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Signed at Washington, DC This 18th Day of June 1999.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application No. D-10694, et al.]

#### Proposed Exemptions; The Chase Manhattan Bank (CMB)

**AGENCY:** Pension and Welfare Benefits 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 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

#### Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW, Washington, DC 20210.

#### Notice to Interested Persons

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

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. 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.

#### The Chase Manhattan Bank (CMB); Located in New York, NY

[Application No. D-10694]

##### 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<sup>1</sup> and

<sup>1</sup> For purposes of this proposed exemption, references to specific provisions of Title I of the

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 exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lending of securities to affiliates of The Chase Manhattan Corporation (CMC), which are engaged in CMC's capital markets line of business (Global Capital Markets), by employee benefit plans (the Client Plans), including commingled investment funds holding Client Plan assets, for which CMC, through its Global Investor Services line of Business, as operated through CMB and its affiliates (GIS), acts as directed trustee or custodian, and for which CMC through its Global Securities Lending Division or any other similar division of CMB or a U.S. affiliate of CMC (collectively, GSL) acts as securities lending agent or sub-agent and (2) to the receipt of compensation by GSL in connection with the proposed transactions, provided the general conditions set forth below in Section II are met.

#### Section II. General Conditions

(a) This exemption applies to loans of securities to Global Capital Markets, as operated through CMB in the United States (Global Capital Markets/U.S. or the U.S. Affiliated Borrower) and in the following foreign countries: the United Kingdom (Global Capital Markets/U.K.), Canada (Global Capital Markets/Canada), Australia (Global Capital Markets/Australia), Japan (Global Capital Markets/Japan) (collectively, the Foreign Affiliated Borrowers). Global Capital Markets will also include other companies or their successors which are affiliated with either CMB or CMC within these countries.<sup>2</sup>

(b) For each Client Plan, neither GIS, Global Capital Markets, GSL, nor any other division or affiliate of CMC has or exercises discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction (other than with respect to the lending of securities designated by an independent fiduciary of a Client Plan as being available to lend and the investment of cash collateral after securities have been loaned and

Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

<sup>2</sup> Unless otherwise noted, Global Capital Markets will consist collectively of the above referenced entities.

collateral received), or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets, including decisions concerning a Client Plan's acquisition and disposition of securities available for loan.

(c) Before a Client Plan participates in a securities lending program and before any loan of securities to Global Capital Markets is effected, a Client Plan fiduciary which is independent of Global Capital Markets must have—

(1) Authorized and approved a securities lending authorization agreement (the Agency Agreement) with GSL, where GSL is acting as the securities lending agent;

(2) Authorized and approved the primary securities lending authorization agreement (the Primary Lending Agreement) with the primary lending agent where GSL is lending securities under a sub-agency agreement (the Sub-Agency Agreement) with the primary lending agent;<sup>3</sup> and

(3) Approved the general terms of the securities loan agreement (the Loan Agreement) between such Client Plan and Global Capital Markets, the specific terms of which are negotiated and entered into by GSL.

(d) Each loan of securities by a Client Plan to Global Capital Markets is at market rates and terms which are at least as favorable to such Client Plan as if made at the same time and under the same circumstances to an unrelated party.

(e) The Client Plan may terminate the agency or sub-agency arrangement at any time without penalty to such Client Plan on five business days notice whereupon Global Capital Markets delivers securities identical to the borrowed securities (or the equivalent in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Client Plan within—

(1) The customary delivery period for such securities;

(2) Five business days; or

(3) The time negotiated for such delivery by the Client Plan and Global Capital Markets, whichever is less.

(f) The Client Plan receives from Global Capital Markets (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or

before the day the loaned securities are delivered to Global Capital Markets, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by a U.S. bank, which is a person other than Global Capital Markets or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81-6 (as amended from time to time or, alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans), having, as of the close of business on the preceding business day, a market value (or, in the case of a letter of credit, a stated amount) initially equal to at least 102 percent of the market value of the loaned securities.

(g) If the market value of the collateral on the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of business on that day, Global Capital Markets delivers additional collateral on the following day such that the market value of the collateral again equals 102 percent.

(h) The Loan Agreement gives the Client Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral and GSL monitors the level of the collateral daily.

(i) Before entering into a Loan Agreement, Global Capital Markets furnishes GSL the most recently available audited and unaudited statements of the financial condition of the applicable borrower within Global Capital Markets. Such statements are, in turn, provided by GSL to the Client Plan. At the time of the loan, Global Capital Markets gives prompt notice to the Client Plan fiduciary of any material adverse change in the borrower's financial condition since the date of the most recent financial statement furnished to the Client Plan. In the event of any such changes, GSL requests approval of the Client Plan to continue lending to Global Capital Markets before making any such additional loans. No new securities loans will be made until approval is received and each loan constitutes a representation by Global Capital Markets that there has been no such material adverse change.

(j) In return for lending securities, the Client Plan either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (In the case of cash collateral, the Client Plan may pay a loan rebate or similar fee to Global Capital Markets if such fee is not greater than the fee the Client Plan would pay an unrelated party in a comparable arm's length transaction.)

(k) All procedures regarding the securities lending activities conform to the applicable provisions of PTEs 81-6 and PTE 82-63 (as amended from time, or alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans).

(l) If Global Capital Markets defaults on the securities loan or enters bankruptcy, the collateral will not be available to Global Capital Markets or its creditors, but will be used to make the Client Plan whole. In this regard,

(1) In the event a Foreign Affiliated Borrower defaults on a loan, CMB will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, CMB will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify properly under this provision). Alternatively, if such identical securities are not available on the market, the GSL will pay the Client Plan cash equal to—

(i) The market value of the borrowed securities as of the date they should have been returned to the Client Plan, plus

(ii) All the accrued financial benefits derived from the beneficial ownership of such loaned securities as of such date, plus;

(iii) Interest from such date to the date of payment. The lending Client Plans will be indemnified in the United States for any loans to the Foreign Affiliated Borrowers.

(2) In the event the U.S. Affiliated Borrower defaults on a loan, CMB will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, either CMB or the U.S. Affiliated Borrower will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify property under this provision).

<sup>3</sup> The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than GSL, beyond that provided pursuant to Exemption (PTE) 81-6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and PTE 82-63 (47 FR 14804, April 6, 1982).

(m) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including all interest, dividends and distributions on the loaned securities during the loan period.

(n) Prior to any Client Plan's approval of the lending of its securities to Global Capital Markets, copies of the notice of proposed exemption and the final exemption, if granted, are provided to the Client Plan.

(o) Each Client Plan receives a monthly report with respect to its securities lending transactions, including but not limited to the information described in Representation 24 of the proposed exemption, so that an independent fiduciary of the Client Plan may monitor the securities lending transactions with Global Capital Markets.

(p) Only Client Plans with total assets having an aggregate market value of at least \$50 million are permitted to lend securities to Global Capital Markets; provided, however, that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3-101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with Global Capital Markets, the foregoing \$50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with Global Capital Markets, the foregoing \$50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of \$50

million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

(In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(q) With respect to each successive two week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans by GSL, in the aggregate, will be to unrelated borrowers.

(r) In addition to the above, all loans involving Foreign Affiliated Borrowers within Global Capital Markets have the following supplemental requirements:

(1) Such Foreign Affiliated Borrower is registered as a bank or broker-dealer with—

(i) The Financial Services Authority or the Securities and Futures Authority, in the case of Global Capital Markets/U.K.;

(ii) The Office of the Superintendent of Financial Institutions (OSFI), or the Ontario Securities Commission and/or the Investment Dealers Association, in the case of Global Capital Markets/Canada;

(iii) The Australian Prudential Regulation Authority (APRA), or the Australian Securities & Investments Commission and/or the Australian Stock Exchange Limited, in the case of Global Capital Markets/Australia; and

(iv) The Ministry of Finance and/or the Tokyo Stock Exchange, in the case of Global Capital Markets/Japan.

(2) Such broker-dealer or bank is in compliance with all applicable provisions of Rule 15a-6 (17 CFR 240.15a-6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or dollar-

denominated securities or letters of credit of U.S. banks or any combination thereof, or other collateral permitted under PTE 81-6 (as amended from time to time, or alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans);

(4) All collateral is held in the United States;

(5) The situs of the Loan Agreement is maintained in the United States;

(6) The lending Client Plans are indemnified by CMB in the United States for any transactions covered by this exemption with the Foreign Affiliated Borrower so that the Client Plans do not have to litigate in a foreign jurisdiction nor sue the Foreign Affiliated Borrower to realize on the indemnification; and

(7) Prior to the transaction, each Foreign Affiliated Borrower enters into a written agreement with GSL on behalf of the Client Plan whereby the Foreign Affiliated Borrower consents to service of process in the United States and to the jurisdiction of the courts of the United States with respect to the transactions described herein.

(s) CMB or Chase Securities Inc. (CSI) maintains, or causes to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of CMB or CSI, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than CMB or CSI shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (s) are unconditionally available at their customary location during normal business hours by:

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

(ii) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Client Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(t)(2) None of the persons described above in paragraphs (t)(1)(ii)–(t)(1)(iv) of this paragraph (t)(1) are authorized to examine the trade secrets of CMB, the U.S. Affiliated Borrowers, or the Foreign Affiliated Borrowers or commercial or financial information which is privileged or confidential.

### III. Definitions

For purposes of this proposed exemption,

(a) The terms “CMB” and “CMC” as referred to herein in Sections I and II, refer to The Chase Manhattan Bank and its parent, The Chase Manhattan Corporation.

(b) The term “affiliate” means any entity now or in the future, directly or indirectly, controlling, controlled by, or under common control with CMC or its successors. (For purposes of this definition, 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 “U.S. Affiliated Borrower” means an affiliate of CMC that is a bank supervised by the United States or a State, or a broker-dealer registered under the 1934 Act.

(d) The term “Foreign Affiliated Borrower” means an affiliate of CMC that is a bank or a broker-dealer which is supervised by—

(1) The Financial Services Authority or the Securities and Futures Authority in the United Kingdom;

(2) OSFI, or the Ontario Securities Commission and/or the Investment Dealers Association in Canada;

(3) APRA, or the Australian Securities & Investments commission and/or the Australian Stock Exchange in Australia; and

(4) The Ministry of Finance and/or the Tokyo Stock Exchange in Japan.

### Summary of Facts and Representations

1. CMB is a wholly owned subsidiary of CMC, a bank holding company organized under the laws of the State of Delaware. As a New York bank and a member of the Federal Reserve System, CMB is a “bank” as defined in both section 202(a)(2) of the Investment Advisers Act of 1940 (the Advisers Act)

and section 581 of the Code.<sup>4</sup> As of March 31, 1998, CMB’s total assets were \$299 billion, of which \$93.5 billion (or 31 percent) represented investment securities and money market assets and \$125 billion (or 42 percent) represented loans.

2. GIS, the investor services line of business of CMC, as operated through CMB and certain of its affiliates, provides custodial services, trustee and related services to its customers. In this regard, GIS had more than \$4.45 trillion of assets under custody and directed trusteeship as of December 31, 1997. As directed trustee or custodian, GIS services \$412 billion of assets for U.S. pension plans, government plans, endowments and foundations. In addition, GIS currently acts as custodian for \$751 billion of mutual fund assets.

3. GSL, which is comprised collectively of similar divisions of CMB or U.S. affiliates of CMC, is the securities lending line of business of CMC. It provides securities lending services to many of CMB’s institutional clients. In this regard, GSL, on behalf of CMB’s securities lending agents, negotiates the terms of loans with borrowers pursuant to a client-approved form of loan agreement, the terms of which may be modified from time to time with the approval of the client, and otherwise acts as a liaison between the lender and the borrower to facilitate the lending transaction. As securities lending agent, GSL has responsibility for monitoring receipt of all required collateral and for marking such collateral to market daily so that adequate levels of collateral are maintained. Further, to the extent agreed upon with the client, GSL is responsible for investing the cash collateral after securities have been loaned and cash collateral received. Finally, GSL monitors and evaluates, on a continuing basis, the performance and creditworthiness of the borrowers of securities.

In addition, GSL may be retained from time to time by other primary securities lending agents to provide securities lending services in a sub-agency capacity with respect to portfolio securities of the clients of such primary lending agents. As securities lending agent, GSL’s role in the lending transaction (i.e., negotiating the terms of loans with borrowers pursuant to a client-approved form of loan agreement, the terms of which may be modified from time to time with the approval of

the client, monitoring receipt of collateral, marking to market required collateral, and investing cash collateral) parallels the role under lending transactions in which GSL acts as primary lending agent on behalf of its clients.<sup>5</sup>

The borrowers with whom GSL usually transacts business as agent for the lender are typically U.S. broker-dealers who use borrowed securities to satisfy their trading requirements or to “re-lend” securities to other broker-dealers and others who need a particular security for various periods of time. All such borrowings by U.S. broker-dealers are required to conform to the Federal Reserve Board’s Regulation T, to the extent applicable.

4. *Global Capital Markets* is one of the principal lines of business of CMC and its affiliates. Global Capital Markets acts through CMB and certain of its affiliates located in the United States as well as through certain Foreign Affiliated Borrowers that are located abroad. In other words, Global Capital Markets conducts its business through these different legal entities depending upon the jurisdiction and the specific product being sold. The entities currently comprising Global Capital Markets are Global Capital Markets/U.S., Global Capital Markets/U.K., Global Capital Markets/Canada, Global Capital Markets/Australia and Global Capital Markets/Japan. A description of each of these entities is presented below.

(a) *Global Capital Markets/U.S.* currently includes CMB and CSI, a U.S. broker-dealer registered with the SEC and located in New York, New York. However, in the future, it may include other broker-dealer entities that Global Capital Markets has established or acquired in the United States and operates as separate companies.

(b) *Global Capital Markets/U.K.* currently consists of Chase Manhattan International Limited (CMIL) and CMB’s London branch (CMB/London). CMIL is a merchant bank based in London, England and it is supervised by the Financial Services Authority. CMIL is also a member of the Securities and Futures Authority and is subject to regulation by this organization with respect to its broker-dealer activities.

CMB/London is an office of CMB which was authorized by the former Bank of England to accept deposits in the United Kingdom. CMB/London is a listed institution under Section 43 of the Financial Services Act, the Money

<sup>4</sup> In relevant part, section 202(a)(2) of the Advisers Act and section 581 of the Code state that a “bank” is a banking institution, bank or trust company incorporated and doing business under the laws of the United States.

<sup>5</sup> As noted previously, the Department is not providing exemptive relief herein for securities lending transactions that are engaged in by primary lending agents, other than GSL and its affiliates beyond that provided by PTEs 81–6 and 82–63.

Market Regulations. In addition, CMB/London is regulated by the Securities and Futures Authority in the conduct of investment business in the United Kingdom. In mid-1997, the Financial Services Authority took over the supervision of banks in the United Kingdom including the Money Market Regulations. CMB/London is also subject to annual examination by bank examiners from the Federal Reserve Bank of New York and the State of New York.

(c) *Global Capital Markets/Canada* currently consists of Chase Securities Canada Inc. (CSCI), a broker-dealer located in Toronto. This entity is subject to regulation by the Ontario Securities Commission and the Investment Dealers Association.<sup>6</sup> In the future, Global Capital Markets Canada may be expanded to include CMB's banking affiliates that are based in Canada. These entities are subject to regulation in Canada by OSFI.

(d) *Global Capital Markets/Australia* currently consists of Chase Securities Australia, Limited (CSA), which is a broker-dealer located in Sydney. CSA holds a dealers license and is regulated by the Australian Securities & Investments Commission. In the future, Global Capital Markets/Australia may be expanded to include CMB's banking affiliates that are based in Australia. These entities will be subject to regulation by APRA.

(e) *Global Capital Markets/Japan* currently consists of Chase Securities Japan Limited (CSJL), a broker-dealer based in Tokyo, Japan. CSJL is subject to regulation by Japan's Ministry of Finance and the Tokyo Stock Exchange. In the future, Global Capital Markets/Japan may be expanded to include CMB's banking affiliates that are based in Japan. These entities will be subject to regulation by the Ministry of Finance.

Global Capital Markets also is a borrower of securities and acts in this capacity after full disclosure and consent with respect to many of its institutional clients that included public pension plans which are not covered by the Act. Global Capital Markets, as borrower, uses borrowed securities to meet its obligations to deliver securities in connection with its short sales, trade fails<sup>7</sup> or other similar situations and to

engage in repurchase transactions with third parties. Acting as principal, Global Capital Markets actively engages in the borrowing and lending of securities with an outstanding loan volume of \$48 billion as of May 31, 1998.

GSL currently does not lend to Global Capital Markets the securities of any of CMB's trust or custody clients covered under the Act. Although as noted above, after full disclosure and consent, GSL does lend securities to Global Capital Markets for certain of its clients which are not covered by the Act. Global Capital Markets and GSL have each developed an accounting system and safeguards to service the needs of their respective client bases. Whenever trades are effected between GSL, acting as securities lending agent, and Global Capital Markets, as borrower, such trades are accomplished in the same manner as between non-affiliated, independent third parties. In this regard, such trades take place pursuant to an established protocol, primarily over the telephone and through computer trading screens used by all participants in the industry in accordance with established protocol.<sup>8</sup>

5. GSL would like to offer employee benefit plans that are covered under the provisions of the Act and for which GSL serves as securities lending agent (i.e., the Client Plans)<sup>9</sup> the opportunity to participate in a securities lending program including Global Capital Markets as a potential borrower. In addition, CMB proposes that GSL and Global Capital Markets receive compensation in connection with such securities lending transactions. In this regard, CMB would like to offer Client Plans the opportunity to add as potential borrowers Global Capital Markets/U.S., Global Capital Markets/U.K., Global Capital Markets/Canada, Global Capital Markets/Australia and Global Capital Markets/Japan.

For each Client Plan, neither CMB, Global Capital Markets, GSL nor any other division or affiliate of CMB will have or exercise discretionary authority or control with respect to the investment of Client Plan assets in the

before the settlement date. Under these circumstances, it is common for the seller of the security to borrow the security being sold in order to avoid a breach of its obligation to deliver securities to the buyer on the settlement date.

<sup>8</sup> In this regard, CMB maintains a set of procedures and policies designed to eliminate any sharing of client portfolio information between the personnel in its commercial banking and trust departments.

<sup>9</sup> For the sake of simplicity, future references to GSL's performance of services as securities lending agent should be deemed to include its activities as securities lending sub-agent and references to Client Plans should be deemed to refer to plans for which GSL is acting as sub-agent.

transaction (other than with respect to the investment of cash collateral after securities have been loaned and collateral received) or render investment advice [within the meaning of 29 CFR 2510.3-12(c)] with respect to those assets, including decisions concerning a Client Plan's acquisition or disposition of securities available for loan. Accordingly, GSL will not be in a position to influence the portfolio holdings of Client Plans in a manner that might increase or decrease the securities available for lending to Global Capital Markets (or any other borrower). Thus, GSL's discretion will be limited to activities such as negotiating the terms of the securities loans with Global Capital Markets and (to the extent granted by the Client Plan fiduciary) investing any cash collateral received in respect of the loans.

Because, under the proposed arrangement, GSL would have discretion to lend Client Plan securities to Global Capital Markets, and because both GSL and parts of Global Capital Markets are divisions of CMB, the lending of securities to Global Capital Markets by a Client Plan for which GSL serves as securities lending agent (or sub-agent) may be outside the scope of relief provided by PTE 81-6 and PTE 82-63.<sup>10</sup> Further, loans to Foreign Affiliated Borrowers within Global Capital Markets would be outside of the relief granted in PTE 81-6.

Therefore, several safeguards, described more fully below, are incorporated in the application in order to ensure the protection of the Client Plan assets involved in the transactions. In addition, the applicants represent that the proposed lending program incorporates the conditions contained in PTE 81-6 and PTE 82-63 and will be in compliance with all applicable securities laws of the United States.

6. Although not registered with the United States SEC as broker-dealers, the Foreign Affiliated Borrowers within Global Capital Markets are subject to the rules, regulations and membership requirements of their respective regulatory entities identified above. For example, CMIL, the broker-dealer entity within Global Capital Markets/U.K. is

<sup>10</sup> PTE 81-6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest.

PTE 82-63 provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities.

<sup>6</sup> CMB represents that Chase Securities Canada Inc., which is currently inactive, is the likely Canadian vehicle to participate in Global Capital Markets if it resumes business in Canada.

<sup>7</sup> According to CMB, a trade fail occurs when the seller of a security is unable to deliver the security to the buyer on the settlement date. Typically, this may occur when a security being sold is on loan or held by another custodian at the time a sale is executed and cannot be delivered to the seller.

subject to the rules, regulations and membership requirements of the Securities and Futures Authority. CSCI, the broker-dealer entity within Global Capital Markets/Canada is governed by the rules, regulations and membership requirements of the Ontario Securities Commission and the Investment Dealers Association. CSA, the broker-dealer entity within Global Capital Markets/Australia is governed by the licensing requirements of the Australian Securities & Investments Commission. CSJL, the broker-dealer entity within Global Capital Markets/Japan is governed by the rules, regulations and membership requirements of the Ministry of Finance and the Tokyo Stock Exchange.<sup>11</sup>

The Foreign Affiliated Borrowers within Global Capital Markets which are broker-dealers are subject to rules relating to minimum capitalization, reporting requirements, periodic examinations, client money and safe custody rules and books and records requirements with respect to client accounts. These rules and regulations set forth by the Foreign Broker-Dealer Regulatory Entities and the SEC share a common objective: The protection of the investor by the regulation of the securities industry. The rules promulgated by the Foreign Broker-Dealer Regulatory Entities require each firm which employs registered representatives or registered traders to have a positive tangible net worth and be able to meet its obligations as they may fall due. In addition, the rules of the Foreign Broker-Dealer Regulatory Entities set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. Further, to demonstrate capital adequacy, the rules of the Foreign Broker-Dealer Regulatory Entities impose reporting/disclosure requirements on broker-dealers with respect to risk management, internal controls, and transaction reporting and recordkeeping requirements to the effect that required records must be produced at the request of the Foreign Broker-Dealer Regulatory Entities. Finally, the rules and regulations of the Foreign Broker-Dealer Regulatory Entities impose potential fines and penalties on broker-dealers which establish a comprehensive disciplinary system.

7. Similarly, Global Capital Markets/U.K. is also subject to regulation in the

United Kingdom by the Financial Services Authority, the successor regulator to the Bank of England. The Financial Services Authority issues licenses to banks in the United Kingdom, issues directives to address violations by or irregularities involving such banks, requires information from a bank or its auditor regarding supervisory matters and revokes bank licenses. The Financial Services Authority has established procedures for monitoring the activities of CMB in the United Kingdom through various statutory and regulatory standards. Among these standards are requirements for adequate internal controls, oversight and administration. On a recurring basis, CMB will be required to provide the Financial Services Authority with information regarding its activities in the United Kingdom, profit and loss, balance sheet, large exposures, foreign exchange exposures and country risk exposure. The regulator responsible for CMB's capital adequacy is the Board of Governors of the Federal Reserve System (the Board).

In addition, banks which may comprise Global Capital Markets/Canada will be subject to the rules of OSFI, an entity that licenses and regulates banks established in Canada as deposit-taking subsidiaries. OSFI licenses banks, issues directives to address violations by or irregularities involving a bank, requires information from the bank or its auditors regarding supervisory matters and revokes bank licenses.

Moreover, OSFI has established procedures for monitoring the activities of Canadian banks through various statutory and regulatory standards. Among those standards are requirements for capital adequacy, adequate internal controls, oversight and administration. On a recurring basis, a bank comprising Global Capital Markets/Canada will be required to provide OSFI with information regarding its activities in Canada, profit and loss, balance sheet, large exposures and foreign exchange exposures.

Legislation is pending in Canada which would permit a foreign bank to establish a branch in Canada. Under the proposed rule, the Minister of Finance would authorize the establishment of the branch and OSFI would license the bank branch to carry on business and may revoke the license. The bank branch would be required to have a minimum amount of unencumbered assets in Canada equal to a percentage of branch liabilities and must satisfy capital adequacy rules. Branches accepting deposits would be subject to

a yearly audit by an external auditor and examination by OSFI.

APRA, which has taken over the bank supervisory duties of the Reserve Bank of Australia, will license and regulate banks comprising Global Capital Markets/Australia. APRA has the power to issue and revoke bank licenses. In addition, APRA may issue directives to address violations by or irregularities involving banks and it requires information from a bank or its auditors regarding supervisory matters. APRA has established procedures for monitoring the activities of banks that will comprise Global Capital Markets/Australia through various statutory and regulatory standards. Among those standards are requirements for capital adequacy, internal controls, oversight and administration. On a recurring basis, banks comprising Global Capital Markets/Australia will be required to provide APRA with information regarding their activities in Australia, profit and loss, balance sheets and large exposures.

APRA's licensing and supervision of Global Capital Markets/Australia foreign bank branches is similar to that of locally-incorporated banks. While APRA monitors credit risk concentrations of foreign bank branches, endowed capital in Australia and capital-based large risk exposure limits are the responsibility of the home supervisor which is the Board.<sup>12</sup>

8. Aside from the protections afforded by the Foreign Broker-Dealer Regulatory Entities and in the case of Global Capital Markets/U.K., the Financial Services Authority, CMB represents that the Foreign Affiliated Borrowers will comply with all applicable provisions of Rule 15a-6 of the 1934 Act. Rule 15a-6 provides foreign broker-dealers with a limited exemption from SEC registration requirements and, as described below, offers additional protections.<sup>13</sup>

<sup>12</sup> For a description of the Ministry of Finance, which regulates both banks and broker-dealers in Japan, see Representations 3 and 4 of the Notice of Proposed Exemption for the Union Bank of Switzerland and UBS Securities, LLC (63 FR 15452, 15455, March 31, 1998).

<sup>13</sup> According to the applicants, section 3(a)(4) of the 1934 Act defines "broker" to mean "any person engaged in the business of effecting transactions in securities for the account of others, but it does not include a bank. Section 3(a)(5) of the 1934 Act provides a similar exclusion for "banks" in the definition of the term "dealer." However, section 3(a)(6) of the 1934 Act defines "bank" to mean a banking institution organized under the laws of the United States or a State of the United States. Further, Rule 15(a)(6)(b)(2) provides that the term "foreign broker or dealer" means "any non-U.S. resident person \* \* \* whose securities activities, if conducted in the United States, would be described by the definition of "broker" or "dealer" in sections 3(a)(4) or 3(a)(5) of the [1934] Act." Therefore, the test of whether an entity is a "foreign broker" or

<sup>11</sup> The Securities and Futures Authority, the Ministry of Finance, the Tokyo Stock Exchange, the Australian Securities & Investments Commission, the Australian Stock Exchange Limited, the Ontario Securities Commission and the Investment Dealers Association are collectively referred to herein as the Foreign Broker-Dealer Regulatory Entities.

Specifically, Rule 15a-6 provides an exemption from U.S. broker-dealer registration for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "major U.S. institutional investor," provided that the foreign broker-dealer, among other things, enters into these transactions through a U.S. registered broker-dealer intermediary. The term "U.S. institutional investor," as defined in Rule 15a-6(b)(7), includes an employee benefit plan within the meaning of the Act if (a) the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or (b) the employee benefit plan has total assets in excess of \$5 million, or (c) the employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors" as defined in Rule 501(a)(1) of Regulation D of the Securities Exchange Act of 1933, as amended. The term "major U.S. institutional investor" is defined in Rule 15a-6(b)(4) as a person that is a U.S. institutional investor that has total assets in excess of \$100 million or an investment adviser registered under Section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of \$100 million.<sup>14</sup>

9. CMB represents that under Rule 15a-6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or a major U.S. institutional investor must, among other things—

- (a) Consent to service of process for any civil action brought by, or proceeding before, the SEC or any self-regulatory organization;
- (b) Provide the SEC (upon request or pursuant to agreements reached between any foreign securities authority, including any foreign government, and the SEC or the U.S. Government) with any information or documents within the possession, custody or control of the foreign broker-dealer, any

"dealer" is based on the nature of such foreign entity's activities and, with certain exceptions, only banks that are regulated by either the United States or a State of the United States are excluded from the definition of the term "broker" or "dealer." Thus, for purposes of this exemption request, the applicants are willing to represent that they will comply with the applicable provisions and relevant SEC interpretations and amendments of Rule 15a-6.

<sup>14</sup> See also SEC No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (hereinafter, the April 9, No-Action Letter), expanding the definition of the term "Major U.S. Institutional Investor."

testimony of any such foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker-dealer<sup>15</sup> through which the transactions with the U.S. institutional and major U.S. institutional investors are effected to (among other things):

- (1) Effect the transactions, other than negotiating their terms;
- (2) Issue all required confirmations and statements;
- (3) As between the foreign broker-dealer and the U.S. registered broker-dealer, extend or arrange for the extension of credit in connection with the transactions;
- (4) Maintain required books and records relating to the transactions, including those required by Rules 17a-3 (Records to be Made by Certain Exchange Members) and 17a-4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;
- (5) Receive, deliver and safeguard funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3-3 of the 1934 Act (Customer Protection—Reserves and Custody of Securities);<sup>16</sup> and
- (6) Participate in certain oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor (not the major U.S. institutional investor), and accompany the foreign associated person on certain visits with both U.S. institutional and major U.S. institutional investors. By virtue of this participation, the U.S. registered broker-dealer would become responsible for the content of all these communications.<sup>17</sup>

10. Where GSL is the direct securities lending agent, a fiduciary of a Client Plan which is independent of CMB, GSL, Global Capital Markets, and any other division or affiliate of CMB will sign a securities lending authorization agreement with GSL (i.e., the Agency Agreement) before that Client Plan participates in a securities lending program. The Agency Agreement will, among other things, describe the operation of the lending program, prescribe the form of securities Loan

<sup>15</sup> The Foreign Affiliated Borrowers, in lieu of relying on a U.S. broker-dealer and to the extent permitted by applicable U.S. securities law, may rely on a U.S. bank or trust company, including GSL, to perform this role.

<sup>16</sup> Under certain circumstances described in the April 9, 1997 No-Action Letter (e.g., clearance and settlement transactions), there may be direct transfers of funds and securities between the Client Plan and a Foreign Affiliated Borrower. CMB notes that in such situations, the U.S. registered broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a-6.

<sup>17</sup> Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. Institutional Investor. See April 9 SEC No-Action Letter.

Agreement to be entered into on behalf of the Client Plan with borrowers, specify the securities which are available to be loaned and prescribe that a borrower (including Global Capital Markets) is required to deliver collateral having a value in excess of the value of the loaned securities (i.e., not less than 102 percent or, in some cases, a higher agreed-upon percentage). In addition, the Agency Agreement will provide that the securities will be marked to market daily and incorporate a list of permissible borrowers, including the specified legal entities within Global Capital Markets.

The Agency Agreement will also set forth the basis and rate for GSL's compensation from a Client Plan for the performance of securities lending services. As set forth more fully below, in the case of loans secured by cash collateral, the basis for GSL's compensation will be an agreed-upon fixed percentage share of return, if any on cash collateral plus an investment management fee for investing the cash collateral. The actual income that will be divided between the Client Plan and GSL will vary each day according to the investment performance from each loan of securities. With respect to loans secured by non-cash collateral, GSL's compensation will be an agreed-upon fixed percentage share of the securities lending fee. GSL's share of the return on cash collateral and the securities lending fees with respect to any Client Plan will be negotiated with that Client Plan and thereafter set forth in the Agency Agreement on the date such agreement is executed.

The Agency Agreement will contain provisions to the effect that if Global Capital Markets is designated by a Client Plan as an approved borrower (a) the Client Plan will acknowledge that certain segments of Global Capital Markets, GSL and GIS are, or may be deemed to be, the same legal entity, and (b) GSL will represent to the Client Plan that each and every loan made to Global Capital Markets on behalf of such Client Plan will be at market rates and will, in no event, be less favorable to the Client Plan than a loan of such securities, made at the same time and under the same circumstances, to an unaffiliated borrower.

A Client Plan may terminate the Agency Agreement at any time, without penalty to such plan, on five business days' notice.<sup>18</sup>

<sup>18</sup> CMB represents that if investments of cash collateral must be terminated or liquidated prematurely due to a Client Plan's termination of the Agency Agreement, penalties might be chargeable by issuers of the investments (or



11. When GSL is lending securities under a sub-agency arrangement, the primary lending agent will enter into a Primary Lending Agreement with a fiduciary of a Client Plan that is independent of such primary lending agent, GSL or Global Capital Markets, before the Client Plan participates in the securities lending program. Under the terms of the sub-agency arrangement, it is the responsibility of the primary lending agent to obtain the approval of the fiduciary of the Client Plan to such Primary Lending Agreement. The primary lending agent will be independent of GSL and Global Capital Markets. As CMB will not be a party to the Primary Lending Agreement, the sub-agency arrangement between GSL and the primary lending agent will obligate the primary lending agent to provide assurance that the primary lending agent was independent of the fiduciary of the Client Plan.

The Primary Lending Agreement will contain substantive provisions akin to those in the Agency Agreement relating to the description of the operation of the lending program, use of an approved form of Loan Agreement, specification of securities which are available to be loaned, prescription that a borrower is required to deliver collateral having a specified value in excess of the value of the loaned securities and a list of approved borrowers (including the various legal entities comprising Global Capital Markets). The Primary Lending Agreement will specifically authorize the primary lending agent to appoint sub-agents, including GSL, to facilitate the performance of securities lending agency functions. Where GSL is appointed to act as a sub-agent, GSL will require that the primary lending agent represent to GSL that the primary lending agent has received prior approval of, or has the authority to make the decision to hire GSL.

The Primary Lending Agreement also will set forth the basis and the method for the primary lending agent's compensation from the Client Plan for the performance of securities lending services and will authorize the primary lending agent to pay a portion of its fee, as the primary lending agent determines in its sole discretion, to any sub-agent(s) it retains pursuant to the authority granted under such agreement. Each Primary Lending Agreement will be subject to a termination provision similar to that contained in the Agency Agreement if the primary lending agent is relying on PTE 81-6.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (i.e., the Sub-Agency Agreement) with GSL under which the primary lending agent will retain and authorize GSL, as sub-agent, to lend securities of the primary lending agent's Client Plans, in a manner consistent with the terms and conditions as specified in the Primary Lending Agreement. The Primary Lending Agreement and the Sub-Agency Agreement will not necessarily have identical terms because the procedures that CMB uses in operating its lending program will be spelled out in its form agreement and these may not be identical to how the primary lending agent operates its own program. For example, CMB may require that its Sub-Agency Agreement contain certain specific provisions which the primary lending agent may not have requested from the Client Plan. One such requirement is that the collateral initially equal 102 percent of the value of the loaned securities, whereas the primary lending agent may have been authorized to make loans of securities at less than 102 percent collateral. CMB may also require recordkeeping in addition to that specified in the Primary Lending Agreement and may require different notice provisions.

Each Sub-Agency Agreement will contain provisions which are in substance comparable to those described above, which would appear in an Agency Agreement in situations where GSL is the primary lending agent. In this regard, GSL will make the same representation in the Sub-Agency Agreement, as described above, with respect to arm's length dealings with Global Capital Markets. The Sub-Agency Agreement will also set forth the basis and rate for GSL's compensation to be paid by the primary lending agent.

12. GSL, on behalf of the Client Plans, will enter into a Loan Agreement with each applicable entity within Global Capital Markets that is in substantially similar form to the one used from time to time with all other borrowers. The Loan Agreement will not be identical to that used with an unrelated party, in part, because special disclosures must be made to the Client Plans regarding the relationship between GSL and certain parts of Global Capital Markets and GIS. However, the economic terms and procedures required by the Loan Agreement will be identical to those negotiated with unrelated borrowers.

The form of the Loan Agreement also will be the industry or the market standard for loans to the borrowers in the country where the borrower is

domiciled. It will describe the lender's rights against the borrower in the country of the borrower's domicile and represent that these rights will be equivalent under U.S. law.<sup>19</sup> The independent fiduciary for each Client Plan will approve the terms of the Loan Agreement through its authorization of the lending program and such fiduciary will be provided a copy of the applicable Loan Agreement from GSL upon request.

The Loan Agreement will specify, among other things, the right of GSL, as lending agent on behalf of the Client Plan, to terminate a loan at any time on not more than five business days' notice and the lending agent's rights in the event of any default by the borrower. In addition, the Loan Agreement will contain a requirement that Global Capital Markets must pay all transfer fees and transfer taxes related to loans of securities. Further, the Loan Agreement will describe the basis for compensation to the Client Plan for lending securities to Global Capital Markets under each category of collateral.

Before entering into the Loan Agreement, Global Capital Markets will furnish GSL the most recently available audited and unaudited statements of the financial condition of the applicable borrower within Global Capital Markets. In turn, such statements will be provided by GSL to the Client Plan before such plan is asked to approve the terms of the Loan Agreement. The Loan Agreement will contain a requirement that Global Capital Markets must provide to the Client Plan prompt notice, at the time of a loan by such Client Plan, of any material adverse changes in the borrower's financial condition since the date of the most recently furnished financial statements.<sup>20</sup> If any such changes have

<sup>19</sup> For example, the form of Loan Agreement between GSL and a Foreign Affiliated Borrower differs from the standard U.S. loan agreement. Under the Global Capital Markets/U.K. Loan Agreement, the Client Plan receives title to (rather than a pledge of or a security interest in) the collateral.

<sup>20</sup> Like broker-dealers registered with the SEC, the broker-dealer entities within Global Capital Markets/U.K., Global Capital Markets/Japan and Global Capital Markets/Australia will be subject to capital adequacy provisions of their respective regulatory entities. It is represented that such rules require the Foreign Affiliated Borrowers to maintain, at all times, financial resources in excess of its financial resources requirement (the Financial Resources Requirement). For this purpose, financial resources include equity capital, approved subordinated debt and retained earnings, less deductions for illiquid assets. The Financial Resources Requirement includes capital requirements for market risk, credit risk, foreign exchange risk and large exposures. The rules of each applicable Foreign Broker-Dealer Regulatory



taken place, GSL will not make any further loans to Global Capital Markets unless an independent fiduciary of that Client Plan has approved the loan in view of the changed financial condition. Conversely, if the borrower within Global Capital Markets fails to provide notice of such a change in its financial condition, such failure will trigger an event of default under the Loan Agreement.

13. As noted above, the agreement by GSL to provide securities lending services, as agent, to a Client Plan will be embodied in the Agency Agreement. The Client Plan and GSL will, prior to the commencement of any lending activity, agree to the arrangement, as described above, under which GSL will be compensated for its services as lending agent. The agreed-upon fee arrangement will be set forth in the Agency Agreement and thereby will be subject to the prior written approval of a fiduciary of the Client Plan which is independent of Global Capital Markets and GSL.

Similarly, with respect to arrangements under which GSL is acting as securities lending sub-agent, the agreed upon fee arrangement of the primary lending agent will be set forth in the Primary Lending Agreement, and such agreement will specifically authorize the primary lending agent to pay a portion of such fee, as the primary lending agent determines in its sole discretion, to any sub-agent, including GSL, which is to provide securities lending services to the Client Plans.<sup>21</sup> A Client Plan will be provided with any reasonably available information which is necessary for the Client Plan's independent fiduciary to make a determination whether to enter into or

continue to participate under the Agency Agreement (or the Primary Lending Agreement) and any other reasonably available information which such fiduciary may reasonably request.

14. Each time a Client Plan lends securities to Global Capital Markets pursuant to the Loan Agreement, GSL will reflect in its records, the material terms of the loan, including the securities to be loaned, the required level of collateral and the fee receivable or rebate payable. When a loan is collateralized with cash, the cash will be invested for the benefit of and at the risk of the Client Plan, and resulting earnings (net of a rebate to the borrower and the fee to the lending agent) comprise the compensation to the Client Plan with respect to such loan. Where collateral consists of obligations other than cash, the borrower will pay a fee (loan premium) directly to the lending Client Plan, which fee will be shared with GSL as agreed under the Agency Agreement. The terms of each loan will be at least as favorable to the Client Plan as those of a comparable arm's length transaction between unrelated parties.

15. The Client Plan will receive the equivalent of all distributions made to holders of the borrowed securities during the term of any loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities or other distributions. The Loan Agreement will provide that the Client Plan may terminate any loan at any time. Upon a termination, Global Capital Markets will be contractually obligated to return the loaned securities to the Client Plan within five business days of notification (or such longer period of time permitted under PTE 81-6, as amended or superseded). If Global Capital Markets fails to return the securities within the designated time, the Client Plan will have the right under the Loan Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the Client Plan associated with the sale and/or purchase.

16. The Client Plan will receive collateral from Global Capital Markets (by physical delivery, book entry in a U.S. securities depository, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to Global Capital Markets. The collateral will consist of cash, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable U.S. bank letters of credit (issued by a person other than CMB or its affiliates) or any combination thereof,

of such other types of collateral which might be permitted by the Department under PTE 81-6, as amended or superseded, relating to securities lending activities. The market value of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The Loan Agreement will give the Client Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral. GSL will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent (or such greater percentage as agreed to by the parties) of that of the loaned securities, GSL will require Global Capital Markets to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent.

17. As securities lending agent for the Client Plans, GSL also provides ancillary services such as investing the cash collateral received with respect to such securities loans. Such investment management services can be provided on a separate account basis or through CMB's commingled funds. For these services, GSL is paid an investment management fee by the Client Plans, either through a direct charge to the Client Plan for individually-managed accounts and some commingled funds, or, in the case of other commingled funds, through an investment management fee charged against the commingled fund's assets. Retaining GSL to provide such investment management services is optional and within the total discretion of the Client Plan. Alternatively, the independent fiduciary of the Client Plan may select its own manager, an unrelated mutual or collective fund, or another vehicle of his choice. The selected investment vehicle must be acceptable to GSL. GSL neither selects the collateral investment vehicle nor has any authority or responsibility to do so. To further protect the Client Plans' assets in these transactions, GSL's procedures for lending securities will comply with the applicable conditions of PTE 81-6 and PTE 82-63 (including with respect to any commingled funds that may participate in the securities lending program).

18. GSL will establish each day separate written schedules of lending fees and rebate rates to assure uniformity of treatment among borrowing brokers and to limit the discretion that GSL would have in negotiating securities loans to Global Capital Markets. Comparable loans to all borrowers of a given security on that day will be made at rates or lending fees

Entity, require that if a firm's financial resources fall below a certain percentage (e.g., 120 percent with respect to the Securities and Futures Authority and 140 percent with respect to the Ministry of Finance and the Tokyo Stock Exchange) of its Financial Resources Requirement, the Foreign Broker-Dealer Regulatory Entity must be notified so that it can examine the terms of the firm's financial position and require an infusion of more capital, if needed. In addition, a breach of the requirement to maintain financial resources in excess of the Financial Resources Requirement may lead to sanctions by the applicable Foreign Broker-Dealer Regulatory Entity. If the breach is not promptly resolved, such Foreign Broker-Dealer Regulatory Entity may restrict the firm's activities.

<sup>21</sup> The foregoing provisions describe arrangements comparable to conditions (c) and (d) of PTE 82-63 which require that the payment of compensation to a "lending fiduciary" is made under a written instrument and is subject to prior written authorization of an independent "authorizing fiduciary." In the event that a commingled investment fund will participate in the securities lending program, the special rule applicable to such funds concerning the authorization of the compensation arrangement set forth in condition (f) of PTE 82-63 will be satisfied.

on the relevant daily schedules or at rates or lending fees which may be more advantageous to the Client Plans. In no case will loans be made to Global Capital Markets at rates or lending fees that are less advantageous to the Client Plans than those on the schedule. The daily schedule of rebate rates will be based on the current value of the clients' reinvestment vehicles and on market conditions, as reflected by demand for securities by borrowers other than Global Capital Markets. As with rebate rates, the daily schedule of lending fees will also be based on market conditions, as reflected by demand for securities by borrowers other than Global Capital Markets, and will generally track the rebate rates with respect to the same security or class of security.

GSL will adopt maximum daily rebate rates for cash collateral payable to Global Capital Markets on behalf of a lending Client Plan. Separate maximum daily rebate rates will be established with respect to securities loans of designated securities classes of securities such as U.S. Government securities, U.S. equities and corporate bonds, international fixed income securities and international equities. With respect to each designated class of securities, the maximum rebate rate will be the lower of (a) a rate based upon an agreed-upon interest rate index (such as one month LIBOR for Fed funds) and (b) the client's initial or expected reinvestment rate for the relevant cash collateral, minus a stated percentage of such reinvestment rate, as pre-approved by the independent fiduciary of the Client Plan. Thus, when cash is used as collateral, at least initially, the daily rebate rate will always be lower than the rate of return to the Client Plans from authorized investments for cash collateral by such stated percentage as shall be pre-approved by the independent fiduciary. GSL will submit the formula for determining the maximum daily rebate rate to an independent fiduciary of the Client Plan for approval before lending any securities to Global Capital Markets on behalf of such plan.

GSL will also adopt minimum daily lending fees for non-cash collateral payable by Global Capital Markets to GSL on behalf of the Client Plan and GSL. Separate minimum daily gross lending fees will be established with respect to loans of designated classes of securities such as U.S. Government securities, U.S. equities and corporate bonds, international fixed income securities and international equities. With respect to each designated class of securities, the minimum lending fee will be stated as a percentage of the

principal value of the loaned securities. GSL will submit such gross minimum daily lending fees to an independent fiduciary of a Client Plan for approval before initially lending any securities to Global Capital Markets on behalf of such Client Plan.

19. For collateral other than cash, the lending fees charged the previous day will be reviewed by GSL for competitiveness. Based on the demand of the marketplace, this daily fee historically has remained relatively constant although it may be subject to fluctuation due to market conditions.<sup>22</sup> Because during any successive two week period, on average, at least 50 percent or more of securities loans negotiated on behalf of Client Plans, in the aggregate, will be to unrelated brokers or dealers, the competitiveness of GSL's fee schedule will be continuously tested in the marketplace.<sup>23</sup> Accordingly, loans to Global Capital Markets should result in competitive rate income to the lending Client Plan.

20. The method of determining the daily securities lending rates (fees and rebates), the minimum lending fees payable by Global Capital Markets and the maximum rebate payable to Global Capital Markets will be specified in an exhibit attached to the Agency Agreement to be executed between the independent fiduciary of the Client Plan and GSL in cases where GSL is the direct securities lending agent.

21. Should GSL recognize prior to the end of a business day that, with respect to new and/or existing loans, it must change the rebate rate or lending fee formula in the best interest of the Client Plans, it may do so with respect to Global Capital Markets.<sup>24</sup> If GSL changes the lending fee formula or the rebate rate formula on any outstanding loan to Global Capital Markets (except for any change resulting from a change in the value of any third party independent index with respect to which the fee or rebate is calculated, or if the formula will always be beneficial to the Client Plan), GSL, by the close of business on the date of such adjustment, will provide the independent fiduciary of the Client Plan with notice that it has

changed such fee formula or rebate rate formula with respect to such loan and that the Client Plan may terminate such loan at any time. Allowing GSL to request a modification to the lending fee or the rebate rate formula with respect to an existing loan to Global Capital Markets when market conditions change will be beneficial to the Client Plans. In the absence of the ability to make such modification, Global Capital Markets may be forced by market conditions to terminate the loan and seek better terms elsewhere. Such termination may then force the Client Plan to seek new borrowers for its securities who, in light of the changed market conditions, are likely to negotiate for the lending fee or rebate rate which Global Capital Markets would have received or paid had GSL had the written authority from the independent fiduciary of the Client Plan to decrease the lending fee or increase the rebate rate.

22. Although GSL will normally lend securities to requesting borrowers and include for these purposes Global Capital Markets on a "first come, first served" basis as a means of assuring uniformity of treatment among borrowers, the applicants recognize that, in some cases, it may not be possible to adhere to a "first come, first served" allocation. This can occur, for instance where (a) the credit limit established for such borrower by GSL and/or the Client Plan has already been satisfied; (b) the "first in line" borrower is not approved as a borrower by the particular Client Plan whose securities are sought to be borrowed; and (c) the "first in line" borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different GSL representatives at or about the same time with respect to the same security. In situations (a) and (b), loans would normally be effected with the "second in line." In situation (c), securities would be allocated equitably among all eligible borrowers.

23. The Client Plans will be indemnified by CMB or CSI in the event Global Capital Markets fails to return borrowed securities. In the event a Foreign Affiliated Borrower within Global Capital Markets defaults on a loan, CMB will liquidate the loan collateral to purchase identical securities for the Client Plan. In the event the collateral is insufficient to accomplish such purchase, CMB will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify properly under this

<sup>22</sup> With respect to domestic securities and international debt securities the daily lending fee is currently at least 1/20th of one percent of the principal value of the loaned securities. With respect to international equity securities, the daily fee is currently 1/5th of one percent of the principal value of the loaned securities.

<sup>23</sup> This 50 percent requirement will apply regardless of the type of collateral used to secure the loan.

<sup>24</sup> GSL will not initiate any modification in such rates or fees which would be detrimental to Client Plans.

provision). Alternatively, if such identical securities are not available on the market, CMB will pay the Client Plan cash equal to the market value of the borrowed securities as of the date they would have been returned to the Client Plan plus all the accrued financial benefits derived from the beneficial ownership of such loaned securities. The lending Client Plans will be indemnified by CMB in the United States for any loans to the Foreign Affiliated Borrower.

When the U.S. Affiliated Borrower is CSI, a U.S. registered broker-dealer, either CMB or CSI will indemnify the Client Plan against losses. CMB will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, either CMB or CSI will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify properly under this provision.)

24. Each Client Plan participating in the lending program will be sent a monthly transaction report which will provide a list of all security loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or loan premium (as the case may be) at which the security is loaned, and the number of days the security has been on loan. In order to provide the means for monitoring lending activity, rates on loans to Global Capital Markets compared with loans to other brokers and the level of collateral on the loans, the monthly report will show, on a daily basis, the market value of all outstanding securities loans to Global Capital Markets and to other borrowers as compared to the total collateral held for both categories of loans. In addition, the monthly report will state the daily fees where collateral other than cash is utilized and will specify the details used to establish the daily rebate payable to all brokers where cash is used as collateral. Further, the monthly report will state, on a daily basis, the rates at which securities are loaned to Global Capital Markets as compared with those at which securities are loaned to other brokers. This statement will give the Client Plan's independent fiduciary information which can be compared to that contained in the daily rebate schedule.

25. In all cases, GSL will maintain records sufficient to assure compliance with its representation that all loans to Global Capital Markets are effectively at arm's length terms. These records will be provided to the appropriate independent fiduciary of a Client Plan in the manner and format agreed to with such fiduciary and without charge to that Client Plan. With respect to the proposed transactions, GSL will make and retain for six months, tape recordings evidencing all securities loan transactions with Global Capital Markets. Also, if requested by the lending customer, GSL will provide daily confirmations of securities lending transactions. Further, if requested by the customer, GSL will provide weekly or daily reports setting forth for each transaction made or outstanding during the relevant reporting period the following information: The loaned securities, the related collateral, the rebates and loan premiums and such other information in such format as is agreed to by the parties. Finally, prior to a Client Plan's approval of a securities lending program, GSL will provide a Client Plan fiduciary with a copy of the proposed exemption and the notice granting the exemption.

26. Only Client Plans with total assets having an aggregate market value of at least \$50 million are permitted to lend securities to Global Capital Markets. In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (i.e., the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under the Plan Asset Regulation), which entity is engaged in securities lending arrangements with Global Capital Markets, the foregoing \$50 million requirement will be satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million. However, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary must have total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (i.e., the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other

form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with Global Capital Markets, the foregoing \$50 million requirement will be satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Client Plan or an employee organization whose members are covered by such Client Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity (a) must have full investment responsibility with respect to plan assets invested therein<sup>25</sup>; and (b) must have total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

In addition, none of the entities described above must be formed for the sole purpose of making loans of securities.

27. With respect to loans involving the Foreign Affiliated Borrowers within Global Capital Markets, the following additional safeguards will be applicable: (a) All collateral will be maintained in U.S. dollars, U.S. dollar-denominated securities or letters of credit of U.S. banks; (b) all collateral will be held in the United States;<sup>26</sup> (c) the situs of the Loan Agreement will be maintained in the United States; and (d) CMB will indemnify the lending Client Plan in the United States for any loans to a Foreign Affiliated Borrower so that the Client Plan will not have to litigate in a foreign jurisdiction nor sue the Foreign Affiliated Borrower to realize on the indemnification; (e) prior to the transaction, the Foreign Affiliated Borrower will enter into a written agreement with GSL on behalf of the Client Plan whereby the Foreign Affiliated Borrower consents to the

<sup>25</sup> For purposes of this proposed exemption, the term "full investment responsibility" means that the fiduciary responsible for making investment decisions on behalf of the group trust or other form of entity, has and exercises discretionary management authority over all of the assets of the group trust or other plan assets entity.

<sup>26</sup> Under United Kingdom law, the securities lending agreement between GSL and CMIL provides, among other things, that all title and interest in the loaned securities passes to the borrower and all rights, title and interest in the collateral passes to the lending Client Plan.

jurisdiction of the courts of the United States with respect to the transactions described herein; and (f) each Foreign Affiliated Borrower will be (1)(i) a deposit taking or merchant banking institution supervised by the banking authorities of the jurisdiction in which it is located; or (ii) a broker-dealer supervised by a regulatory authority in the country in which it is located; and (2) in compliance with all applicable provisions of Rule 15a-6 under the 1934 Act.

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

(a) The form of the Loan Agreement pursuant to which any securities loan is effected will be approved by a fiduciary of the Client Plan which is independent of GSL before a Client Plan lends any securities to Global Capital Markets.

(b) The lending arrangements (1) will permit the Client Plans to lend to Global Capital Markets and (2) will enable the Client Plans to diversify the list of eligible borrowers and earn additional income from the loaned securities on a secured basis, while continuing to receive any dividends, interest payments and other distributions due on those securities.

(c) The Client Plans will receive sufficient information concerning the financial condition of the borrowers within Global Capital Markets before the Client Plan lends any securities to any of those entities.

(d) The collateral on each loan to Global Capital Markets initially will be at least 102 percent of the market value of the loaned securities, which is in excess of the 100 percent collateral required under PTE 81-6, and will be monitored daily by GSL.

(e) The Client Plans will receive a monthly report which provides an independent fiduciary of the Client Plans with information on loan activity, fees, loan return/yield and the rates on loans to Global Capital Markets as compared with loans to other brokers and the level of collateral on the loans.

(f) Neither GSL, GIS, Global Capital Markets nor any other division or affiliate of CMC will have discretionary authority or control over a Client Plan's assets, including the acquisition or disposition of securities available for loan.

(g) The terms of each loan will be at least as favorable to a Client Plan as those of a comparable arm's length transaction with an unrelated party.

(h) The fee payable by Global Capital Markets to the Client Plan for the use of the securities (or the loan rebate fee payable by the Client Plan to Global

Capital Markets if the loan is collateralized with cash) will be set forth in the applicable report provided to the independent fiduciary of the Client Plan.

(i) The Client Plan will be able to terminate the lending arrangement without penalty within five business days after providing written notice of termination to GSL.

(j) All of the procedures under the transactions will conform to the applicable provisions of PTE 81-6 and PTE 82-63 and also will be in compliance with the applicable banking or securities laws of the United States, the United Kingdom, Canada, Australia and Japan.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

**Henry H. Borland III and Pat Borland; Located in Downers Grove, IL**

[Exemption Application No. D-10707]

*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 32826, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of certain improved real property (the Property) by the H.H. Borland, Inc. Profit Sharing Plan (the Plan) to the trustees of the Plan, Henry H. Borland III (Mr. Borland) and Pat Borland (collectively, the Trustees), disqualified persons with respect to the Plan,<sup>27</sup> provided that the following conditions are met:

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

(b) The Trustees will purchase the Property from the Plan for the greater of \$200,000 or the fair market value of the Property as of the date of the transaction as determined by a qualified, independent appraiser;

(c) The Sale will be a one-time transaction for cash; and

(d) The Plan will pay no fees or commissions in connection with the Sale.

*Summary of Facts and Representations*

1. H.H. Borland, Inc. (H.H. Borland) is an Illinois corporation engaged in the purchase and sale of real estate. H.H. Borland is the sponsor of the Plan which is a defined contribution profit sharing plan located in Downers Grove, Illinois. The Plan had one participant, Mr. Borland, and approximately \$1,100,000 in total assets as of November 21, 1998. The trustees of the Plan are Mr. Borland and Pat Borland (collectively, the Trustees). Among the Plan's assets is the Property which is a single family residence located at 1213 Red Silver Court, Downers Grove, Illinois. The Property was acquired by the Plan from the estate of Wilma L. Winterfield, a party unrelated to the Plan, for \$160,875 on January 30, 1991.

2. The applicants represent that, since its acquisition, the Property has generated rental income (the Rental Income) for the Plan. In this regard, the applicants represent that the Plan rented the Property to unrelated third parties from January 30, 1991 until November 30, 1998 and received rental income (the Rental Income) totaling \$132,404.25. The applicants represent that from November 30, 1998 to present, the Plan has not rented the Property and the Property has not generated any income for the Plan. The applicants additionally represent that at no time have the Trustees occupied or otherwise benefitted from the Plan's ownership of the Property.

3. The applicants represent that the Plan has incurred certain expenses (the Expenses) as a result of the Plan's ownership of the Property. In this regard, the applicants represent that the Plan has incurred a total of \$47,648.72 in real estate taxes and insurance costs associated with the Plan's ownership of the Property. The applicants represent that, after deducting the Expenses from the Rental Income, the Plan has received an annual yield of 6.6% relative to the Property's acquisition price due to the Plan's ownership of the Property.

3. The Property was appraised on January 25, 1999 by David M. Benacke (Mr. Benacke) for Appraisal Resources, Ltd., an appraisal company independent of the Plan and the Trustees. Mr. Benacke, an Illinois certified real estate appraiser, used the sales comparison approach to evaluate the fair market value of the Property. Mr. Benacke represents that he compared the Property to three similar properties which were the subject of recent sales. Based on these comparisons, Mr.

<sup>27</sup> Since Mr. Borland is the sole owner of the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR § 2510.3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Benacke represents that the fair market value of the Property was \$200,000, as of January 25, 1999.

4. The applicants propose a sale of the Property (i.e., the Sale) by the Plan to the Trustees for \$200,000, the Property's current fair market value. The applicants represent that the Sale is administratively feasible in that it will be a one-time transaction for cash in which the Plan will pay no fees or commissions. The applicants also represent that the Sale is in the best interest of the Plan since the Property is currently vacant and any future rental of the Property to unrelated parties will require substantial Plan expenditures for renovations. In addition, the applicants represent that the Sale is protective of the Plan since the Plan will receive cash for the Property which the Plan can invest in assets appropriate for the Plan's sole participant.

5. In summary, the applicant represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because:

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

(b) The Trustees will purchase the Property from the Plan for the greater of \$200,000 or the fair market value of the Property as of the date of the transaction as determined by a qualified, independent appraiser;

(c) The Sale will be a one-time transaction for cash; and

(d) The Plan will pay no fees or commissions in connection with the Sale.

**FOR FURTHER INFORMATION CONTACT:** Christopher J. Motta of the Department, telephone (202) 219-8883 (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 of 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 accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 22nd day of June 1999.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration,  
Department of Labor.*

[FR Doc. 99-16215 Filed 6-24-99; 8:45 am]

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## **DEPARTMENT OF LABOR**

### **Pension and Welfare Benefits Administration**

[Prohibited Transaction Exemption 99-23; Exemption Application No. D-10021, et al.]

### **Grant of Individual Exemptions; First Security Corporation (FSC), et al.**

**AGENCY:** Pension and Welfare Benefits 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 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type 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 exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### **First Security Corporation (FSC), Located in Salt Lake City, UT**

[Prohibited Transaction Exemption 99-23; Exemption Application No. D-10021]

### **Exemption**

#### **Section I. Exemption for the IN-KIND Transfer of Assets**

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of