to accept the Offer or retain the ARS is made by an Independent Fiduciary (as defined in

section III(d)).² Notwithstanding the foregoing, in the case of an individual retirement account (IRA) which is beneficially owned by an employee, officer, director or partner of Northern, the decision to accept the Offer or retain the ARS may be made by such employee, officer, director, or partner;

(h) Neither Northern nor an affiliate thereof exercises investment discretion or renders investment advice, within the meaning of 29 CFR 2510.3-21(c), in connection with the decision to sell or retain the ARS;

(i) The Plan does not pay any commissions or any other transaction costs with respect to the Sale;

(j) The Sale is not part of an arrangement, agreement, or understanding designed to benefit a party in interest or disqualified person to the Plan;

(k) Northern maintains, or causes to be maintained, for a period of six (6) years from the date of the Sale such records as are necessary to enable the persons described below in paragraph (l)(i), to determine whether the conditions of this exemption have been met, except that—

(i) No party in interest or disqualified person with respect to a Plan which engages in a Sale, other than Northern and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of ERISA 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 (l)(i); and

(ii) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Northern or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period; and

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

² The Department notes that ERISA's general standards of fiduciary conduct would apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the ARS to Northern for the par value of the ARS. The Department further emphasizes that it expects plan fiduciaries, prior to entering into any of the transactions, to fully understand the risks associated with this type of transaction, following disclosure by Northern of all the relevant information.

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

(B) Any fiduciary of any Plan, including an IRA owner, that engages in a Sale, 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 Sale, or any authorized employee or representative of these entities;

(ii) None of the persons described above in paragraph (l)(i)(B)–(C) shall be authorized to examine trade secrets of Northern, or commercial or financial information which is privileged or confidential; and

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

III. Definitions

For purposes of this exemption:

(a) The term "affiliate" of another person means: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; (2) any officer, director, partner, employee, or relative (as defined in section 3(15) of ERISA) of such other person; and (3) any corporation or partnership of which such other person is an officer, director, partner, or employee;

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term "Auction Rate Security" or "ARS" means a debt obligation of a corporation, business entity, municipality or other governmental agency with a nominal long-term maturity for which the interest rate is reset through a Dutch Auction typically held every 7, 14, 28, 35, or 49 days, with interest paid at the end of each auction period. The term also means preferred stock issued by a corporation or other business entity for which the dividend is reset and paid through the same process;

(d) The term "Independent Fiduciary" shall mean the fiduciary of the Plan making the decision to engage the Plan in the covered transactions, provided

that such fiduciary may not be Northern or an affiliate thereof; and

(e) The term "Plan" means an individual retirement account (an IRA) or similar account described in section 4975(e)(1)(B) through (F) of the Code; or an employee benefit plan as defined in section 3(3) of ERISA.

DATES: Effective Date: This exemption is effective as of October 31, 2008.

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 May 5, 2011 at 76 FR 25711.

Written Comments

No written comments were received by the Department with respect to the notice of proposed exemption.

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

Bank of America, NA et al., Located in Charlotte, North Carolina

[Prohibited Transaction Exemption 2011-19; Exemption Application No. D-11576]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply: (a) From January 1, 2009 to October 7, 2010: (1) To the operation of the RPT Stable Value Agreements, pursuant to the terms thereof, and to the receipt of a fee by BANA in connection therewith; and (2) to transactions under the RPT Stable Value Agreements (the RPT Wrap-Related Transactions); (b) from April 23, 2009 to October 7, 2010: (1) To the execution of the RPT Special Purpose Wrap Agreement; (2) to the operation of the RPT Special Purpose Wrap Agreement, pursuant to the terms thereof, and to the receipt of a fee by BANA in connection therewith; and (3) to transactions under the RPT Special Purpose Wrap Agreement (the Special Purpose Wrap-Related Transactions); and (c) from January 1, 2009 to April 8, 2011: (1) To the operation of the Separately Managed Account Wrap Agreements, pursuant to the terms thereof, and to the receipt of a fee by BANA in connection therewith; and (2) to transactions under the Separately Managed Account Wrap Agreements (the Separately Managed Account Wrap-Related Transactions), provided that the

following conditions, as applicable, have been met.³

Section II. Conditions Applicable to Transactions Described in Section I(a).

(a) Effective June 1, 2009, BlackRock Advisors may change the formula for calculating the Crediting Rate with respect to the Global Wrap Account or the Global Buy and Hold Account (either, a Global Account) only after obtaining prior approval from:

(1) Each financial institution that has entered into a wrap agreement covering assets included in the applicable Global Account; and

(2) The Independent Fiduciary, after BlackRock Advisors has provided the Independent Fiduciary with any information that the Independent Fiduciary has reasonably requested in determining whether to approve the proposed change in the Crediting Rate formula;

(b) BANA may not reset a Crediting Rate attributable to a Global Account more frequently than on a monthly basis unless:

(1) A crediting rate attributable to a non-BANA wrap agreement covering assets in the same Global Account is reset more frequently than on a monthly basis; and

(2) BANA resets the Crediting Rate at the same time, and in the same manner, as such other non-BANA wrap agreement crediting rate;

(c) Each financial institution entering into a wrap agreement covering assets included in a Global Account obtains information from BlackRock Advisors on a monthly basis regarding the investments included in such Global Account. This information must be sufficiently detailed to enable the financial institution to independently verify that the applicable Crediting Rate was calculated properly;

(d) The fee received by BANA in connection with the BANA RPT Global Wrap Agreement or the BANA RPT Buy and Hold Wrap Agreement will be reasonable relative to market conditions and risks. Notwithstanding the above, in no event shall the fee received by BANA under the BANA RPT Global Wrap Agreement or the BANA RPT Buy and Hold Wrap Agreement exceed the maximum percentage fee paid to any other financial institution pursuant to a wrap agreement covering assets in the applicable Global Wrap Account or the Global Buy and Hold Account, as relevant;

³ For purposes of this exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

(e) The Trustee may trigger immunization with respect to the BANA RPT Global Wrap Agreement only if:

(1) The Trustee triggers immunization with respect to another wrap agreement covering assets in the Global Wrap Account immediately prior to, or at the same time as, the Trustee triggers immunization with respect to the BANA RPT Global Wrap Agreement; or

(2) A financial institution not affiliated with BANA triggers immunization with respect to assets in the Global Wrap Account immediately prior to, or at the same time as, the Trustee triggers immunization with respect to the BANA RPT Global Wrap Agreement; or

(3) The Trustee determines that BANA is no longer financially responsible and the Independent Fiduciary determines that immunization is in the interests of Plans invested in RPT;

(f) Assets held in RPT will be valued at their current fair market value on a daily basis utilizing the following BlackRock firm-wide approved valuation process:

(1) Valuations will be performed without regard to whether the security is held in RPT or another account or commingled vehicle advised by BlackRock;

(2) Valuations will be based on the price that may be obtained in a current arm's-length sale to an unrelated third party;

(3) BlackRock will first obtain prices for securities from independent third-party sources, including index providers, broker-dealers and independent pricing services. BlackRock will maintain a hierarchy that prioritizes pricing sources by asset class or type and will value securities based on the price generated by the highest priority source. The hierarchy may vary by asset class or type, but not for a particular security;

(4) If no third-party sources are available to value a security or the price generated by the third-party falls outside specified statistical norms and after review BlackRock determines that such price is not reliable, BlackRock will value the security using an analytic methodology in accordance with its written valuation policy. If BlackRock values a security using such analytic methodology, the Independent Fiduciary will review that methodology and valuation and will obtain its own valuation if it deems appropriate; and

(5) Values determined in accordance with (1) through (4) above will be provided to each financial institution that has entered into a wrap agreement covering assets in the Global Wrap

Account or the Global Buy and Hold Account, as the case may be;

(g) Each financial institution that has entered into a wrap agreement covering assets in the Global Wrap Account and/or the Global Buy and Hold Account, including BANA, may raise an objection regarding a particular security's valuation, regardless of the source of such valuation. Once an objection is raised, wrap providers other than BANA may determine a new valuation for such security and BANA must accept this new valuation, provided that BANA is given reasonably satisfactory documentation supporting the new valuation;

(h) Prior to a Plan sponsor's decision to include RPT as an investment option for its Plan's participants, the Trustee will provide the Plan sponsor with the following:

(1) RPT's Declaration of Trust (as amended and restated as of April 23, 2009, and as may be further amended from time to time);

(2) A purchase agreement to be entered into by the Plan fiduciary and the Trustee;

(3) Upon request, a copy of the Annual Report for RPT and a fact sheet describing RPT's investment objective and strategy and a performance analysis; and

(4) A copy of the proposed exemption or a copy of the final exemption;

(i) The Trustee will provide the following ongoing disclosures to Plan fiduciaries regarding a Plan's investment in RPT:

(1) The Annual Report for RPT; and

(2) The Plan's Investment Summary and Accounting;

(j) Plan participants will be provided the following disclosures regarding their investment in RPT:

(1) Prior to and following their initial investment, information describing the investment objectives and performance of RPT; and

(2) A statement, delivered at least quarterly, that sets forth the value of the participant's account contributions, withdrawals, distributions, loans and change in value since the prior statement;

(k) The Independent Fiduciary must receive a copy of any RPT Stable Value Agreement amendment prior to the effective date of such amendment. The Independent Fiduciary must review and approve the amendment prior to its implementation, except that no such review and approval shall be required for an amendment that is purely ministerial in nature;

(l) The dollar amount of Global Wrap Account assets covered by the BANA RPT Global Wrap Agreement shall not

exceed 50% of the total assets held in such Account, and the terms associated with the BANA RPT Global Wrap Agreement at the time such Agreement was entered into, amended, modified or renewed shall be no less favorable to RPT than the terms associated with comparable agreements with unrelated parties;

(m) The dollar amount of Global Buy and Hold Account assets covered by the BANA RPT Buy and Hold Wrap Agreement shall not exceed 60% of the total assets held in such Account, and the terms associated with the BANA RPT Buy and Hold Wrap Agreement at the time such Agreement was entered into, amended, modified or renewed shall be no less favorable to RPT than the terms associated with comparable agreements with unrelated parties; and

(n) Any RPT Wrap-Related Transaction that involves: (1) The exercise by BANA, the Trustee, or BlackRock Advisors of their rights under the RPT Stable Value Agreements; or (2) the performance by BANA, the Trustee, or BlackRock Advisors of their obligations under the RPT Stable Value Agreements, shall be subject to prior review and approval by the Independent Fiduciary if such exercise or performance affects the Crediting Rate or would otherwise have an adverse impact on the book value of a participant's or beneficiary's investment in RPT.

Section III. Conditions Applicable to Transactions Described in Section I(b)

(a) Below Investment Grade Securities will be transferred automatically to a RPT account (the Type D1 Account) and covered by the RPT Special Purpose Wrap Agreement. The RPT Special Purpose Wrap Agreement shall cover up to in the aggregate \$200 million of the following:

(1) Book value of Downgraded Securities that have not been sold; and/or

(2) Aggregate unamortized realized losses with respect to sold Downgraded Securities;

(b) The Minimum Ratio shall be maintained;

(c) The total book value of the assets included in the Type D1 Account and covered by the RPT Special Purpose Wrap, including the Permitted Securities, will not exceed \$700 million without the prior written consent of the Trustee, BlackRock Advisors, BANA and the Independent Fiduciary;

(d) The crediting rate with respect to the Type D1 Account (the Type D1 Account Crediting Rate) shall be 0.00% at times when there are unamortized losses (whether realized or unrealized)

attributable to Downgraded Securities in the Type D1 Account, calculated in accordance with the provisions of the RPT Special Purpose Wrap Agreement. In the event there are no unamortized losses (i.e., neither realized nor unrealized) recorded to the Type D1 Account which relate to Downgraded Securities, the Type D1 Account Crediting Rate shall be determined in accordance with a formula that has been reviewed by the Independent Fiduciary;

(e) Effective June 1, 2009, BlackRock Advisors may change the formula for calculating the Type D1 Account Crediting Rate only after obtaining prior approval from BANA and the Independent Fiduciary. BlackRock Advisors shall provide the Independent Fiduciary with any information it may reasonably request in determining whether to approve a proposed change in the Type D1 Account Crediting Rate formula;

(f) The Type D1 Account Crediting Rate will not be reset more frequently than on a monthly basis;

(g) Permitted Securities will have a maximum duration of 3.5 years at the time of purchase;

(h) The fee charged by BANA for the RPT Special Purpose Wrap will be reasonable relative to market conditions and risks, as determined annually by the Independent Fiduciary. Notwithstanding the above, in no event shall such fee exceed 15 basis points per annum of the total book value of assets included in the Type D1 Account;

(i) Assets covered by the RPT Special Purpose Wrap Agreement will be valued in accordance with the methodology specified in section II(f) above, provided, however, that if the Independent Fiduciary obtains a valuation, such valuation will be binding on BANA;

(j) The Trustee has the right to immunize the portfolio of securities included in the Type D1 Account only if BANA elects to terminate the RPT Special Purpose Wrap Agreement, or if BANA defaults under the RPT Special Purpose Wrap Agreement. If an immunization election becomes effective (the RPT Special Purpose Immunization Date), the RPT Special Purpose Wrap Agreement would terminate on the later of: (1) The date that is the number of years after the RPT Special Purpose Immunization Date which does not extend beyond the modified duration (as defined in the RPT Special Purpose Wrap Agreement) of the underlying assets on the RPT Special Purpose Immunization Date; or (2) the first date on which the market value of the underlying assets equals or

exceeds the book value under the wrap agreement;

(k) No Below Investment Grade Securities will be added to the RPT Special Purpose Wrap Agreement after April 23, 2011, unless otherwise agreed by BANA, the Trustee, and the Independent Fiduciary. No party to the RPT Special Purpose Wrap Agreement is obligated to amend or extend the RPT Special Purpose Wrap Agreement;

(l) The tasks performed by the Independent Fiduciary will include:

(1) Determining whether the RPT Special Purpose Wrap Agreement and the portfolio arrangement for the Type D1 Account (including the wrap fee payable to BANA, the Minimum Ratio, the prefunding of the RPT Special Purpose Wrap Agreement and the formula for resetting the Type D1 Account Crediting Rate) are prudent and in the best interest of participants and beneficiaries of Plans investing in RPT;

(2) Reviewing valuations generated by BlackRock (in connection with the RPT Special Purpose Wrap Agreement) in any situation where BlackRock is unable to obtain a reliable valuation from independent third party sources. If, after such review, the Independent Fiduciary deems appropriate, the Independent Fiduciary will obtain an independent valuation which will be binding on the parties;

(3) Reviewing and monitoring whether the Type D1 Account Crediting Rate is calculated correctly;

(4) Monitoring the addition and removal of Below Investment Grade Securities and any changes in Permitted Securities in the Type D1 Account, and opining, in a written report, whether such addition, removal or change is appropriate;

(5) If BANA objects to the calculation by the Trustee or its designee of the Type D1 Account Crediting Rate or the information used to calculate the Type D1 Account Crediting Rate, the Independent Fiduciary will make a conclusive and binding determination regarding such calculation or information;

(6) Determining whether to approve any proposed change to the Type D1 Account Crediting Rate formula, including any proposed adjustment to the duration component of the Type D1 Account Crediting Rate formula;

(7) No later than April 30, 2011, working with BANA, BlackRock, and the Trustee to review and determine whether additional Below Investment Grade Securities may be transferred to the Type D1 Account and be covered by the RPT Special Purpose Wrap Agreement;

(8) Making an initial and, thereafter, annual determination regarding whether the fee described in paragraph (h) of this section is reasonable relative to the specific attributes of the RPT Special Purpose Wrap Agreement;

(9) Making an annual determination regarding whether the continued maintenance of the RPT Special Purpose Wrap Agreement is appropriate and in the interest of Plans;

(10) Making a monthly determination regarding whether the appropriate Type D1 Crediting Rate formula is being used; and

(11) Reviewing and approving any amendment to a RPT Special Purpose Wrap Agreement consistent with paragraph (n) of this section;

(m) Any Special Purpose Wrap-Related Transaction that involves: (1) The exercise by BANA, the Trustee, or BlackRock Advisors of their rights under the RPT Special Purpose Wrap Agreement; or (2) the performance by BANA, the Trustee, or BlackRock Advisors of their obligations under the RPT Special Purpose Wrap Agreement, shall be subject to prior review and approval by the Independent Fiduciary if such exercise or performance affects the Type D1 Crediting Rate or otherwise would have an adverse impact on the book value of a participant's or beneficiary's investment in RPT; and

(n) The Independent Fiduciary must receive a copy of any RPT Special Purpose Wrap Agreement amendment prior to the effective date of such amendment. The Independent Fiduciary must review and approve the amendment prior to its implementation, except that no such review and approval shall be required for an amendment that is purely ministerial in nature.

Section IV. Conditions Applicable to Transactions Described in Section I(c)

(a) Effective June 1, 2009, BlackRock Advisors may change the formula for calculating the Crediting Rate with respect to each Separately Managed Account Wrap Agreement only after obtaining prior approval from BANA and the Independent Fiduciary. BlackRock Advisors shall provide the Independent Fiduciary with any information it may reasonably request in determining whether to approve a proposed change in the Crediting Rate formula;

(b) Effective June 1, 2009, the Crediting Rate will be reset no more frequently than on a monthly basis;

(c) BANA will not receive a fee under the BANA Wal-Mart Separately Managed Wrap Agreement in excess of the maximum percentage fee received by any other Tier 3 Wrap Provider in the

Wal-Mart Separately Managed Account; and BANA will not receive a fee under the BANA Hertz Separately Managed Wrap Agreement in excess of the maximum percentage fee received by any other financial institution that has entered into a wrap agreement covering assets in the Hertz Separately Managed Account;

(d) Assets covered under each Separately Managed Account Wrap Agreement will be valued in accordance with the same methodology specified in section II(f) above; provided, however, that if BANA objects to the valuation of any asset, the Independent Fiduciary will make a binding determination of the value of the asset;

(e) The tasks performed by the Independent Fiduciary will include:

(1) Conducting a monthly review of the Crediting Rate, including, confirming: (A) The book value of the portfolio of assets wrapped by each Separately Managed Account Wrap Agreement; (B) the valuation of securities; (C) the duration of securities; (D) the market yield of securities; and (E) that the Crediting Rate formula was calculated properly;

(2) Reviewing and approving any proposed amendment to a Separately Managed Wrap Agreement consistent with paragraph (i) below;

(3) Reviewing any exercise of contract provisions by any of BANA, BlackRock Advisors or, in the case of the BANA Wal-Mart Separately Managed Wrap Agreement, the Trustee, and analyze its potential impact on investors;

(4) Evaluating any changes to the fees paid to BANA under each Separately Managed Account Wrap Agreement to determine reasonableness relative to market conditions and risks; and

(5) Providing quarterly reports to BlackRock Advisors and to the named fiduciaries of the Wal-Mart Plan and the Hertz Plan. These reports must certify that the Independent Fiduciary has reviewed the factors described above and state whether BlackRock Advisors has complied with all requirements of the contract. The Independent Fiduciary will inform the named fiduciaries of a Plan if it believes that BANA or BlackRock Advisors has taken any actions that are not in the best interests of the participants and beneficiaries in the Wal-Mart Plan or the Hertz Plan, as relevant;

(f) The Separately Managed Account Wrap Agreements shall authorize the Independent Fiduciary to:

(1) Review and approve any proposed changes in the formula for calculating the Crediting Rate, prior to implementation of any such change;

(2) If BlackRock Advisors generates its own valuation, review the valuation, and if the Independent Fiduciary deems appropriate, obtain an independent valuation, which shall be binding on the parties, subject to BANA's right to raise an objection to any valuation;

(3) If BANA objects to the valuation of any asset, make a binding determination of the value of the asset;

(g) The named fiduciaries (or their authorized representatives) for the Wal-Mart Plan have the right to terminate BlackRock Advisors, as investment manager for the Wal-Mart Separately Managed Account, on 90 days' written notice. The named fiduciaries (or their authorized representatives) for the Hertz Plan have the right to terminate BlackRock Advisors as investment manager for the Hertz Separately Managed Account, on 30 days' written notice;

(h) Any Separately Managed Account Wrap-Related Transaction that involves: (1) The exercise by BANA, the Trustee, or BlackRock Advisors of their rights under a Separately Managed Account Wrap Agreement; or (2) the performance by BANA, the Trustee, or BlackRock Advisors of their obligations under a Separately Managed Wrap Agreement: Shall be subject to prior review and approval by the Independent Fiduciary if such exercise or performance affects the Crediting Rate or otherwise would have an adverse impact on the book value of a participant's or beneficiary's investment in RPT;

(i) The Independent Fiduciary must receive a copy of any amendment contemplated for a Separately Managed Wrap Agreement. The Independent Fiduciary must review and approve the amendment prior to its implementation, except that no such review and approval shall be required for an amendment that is purely ministerial in nature; and

(j) BlackRock may not terminate a Separately Managed Account Wrap Agreement without the prior approval of the Independent Fiduciary.

Section V. General Conditions

(a) BlackRock Advisors shall maintain in the United States the records necessary to enable the persons described in (b) below to determine whether the conditions of this exemption were met, except that:

(1) If the records necessary to enable the persons described in (b) below to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of BlackRock Advisors, then no prohibited transaction will be considered to have occurred solely on

the basis of the unavailability of those records; and

(2) No party in interest other than BlackRock Advisors shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and (b) of the Code if the records have not been maintained or are not available for examination as required by paragraph (b) below;

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

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

(2) Any fiduciary of a Plan participating in RPT or the Hertz Plan or the Wal-Mart Plan;

(3) Any participant or beneficiary of a Plan participating in RPT or the Hertz Plan or the Wal-Mart Plan; or

(4) The Independent Fiduciary.

(c) None of the persons described above in paragraphs (2), (3), and (4) of paragraph (b) of this section V shall be authorized to examine trade secrets of BlackRock, BANA, the Trustee or any of their Affiliates, or any commercial or financial information which is privileged or confidential. Should BlackRock Advisors refuse to disclose information on the basis that such information is exempt from disclosure, BlackRock Advisors shall, by the close of the thirtieth (30th) day following the request, provide written notice advising that person of the reason for the refusal and that the Department may request such information; and

(d) Promptly following publication of this final exemption in the **Federal Register**, the Trustee or BlackRock Advisors will provide a copy of the final exemption to the Plan sponsor of each Plan invested in RPT, and to the Plan sponsor of the Hertz Plan, and to the Plan sponsor of the Wal-Mart Plan.

Section VI. Definitions

(a) The term Act means: The Employee Retirement Income Security Act of 1974, as amended;

(b) The term Affiliate means: Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such person;

(c) The term BANA means: Bank of America, N.A. and its Affiliates;

(d) The term BANA Hertz Separately Managed Wrap Agreement means: The agreement dated as of July 27, 2007 (and amended effective as of December 31, 2008) among BANA, BlackRock Advisors (as investment manager for a portion of the assets of the Hertz Plan), and the Bank of New York Mellon (the successor by operation of law to Mellon Bank N.A., and the trustee of the trust created pursuant to the Hertz Plan), as such agreement may be amended from time to time, pursuant to which BANA provides a book value benefit responsive facility with respect to a portion of the assets held in the Hertz Separately Managed Account;

(e) The term BANA RPT Buy and Hold Wrap Agreement means: The agreement dated as of October 16, 1996, between Barclays Bank PLC and the Trustee (as assigned to BANA as of April 1, 1998, and amended effective as of December 31, 2008), as such agreement may be amended from time to time, pursuant to which BANA provides a book value benefit responsive facility with respect to an undivided portion of the assets held in the Global Buy and Hold Account;

(f) The term BANA RPT Global Wrap Agreement means: The agreement dated as of May 1, 2004 (and amended effective as of December 31, 2008) between BANA and the Trustee, as such agreement may be amended from time to time, pursuant to which BANA provides a book value benefit responsive facility with respect to an undivided portion of the assets held in the Global Wrap Account;

(g) The term BANA Wal-Mart Separately Managed Wrap Agreement means: The agreement dated as of August 19, 2003 (and amended effective as of December 31, 2008) between BANA and the Trustee, as such agreement may be amended from time to time, pursuant to which BANA provides a book value benefit responsive facility with respect to a portion of the assets held in the Wal-Mart Separately Managed Account;

(h) The term Below Investment Grade Security means: Securities that cease to be covered by a benefit responsive contract in RPT (other than by the RPT Special Purpose Wrap Agreement) solely as a result of a downgrade in the credit rating of the security to below Baa3, BBB- or BBB- by Moody's Investors Services, Inc., Standard & Poor's Rating Group, or Fitch Ratings, respectively; provided, however, that a Below Investment Grade Security shall not include any security that is an Impaired Security;

(i) The term BlackRock means: BlackRock, Inc.;

(j) The term BlackRock Advisors means: BlackRock Investment Management, LLC and its Affiliates;

(k) The term Code means: The Internal Revenue Code of 1986, as amended;

(l) The term Crediting Rate means: The crediting rate described in sections II and IV that is used for purposes of determining the accrued interest to be added to the book value of an individual's account within RPT or the Separately Managed Accounts;

(m) The term Downgraded Security means: A Below Investment Grade Security that is held in the Type D1 Account and covered by the RPT Special Purpose Wrap Agreement;

(n) The term Global Buy and Hold Account means: The book account or sub-account maintained within RPT for purposes of identifying certain assets relating to the BANA RPT Buy and Hold Wrap Agreement;

(o) The term Global Wrap Account means: The book account or sub-account maintained within RPT for purposes of identifying certain assets relating to the BANA RPT Global Wrap Agreement;

(p) The term Hertz Plan means: The Hertz Corporation Income Savings Plan;

(q) The term Hertz Separately Managed Account means: The separately managed stable value account advised by BlackRock Advisors on behalf of the Hertz Plan;

(r) The term Impaired Security means:

(i) A security with respect to which the issuer or guarantor has failed to make one or more payments of principal or interest (after giving effect to any applicable grace period under the terms of such security or prescribed by any change in law, regulation, ruling or other governmental action); (ii) a security with respect to which the principal or interest has become due and payable before it otherwise would have been due or payable other than: (x) By reason of a call or other prepayment of such security made in accordance with its terms that does not constitute a default under such security, or (y) solely on account of any change in law, regulation, ruling or other governmental action; (iii) a security where the rate of interest thereon has been reset other than: (x) Pursuant to the original terms of such security, or (y) solely on account of any change in law, regulation, ruling or other governmental action; or (iv) a security with respect to which the issuer becomes insolvent or institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights;

(s) The term Independent Fiduciary means an entity that is: (i) Experienced and knowledgeable in ERISA and the transactions and arrangements described herein; (ii) independent of and unrelated to BANA, Merrill, BlackRock, and their Affiliates; and (iii) appointed to act on behalf of Plans investing in RPT or the Separately Managed Accounts with respect to the matters described herein. The Independent Fiduciary will not be deemed to be independent of and unrelated to BANA, Merrill, BlackRock, and their Affiliates if: (i) Such fiduciary directly or indirectly controls, is controlled by or is under common control with BANA, Merrill, or BlackRock; (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption other than for acting as an Independent Fiduciary in connection with the transactions described herein, provided that the amount or payment of such compensation is not contingent upon, or in any way affected by, the Independent Fiduciary's ultimate decision; and (iii) the annual gross revenue received by the Independent Fiduciary, during any year of its engagement, from BANA, Merrill, BlackRock, and any of their Affiliates, exceeds five percent (5%) of the Independent Fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year;

(t) The term Minimum Ratio means: A ratio of 2.5 to 1.0 of market value of Permitted Securities to the total unamortized unrealized and realized losses with respect to Downgraded Securities;

(u) The term Permitted Securities means any security that: (i) Is a U.S. Treasury debenture, a security issued by the Government National Mortgage Association or a security guaranteed by the Federal Deposit Insurance Corporation; and (ii) has a modified duration on the date of purchase by RPT of 3.5 years or less;

(v) The term Plan means: An employee benefit plan within the meaning of and subject to Title I of the Act or an individual retirement account within the meaning of section 4975 of the Code;

(w) The term RPT means: The Merrill Lynch Retirement Preservation Trust maintained by the Trustee;

(x) The term RPT Special Purpose Wrap Agreement means: The agreement dated as of April 23, 2009, as amended, between BANA and the Trustee, pursuant to which BANA provides a book value benefit responsive facility

with respect to an undivided portion of the assets held in the Type D1 Account;

(y) The term RPT Stable Value Agreements means: The BANA RPT Global Wrap Agreement and the BANA RPT Buy and Hold Wrap Agreement;

(z) The term Separately Managed Accounts means: The Hertz Separately Managed Account and the Wal-Mart Separately Managed Account;

(aa) The term Separately Managed Account Wrap Agreements means: The BANA Wal-Mart Separately Managed Wrap Agreement and the BANA Hertz Separately Managed Wrap Agreement;

(bb) The term Type D1 Account means: The book account maintained within RPT for purposes of identifying Downgraded Securities, including unamortized losses with respect to Downgraded Securities that have been sold, and Permitted Securities covered by the RPT Special Purpose Wrap Agreement;

(cc) The term Tier 3 Wrap Provider means: A financial institution that has entered into a wrap agreement with respect to assets held in the Wal-Mart Separately Managed Account that will not be accessed for purposes of making benefit payments until after two tiers of buffer assets are accessed;

(dd) The term Trustee means: Bank of America, N.A.;

(ee) The term Wal-Mart Plan means: The Wal-Mart Profit Sharing and 401(k) Plan and the Wal-Mart Puerto Rico Profit Sharing and 401(k) Plan;

(ff) The term Wal-Mart Separately Managed Account means: The separately managed stable value account advised by BlackRock Advisors on behalf of the Wal-Mart Plan;

(gg) The term Merrill means: Merrill Lynch & Co., Inc. and its Affiliates;

(hh) The term RPT Wrap-Related Transaction means: (1) The determination, calculation of and adjustments to the Crediting Rate, and any changes to the Crediting Rate formula; (2) valuations of securities covered by the RPT Stable Value Agreements; (3) payment of wrap fees and any changes to wrap fees; (4) the purchase and sale of any security covered by the RPT Stable Value Agreements; (5) BANA's or the Trustee's exercise of its right to immunize or terminate the RPT Stable Value Agreements; (6) amendments to the RPT Stable Value Agreements; and (7) any other exercise by BANA, the Trustee, or BlackRock Advisors of their rights, or any performance by BANA, the Trustee, or BlackRock Advisors of their obligations, under the RPT Stable Value Agreements;

(ii) The term Special Purpose Wrap-Related Transaction means: (1) The

transfer of Below Investment Grade Securities to the Type D1 Account; (2) the sale or transfer of Downgraded Securities out of the Type D1 Account; (3) the purchase and sale of certain other securities permitted to be held in the Type D1 Account; (4) transactions relating to maintenance of a minimum ratio of Permitted Securities and Downgraded Securities; (5) the determination, calculation of and adjustments to the Type D1 Account Crediting Rate and any changes to the Type D1 Account Crediting Rate formula; (6) valuations of securities covered by the RPT Special Purpose Wrap Agreement; (7) payment of and any changes to wrap fees; (8) BANA's or the Trustee's exercise of its right to immunize or terminate the RPT Special Purpose Wrap Agreement; (9) the entering into and amendment of the RPT Special Purpose Wrap Agreement; and (10) any exercise by BANA, the Trustee, or BlackRock Advisors of their rights, or any performance by BANA, the Trustee, or BlackRock Advisors of their obligations, under the RPT Special Purpose Wrap Agreement;

(jj) The term Separately Managed Account Wrap-Related Transaction means: (1) The determination, calculation of and adjustments to the Crediting Rate, and any changes to the Crediting Rate formula; (2) valuations of securities covered by the Separately Managed Account Wrap Agreements; (3) payment of wrap fees and any changes to wrap fees; (4) the purchase and sale of any security covered by the Separately Managed Account Wrap Agreements; (5) BANA's or the Trustee's exercise of its right to terminate the Separately Managed Account Wrap Agreements; (6) amendments to the Separately Managed Wrap Agreements; and (7) any other exercise by BANA, the Trustee, or BlackRock Advisors of their rights, or any performance by BANA, the Trustee, or BlackRock of their obligations, under the Separately Managed Account Wrap Agreements.

Written Comment

The Department received one written comment letter, dated November 19, 2010, from Bank of America, N.A. (BANA), Merrill Lynch & Co., Inc. (Merrill Lynch) and BlackRock, Inc. (BlackRock) (collectively, the Applicants). In the letter, the Applicants made certain representations and/or requests regarding the preamble to the proposed exemption, and sections I(a) and (b), II(d), and III(h) of the proposed exemption. On August 18, 2011 and September 19, 2011, the Department received further correspondence from the Applicants, whereby the Applicants

provided an additional representation and made an additional request regarding section I(c) of the proposed exemption.

With respect to the preamble to the proposed exemption, the Applicants state that a clause was omitted from paragraph 47 of the Summary of Facts and Representations. In this regard, the Applicants represent that the first sentence of that paragraph should read as follows: "BANA will not receive a fee under either the BANA Wal-Mart Separately Managed Wrap Agreement or the BANA Hertz Separately Managed Wrap Agreement in excess of the maximum percentage fee received by any other Tier 3 Wrap Provider in the Wal-Mart Separately Managed Account, or in excess of the maximum percentage fee received by any other entity that has entered into a wrap agreement covering assets in the Hertz Separately Managed Account, as the case may be." The Department concurs with this comment.

With respect to section I(a) and (b) of the proposed exemption, the Applicants state that the RPT Stable Value Agreements and the RPT Special Purpose Wrap Agreement were terminated on October 6, 2010 and the relief set forth in section I(a) and (b) of the proposed exemption is not needed beyond October 7, 2010.⁴ The Applicants request that the relief contained in section I(a) and (b) of the final exemption expire on October 7, 2010.

Upon consideration of this request, the Department has determined that it would be appropriate to modify the proposed exemption as requested by the Applicants and, accordingly, the relief set forth in section I(a) and (b) of the final exemption expires on October 7, 2010.

With respect to section I(c) of the proposed exemption, the Applicants represent that Merrill Lynch's investment in BlackRock has diminished to the point where the relief described in section I(c) is not needed beyond April 8, 2011. The Applicants therefore request that the relief contained in section I(c) of the final exemption expire on April 8, 2011.

Upon consideration of this request, the Department has determined that it would be appropriate to modify the proposed exemption as requested by the Applicants and, accordingly, the relief set forth in section I(c) of the final exemption expires on April 8, 2011.

⁴ In the letter, the Applicants represented that, in connection with the change, Plan sponsors and participants and beneficiaries were to receive the book value of their investment and be permitted to transfer the proceeds to alternative investments.

With respect to the above-described modifications to section I, the Department notes that the exemption was proposed with the expectation that the relief provided by the exemption, if granted, would be on-going in nature. The proposed exemption therefore contains certain conditions applicable to section I(a) and (b) that expressly require the Applicants and/or the Independent Fiduciary to perform a specific action subsequent to October 7, 2010.⁵ Similarly, the proposed exemption contains a condition applicable to section I(c) that expressly requires the Applicants to perform a specific action subsequent to April 8, 2011.⁶ While these conditions have not been modified for purposes of this final exemption, such conditions do not remain in effect after: October 7, 2010 for conditions relating to the relief set forth in section I(a) or (b); or April 8, 2011 for conditions relating to the relief set forth in section I(c).

With respect to section II(d) of the proposed exemption, the Applicants request the removal of that condition's requirement that the Independent Fiduciary review the fees received by BANA in connection with the RPT Stable Value Agreements and the RPT Special Purposes Wrap Agreement. In this regard, the Applicants represent that such review is unnecessary due to: The limited time period for which exemptive relief is required (i.e., from January 1, 2009 to October 7, 2010); and the other fee restrictions contained in the proposed exemption.⁷ Upon consideration of this request, the Department has determined that it is appropriate to modify the proposed exemption in the manner requested by the Applicants and, accordingly, has revised section II(d) of the final exemption.

With respect to section III(h) of the proposed exemption, the Applicants request the removal of the second sentence of this condition. The subject sentence provides, in part, that "in no event shall the fee received by BANA under the BANA RPT Global Wrap Agreement or the BANA RPT Buy and Hold Wrap Agreement exceed the maximum percentage fee paid to any other financial institution pursuant to a wrap agreement covering assets in the applicable Global Wrap Account or the Global Buy and Hold Account, as relevant, as determined annually by the Independent Fiduciary." Upon

⁵ See, for example, paragraph I(1)(7) of section III.

⁶ See paragraph (d) of section V.

⁷ The Applicants represent that BANA is no longer receiving any fees with respect to the RPT Stable Value Agreements or the RPT Special Purpose Wrap Agreement.

consideration of this request, the Department has determined that it is appropriate to modify the proposed exemption in the manner requested by the Applicants and, accordingly, has revised section III(h) of the final exemption.

After full consideration and review of the entire record, including the written comment, the Department has determined to grant the exemption, as modified herein. The comment submitted by the Applicants to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published on October 6, 2010 (75 FR 61932).

FOR FURTHER INFORMATION CONTACT:

Christopher Motta of the Department, telephone (202) 693-8544. (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

[Prohibited Transaction Exemption No. 2011-20; Exemption Application No. D-11659]

Exemption

Section I: Transactions

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,⁸ 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 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 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 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.

DATES: Effective Date: This exemption is effective, October 27, 2010, the date the Plan acquired the Rights.

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 13, 2011, at 76 FR 34266.

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 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 21st day of September 2011.

Ivan Strasfeld,

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

[FR Doc. 2011-24657 Filed 9-23-11; 8:45 am]

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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

⁸ For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.