Strategic Plan initiatives; vertical tandem lifts in the marine cargo handling environment; ship scrapping; training partnerships; an update on ergonomics projects; a general OSHA standards update; and an OSHA compliance update. MACOSH subgroups will also present overviews of their activities, products, and future goals/initiatives.

Public Participation

Written data, views, or comments for consideration by MACOSH on the various agenda items listed above may be submitted, preferably with copies, to Chap Pierce at the address listed above. Submissions received by November 5, 1999 will be provided to the members of the committee and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted if time permits. Anyone wishing to make an oral presentation to the Committee on any of the agenda items noted above should notify Chap Pierce by November 10, 1999. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, DC this 18th day of October 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–27647 Filed 10–21–99; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10706 et al.]

Proposed Exemptions; Allfirst Bank, et al.

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, N.W., Washington, D.C. 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, N.W., Washington, D.C. 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.

Allfirst Bank, Located in Baltimore, Maryland

[Application No. D–10706]

Proposed Exemption

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

Section I—Proposed Exemption for Receipt of Fees

If the exemption is granted, the restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply as of November 13, 1998, to the proposed receipt of fees by Allfirst from the ARK Funds, an open-end investment company registered under the Investment Company Act of 1940 (the 1940 Act), for acting as an investment adviser for such Funds, as well as for providing other services to the ARK Funds which are ''Secondary Services'' as defined in Section III(i), in connection with the investment by plans for which Allfirst serves as a fiduciary (the Client Plans) in shares of the ARK Funds, provided that the following conditions and the general conditions of Section II are met:

(a) Each Client Plan satisfies either (but not both) of the following:

(1) The Client Plan receives a cash credit of such Plan's proportionate share of all fees charged to the Funds by Allfirst for investment advisory services, including any investment advisory fees paid by Allfirst to third party sub-advisers, no later than the same day as the receipt of such fees by Allfirst. The crediting of all such fees to the Client Plans by Allfirst is audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Plan.

(2) The Client Plan does not pay any Plan-level investment management fees, investment advisory fees, or similar fees to Allfirst with respect to any of the assets of such Plan which are invested in shares of any of the ARK Funds. This

condition does not preclude the payment of investment advisory or similar fees by the ARK Funds to Allfirst under the terms of an investment management agreement adopted in accordance with section 15 of the 1940 Act, nor does it preclude the payment of fees for Secondary Services to Allfirst pursuant to a duly adopted agreement between Allfirst and the ARK Funds.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share at the time of the transaction, as defined in Section III(f), and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Allfirst, including any officer or director of Allfirst, does not purchase or sell shares of the ARK Funds from or to any Client Plan.

(d) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the ARK Funds, and no redemption fees are paid in connection with the sale of shares by the Client Plans to the ARK Funds.

(e) For each Client Plan, the combined total of all fees received by Allfirst for the provision of services to a Client Plan, and in connection with the provision of services to the ARK Funds in which the Client Plan may invest, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(f) Allfirst does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(g) The Client Plans are not employee benefit plans sponsored or maintained by Allfirst.

(h) The Second Fiduciary receives, in advance of any initial investment by the Client Plan in a Fund, full and detailed written disclosure of information concerning the ARK Funds, including but not limited to:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any secondary services as defined in Section III(i), and all other fees to be charged to or paid by the Client Plan and by the ARK Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why Allfirst may consider such investment to be appropriate for the Client Plan;

(4) A statement describing whether there are any limitations applicable to Allfirst with respect to which assets of a Client Plan may be invested in the ARK Funds, and if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, if granted, once such documents are published in the **Federal Register**.

(i) After consideration of the information described above in paragraph (h), the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in each particular Fund and the fees to be paid by such ARK Funds to Allfirst.

(j) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to Allfirst are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by Allfirst of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) above (the Termination Form) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually—provided that the Termination Form need not be supplied to the Second Fiduciary pursuant to this paragraph sooner than six months after such Termination Form is supplied pursuant to paragraph (l) below, except to the extent required by such paragraph in order to disclose an additional service or fee increase. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by Allfirst of written notice from the Second Fiduciary; and

(2) Failure to return the Termination Form will result in continued authorization of Allfirst to engage in the transactions described in paragraph (i) on behalf of the Client Plan.

(k) For each Client Plan using the fee structure described in paragraph (a)(1) above with respect to investments in a particular Fund, the Second Fiduciary of the Client Plan receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by Allfirst to the ARK Funds for investment advisory services.

(l)(1) For each Client Plan using the fee structure described in paragraph (a)(2) above with respect to investments in a particular Fund, an increase in the rate of fees paid by the Fund to Allfirst regarding any investment management services, investment advisory services, or similar services that Allfirst provides to the Fund over an existing rate for such services that had been authorized by a Second Fiduciary in accordance with paragraph (i) above; or

(2) For any Client Plan under this proposed exemption, an addition of a Secondary Service (as defined in Section III(i) below) provided by Allfirst to the Fund for which a fee is charged, or an increase in the rate of any fee paid by the ARK Funds to Allfirst for any Secondary Service that results either from an increase in the rate of such fee or from the decrease in the number of kind of services performed by Allfirst for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Client Plan in accordance with paragraph (i) above;

Allfirst will, at least 30 days in advance of the implementation of such additional service for which a fee is charged or fee increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and that explains the nature and amount of the additional service for which a fee is charged or of the increase in fees) to the Second Fiduciary of the Client Plan. Such notice shall be accompanied by a Termination Form with instructions as described in paragraph (i) above.

(m) On an annual basis, Allfirst provides the Second Fiduciary of a Client Plan investing in the ARK Funds with:

(1) A copy of the current prospectus for the ARK Funds in which the Client Plan invests and, upon such fiduciary's request, a copy of the Statement of Additional Information for such ARK Funds which contains a description of all fees paid by the ARK Funds to Allfirst;

(2) A copy of the annual financial disclosure report prepared by Allfirst which includes information about the Fund portfolios as well as audit findings of an independent auditor within 60 days of the preparation of the report; and

(3) Oral or written responses to inquiries of the Second Fiduciary as they arise.

(n) With respect to each of the ARK Funds in which a Client Plan invests, in the event such Fund places brokerage transactions with Allfirst, Allfirst will provide the Second Fiduciary of such Plan at least annually with a statement specifying:

(1) The total, expressed in dollars, of brokerage commissions of each Fund that are paid to Allfirst by such Fund;

(2) The total, expressed in dollars, of brokerage commissions of each Fund

that are paid by such Fund to brokerage firms unrelated to Allfirst;

(3) The average brokerage commissions per share, expressed as cents per share, paid to Allfirst by each Fund; and

(4) The average brokerage commissions per share, expressed as cents per share, paid by each Fund to brokerage firms unrelated to Allfirst.

(o) All dealings between the Client Plans and the ARK Funds are on a basis no less favorable to the Plans than dealings with other shareholders of the ARK Funds.

Section II—General Conditions

(a) Allfirst maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) to determine whether the conditions of this 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 Allfirst, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Allfirst 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 by paragraph (b) below.

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

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

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the ARK Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1)(ii) and (iii) shall be authorized to examine trade secrets of Allfirst, or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this proposed exemption:

(a) The term ''Allfirst'' means Allfirst Bank, and any affiliate thereof as defined below in paragraph (c)(1) of this section, effective as of June 28, 1999, the date the First National Bank of Maryland (First Maryland) changed its name to Allfirst Bank.

(b) The term ''First Maryland'' refers to First National Bank of Maryland, and any affiliate thereof as defined below in paragraph (c)(1) of this section, prior to June 28, 1999.

(c) An ''affiliate'' of a person includes:

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

(2) Any officer, director, employee, relative, or partner in any such person; and

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

(d) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term ''Fund'' or ''ARK Funds'' shall include the ARK Funds, Inc. or any other diversified open-end investment company or companies registered under the 1940 Act for which Allfirst serves as an investment adviser and may also serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, Fund accountant, or provide some other ''Secondary Service'' (as defined below in paragraph (i) of this Section) which has been approved by such ARK Funds.

(f) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and Statement of Additional Information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(g) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(h) The term ''Second Fiduciary'' means a fiduciary of a Client Plan who is independent of and unrelated to Allfirst. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Allfirst if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with Allfirst;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner or employee of Allfirst (or is a relative of such persons);

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner or employee of Allfirst (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the ARK Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Section I above, then paragraph (h)(2) of this section shall not apply.

(i) The term ''Secondary Service'' means a service other than an investment management, investment advisory, or similar service, which is provided by Allfirst to the ARK Funds, including but not limited to custodial, accounting, brokerage, administrative, or any other service.

(j) The term ''Termination Form'' means the form supplied to the Second Fiduciary which expressly provides an election to the Second Fiduciary to terminate on behalf of a Client Plan the authorization described in paragraph (i) of Section I. Such Termination Form may be used at will by the Second Fiduciary to terminate an authorization without penalty to the Client Plan and to notify Allfirst in writing to effect a termination by selling the shares of the ARK Funds held by the Client Plan requesting such termination within one business day following receipt by Allfirst of the form; provided that if, due to circumstances beyond the control of Allfirst, the sale cannot be executed within one business day, Allfirst shall have one additional business day to complete such sale.

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of November 13, 1998, the date that Dauphin Deposit Bank and Trust Company ceased to exist as a separate bank as a result of its acquisition by First Maryland.

Summary of Facts and Representations

1. Allfirst is currently a subsidiary of First Maryland Bancorp, a Maryland corporation and bank holding company registered under the Bank Holding Company Act of 1956. Prior to June 28, 1999, Allfirst was doing business under the name ''First National Bank of Maryland'' (*i.e.*, First Maryland). The

applicant represents that First Maryland changed its name to ''Allfirst Bank'' effective June 28, 1999. The applicant states that as of September 21, 1999, there have been no further name changes. Thus, all representations made by Allfirst are meant to apply to First Maryland for the period from November 13, 1998, the effective date of this proposed exemption, until June 28, 1999.

First Maryland Bancorp serves, through its banking, trust company and investment management affiliates, as trustee, investment manager and/or custodian to employee benefit plans. As of December 31, 1997, these affiliates collectively provided trust services to approximately 800 employee benefit trusts, and had total assets under management of approximately $16 billion. As of that date, First Maryland Bancorp had consolidated total assets of $17.8 billion.

Prior to November 13, 1998, First Maryland Bancorp wholly-owned the following banks and trust companies: (i) The York Bank & Trust Company (a Pennsylvania-chartered bank, referred to hereafter as York Bank); (ii) First Omni Bank, N.A. (a national banking association); (iii) First National Bank of Maryland (a national banking association); (iv) Dauphin Deposit Bank & Trust Company (a Pennsylvania-chartered bank, acquired July 8, 1997, referred to hereafter as ''Dauphin''); and (v) FMB Trust Company, N.A. (a non-depository trust company wholly-owned by First Maryland).

Effective November 13, 1998, Dauphin and York Bank were merged into First Maryland. Following this merger, the trust and investment advisory business formerly conducted by Dauphin was conducted by First Maryland and its trust and investment advisory subsidiaries.

First Maryland (*i.e.*, Allfirst, as of June 28, 1999) also owns First Maryland Brokerage Corp., a brokerage firm, and Allied Investment Advisors, Inc. (Allied), a registered investment adviser that serves as investment adviser to the ARK Funds. As of June 30, 1998, Allied had assets under management of approximately $11.1 billion.

First Maryland Bancorp is controlled by Allied Irish Banks, p.l.c., which owns 100% of First Maryland Bancorp's outstanding common stock.

2. In 1996, Dauphin obtained a prohibited transaction exemption from the Department (see Prohibited Transaction Exemption (PTE) 96–45 (61 FR 28244, June 4, 1996). Section I of PTE 96–45 permits the in-kind transfer of assets of plans for which Dauphin acted as a fiduciary (the Client Plans), other than plans established and maintained by Dauphin (Bank Plans), that were held in certain collective investment funds (CIFs) maintained by Dauphin, in exchange for shares of the Marketvest Funds, open-end investment companies registered under the 1940 Act, in situations where Dauphin acted as investment advisor for such Funds, as well as for providing certain ''secondary services'' to such Funds (as defined therein), in connection with the termination of such CIFs. Section II of PTE 96–45 permits the receipt of fees by Dauphin from the Marketvest Funds, or any other diversified open-end investment company registered under the 1940 Act for which Dauphin serves as an investment adviser, for acting as an investment adviser for such Funds as well as for providing other services to the Funds which are ''secondary services'' (as defined therein), in connection with the investment by the Client Plans in shares of such Funds.

In July 1997, Dauphin became a subsidiary of First Maryland, and in March 1998, the Marketvest Funds were merged into First Maryland's family of mutual funds. Dauphin ceased to exist as a separate bank as of November 13, 1998. Therefore, First Maryland requested a new exemption to enable it to obtain exemptive relief similar to the relief granted by the Department to Dauphin in Section II of PTE 96–45 for the receipt of fees by Dauphin from the Marketvest Funds. With respect to the relief provided to Dauphin in Section I of PTE 96–45, it should be noted that the Department granted a class exemption in August 1997 for collective investment fund conversion transactions (see PTE 97–41, 62 FR 42830, August 8, 1997). Thus, the relief provided to Dauphin in PTE 96–45, Section I, for in-kind transfers of CIF assets to Funds, would be available under PTE 97–41 to First Maryland as of November 13, 1998, and is available to Allfirst as of June 28, 1999, if the conditions of that class exemption are met.

However, First Maryland (*i.e.*, Allfirst), like Dauphin and as the acquirer of Dauphin's business, serves a number of employee benefit plan clients in the capacity of trustee, investment manager, and/or custodian. The assets of some of these plans are investment in the ARK Funds, a series of mutual fund portfolios advised by an affiliate of Allfirst, as discussed further below. As a result, this proposed exemption concerns the relief needed by First Maryland, as of November 13, 1998, and Allfirst, as of June 28, 1999, for the receipt of fees by such entities from the ARK Funds for investment advisory and other services to such Funds.

3. As noted above, Allfirst acts as a trustee, directed trustee, investment manager, and/or custodian for a number of plans (referred to herein as ''the Client Plans''). The Client Plans may include various pension, profit sharing, and stock bonus plans, as well as voluntary employees' beneficiary associations, supplemental unemployment benefit plans, simplified employee benefit plans, retirement plans for self-employed individuals (*i.e.* Keogh Plans) and individual retirement accounts (IRAs). Some of the Client Plans may be participant-directed individual account plans.

As custodian of a Client Plan, Allfirst is responsible for maintaining custody over all or a portion of the Client Plan's assets, for providing trust accounting and valuation services, for asset and transaction reporting, and for execution and settlement of directed transactions. Where Allfirst serves as trustee or directed trustee, it is responsible for ownership of the assets of the Client Plan, and may provide additional trust services such as benefit payments, loan processing, and participant accounting. Where Allfirst is also acting as the investment manager, Allfirst has investment discretion over the Client Plan's assets and is responsible for implementing the Plan's funding policies and investment objectives, executing transactions, and periodic performance measurements.

The Client Plans pay fees in accordance with fee schedules negotiated with Allfirst. Fees vary from fixed amounts to asset-based amounts, depending on the level of services provided, and may include further charges for additional trust services such as processing benefit payments.

The specific Client Plans of Allfirst to which this proposed exemption, if granted, would apply are those whose assets were invested in the ARK Funds as of November 13, 1998, those whose assets have been invested in such Funds since that date, and those whose assets will be invested in such Funds in the future. However, Allfirst does not seek relief for investments in the Funds by any employee benefit plans established and maintained by Allfirst for its own employees (Allfirst Plans).[1]

[1] Allfirst represents that it will comply with the requirements of Prohibited Transaction Exemption (PTE) 77–3, 42 FR 18734 (April 8, 1977), with respect to any investments in the Funds made by the Allfirst Plans. PTE 77–3 permits the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or

4. The ARK Funds are registered as an open-end investment company with the SEC under the 1940 Act. The ARK Funds consist of a series of investment portfolios (each a ''Fund'') representing distinct investment vehicles. Each ARK Fund will have its own prospectus or a joint prospectus with one or more other ARK Fund(s). The shares of each ARK Fund will represent a proportionate interest in the assets of that Fund.

The overall management of the ARK Funds, including the negotiation of investment advisory contracts, will rest with each Fund's Board of Directors, more than a majority of whose members will be independent of Allfirst. The Board of Directors will be elected by the shareholders of the Funds. Allied, which is a wholly-owned subsidiary of Allfirst, serves as the investment adviser to each ARK Fund and will receive investment advisory fees from each Fund that will vary between 0.20% and 1.00% of the Fund's average net assets on an annual basis, depending on the particular Fund. However, these fees will be subject to voluntary waivers by Allfirst and initially will be no more than 0.87% of the Fund's average net assets. FMB Trust Company, another First Maryland subsidiary, serves as custodian of the ARK Funds, for which it receives a custodial services fee and also provides sub-administration services for a fee.

The other service-providers to the Funds will be independent of and unaffiliated with Allfirst. Such service-providers currently will include: (i) The Fund Administrator, SEI Investments Mutual Fund Services; (ii) the Fund Distributor, SEI Investments Distribution Co.; and (iii) the Transfer Agent, SEI Investments Management Corporation. The ARK Funds also may pay shareholder servicing fees of up to 0.15% on certain classes of shares.

The Funds will be able to charge a distribution fee of 0.25% of a Fund's average net assets, pursuant to Rule 12b–1 under the 1940 Act, for certain classes of shares. However, Allfirst represents that such 12b–1 fees will not be charged to any class of shares invested in by the Client Plans. Therefore, Allfirst will not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions covered by this proposed exemption.

principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met. The Department is expressing no opinion in this proposed exemption regarding whether any of the transactions with the Funds by the Allfirst Plans would be covered by PTE 77–3.

5. Allfirst is making the ARK Funds available to the Client Plans because it believes that there are material advantages to the Client Plans from the use of the ARK Funds, and Allfirst's customers are interested in having mutual funds available as investment vehicles for their employee benefit plan trust accounts. The ARK Funds are valued on a daily basis, which permits: (i) Immediate investment of Plan contributions in varied types of investments; (ii) greater flexibility in transferring assets from one type of investment to another; and (iii) daily redemption of investments for purposes of making distributions. In addition, information concerning the investment performance of the ARK Funds is available each day in newspapers of general circulation, which allow Client Plan sponsors and participants to monitor the performance of their investments on a daily basis. Furthermore, shares of the ARK Funds can be given to Client Plan participants in plan distributions, thus avoiding the expense and delay of liquidating plan investments and facilitating roll-overs into IRAs. At the present time, Allfirst expects that the Client Plans will be able to continue making direct purchases of ARK Fund shares for cash on an ongoing basis.

Allfirst states that the price that will be paid or received by a Client Plan for shares in a Fund will be the net asset value per share at the time of the transaction, as defined in Section III(f), and will be the same price which will be paid or received for the shares by any other investor at that time. In addition, Allfirst states that no sales commissions or redemption fees will be charged in connection with the purchase or sale of Fund shares by the Client Plans.

6. Prior to investing any Client Plan's assets in an ARK Fund, Allfirst will obtain the approval of a Second Fiduciary acting for the Client Plan. The Second Fiduciary generally will be the Client Plan's named fiduciary, trustee (if other than Allfirst), or the sponsoring employer. Allfirst will provide the Second Fiduciary with a current prospectus for the Fund and a written statement giving full disclosure of the fee structure under which either Allfirst's investment advisory and other fees will be credited back to the Client Plan or the Plan-level investment management fees will be waived. The disclosure statement and the letter that precedes the disclosure statement will describe why Allfirst believes the investment of a Client Plan's assets in the ARK Funds may be appropriate. Allfirst states that these disclosures will be based on the requirements of PTE 77–4 (42 FR 18732, April 8, 1977).[2]

On the basis of such information, the Second Fiduciary will authorize Allfirst to invest the Client Plan's assets in the ARK Funds and to receive fees from the ARK Funds.

7. Allfirst will charge investment advisory fees to the ARK Funds in accordance with the investment advisory agreements between Allfirst and the ARK Funds. These agreements will be approved by the independent members of the Board of Directors of the ARK Funds, in accordance with the applicable provisions of the 1940 Act, and any subsequent changes in the fees will have to be approved by such Directors. These fees also will not be increased without the approval of the shareholders of the affected ARK Funds. The fees will be paid monthly by the ARK Funds. In addition, FMB Trust Company, an affiliate of Allfirst, will charge fees for custody services, or other services, it will provide to the ARK Funds in accordance with a custodial services agreement and other agreements negotiated with the ARK Funds.

Allfirst will avoid charging the Client Plans duplicative investment management fees by either: (a) Crediting the Client Plan's pro rata share of the Fund advisory fees back to the Client Plan; or (b) waiving any investment management fee for the Client Plan at the Plan-level.

The ''crediting'' fee structure will be designed to preserve the negotiated fee rates of the Client Plans so as to minimize the impact of the change to the ARK Funds on a Client Plan's fees. Allfirst will charge a Client Plan its standard fees as applicable to the particular Client Plan for serving as trustee, directed trustee, investment manager, or custodian. At the beginning of each month, and in no event later than the same day as the payment of investment advisory fees by the ARK

[2] PTE 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that, among other things, the plan does not pay an investment management, investment advisory, or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77–4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

Funds to Allfirst for the previous month, Allfirst will credit to each Client Plan in cash its proportionate share of all investment advisory fees charged by Allfirst to the ARK Funds for the previous month. The credit will include the Client Plan's share of any investment advisory fees paid by Allfirst to third party sub-advisors.

Allfirst states that the credit will not include the custodial fees payable by the ARK Funds to FMB Trust Company, or any other affiliate of Allfirst who may serve in that capacity in the future, because custodial services rendered at the Fund-level will not be duplicative of any services provided directly to the Client Plan. The custodial services to the Fund will involve maintaining custody and providing reporting relative to the individual securities owned by the Fund. The services to the Client Plan will involve maintaining custody over all or a portion of the Client Plan's assets (which may include Fund shares, but not the assets underlying the Fund shares), providing trust accounting and participant accounting (if applicable), providing asset and transaction reporting, execution and settlement of directed transactions, processing benefit payments and loans, maintaining participant accounts, valuing plan assets, conducting non-discrimination testing, preparing Forms 5500 and other required filings, and producing statements and reports regarding overall plan and individual participant holdings. Allfirst states that these trust services will be necessary regardless of whether the Client Plan's assets are invested in the ARK Funds. Thus, Allfirst represents that its proposed receipt of fees for both secondary services at the Fund-level and trustee services at the Plan-level will not involve the receipt of ''double fees'' for duplicative services to the Client Plans because a Fund will be charged for custody and other services relative to the individual securities owned by the Fund, while a Client Plan will charged for the maintenance of Plan accounts reflecting ownership of the Fund shares and other assets.[3]

Allfirst represents that for each Client Plan, the combined total of all fees it will receive directly and indirectly from the Client Plans for the provision of services to the Plans and/or to the ARK Funds will not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.[4]

8. Allfirst will maintain a system of internal accounting controls for the crediting of all fees to the Client Plans. In addition, Allfirst has retained the services of PricewaterhouseCoopers LLP (the Auditor), an independent accounting firm, to audit annually the crediting of fees to the Client Plans under this program. Such audits will provide independent verification of the proper crediting to the Client Plans.

In its annual audit of the credit program, the Auditor will: (i) Review and test compliance with the specific operational controls and procedures established by Allfirst for making the credits; (ii) verify on a test basis the monthly credit factors transmitted to Allfirst by the ARK Funds; (iii) verify on a test basis the proper assignment of identification fields to the Client Plans; (iv) verify on a test basis the credits paid in total to the sum of all credits paid to each Client Plan; and (v) recompute, on a test basis, the amount of the credit determined for selected Client Plans and verify that the credit was made to the proper Client Plan account.

In the event either the internal audit by Allfirst or the independent audit by the Auditor identifies an error made in the crediting of fees to the Client Plans, Allfirst will correct the error. With respect to any shortfall in credited fees to a Client Plan, Allfirst will make a cash payment to the Client Plan equal to the amount of the error plus interest paid at money market rates offered by Allfirst for the period involved. Any excess credits made to a Client Plan will be corrected by an appropriate deduction from the Client Plan account or reallocation of cash during the next payment period after discovery of the error to reflect accurately the amount of total credits due to the Client Plan for the period involved.

9. Allfirst represents that the use of the ''crediting'' fee structure will be available for any investments made by Client Plans in the ARK Funds. The use of this fee structure must be approved prior to the Client Plan's initial investment in the ARK Funds by a Second Fiduciary acting for the Client Plan. The Second Fiduciary will receive full and detailed written disclosure of information concerning the ARK Funds in advance of any investment by the Client Plan in the ARK Funds, including the Fund prospectuses as well as a separate statement describing the crediting fee structure.

After consideration of such information, the Second Fiduciary will authorize in writing the investment of assets of the Client Plan in one or more specified ARK Funds and the fees to be paid by the ARK Funds to Allfirst. In addition, the Second Fiduciary of each Client Plan invested in a particular Fund will receive full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by Allfirst to the ARK Funds for secondary services which are above the rates reflected in the Fund prospectuses, at least thirty (30) days prior to the effective date of such increase.

In the event that Allfirst provides an additional secondary service for which a fee is charged or there is an increase in the rate of fees paid by the ARK Funds to Allfirst for any secondary service, including any increase resulting from a decrease in the number or kind of services performed by Allfirst for such fees in connection with a previously authorized secondary service, Allfirst will, at least 30 days in advance of the implementation of such additional service or fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund.[5] Such notice

[3] The Department notes that although certain transactions and fee arrangements are the subject of an administrative exemption, a Client Plan fiduciary must still adhere to the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions the fiduciaries of the Client Plans investing in the ARK Funds that they will have an ongoing duty under section 404 of the Act to monitor the services provided to the Client Plans to ensure that the fees paid by the Client Plans for such services are reasonable in relation to the value of the services provided. Such responsibilities will include determinations that the services provided are not duplicative and that the fees are reasonable in light of the level of services provided.

The Department also notes that Allfirst, as a trustee and investment manager for a Client Plan in connection with the decision to invest Client Plan assets in the ARK Funds, will have a fiduciary duty to monitor all fees paid by a Fund to Allfirst, its affiliates, and third parties for services provided to the Fund to ensure that the totality of such fees will be reasonable and will not involve the payment of any ''double'' fees for duplicative services to the Fund by such parties.

[4] The Department is expressing no opinion in this proposed exemption as to whether the fee arrangements discussed herein will comply with section 408(b)(2) of the Act and the regulations thereunder (see 29 CFR 2550.408b–2).

[5] With respect to increases in fees, the Department notes that an increase in the amount of a fee for an existing secondary service (other than through an increase in the value of the underlying assets in the ARK Funds), or the imposition of a fee for a newly-established secondary service, shall be considered an increase in the rate of such fees. However, in the event a secondary service fee has already been described in writing to the Second Fiduciary and the Second Fiduciary has provided authorization for the fee, and such fee was temporarily waived, no further action by Allfirst would be required in order for the Bank to receive such fee at a later time. Thus, for example, no further disclosure would be necessary if Allfirst had received authorization for a fee for custodial services from Plan investors and subsequently determined to waive the fee for a period of time in order to attract new investors but later charged the fee.

will be made separate from the Fund prospectus and will be accompanied by a Termination Form. The Second Fiduciary also will receive full written disclosure in a Fund prospectus or otherwise of any increases in the rate of fees charged by Allfirst to the ARK Funds for investment advisory services, even though such fees will be credited to the investing Client Plans.

The authorizations made by a Second Fiduciary of any Client Plan will be terminable at will, without penalty to the Client Plan, upon receipt by Allfirst of written notice of termination. A form (the Termination Form) expressly providing an election to terminate the authorization, with instructions on the use of the form, will be supplied to the Second Fiduciary no less than annually. However, the Termination Form will not need to be supplied to the Second Fiduciary for an annual reauthorization sooner than six months after such Termination Form is supplied for an additional service or for an increase in fees (as discussed above), unless another Termination Form is required to disclose additional services or fee increases. The Termination Form will instruct the Second Fiduciary that the authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by Allfirst of written notice from the Second Fiduciary, and that failure to return the Termination Form will result in the continued authorization of Allfirst to engage in the subject transactions on behalf of the Client Plan.

The Termination Form will be used to notify Allfirst in writing to effect a termination by selling the shares of the ARK Funds held by the Client Plan, requesting such termination within one business day following receipt by Allfirst of the form. If, due to circumstances beyond the control of Allfirst, the sale cannot be executed within one business day, Allfirst will be obligated to complete the sale within the next business day.

10. Allfirst represents that for smaller Client Plans, the Fund-level investment advisory fees generally do not exceed the Plan-level investment management fees, so that the Client Plan will not benefit from a Fund-level fee credit. In these cases, if the Second Fiduciary authorizes the fee structure, Allfirst will waive the Plan-level investment management fees that would otherwise be charged for the Client Plan's assets invested in the ARK Funds, so that the Plan-level fees will be offset and the Client Plan will pay only one investment management fee for those assets, at the Fund-level. This fee structure, which is one of the fee structures described in PTE 77–4, will ensure that Allfirst does not receive any additional investment management, advisory or similar fee as a result of investments in the ARK Funds by the Client Plans.

Disclosures, approvals, and notifications with regard to any changes in fees or secondary services will be handled in the same manner as for the fee structure described in paragraph 10 above, with one exception. The exception is that notifications with regard to increases in rates of investment advisory fees for the ARK Funds will conform to the procedures for increases in rates of secondary service fees as described above. Therefore, in such instances, there will be prior written notification of the fee increase to the Second Fiduciary for the Client Plan and a Termination Form will be provided. The reason for the exception is that the total fees paid by the Client Plan, under this fee structure, will be directly affected by any increases in Fund-level investment advisory fees because such fees will not be credited back to the Client Plan.

11. Allfirst states that a Second Fiduciary will always receive a written statement giving full disclosure of the fee structures prior to any investment in the ARK Funds. The disclosure statement will explain why Allfirst believes that the investment of assets of the Client Plan in the ARK Funds may be appropriate. The disclosure statement also will describe whether there are any limitations on Allfirst with respect to which Client Plan assets may be invested in shares of the ARK Funds and, if so, the nature of such limitations.[6]

12. On an annual basis, the Second Fiduciary of a Client Plan investing in the ARK Funds will receive copies of the current Fund prospectuses and, upon such fiduciary's request, a copy of the Statement of Additional Information for such ARK Funds, as well as copies of the annual financial disclosure reports containing information about the Fund and independent auditor findings.

In addition, if the ARK Funds obtain brokerage services in the future from any broker-dealers that are affiliates of Allfirst, Allfirst will provide at least annually to the Second Fiduciary of Client Plans investing in the ARK Funds written disclosures indicating the following: (i) The total, expressed in dollars, of brokerage commissions of each Fund that are paid to Allfirst by such Fund; (ii) the total, expressed in dollars, of brokerage commissions of each Fund that are paid by such Fund to brokerage firms unrelated to Allfirst; (iii) the average brokerage commissions per share, expressed as cents per share, paid to Allfirst by each Fund portfolio; and (iv) the average brokerage commissions per share, expressed as cents per share, paid by each Fund portfolio to brokerage firms unrelated to Allfirst. All such brokerage services would be provided in accordance with section 17(e) of the 1940 Act and Rule 17e–1 thereunder. Such provisions require, among other things, that the commissions, fees, or other remuneration for any brokerage services provided by an affiliate of an investment company's investment adviser be reasonable and fair compared to what other brokers receive for comparable transactions involving similar securities.

13. No sales commissions will be paid by the Client Plans in connection with the purchase or sale of shares of the ARK Funds. In addition, no redemption fees will be paid in connection with the sale of shares by the Client Plans to the ARK Funds. Allfirst states that it will not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions. Allfirst states further that all other dealings between the Client Plans and the ARK Funds will be on a basis no less favorable to the Client Plans than such dealings will be with the other shareholders of the ARK Funds.

14. In summary, Allfirst represents that the transactions described herein will satisfy the statutory criteria of section 408(a) of the Act because: (a) The ARK Funds will provide the Client Plans with a more effective investment vehicle than collective investment ARK Funds maintained by Allfirst without any increase in investment management, advisory, or similar fees paid to Allfirst; (b) Allfirst will require annual audits by an independent accounting firm to verify the proper crediting to the Client Plans of investment advisory fees charged by Allfirst to the ARK Funds; (c) with respect to any investments in a Fund by the Client Plans and the payment of any fees by the Fund to Allfirst, a Second Fiduciary will receive full written disclosure of information concerning the Fund, including a current prospectus and a statement describing the fee structure, and will authorize in writing the investment of the Client

[6] See section II(d) of PTE 77–4 which requires, in pertinent part, that an independent plan fiduciary receive a current prospectus issued by the investment company and a full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including a discussion of whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations.

Plan's assets in the Fund and the fees paid by the Fund to Allfirst; (d) any authorizations made by a Client Plan regarding investments in a Fund and fees to be paid to Allfirst, or any increases in the rates of fees for secondary services which will be retained by Allfirst, will be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by Allfirst of written notice of termination from the Second Fiduciary; (e) no commissions or redemption fees will be paid by the Client Plan in connection with either the acquisition of Fund shares or the sale of Fund shares; (f) Allfirst will not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions; and (g) all dealings between the Client Plans and the ARK Funds will be on a basis which is at least as favorable to the Client Plans as such dealings are with other shareholders of the ARK Funds.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams or Ms. Karin Weng of the Department, telephone (202) 219–8194 or 219–8881, respectively. (These are not toll-free numbers.)

John Hancock Mutual Life Insurance Company (John Hancock), Located in Boston, Masachusetts

[Application No. D–10718]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[7]

Section I—Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The receipt of common stock of John Hancock Financial Services, Inc., the holding company for John Hancock (the Holding Company); or (2) the receipt of cash or policy credits, by or on behalf of any eligible policyholder (the Eligible Policyholder) of John Hancock which is an employee benefit plan (the Plan), subject to applicable provisions of the Act and/or the Code, other than certain Eligible Policyholders which are Plans maintained by John Hancock or an affiliate for their own employees (the John Hancock Plans), in exchange for such Eligible Policyholder's membership interest in John Hancock, in accordance with the terms of a plan of reorganization (the Plan of Reorganization) adopted by John Hancock and implemented pursuant to Chapter 175 of the Massachusetts General Laws.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt or holding, by the John Hancock Plans, of employer securities in the form of excess Holding Company stock, in accordance with the terms of the Plan of Reorganization.

This proposed exemption is subject to the conditions set forth below in Section II.

Section II—General Conditions

(a) The Plan of Reorganization is implemented in accordance with procedural and substantive safeguards that are imposed under Massachusetts Insurance Law and is subject to review and supervision by the Massachusetts Commissioner of Insurance (the Commissioner).

(b) The Commissioner reviews the terms of the options that are provided to Eligible Policyholders of John Hancock as part of such Commissioner's review of the Plan of Reorganization, and the Superintendent only approves the Plan of Reorganization following a determination that such Plan of Reorganization is fair and equitable to all Eligible Policyholders and is not detrimental to the public.

(c) Both the Commissioner and the Superintendent concur on the terms of the Plan of Reorganization.

(d) Each Eligible Policyholder has an opportunity to vote to approve the Plan of Reorganization after full written disclosure is given to the Eligible Policyholder by John Hancock.

(e) One or more independent fiduciaries of a Plan that is an Eligible Policyholder receives Holding Company stock, cash or policy credits pursuant to the terms of the Plan of Reorganization and neither John Hancock nor any of its affiliates exercises any discretion or provides ''investment advice,'' as that term is defined in 29 CFR 2510.3–21(c), with respect to such acquisition.

(f) After each Eligible Policyholder is allocated 17 shares of Holding Company stock, additional consideration is allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of John Hancock which formulas have been approved by the Commissioner.

(g) With respect to a John Hancock Plan, where the consideration may be in the form of Holding Company stock an independent Plan fiduciary —

(1) Determines whether the Plan of Reorganization is in the best interest of the John Hancock Plans and their participants and beneficiaries.

(2) Votes at the special meeting of Eligible Policyholders on the proposal to approve or not to approve the Plan of Reorganization.

(3) If the vote is to approve the Plan or Reorganization,

(i) Decides whether the affected John Hancock Plan should receive Holding Company stock or cash (should the latter option be available) and receives such consideration on behalf of the affected John Hancock Plan;

(ii) Monitors, on behalf of the affected John Hancock Plan, the acquisition and holding of the shares of any Holding Company stock received;

(iii) Makes determinations on behalf of the John Hancock Plan with respect to voting and the continued holding of the shares of Holding Company stock received by such Plan; and

(iv) Disposes of any Holding Company stock held by the John Hancock Plan which exceeds the limitation of section 407(a)(2) of the Act as reasonably as practicable but in no event later than six months year following the effective date of the demutualization;

(v) Takes all actions that are necessary and appropriate to safeguard the interests of the John Hancock Plans; and

(vi) Provides the Department with a complete and detailed final report as it relates to the John Hancock Plans prior to the effective date of the demutualization.

(h) All Eligible Policyholders that are Plans participate in the transactions on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(i) No Eligible Policyholder pays any brokerage commissions or fees in connection with their receipt of Holding Company stock or in connection with the implementation of the commission-free sales and purchase programs.

(j) All of John Hancock's policyholder obligations remain in force and are not affected by the Plan of Reorganization.

Section III—Definitions

For purposes of this proposed exemption:

(a) The term ''John Hancock'' means The John Hancock Mutual Life Insurance Company and any affiliate of John Hancock as defined in paragraph (b) of this Section III.

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

(b) An ''affiliate'' of John Hancock includes —

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with John Hancock (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.);

(2) Any officer, director or partner in such person; and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term ''Eligible Policyholder'' means a policyholder whose name appears on the conversion date on John Hancock's records as the owner of a policy under which there is a right to vote and which, on both the December 31 immediately preceding the conversion date and the date the John Hancock's Board of Directors first votes to convert to stock form, is in full force for its full basic benefits with no unpaid premiums or consideration at the expiration of any applicable grace period, or which is being continued under a nonforfeiture benefit and continues to be eligible for participation in John Hancock's annual distribution of divisible surplus.

(d) The term ''policy credit'' means: (1) For an individual or joint ordinary life insurance policy, an increase to the paid-up dividend addition value; and (2) for all other individual or joint life policies and annuities, (i) if the policy or contract has a defined account value, an increase in the account value, or (ii) if the policy or contract does not have a defined account value, an increase to the dividend accumulation fund.

Summary of Facts and Representations

1. John Hancock is a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts on April 18, 1862. As of December 31, 1998, John Hancock and its subsidiaries had total assets in excess of $76 billion and had approximately $310 billion of individual life insurance in force.

John Hancock has a number of subsidiaries and affiliates that provide a variety of financial services, including investment management and brokerage services. John Hancock and its investment management subsidiaries had approximately $124.4 billion in assets under management as of December 31, 1998. As a mutual life insurance company, John Hancock has no stockholders. Instead, policyholders of John Hancock are ''members'' of the company and in that capacity, they are entitled to vote to elect the directors of the company and would be entitled to share in the assets of the company if it were liquidated.

2. John Hancock and its affiliates provide a variety of fiduciary and other services to employee benefit plans covered under relevant provisions of the Act and the Code. By providing these services John Hancock may be considered a party in interest with respect to such Plans under section 3(14)(A) and (B) of the Act or the related derivative provisions. The services provided by John Hancock and its affiliates to Plans include plan administration, investment management and related services. Many of the Plans to which John Hancock provides services are also John Hancock policyholders. As of December 31, 1997 (the most recent date such information is available), John Hancock had issued over 27,000 outstanding policies and contracts to employee pension and welfare benefit plans. These Plans include defined benefit pension plans, defined contribution plans (such as section 401(k) plans), and welfare benefit plans providing welfare benefit plan coverage such as group life, short- and long-term disability, accidental death and dismemberment and group health coverage.

3. John Hancock and its affiliates also sponsor the following Plans, which are collectively referred to herein as ''the John Hancock Plans'':

(a) *The John Hancock Mutual Life Insurance Company Pension Plan (the Pension Plan)* is a defined benefit pension plan that benefits the home office and the field employees of the company as well as its unionized managerial agents and employees of most of John Hancock's domestic subsidiaries. The trustee of the Pension Plan is Investors Bank & Trust Company (Investors). Investment decisions for the Pension Plan are made by either of two internal committees within John Hancock, *i.e.,* the Directors' Employee Benefits Plan Committee or the Plan Investment Advisory Committee. As of December 31, 1998, the Pension Plan had approximately 26,818 participants and total assets of $2,056,832,491.

(b) *The Pension Plan for Personnel in the General Agencies of John Hancock Mutual Life Insurance Company (the GA Pension Plan)* is a multiple employer, defined benefit pension plan that covers statutory employees of John Hancock's general agencies. The trustee of the GA Pension Plan is Investors. The decisionmakers with respect to investments for the GA Pension Plan are the two internal committees identified above in paragraph 3(a). As of December 31, 1997 (the most recent date such information is available), the GA Pension Plan had 4,668 participants and total assets of $186,343,278.

(c) *The Investment-Incentive Plan for John Hancock Employees (TIP)* is a section 401(k) profit sharing plan covering home office employees of John Hancock as well as certain domestic subsidiaries. The trustee of TIP is Investors. Because TIP is participant-directed and intended to qualify under section 404(c) of the Act, its investment options are selected by two internal committees within John Hancock. They are the Directors' Employee Benefits Plan Committee and the Savings Plan Investment Committee. As of December 31, 1998, TIP had 8,655 participants and total assets of $848,545,190.

(d) *The John Hancock Savings and Investment Plan (SIP)* is a section 401(k) profit sharing plan covering unionized managerial agents of John Hancock as well as certain other employees in the managerial agency system. SIP shares the same trustee and decision-making committees as TIP. As of December 31, 1998, SIP had 2,145 participants and total assets of $135,847,910.

(e) *The John Hancock Mutual Life Insurance Company Employee Welfare Plan (the Employee Welfare Plan)* is a welfare benefit plan maintained by John Hancock and its employees and those of its domestic subsidiaries. The Employee Welfare Plan provides health, life insurance, dental, vision, temporary and long-term disability, and long-term care coverage. The Employee Welfare Plan has 3 trustees, each of whom is an officer of John Hancock. Investment decisions for the non-insurance plan assets of the Employee Welfare Plan are made by the same investment committees as the Pension Plan described above in paragraph 3(a). As of December 31, 1997, the Employee Welfare Plan had 17,148 participants (including beneficiaries of deceased participants) and total assets of $87,066,100.

(f) *The GA Association Employee Welfare Plan (the GA Employee Welfare Plan* is a multiple employer welfare benefit plan maintained by John Hancock to enable General Agents who are members of the John Hancock General Agency Association to provide benefits to personnel who are common law or statutory employees of the general agencies. The GA Employee Welfare Plan, which provides health, life, long-term disability and voluntary accidental death and dismemberment benefits, is a fully-insured arrangement. As of December 31, 1998, the GA Employee Welfare Plan had 3,595 participants.

(g) *The John Hancock Funds 401(k) Plan (the 401(k) Plan).* The John Hancock 401(k) Plan is maintained by the Berkeley Financial Group which consists of a group of companies that operate John Hancock's mutual fund business. The John Hancock 401(k) Plan covers employees of that group. The John Hancock 401(k) Plan, which provides for a cash and deferred compensation arrangement, has 3 trustees. Investment decisions for the John Hancock 401(k) Plan are made by the participants. As of December 31, 1998, the John Hancock 401(k) Plan had 792 participants and total assets of $26,590,219.

(h) *The John Hancock Property & Casualty Money Purchase Pension Plan (the Property & Casualty Plan).* John Hancock holds a small guaranteed investment contract on behalf of the Property & Casualty Plan which was established for its former property and casualty subsidiary. The Property & Casualty Plan, which formerly provided retirement benefits until it was frozen, has one trustee who is responsible for making investment decisions affecting such Plan. As of December 31, 1998, the Property & Casualty Plan had 1,311 participants and total assets of $670,147.

In addition to the above, John Hancock holds a group life policy on behalf of certain retirees of Unigard Property and Casualty Company. Although this company was sold recently, John Hancock retains certain benefit responsibilities with respect to its retiree population.

3. John Hancock's Board of Directors authorized its management to develop a plan of demutualization (*i.e.*, the Plan of Reorganization) pursuant to which John Hancock would be converted from a mutual life insurance company to a stock life insurance company. On August 31, 1999, John Hancock's Board of Directors formally adopted the Plan of Reorganization.

In order to implement the Plan of Reorganization, John Hancock requests an individual exemption from the Department that would cover the receipt of Holding Company stock, cash or policy credits by Eligible Policyholders that are Plans in exchange for their existing membership interests in John Hancock. Although John Hancock is not requesting an exemption for distributions of Holding Company stock to the Pension Plan, the GA Pension Plan, TIP, SIP, the 401(k) Plan and the Property & Casualty Plan because it believes such stock would constitute ''qualifying employer securities'' within the meaning of section 407(d)(5) of the Act and that section 408(e) would apply to such distributions,[8] it is nevertheless requesting exemptive relief from the Department to the extent that John Hancock Plans, such as the Employee Welfare Plan and the GA Employee Welfare Plan, receive Holding Company stock which results in violations of section 406(a)(1)(E) and (a)(2) of the Act and section 407(a)(2) of the Act.[9] Since the Holding Company stock that will be held by these John Hancock Plans will exceed 10 percent of the fair market value of the assets of such Plans, John Hancock has retained U.S. Trust Company, N.A. (U.S. Trust) to serve as the independent fiduciary for these Plans as well as for any other John Hancock Plan whose Holding Company Stock exceeds 10 percent of such Plan's assets.

4. John Hancock proposes to convert from a mutual life insurance company to a stock life insurance company under Massachusetts Insurance Law. The principal purposes for the reorganization are to enhance John Hancock's access to capital markets and raise capital that would permit it and the Holding Company to expand their existing business and develop new business opportunities in the insurance and financial services industries. Growth will enable John Hancock to reduce its unit expenses through economies of scale. This growth will be facilitated by John Hancock's ability to acquire other companies using its own stock as acquisition currency. Additionally, access to capital markets will enable John Hancock to invest in new technology, improved customer service, new products and channels of distribution. John Hancock will also obtain more financial flexibility with which to maintain its ratings and financial stability.

In addition, the reorganization of John Hancock pursuant to the Plan of Reorganization will provide Eligible Policyholders with shares of common stock of the Holding Company, cash or policy credits in exchange for their illiquid membership interests. Thus, Eligible Policyholders will realize economic value from their membership interests that is otherwise unavailable to them. However, the demutualization will not, in any way, reduce the benefits, values, guarantees or dividend eligibility of existing policies or contracts issued by John Hancock.

As part of the reorganization, the Holding Company will be established and will become the stock holding company for John Hancock and its subsidiaries. Therefore, after the reorganization, John Hancock, as a stock insurer and a subsidiary of the Holding Company, will have access through the Holding Company to the capital markets, enabling John Hancock to obtain capital from a variety of sources. The Holding Company will also own 100 percent of two new holding companies being established to own existing Canadian subsidiaries of John Hancock and most other foreign insurance subsidiaries, respectively. Most foreign operations are being separated from the domestic operations of John Hancock to achieve improved financial ratios for John Hancock and maximize performance results for policyholders and shareholders.

John Hancock's management believes that the holding company structure will provide several benefits to John Hancock. In this regard, this structure will afford increased flexibility in raising additional capital in the form of debt and equity financings and in pursuing growth in John Hancock's current and future insurance and non-insurance business. The new organization will benefit from increased flexibility in allocating capital and resources among the various subsidiaries of John Hancock. Further, the transfer of the international subsidiaries to the Holding Company will provide a distinct focus for the foreign operations of John Hancock while also improving its risk-based capital ratio.

5. The terms of the Plan of Reorganization are subject to the approval of the Commissioner of Insurance of the Commonwealth of

[8] The Department expresses no opinion herein on whether the Holding Company stock will constitute qualifying employer securities and whether such distributions will satisfy the terms and conditions of section 408(e) of the Act.

[9] Section 406(a)(1)(E) of the Act prohibits the acquisition by a plan of any employer security which would be in violation of section 407(a) of the Act. Section 406(a)(2) of the Act states that no fiduciary who has authority or discretion to control the assets of a plan shall permit the plan to hold any employer security if he [or she] knows that holding such security would violate section 407(a) of the Act. Section 407(a)(1) of the Act prohibits the acquisition by a plan of any employer security which is not a qualifying employer security. Section 407(a)(2) of the Act provides that a plan may not acquire any qualifying employer security, if immediately after such acquisition, the aggregate fair market value of such securities exceeds 10 percent of the fair market value of the plan's assets.

In addition to the above, section 407(f) of the Act, which is applicable to the holding of a qualifying employer security by a plan other than an eligible individual account plan, requires that: (a) Immediately following its acquisition by a plan, no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan; and (b) at least 50 percent of the stock be held by persons who are independent of the issuer. John Hancock notes, however, that the holding by the John Hancock Plans of shares of Holding Company stock will not violate the provisions of section 407(f) of the Act.

Massachusetts. However, market conditions, regulatory requirements and business considerations may also influence the final sequence of events. Subject to the foregoing, under John Hancock's internal working proposal for carrying out the demutualization, it is currently expected that the following steps will occur pursuant to the Plan of Demutualization:

(a) *Formation of a Stock Life Insurance Company.* John Hancock will demutualize and become a stock life insurance company by operation of section 19E of Chapter 175 of the General Laws of the Commonwealth of Massachusetts. Under the Plan of Reorganization, each policyholder's membership interest in John Hancock will be extinguished. As compensation for their membership interests, Eligible Policyholders will receive shares of Holding Company stock, cash or policy credits. John Hancock will become a stock company and a wholly owned subsidiary of the Holding Company. The Holding Company will also own the outstanding shares of two newly-formed holding companies which will own John Hancock's Canadian business and most of its international businesses, respectively.

(b) *Initial Public Offering (the IPO).* The Holding Company will sell new Holding Company shares in an underwritten IPO, on the date of the demutualization of John Hancock. It is expected that the demutualization will occur during early February 2000. However, the effective date may be extended for a period of up to six months if requested by John Hancock subject to approval by the Commissioner. At present, the size of the IPO is not known.

(c) *Contribution to the Capital of John Hancock.* Following the transactions described above, the Holding Company will contribute cash raised in the IPO (after the payment of transaction expenses) to John Hancock in an amount at least equal to the amount required for John Hancock to maintain a risk-based capital ratio of not less than 200 percent following the payment and crediting of cash and establishment of reserves for policy credits called for by the Plan of Reorganization and the payment of expenses resulting from the transactions contemplated by the Plan of Reorganization.

6. In addition to providing enhanced capital markets, it is anticipated that the demutualization will provide the flexibility to cause John Hancock's non-insurance operations to become direct holdings of an ''upstream'' holding company. Further, the conversion will enable John Hancock to use stock options or other equity-based compensation arrangements in order to attract and retain talented employees.

John Hancock believes these consequences of the conversion will benefit all of its policyholders. John Hancock further explains that its insurance policies will remain in force and policyholders will be entitled to receive the benefits under their policies and contracts to which they would have been entitled if the Plan of Reorganization had not been adopted.

7. As noted above, John Hancock will demutualize under Massachusetts Insurance Law. Section 19E of the Massachusetts demutualization law establishes an approval process for the demutualization of a life insurance company organized under Massachusetts law. Specifically, Section 19E requires that the demutualization plan be filed with, and approved by, the Massachusetts Commissioner of Insurance. The Commissioner may approve the demutalization plan only after notice is given to the insurer, its directors, officers, employees and policyholders and a hearing on such plan is held. All persons to whom notice is given have the right to appear and be heard at the hearing and to present oral or written comments.[10]

After the hearing, John Hancock explains that the Commissioner will approve the demutualization plan if she determines that the plan is not prejudicial to the insurer's policyholders or to the ''insuring public.'' The Commissioner must also determine that the demutualization plan conforms to the provisions of Section 19E. In pertinent part, Section 19E requires—

(a) that reasonable notice of and the procedure for vote of the policyholders have been provided;

(b) that the plan gives each eligible policyholder, in exchange for his or her membership interests in the insurer, appropriate consideration determined under a fair and reasonable formula, which is based upon the insurer's entire surplus as adjusted according to paragraph 3 of section 19E;

(c) that, subject to certain exceptions, the plan gives each eligible policyholder a preemptive right to acquire his or her proportionate part of all of the proposed capital stock of the insurer within a reasonable time period, and to apply the amount of his or her consideration to the purchase of such stock, provided that, under certain circumstances, the Commissioner has the power to approve a plan which does not include preemptive rights;

(d) that if, applicable, shares are offered to policyholders at a price not greater than they are offered under the plan to others;

(e) that the plan provides for the payment to each policyholder of consideration which may consist of cash, securities, a certificate of contribution, additional life insurance or annuity benefits, increased dividends or other consideration or any combination of such forms of consideration;

(f) that the plan, when completed, shall provide for the converted insurer's paid-in capital stock to be in an amount not less than the minimum paid-in capital stock and the net cash surplus required of a new domestic stock insurer upon initial authorization to transact like kinds of insurance;

(g) that the insurer's management has not, through reduction in volume of new business written, or cancellation or through any other means, sought to reduce, limit or affect the number or identity of the insurer's policyholders to be entitled to participate in the demutualization plan, or to otherwise secure for individuals comprising management any unfair advantage through such demutualization plan; and

(h) if applicable, that the classifications of management and employee groups to be offered shares not subscribed for by policyholders in the preemptive offering are reasonable.

Section 19E permits the Commissioner to employ staff personnel and to engage outside consultants to assist her in determining whether a demutualization plan meets the requirements of section 19E and any other relevant provisions of chapter 175 of Massachusetts General Laws. A decision by the Commissioner to approve a demutualization plan under section 19E is subject to judicial review in the Massachusetts courts.

In addition to being approved by the Commissioner, John Hancock represents that the demutualization plan must be approved by the policyholders of the insurer. In this regard, under section 19E, policyholders must be provided with notice of a meeting convened for the purpose of voting on whether to approve the demutualization plan. Moreover, the demutalization plan must be approved by a vote of not less than two-thirds of the votes of approximately 3 million policyholders who may vote in person, by proxy or by mail.[11]

8. John Hancock represents that it is licensed to transact business in all fifty states. However, only the State of New York requires that a foreign insurance company that is planning to demutualize file a copy of its demutualization plan with state insurance authorities. In this regard, John Hancock explains that section 1106(i) of the New York Insurance Law

[10] Final approval by the Commissioner is expected to occur on or about January 15, 2000. The public hearing regarding the proposed Plan of Reorganization is expected to occur around November 25, 1999.

[11] The notice of the policyholder meeting were mailed during the week of September 13, 1999. The policyholder meeting is scheduled to be convened on or about November 30, 1999.

[Section 1106(i)] authorizes the Superintendent to review the demutualization plan of a foreign life insurer licensed in New York and to specify the conditions that the Superintendent would impose in order for the foreign insurer to retain its New York license following its demutualization. Specifically, Section 1106(i) requires that a foreign life insurer licensed in New York file with the Superintendent a copy of the demutualization plan at least 90 days prior to the earlier of (a) the date of any public hearing required to be held on the plan of reorganization by the insurer's state of domicile and (b) the proposed date of the demutualization.

If, after examining the plan of reorganization, the Superintendent finds that the plan is not fair or equitable to the New York policyholders of the insurer, the Superintendent must set forth the reasons for his findings. In addition, the Superintendent must notify the insurer and its domestic state insurance regulator of his findings and his reasons for such findings and advise of any requirements he considers necessary for the protection of current New York policyholders in order to permit the insurer to continue to conduct business in New York as a stock life insurer after the demutualization. In the event the Superintendent has any objections to the Plan of Reorganization, John Hancock represents that it will amend the Plan so that it will meet the approval of the Superintendent or otherwise, work out a satisfactory solution with the Superintendent.

9. John Hancock's Plan of Reorganization will provide for Eligible Policyholders to receive common stock of the Holding Company, cash or policy credits as consideration for the termination of their membership interests in the mutual company, which interests will be extinguished as a result of the demutualization. For this purpose, an Eligible Policyholder is essentially a policyholder whose name appears on the conversion date on the insurer's records as owner of a policy under which there is a right to vote. On both the December 31 immediately preceding the conversion date and the date the insurer's board of directors first votes to convert to stock form, the policy must be in full force for its full basic benefits with no unpaid premiums or consideration at the expiration of any applicable grace period. Alternatively, the policy must be continued under a nonforfeiture benefit. In any event, the insurance policy must continue to be eligible for participation in the insurer's annual distribution of divisible surplus.

Solely for purposes of calculating the amount of Holding Company stock, cash or policy credits that will be given to an Eligible Policyholder in exchange for his or her membership interest, John Hancock will allocate to each Eligible Policyholder (but not necessarily issue) shares of Holding Company stock equal to the sum of: (a) A fixed component of consideration consisting of 17 shares of Holding Company stock; and (b) if applicable, a variable component of consideration based on the contributions to surplus made by the Eligible Policyholder's in-force policies. The allocation methodology must be fair and reasonable, a finding that the Commissioner is required to make after the hearing. The allocation formulas are also subject to review by the Superintendent.

10. Section 7.3 of John Hancock's Plan of Reorganization provides that an Eligible Policyholder will be entitled to receive Holding Company stock if such Policyholder affirmatively elects, on a form provided to such Eligible Policyholder that has been properly completed and received by John Hancock prior to the date of the special policyholder meeting, a preference to receive stock. Holding Company stock will also be issued to an Eligible Policyholder, regardless of such Policyholder's election, to the extent funds available are inadequate to pay cash to all such Eligible Policyholders who will be receiving the same number of shares.[12]

In addition, Section 7.3 of John Hancock's Plan of Reorganization states that an Eligible Policyholder will be entitled to receive cash in lieu of allocable Holding Company stock where such Eligible Policyholder's address for mailing purposes, as shown on John Hancock's records: (a) Is an address where mail is undeliverable or is deemed to be undeliverable in accordance with guidelines approved by the Commissioner; or (b) is located outside of the United States. Further, an Eligible Policyholder will be entitled to receive cash instead of allocable Holding Company stock to the extent that his or her insurance policy is subject to a lien or bankruptcy proceeding.

Finally, Section 7.3 of John Hancock's Plan of Reorganization provides that an Eligible Policyholder will receive policy credits instead of allocable Holding Company stock with respect to any policy that is: (a) An individual retirement annuity contract within the meaning of section 408(b) of the Code or a taxsheltered annuity contract within the meaning of section 403(b) of the Code; (b) an individual annuity contract that has been issued pursuant to a plan qualified plan under section 401(a) of the Code directly to the plan participant; or (c) an individual life insurance policy that has been issued pursuant to a plan qualified under section 401(a) of the Code directly to the plan participant.

The cash or policy credits will have a value equal the greater of the price per share of Common Stock in the IPO, which will occur at the time of the demutualization or the average closing price of the Common Stock as reflected on the New York Stock Exchange for the first twenty days of trading, subject to a maximum of 120 percent of the initial stock price.[13] This will ensure that

[12] John Hancock's Plan of Reorganization provides that, as an optional method, each non-trusteed, qualified pension or profit sharing plan that is entitled to receive Holding Company stock may direct John Hancock to place the stock received as a result of the demutualization in a master trust (the Master Trust) established by John Hancock for this express purpose. It is represented that the John Hancock Plans will not participate in the Master Trust because they will have their own trusts in place.

The Master Trust, which will be incorporated through the Adoption Agreement as part of each participating Plan, will have an indefinite duration. The trustee (the Trustee) of the Master Trust will be independent of John Hancock. The Trustee will hold the shares of Holding Company stock for the benefit of the participating Plan. The stock will remain in the Master Trust until the Plan fiduciary instructs the Trustee either to sell the stock on the open market or to distribute the stock to the Plan. A participating Plan may, under no circumstances, direct the Trustee to sell its shares of Holding Company stock to the Holding Company. Each Plan will be responsible for its share of the fees and expenses of the Master Trust as well as for the payment of brokerage commissions incurred in connection with the sale of Holding Company Stock after the termination of the commission-free sales program described in Representation 13 provided such program has been available to the Plan.

It is anticipated that all stock dividends that are received by a Plan will be held in the Master Trust subject to withdrawal by the Plan at any time. However, cash dividends will be paid by the Trustee to the applicable Plan. It is also anticipated that all voting rights will be passed through to the participating Plans.

[13] John Hancock represents that under paragraph 5 of Section 19E of Massachusetts Insurance Law, the policyholder eligible to participate in the distribution of Holding Company stock, cash or policy credits resulting from the Plan of Reorganization is ''the person whose name appears * * * on the insurer's records as owner'' of the policy. John Hancock further represents that an insurance or annuity policy that provides benefits under an employee benefit plan, typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the owner of the policy. In regard to insurance or annuity policies that designate the employer or trustee as owner of the policy, John Hancock represents that it is required under the foregoing provisions of Massachusetts Insurance Law and the Plan of Reorganization to make distributions resulting from such Plan to the employer or trustee as owner of the policy, except as provided below.

Notwithstanding the foregoing, John Hancock's Plan of Reorganization provides a special rule

Eligible Policyholders who receive cash or policy credits will have an opportunity to benefit from any potential appreciation in the stock price during the initial trading period.

One or more fiduciaries of a Plan which is independent of John Hancock will receive the consideration and neither John Hancock nor any of its affiliates will exercise discretion or provide ''investment advice,'' as that term is defined in 29 CFR 2510.3–21(c) with respect to any such acquisition. Further, no Eligible Policyholder will pay brokerage commissions or fees in connection with the receipt of Holding Company stock.

11. As noted above, in the case of the John Hancock Plans, U.S. Trust will represent their interests. U.S. Trust will determine whether the Plan of Reorganization is in the best interest of such Plan and their participants and beneficiaries; vote at the special meeting of Eligible Policyholders on the proposal to approve or not to approve the Plan of Reorganization. If the vote is to approve the Plan of Reorganization, U.S. Trust will decide whether the affected John Hancock Plan should receive Holding Company stock or cash (should the latter option be available) and receives such consideration on behalf of the affected John Hancock Plan; monitor, on behalf of the affected John Hancock Plan, the acquisition and holding of the shares of any Holding Company stock received; make determinations on behalf of the John Hancock Plan with respect to voting and the continued holding of the shares of Holding Company stock received by such Plan; dispose of any Holding Company stock held by the John Hancock Plan which exceeds the limitation of section 407(a)(2) of the Act as reasonably as practicable but in no event later than six months following the effective date of the demutualization; and take all actions that are necessary and appropriate to safeguard the interests of the John Hancock Plans. Further, U.S Trust will provide the Department with a complete and detailed final report as it relates to the John Hancock Plans prior to the effective date of the demutualization. Finally, U.S. Trust states that it has conducted a preliminary review of John Hancock's Plan of Reorganization and it sees nothing in the Plan that would preclude the Department of Labor from proposing the requested exemption.

12. The Plan of Reorganization also provides for the establishment of a commission-free sales program whereby Eligible Policyholders who receive between 99 or fewer shares of Holding Company stock will be given the opportunity to sell, at prevailing market prices, all of their Holding Company stock received without the payment of any brokerage commissions. The commission-free sales program will concurrently offer Eligible Policyholders the opportunity to purchase an additional number of shares necessary to bring their respective total number of shares up to 100. Again, Eligible Policyholders will not be required to pay any brokerage commissions or similar fees to John Hancock. Moreover, John Hancock and its affiliates will not provide ''investment advice'' as described in 29 CFR 2510.3–21(c) with regard to the operation of the program. The commission-free sales program will commence on the first business day after the six month anniversary of the effective date of the reorganization and will continue for 90 days thereafter. Such program may be extended with the approval of the Commissioner if the Board of Directors of the Holding Company determines such extension would be appropriate and in the best interest of the Holding Company and its stockholders.

13. 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 Plan of Reorganization will be implemented in accordance with stringent procedural and substantive safeguards that are being imposed under Massachusetts law and will be subject to the review and supervision of the Commissioner.

(b) The Commissioner will review the terms of the options that are provided to Eligible Policyholders of John Hancock as part of such Commissioner's review of the Plan of Reorganization following a determination that such Plan of Reorganization is not prejudicial to all Eligible Policyholders.

(c) The Plan of Reorganization will be filed with the New York Superintendent who will determine whether the Plan of Reorganization is fair and equitable to Eligible Policyholders from New York.

(d) The Plan of Reorganization will receive the concurrence of both the Commissioner and the Superintendent before it is implemented.

(e) One or more independent Plan fiduciaries will have an opportunity to determine whether to vote to approve the terms of the Plan of Reorganization and will be solely responsible for all such decisions after receiving full and complete disclosure.

(f) The proposed exemption will allow Eligible Policyholders that are Plans to acquire Holding Company stock, cash or policy credits in exchange for their membership interests in John Hancock and neither John Hancock nor its affiliates will exercise any discretion or provide ''investment advice,'' as that term is defined in 29 CFR 2510.3–21(c) with respect to such acquisition.

(g) No Eligible Policyholder will pay any brokerage commissions or fees in connection with such Eligible Policyholder's receipt of Holding Company stock or with respect to the implementation of the commission-free sales and purchase programs.

(h) The Plan of Reorganization will not change premiums or reduce policy benefits, values, guarantees or other policy obligations of John Hancock to its policyholders and contractholders.

Notice to Interested Persons

John Hancock will provide notice of the proposed exemption to Eligible Policyholders that are Plans within 14 days of the publication of the notice of pendency in the **Federal Register**. Such notice will be provided to interested persons by first class mail and will include a copy of the notice of proposed exemption as published in the **Federal Register** as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on the proposed exemption. Comments with respect to the notice of proposed exemption are due within 44 days of the publication of this pendency notice in the **Federal Register**.

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

applicable to an insurance policy issued to a trust established by John Hancock. This rule applies whether or not the trust, or any arrangement established by any employer participating in the trust, constitutes an employee benefit plan subject to the Act. Under this special rule, the holder of each individual ''certificate'' issued in connection with the insurance policy is treated as the policyholder and owner for all purposes under the Plan of Reorganization, including voting rights and the distribution of consideration. The trustee of any such trust established by John Hancock will not be considered a policyholder or owner and will not be eligible to vote or receive consideration.

In general, it is the Department's view that, if an insurance policy (including an annuity contract) is purchased with assets of an employee benefit plan, including participant contributions, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3–3) at the time when John Hancock incurs the obligation to distribute Holding Company stock, cash or policy credits, then such consideration would constitute an asset of such plan. Under these circumstances, the appropriate plan fiduciaries must take all necessary steps to safeguard the assets of the plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

Bankers Trust Company (BT), Located in New York, NY

[Application No. D–10756]

Proposed Exemption

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

Section I.—Covered Transactions

If the 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: (1) The lending of securities to affiliates of BT, a wholly owned subsidiary of Deutsche Bank AG (DB), which are: (i) Either banks, supervised by the United States or by a State within the United States, or broker-dealers registered under the Securities Exchange Act of 1934 (the 1934 Act); or (ii) certain foreign affiliates (the Foreign Affiliates) of BT and DB which are broker-dealers or banks in jurisdictions specified in this proposed exemption (collectively, the Affiliated Borrowers), by employee benefit plans (the Client Plans), including commingled investment funds holding Client Plan assets, for which BT, DB, or either of their current or future affiliates or successors acts as securities lending agent (or sub-agent) (the DB Lending Agent); and (2) the receipt of compensation by the DB Lending Agent in connection with these transactions, provided the general conditions set forth below in Section II are met.

Section II.—General Conditions

(a) For each Client Plan, neither the DB Lending Agent nor an Affiliated Borrower, nor an affiliate of either, has or exercises discretionary authority or control with respect to the investment of Client Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) Any arrangement for a DB Lending Agent to lend Client Plan securities to an Affiliated Borrower in either an agency or sub-agency capacity is approved in advance by a Client Plan fiduciary who is independent of the DB Lending Agent.[14] In this regard, the independent Client Plan fiduciary also approves the general terms of the securities loan agreement (the Loan Agreement) between the Client Plan and the Affiliated Borrowers, although the specific terms of the Loan Agreement are negotiated and entered into by the DB Lending Agent and the DB Lending Agent acts as a liaison between the lender and the borrower to facilitate the lending transaction.

(c) The terms of each loan of securities by a Client Plan to the Affiliated Borrowers is at least as favorable to such Client Plans as those of a comparable arm's length transaction between unrelated parties.

(d) A 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 the Affiliated Borrowers will deliver 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 of by the Client Plan and the Affiliated Borrowers, whichever is less.

(e) The Client Plan receives from the Affiliated Borrower (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 the Affiliated Borrower, 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 person other than the DB Lending Agent or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6, as it may be amended or superseded.

(f) As of the close of business on the preceding business day, the fair market value of the collateral initially equals at least 102 percent of the market value of the loaned securities and, if the market value of the collateral falls below 100 percent, the applicable Affiliated Borrower delivers additional collateral on the following day such that the market value of the collateral again at least equal to 102 percent.

(g) Prior to entering into the lending program, the Affiliated Borrower furnishes the DB Lending Agent its most recently available audited and unaudited statements, which are, in turn, provided to a Client Plan, as well as a representation by such Affiliated Borrower, that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently-furnished statement that has been disclosed to such Client Plan; provided, however, that in the event of a material adverse change, the DB Lending Agent does not make any further loans to such Affiliated Borrower unless an independent fiduciary of the Client Plan is provided notice of any material adverse change and approves the loan in view of the changed financial condition.

(h) 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. (Under such circumstances, the Client Plan may pay a loan rebate or similar fee to an Affiliated Borrower, if such fee is not greater than the fee the Client Plan would pay in a comparable arm's length transaction with an unrelated party.)

(i) All procedures regarding the securities lending activities conform to the applicable provisions of PTE 81–6 and PTE 82–63 as such class exemptions may be amended or superseded as well as to applicable securities laws of the United States or the jurisdiction in which the Foreign Affiliate is domiciled, as appropriate.

(j) The DB Lending Agent or an affiliate which is domiciled in the United States will indemnify and hold harmless each lending Client Plan in the United States against any shortfall in the collateral, as set forth in the applicable lending agreement (the Loan Agreement), plus interest and any transaction costs incurred (including attorney's fees of the Client Plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the Client Plan may incur or suffer directly arising out of the lending of securities of such Client Plan to such Affiliated Borrower, to the extent permitted by law.[15] In the event that an Affiliated Borrower defaults on a loan, the DB Lending Agent will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to

[14] The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than the DB Lending Agent, beyond that provided pursuant to Prohibited Transaction 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).

[15] Where the law prohibits such indemnification by the DB Lending Agent, the Affiliated Borrower will provide the identical indemnification.

accomplish such purchase, the DB Lending Agent or the applicable affiliate will indemnify the Client Plan for any shortfall in the collateral, as set forth in the Loan Agreement, plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan arising out of the default on the loans or the failure to indemnify properly under this provision). Alternatively, if such identical securities are not available on the market, the DB Lending Agent or the applicable affiliate will pay the Client Plan cash equal to: (1) The market value of the borrowed securities as of the date they should have been returned to the Client Plan, plus (2) all the accrued financial benefits derived from the beneficial ownership of such loaned securities as of such date, plus (3) interest from such date to the date of payment.

(k) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the 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.

(l) The DB Lending Agent provides to Client Plans, prior to any Client Plan's approval of the lending of its securities to an Affiliated Borrower, copies of the notice of proposed exemption (the Notice) and the final exemption.

(m) Each Client Plan receives monthly reports with respect to its securities lending transactions, including, but not limited to, the information described in Representation 31 of the Notice, so that an independent fiduciary of the Client Plan may monitor such transactions with Affiliated Borrowers.

(n) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to Affiliated Borrowers; 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 a DB Lending Agent, 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 a DB Lending Agent, 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.

(o) 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 will be to unrelated borrowers.

(p) In addition to the above, all loans involving a Foreign Affiliate have the following supplemental requirements:

(1) As applicable, such Foreign Affiliate is registered as a broker-dealer or bank with—

(i) The Securities and Futures Authority (the SFA) or the Financial Services Authority (the FSA) in the United Kingdom;

(ii) The Deutsche Bundesbank and/or the Federal Banking Supervisory Authority, *i.e.*, der Bundesaufsichsamt fuer das Kreditwesen (the BAK) or the Bundesaufsichtsamt fur den Wertpapierhandel (the BAWe) in Germany;

(iii) The Ministry of Finance (the MOF) and/or the Tokyo Stock Exchange in Japan;

(iv) The Ontario Securities Commission (the OSC) and/or the Investment Dealers Association (the IDA), or the Office of the Superintendent of Financial Institutions (the OSFI) in Canada;

(v) The Swiss Federal Banking Commission in Switzerland; and

(vi) The Australian Prudential Regulation Authority (APRA) or the Australian Securities and Investments Commission (ASIC), and/or the Australian Stock Exchange Limited (ASEL) in Australia.

(2) Such broker-dealer or bank is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under 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 (unless an applicable exemption provides otherwise);

(4) All collateral is held in the United States (unless an applicable exemption provides otherwise) and the situs of the securities Loan Agreements are maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and

(5) Each Foreign Affiliate provides the DB Lending Agent a written consent to service of process in the United States and to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the securities lending transaction, which consent provides that process may be served on such borrower by service on the DB Lending Agent.

(q) The DB Lending Agent and its affiliates maintain, or cause 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 (r)(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 the DB Lending Agent and/or its affiliates, the records are lost or

destroyed prior to the end of the six year period; and

(2) No party in interest other than the DB Lending Agent and/or its affiliates 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 (r)(1).

(r)(1) Except as provided in subparagraph (r)(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 (q) 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.

(r)(2) None of the persons described above in paragraphs (r)(1)(ii)–(r)(1)(iv) of this paragraph (r)(1) are authorized to examine the trade secrets of the DB Lending Agent or commercial or financial information which is privileged or confidential.

III—Definitions

For purposes of this proposed exemption,

(a) The term ''affiliate'' means any entity now or in the future, directly or indirectly controlling, controlled by or under common control with BT, DB or their successors.

(b) The term ''Affiliated Borrower'' means an affiliate of BT or DB that is a bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (the Advisers Act), that is supervised by the United States or a State, or a broker-dealer registered under the 1934 Act, or any Foreign Affiliate.

(c) The term ''Foreign Affiliate'' means an affiliate of BT or DB that is a broker-dealer or bank that is supervised by: (1) The SFA or the FSA in the United Kingdom; (2) the Deutsche Bundesbank and/or the BAK, or the BAWe in Germany; (3) the MOF and/or the Tokyo Stock Exchange in Japan; (4) the OSC, the IDA, and/or OSFI in Canada; (5) the Swiss Federal Banking Commission in Switzerland; and (6) APRA, ASIC, and/or ASEL in Australia.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of April 9, 1999.

Summary of Facts and Representations

1. BT (also referred to herein as ''the Applicant'') is a New York banking corporation and a leading commercial bank, whose parent, Bankers Trust Corporation, is wholly owned by DB, a banking corporation organized under the laws of the Federal Republic of Germany and the largest banking institution in the world, based on assets.

2. The Applicant provides a wide variety of banking, fiduciary, recordkeeping, custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors. Its affiliates actively engage in the borrowing of securities. All borrowings by U.S. broker-dealer affiliates from pension plans conform to the Federal Reserve Board's Regulation T. Since its merger with DB, the Applicant has Foreign Affiliates worldwide that are engaged in the business of trading securities. Among the Applicant's current affiliated banks and broker-dealers are Foreign Affiliates based in—

(a) *The United Kingdom (Affiliated Borrower/U.K.)*, which includes, but is not be limited to, Bankers Trust International PLC and the London Branch of Deutsche Bank;

(b) *Japan (Affiliated Borrower/Japan)*, which includes, but is not be limited to, Japan Bankers Trust Ltd. and the Tokyo Branch of Deutsche Bank;

(c) *Germany (Affiliated Borrower/Germany)*, which includes, but is not limited to, Deutsche Bank;

(d) *Australia (Affiliated Borrower/Australia)*, which includes, but is not limited to, BT Australia Limited and the Sydney Branch of Deutsche Bank;

(e) *Canada (Affiliated Borrower/Canada)*, which includes, but is not limited to, Deutsche Bank Canada and Deutsche Bank Securities Limited; and

(f) *Switzerland (Affiliated Borrower/Switzerland)*, which includes, but is not limited to, Deutsche Bank (Suisse) S.A.

3. The Applicant and its affiliates actively engage in the borrowing and lending of securities, with daily outstanding loan volume averaging billions of dollars. The Affiliated Borrowers utilize borrowed securities to satisfy their trading requirements or to re-lend to other broker-dealers and others who need a particular security for various periods of time.

4. The Applicant's U.S. affiliates are either U.S. registered broker-dealers or banks supervised by the U.S. or a State. Affiliated Borrower/U.K. is either authorized to conduct an investment business in and from the United Kingdom as a broker-dealer regulated by the SFA or as a deposit-taking institution or merchant bank regulated by the FSA. Affiliated Borrower/Japan is authorized to conduct an investment business in Japan as a broker-dealer or bank regulated by the MOF and/or the Tokyo Stock Exchange. Affiliated Borrower/Switzerland is authorized to conduct an investment business as a broker-dealer or bank in Switzerland by the Swiss Federal Banking Commission. Affiliated Borrower/Germany is authorized to conduct business in Germany as a bank or broker-dealer by the Deutsche Bundesbank and/or the BAK, or the BAWe.[16] Affiliated Borrower/Australia is either authorized to conduct an investment business in Australia as a bank or broker-dealer by the APRA, the ASIC and/or the Australian Stock Exchange Limited. Affiliated Borrower/Canada is authorized to conduct an investment business in Canada as a bank or broker-dealer by the OSC and/or the IDA or the OSFI.

5. Although not registered with the United States SEC as broker-dealers, the Foreign Affiliates that are broker-dealers are subject to the rules, regulations and membership requirements of their respective governmental regulators and/or the self-regulatory organizations listed above, 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 share a common objective: the protection of the investor by the regulation of the securities industry. While these rules and regulations vary from country to country, they require each firm which employs registered representatives or registered traders to have a tangible net worth and be able to meet their obligations as they may fall

[16] The BAWe is a German federal agency that enforces German securities laws. Each German state has a state government agency which regulates broker-dealers operating in that state. All broker-dealers report directly to the appropriate state agency by filing, within four months after the end of the fiscal year, audited financial statements supplemented by quarterly earnings reports. In addition, each German stock exchange admits broker-dealers to membership and may revoke such membership. The stock exchanges limit broker-dealer member transactions based on core capital or the equivalent thereof, and additional security provided, based on their exposure to risk from transactions on the exchange. Any change in core capital having the effect of reducing the transaction limit must be reported to the stock exchange immediately.

due. In addition, these rules and regulations set forth comprehensive financial resource and reporting/disclosure rules regarding capital adequacy. Further, to demonstrate capital adequacy, the rules may 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 respective regulators at any time. Finally, these rules and regulations impose potential fines and penalties on broker-dealers which establish a comprehensive disciplinary system.

6. Similarly, the banks comprising the Foreign Affiliates are subject to rules and regulations of their respective governmental regulators. For example, Affiliated Borrower/U.K. banks are subject to regulation in the United Kingdom by the FSA, the successor to the Bank of England. The FSA issues licenses to banks in the United Kingdom, issues directives to address violations by or irregularities involving banks, requires information from a bank or its auditors regarding supervisory matters and revokes bank licenses. In addition, the FSA has established procedures for monitoring the activities of the DB Lending Agent and its affiliates in the United Kingdom through various regulatory standards. Among those standards are requirements for adequate internal controls, oversight and administration. On a recurring basis, the DB Lending Agent and its affiliates will be required to provide the FSA with information regarding its activities in the United Kingdom, profit and loss, balance sheet, large exposures, foreign exchange exposures and country risk exposures. The Board of Directors of the Federal Reserve System in the United States or the BAK in Germany supervises the DB Lending Agent and its affiliates with respect to capital adequacy.

In addition, the APRA, which has taken over the bank supervisory duties of the Reserve Bank of Australia, licenses and regulates Affiliated Borrower/Australia locally-incorporated banks. The APRA has the power to issue and revoke bank licenses. In addition, the 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. The APRA has established procedures for monitoring the activities of Affiliated Borrower/Australia banks in Australia through various statutory and regulatory standards. Among those standards are requirements for capital adequacy, internal controls, oversight and administration. On a recurring basis, Affiliated Borrower/Australia banks that are locally-incorporated will be required to provide the APRA with information regarding its activities in Australia, profit and loss, balance sheets and large exposures.

The APRA's licensing and supervision of Affiliated Borrower/Australia foreign bank branches is similar to that of locally-incorporated banks. While the 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 either the Board of Governors of the Federal Reserve System in the United States or the BAK in Germany.

Further, banks comprising Affiliated Borrower/Canada are subject to the rules of the OSFI, an entity that licenses and regulates Affiliated Borrower/Canada banks established in Canada as deposit-taking subsidiaries. The OSFI licenses banks, issues directives to address violations by or irregularities involving the bank, requires information from the bank or its auditors regarding supervisory matters and revokes bank licenses.

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

Where a foreign bank establishes a branch in Canada, the Minister of Finance authorizes the establishment of the branch and the OSFI licenses the bank branch to carry on business and may revoke the license. The bank branch must 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 are subject to a yearly audit by an external auditor and examination by the OSFI.[17]

7. Aside from the protections afforded by the regulators in each foreign jurisdiction, the Applicant represents that the Foreign Affiliates 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. Specifically, Paragraph (a)(4)(i) of Rule 15a–6 provides an exemption from U.S. broker-dealer registration for a foreign broker-dealer that effects transactions in securities with or for, or induces or attempts to induce the purchase or sale of any security by ''a registered broker or dealer, whether the registered broker or dealer is acting as principal for its own account or as agent for others, or a bank acting in a broker-dealer capacity as permitted by U.S. law.''[18] In engaging in borrowing activities, each Foreign Affiliate, relying on the Paragraph (a)(4)(i) exemption will be interacting solely with the Applicant, each of which is such a ''registered broker or dealer'' or ''bank,'' and will not be interacting with the Applicant's underlying Client Plans.

Paragraph (a)(3) of 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.

[17] For a description of the Bundesbank and BAK regime of regulation applicable to banks comprising Affiliated Borrower/Germany, refer to Representation 2 of the Summary of Facts and Representations in the Notice (63 FR 53703, 53706, October 6, 1998) for Salomon Smith Barney, Inc. Similarly, for descriptions of the Swiss Federal Banking Commission and the MOF, which regulate both banks and broker-dealers comprising Affiliated Borrower/Switzerland and Affiliated Borrower/Japan, respectively, see Representations 3 and 4 of the Notice for the Union Bank of Switzerland and UBS Securities, LLC (63 FR 15452, 15455, March 31, 1998).

[18] 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 15a–6(b)(3) 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 ''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 Applicant is willing to represent that its Foreign Affiliates will comply with the applicable provisions and relevant SEC interpretations and amendments of Rule 15a–6.

institutional investor,'' as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 (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.[19] The term ''major U.S. major 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 Advisers Act that has total assets under management in excess of $100 million.[20]

8. The Applicant represents that under Rule 15a–6, a foreign broker-dealer that, in reliance on the Paragraph (a)(3) exemption, induces or attempts to induce the purchase or sale of any security by a U.S. institutional or 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 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 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);[21] 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 institutional investors.[22]

9. As the DB Lending Agent, the Applicant provides securities lending services on an agency basis to institutional clients. The DB Lending Agent, pursuant to authorization from its client, will negotiate the terms of loans with borrowers pursuant to a client-approved form of Loan Agreement and will act as a liaison between the lender (*i.e.*, the Client Plan and its custodian) and the borrower to facilitate the lending transaction. No loans of futures contracts will be involved. The DB Lending Agent will have responsibility for monitoring receipt of all required collateral and marking such collateral to market daily so that adequate levels of collateral are maintained. The DB Lending Agent also will monitor and evaluate on a continuing basis the performance and creditworthiness of the borrowers. The DB Lending Agent may or may not act as a custodian or directed trustee with respect to the client's portfolio of securities being loaned. The DB Lending Agent may be authorized, from time to time, by a Client Plan to receive and hold pledged collateral and invest cash collateral pursuant to guidelines established by such Client Plan. All of the DB Lending Agent's procedures for lending securities will be designed to comply with the applicable conditions of PTE 81–6 and PTE 82–63 (as such PTEs may be amended or superseded).[23]

10. The DB Lending Agent may be retained occasionally by other primary securities lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such primary lending agents. As securities lending sub-agent, the DB Lending Agent's role under the lending transactions (*i.e.*, negotiating the terms of loans with borrowers pursuant to a client-approved form of Loan Agreement and monitoring receipt of, and marking to market, required collateral) parallels those under lending transactions for which the DB Lending Agent acts as primary lending agent on behalf of its clients.[24]

11. When a loan is collateralized with cash, the cash will be invested for the benefit and at the risk of the Client Plan, and resulting earnings (net of a rebate to the borrower) comprise the compensation to the Client Plan in respect of such loan, which is split between the Client Plan and the securities lending agent. Where collateral consists of obligations other than cash, the borrower pays a fee (loan premium), which is split between the Client Plan and the securities lending agent.

12. Accordingly, the Applicant requests an administrative exemption from the Department with respect to: (a) The lending of securities owned by certain Client Plans for which the DB Lending Agent will serve as securities lending agent or sub-agent to its Affiliated Borrowers (both current and future)[25] following disclosure of their affiliation with the DB Lending Agent; and (b) the receipt of compensation by the DB Lending Agent in connection

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[19] To the extent permitted by applicable U.S. securities law, the Foreign Affiliates may rely on a U.S. bank or trust company to perform this role.

[20] 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.''

[21] 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 an Affiliated Borrower. The Applicant 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.

[22] 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.

[23] 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.

[24] 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 the DB Lending Agent and its affiliates, beyond that provided by PTEs 81–6 and 82–63.

[25] For the sake of simplicity, future references to the DB Lending Agent's performance of services as securities lending agent should be deemed to include its parallel performance as securities lending sub-agent and references to Client Plans should be deemed to refer to Plans for which the DB Lending Agent is acting as sub-agent with respect to securities lending activities, unless otherwise indicated specifically or by the context of the reference.

with such transactions. For each Client Plan, neither the DB Lending Agent nor any affiliate will have discretionary authority or control or render investment advice over Client Plans' decisions concerning the acquisition or disposition of securities available for loan. The DB Lending Agent's discretion will be limited to activities such as negotiating the terms of the securities loans with the Affiliated Borrowers 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, the DB Lending Agent would have discretion to lend Client Plan securities to an Affiliated Borrower, and because the Affiliated Borrower is an affiliate of the DB Lending Agent, the lending of securities to Affiliated Borrowers by a Client Plan for which the DB Lending Agent serves as securities lending agent (or sub-agent) may be outside the scope of relief provided by PTE 81–6 and PTE 82–63. Moreover, loans to the Foreign Affiliates would be outside of the relief granted in PTE 81–6 (because it limits its relief to banks and U.S. registered broker-dealers). 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 proposed lending program will incorporate the conditions contained in PTE 81–6 and PTE 82–63 and will be in compliance with all securities laws of the United States, to the extent applicable.

13. Where a DB Lending Agent is the direct securities lending agent, a fiduciary of a Client Plan which is independent of the DB Lending Agent will sign a securities lending agency agreement with the DB Lending Agent (the Agency Agreement) before the Client Plan participates in a securities lending program. The Agency Agreement and the explanatory material accompanying such agreement will, among other things, describe the operation of the lending program, prescribe the form of securities Loan Agreement to be entered into on behalf of the Client Plan with borrowers, specify the securities which are available to be lent, required margin and daily marking-to-market, and provide a list of permissible borrowers, including the Affiliated Borrowers. The Agency Agreement will also set forth the basis and rate for the DB Lending Agent's compensation from the Client Plan for the performance of securities lending services.

14. The Agency Agreement will contain provisions to the effect that if the Affiliated Borrowers are designated by the Client Plan as approved borrowers: (a) The Client Plan will acknowledge that the Affiliated Borrowers are affiliates of the DB Lending Agent; and (b) the DB Lending Agent will represent to the Client Plan that each and every loan made to the Affiliated Borrowers on behalf of the Client Plan will be at market rates which are no 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.

15. When the DB Lending Agent is lending securities under a sub-agency arrangement, the primary lending agent will enter into a securities lending agency agreement (the Primary Lending Agreement) with a fiduciary of a Client Plan who is independent of such primary lending agent, the DB Lending Agent or an Affiliated Borrower, before the Client Plan participates in the securities lending program. The primary lending agent will be unaffiliated with the DB Lending Agent or its affiliates. The DB Lending Agent will not enter into a sub-agent arrangement unless the Primary Lending Agreement contains 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 lent, required margin and daily marking-to-market, and provision of a list of approved borrowers (which will include Affiliated Borrowers). The Primary Lending Agreement will specifically authorize the primary lending agent to appoint sub-agents, to facilitate its performance of securities lending agency functions. Where the DB Lending Agent is to act as such a sub-agent, the Primary Lending Agreement will expressly disclose that the DB Lending Agent is to so act. The Primary Lending Agreement will also set forth the basis and rate 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.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (the Sub-Agency Agreement) with the DB Lending Agent under which the primary lending agent will retain and authorize the DB Lending Agent as sub-agent, to lend securities of the primary lending agent's Client Plans, subject to the same terms and conditions as are specified in the Primary Lending Agreement. Thus, for example, the form of Loan Agreement will be the same as that approved by the Client Plan fiduciary in the Primary Lending Agreement and the list of permissible borrowers under the Sub-Agency Agreement (which will include the Affiliated Borrowers) will be limited to those approved borrowers listed as such under the Primary Lending Agreement.

The Applicant states that the 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 the DB Lending Agent is the primary lending agent. In this regard, the DB Lending Agent will make the same representation in the Sub-Agency Agreement as described above in Representation 14 with respect to arm's length dealings with the Affiliated Borrowers. The Sub-Agency Agreement will also set forth the basis and rate for the DB Lending Agent's compensation to be paid by the primary lending agent.[26]

16. In all cases, the DB Lending Agent will maintain transactional and market records sufficient to assure compliance with its representation that all loans to the Affiliated Borrowers are effectively at arm's length terms. Such records will be provided to the appropriate Client Plan fiduciary in the manner and format agreed to with the such Client Plan fiduciary, without charge to the Client Plan. A Client Plan may terminate the Agency Agreement (or the Primary Lending Agreement) at any time, without penalty to the Client Plan, on five business days notice. In addition, the DB Lending Agent will make and retain for six months, tape recordings evidencing all securities loan transactions with Affiliated Borrowers.

17. The DB Lending Agent will negotiate the Loan Agreement with the Affiliated Borrowers on behalf of Client Plans as it does with all other borrowers. An independent fiduciary of the Client Plan will approve the terms of the Loan Agreement. The Loan Agreement will specify, among other things, the right of the Client Plan to terminate a loan at any time and the Plan's rights in the event of any default by an Affiliated Borrower. The Loan Agreement will explain the basis for

[26] The agreement setting forth the respective rights and obligations of the parties in a sub-agency arrangement may be a tripartite agreement among the Primary Lending Agent, the Client Plan and the DB Lending Agent.

compensation to the Client Plan for lending securities to the Affiliated Borrowers under each category of collateral. The Loan Agreement also will contain a requirement that the Affiliated Borrowers must pay all transfer fees and transfer taxes related to the security loans.

18. Before authorizing the program permitting loans to Affiliated Borrowers, a Client Plan will be furnished, upon request, the most recently available audited and unaudited financial statements of the Affiliated Borrowers. The Loan Agreement will contain a requirement that the Affiliated Borrower must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements.[27] If any such changes have taken place, the DB Lending Agent will not make any further loans unless an independent fiduciary of the Client Plan has approved the loan in view of the changed financial condition. Conversely, if the Affiliated Borrower fails to provide notice of such a change in its financial condition, such failure will trigger an event of default under the Loan Agreement.

19. As noted above, the agreement by the DB Lending Agent to provide securities lending services, as agent, to a Client Plan will be embodied in the Agency Agreement. The Client Plan and the DB Lending Agent will agree to the arrangement under which the DB Lending Agent will be compensated for its services as lending agent, including services as custodian, where applicable, and manager of the cash collateral received, where applicable, prior to the commencement of any lending activity. The securities lending 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 who is independent of the DB Lending Agent. Similarly, with respect to arrangements under which the DB Lending Agent 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 or the tripartite agreement, and such agreement will specifically authorize the primary lending agent to pay a portion of such fee, as the primary lending agent and sub-agent may agree, to any sub-agent, including the DB Lending Agent, which is to provide securities lending services to the Client Plan.[28] The Client Plan will be provided with any reasonably available information which is necessary for the Client Plan fiduciary to make a determination whether to enter into or continue to participate under the Agency Agreement (or the Primary Lending Agreement or the tripartite agreement) and any other reasonably available information which the Client Plan fiduciary may reasonably request.

20. Each time a Client Plan lends securities to an Affiliated Borrower pursuant to the Loan Agreement, the DB Lending Agent 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 or rebate payable. The terms of the fee or rebate payable for each loan will be at least as favorable to the Client Plan as those of a comparable arm's length transaction between unrelated parties.

21. The Client Plan will be entitled to the equivalent of all interest, dividends and distributions on the loaned securities during the loan period. The Loan Agreement will provide that the Client Plan may terminate any loan at any time without penalty to such Client Plan. Upon a termination, the Affiliated Borrower 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 pursuant to a class exemption). If the Affiliated Borrower 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.

22. The DB Lending Agent will establish each day a written schedule of lending fees[29] and rebate rates[30] in order to assure uniformity of treatment among borrowing brokers and to limit the discretion the DB Lending Agent would have in negotiating securities loans to the Affiliated Borrowers. Loans to all borrowers of a given security on that day will be made at rates or lending fees on the relevant daily schedules or at rates or lending fees which may be more advantageous to the Client Plans. It is represented that in no case will loans be made to Affiliated Borrowers 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 Client Plan's reinvestment vehicles and on market conditions, as reflected by demand for securities by borrowers other than the Affiliated Borrowers. 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 the Affiliated Borrowers, and will generally track the rebate rates with respect to the same security or class of security.

23. The rebate rates (in respect of cash-collateralized loans made by Client Plans) which are established will also take into account the potential demand for loaned securities, the applicable benchmark cost of funds indices (typically, Federal Funds, overnight repo rate or the like) and anticipated investment return on overnight investments which are permitted by the relevant Client Plan fiduciary. Further, the lending fees (in respect of loans made by Client Plans collateralized by other than cash) which are established

[27] Like broker-dealers registered with the SEC, the Foreign Affiliates are subject to capital adequacy provisions of their respective regulatory entities. It is represented that such rules require the Foreign Affiliates 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. These regulatory authority rules require that if a firm's financial resources fall below a certain percentage, the regulatory authority 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. If the breach is not promptly resolved, the firm's activities may be restricted.

[28] 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.

[29] The DB Lending Agent will adopt minimum daily lending fees for non-cash collateral payable by the Affiliated Borrowers to the DB Lending Agent on behalf of a Client Plan. The DB Lending Agent will submit the method for determining such minimum daily lending fees to an independent fiduciary of the Client Plan for approval before initially lending any securities to the Affiliated Borrower on behalf of such Client Plan.

[30] The DB Lending Agent will adopt separate maximum daily rebate rates with respect to securities loans collateralized with cash collateral. Such rebate rates will be based upon an objective methodology which takes into account several factors, including potential demand for loaned securities, the applicable benchmark cost of fund indices, and anticipated investment return on overnight investments permitted by the Client Plan's independent fiduciary. The DB Lending Agent will submit the method for determining such maximum daily rebate rates to such fiduciary before initially lending any securities to an Affiliated Borrower on behalf of the Client Plan.

will be set daily to reflect conditions as influenced by potential market demand.

24. The DB Lending Agent will negotiate rebate rates for cash collateral payable to each borrower, including the Affiliated Borrowers, on behalf of a Client Plan. With respect to each designated class of securities, the maximum daily rebate rate will generally be the lower of (a) the overnight repo rate or Federal Funds rate, minus a stated percentage, and (b) the actual investment rate for the cash collateral, minus a stated percentage. Where cash collateral is derived from a loan with an expected maturity date (term loan) and is intended to be invested in instruments with similar maturities, the maximum rebate fee will be less than the expected investment return (assuming no investment default). With respect to any loan to an Affiliated Borrower, the DB Lending Agent will not negotiate a rebate rate with respect to such loan which would be expected, at the time of the loan, to produce a zero or negative return to the Client Plan (assuming no default on the investments related to the cash collateral from such loan). The Applicant represents that the written rebate rate established daily for cash collateral under loans negotiated with the Affiliated Borrower will not exceed the rebate rate which would be paid to a similarly situated unrelated borrower with respect to a comparable securities lending transaction. The DB Lending Agent will disclose the method for determining the maximum daily rebate rate as described above to an independent fiduciary of a Client Plan for approval before lending any securities to an Affiliated Borrower on behalf of the Client Plan.

25. For collateral other than cash, the applicable loan fee in respect of any outstanding loan is reviewed daily for competitiveness and adjusted, where necessary, to reflect market terms and conditions. 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 will be to unrelated borrowers. This will ensure that the competitiveness of the loan fee will be tested in the marketplace. Accordingly, loans to an Affiliated Borrower should result in competitive rate income to the lending Client Plan. At all times, the DB Lending Agent will effect loans in a prudent and diversified manner. While the DB Lending Agent will normally lend securities to requesting borrowers on a ''first come, first served'' basis, as a means of assuring uniformity of treatment among borrowers, it should be recognized 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 the DB Lending Agent 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 DB Lending Agent 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.

26. The method of determining the daily securities lending rates (fees and rebates), the minimum lending fees payable by the Affiliated Borrowers and the maximum rebate payable to the Affiliated Borrower will be specified in the Agency Agreement or a tripartite agreement.

27. If the DB Lending Agent reduces the lending fee or increases the rebate rate on any outstanding loan to an Affiliated Borrower (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), the DB Lending Agent, 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 reduced such fee or increased the rebate rate to such Affiliated Borrower and that the Client Plan may terminate such loan at any time. In addition, the DB Lending Agent will provide the independent fiduciary of the Client Plan with such information as the fiduciary may reasonably request regarding such adjustment.

28. The DB Lending Agent or an affiliate which is domiciled in the United States (for purposes of this paragraph ''the Deutsche Entity''), will indemnify and hold harmless each lending Client Plan in the United States against any shortfall in the collateral, as clearly set forth in the applicable lending agreement, plus interest and any transaction costs incurred (including attorney's fees of the Client Plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the Client Plan may incur or suffer directly arising out of the lending of securities of such Client Plan to such Affiliated Borrowers, to the extent permitted by law, except to the extent that such losses or damages are caused by the Client Plan's negligence.

In the event the Affiliated Borrower defaults on a loan, the DB Lending Agent will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, the DB Lending Agent, or in the case of affiliates which are U.S. broker-dealers, that broker-dealer or another Deutsche Entity [31] 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 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 DB Lending Agent (or the affiliated U.S. broker-dealer or Deutsche Entity) will pay the Client Plan cash equal to the market value of the borrowed securities as of the date they should have been returned to the Client Plan plus all interest and accrued financial benefits derived from the beneficial ownership of such loaned securities. Under such circumstances, the DB Lending Agent (or the affiliated U.S. broker-dealer or a Deutsche Entity) will pay the Client Plan an amount equal to (a) the value of the securities as of the date such securities should have been returned to the Client Plan plus (b) all of the accrued financial benefits derived from the beneficial ownership of such loan securities as of such date, plus (c) interest from such date through the date of payment.

29. The Client Plan will receive collateral from the Affiliated Borrower 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 the Affiliated Borrower. 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 an affiliate of the DB Lending Agent) or such other types of collateral which might be permitted by the Department under a class exemption. 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 and a lien on or title to the collateral. The DB Lending Agent

[31] It is represented that U.S. banking law prohibits the indemnification of certain affiliates.

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, the DB Lending Agent will require the Affiliated Borrower to deliver, by the close of business the next day, sufficient additional collateral to bring the level back to at least 102 percent.

30. With respect to loans involving Foreign Affiliates, the following additional conditions will be applicable: (a) All collateral will be maintained in United States dollars or dollar-denominated securities or letters of credit; (b) all collateral will be held in the United States and the DB Lending Agent will maintain the situs of the securities loan agreements in the United States under an arrangement that will comply with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404b–1; and (c) a written consent to service of process in the United States for any civil action or proceeding brought in respect of the securities lending transaction, which consent provides that process may be served on the DB Lending Agent.

31. Each Client Plan participating in the lending program will be sent a monthly transaction report. The monthly report 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 addition, if requested by the lending customer, the DB Lending Agent will provide more frequent confirmations of securities lending transactions, and, with respect to monthly reports, if requested by the customer, the DB Lending Agent will provide weekly or daily reports, setting forth for each transaction made or outstanding during the relevant reporting period, the loaned securities, the related collateral, rebates and loan premiums and such other information in such format as shall be agreed to by the parties. Further, prior to a Client Plan's approval of a securities lending program, the DB Lending Agent will provide a Client Plan fiduciary with a copy of the proposed exemption and the notice granting the exemption.

32. In order to provide the means for monitoring lending activity, the monthly report will reflect rates on loans by the Client Plans to Affiliated Borrowers and rates on loans to other brokers as well as the level of collateral on the loans. In this regard, the monthly report will show, on a daily basis, the market value of all outstanding security loans to the Affiliated Borrowers and to other borrowers. 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 the Affiliated Borrowers and those at which securities are loaned to other brokers. This statement will give an independent fiduciary information which can be compared to that contained in the daily rate schedule.

33. Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Affiliated Borrowers. 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 the DB Lending Agent, 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 the DB Lending Agent, 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;[32] 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.

34. In summary, the Applicant represents that the described transactions have satisfied or 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 loan is effected has been or will be approved by a fiduciary of the Client Plan which is independent of the DB Lending Agent before a Client Plan lends any securities to an Affiliated Borrower.

(b) The lending arrangements (1) will permit the Client Plans to lend to the Affiliated Borrowers 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 have received or will receive sufficient information concerning the Affiliated Borrowers' financial condition before the Client Plan lends any securities to any of those entities.

(d) The collateral on each loan to the Affiliated Borrowers 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 has been and will be monitored daily by the DB Lending Agent.

(e) The Client Plans have received and will receive a monthly report which provides an independent fiduciary of

[32] 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.

the Client Plans with information on loan activity, fees, loan return/yield and the rates on loans to the Affiliated Borrowers as compared with loans to other brokers and the level of collateral on the loans.

(f) Neither the DB Lending Agent nor any affiliate has or will have discretionary authority or control over the Client Plan's acquisition or disposition of securities available for loan.

(g) The terms of the fee or rebate payable for each loan have been and will be at least as favorable to the Client Plans as those of a comparable arm's length transaction between unrelated parties.

(h) All of the procedures under the transactions have conformed or will conform to the applicable provisions of PTE 81–6 and PTE 82–63 and also have been and will be in compliance with the applicable securities laws of the United States and the local laws of the Foreign Affiliates.

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

Information Systems Development, Inc. Employees Profit Sharing Plan (the Plan), Located in Cincinnati, Ohio

[Application No. D–10787]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain illiquid limited partnership interests (collectively; the Interests) to CONVERGYS Information Management Group Inc. (the Company), the sponsor of the Plan and a party in interest with respect to the Plan, provided that the following conditions are met:

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

(2) The Plan receives an amount equal to the greater of: (a) The Plan's cost for the Interests, less all cash distributions received as a result of owning the Interests (*i.e.*, the adjusted cost), (b) the fair market value of the Interests on the date of the sale, as established by a qualified independent appraiser, or (c) the estimated value of the Interests, as determined by the general partner of each partnership and reported on the most recent account statements available at the time of the sale;

(3) The Plan pays no commissions or any other expenses relating to the sale; and

(4) The Plan suffers no loss, as a result of its acquisition and holding of the Interests, taking into account all cash distributions received by the Plan as a result of owning the Interests.

Summary of Facts and Representations

1. The Plan is a 401(k) defined contribution, profit sharing plan with approximately 43 participants and $2,487,682.52 in total assets as of March 31, 1999. Approximately 1.16% of the Plan's total assets will be involved in the proposed transaction. Mr. James Dahmus, a Senior Vice President and Controller of the Company, is the trustee of the Plan.

The Plan was originally established and maintained by Information Systems Development, Inc. (ISD). The Company acquired ISD effective January 1, 1996, and as a result became the sponsor of the Plan. The Company is in the business of providing billing and customer support solutions for the communications industry, both domestically and internationally.

2. Among the assets of the Plan are investments in five limited partnerships (*i.e.*, the Interests): (i) Pegasus Aircraft Partners, L.P. (Pegasus I); (ii) Pegasus Aircraft Partners II, L.P. (Pegasus II); (iii) Paine Webber Equity Partners Two Limited Partnership (PW Equity); (iv) Paine Webber Preferred Yield Fund, L.P. (PW Yield); and (v) Geodyne Energy Income Ltd. Partnership II D (Geodyne).

3. Pegasus I was formed in June, 1988, for the purpose of acquiring a specified portfolio of used commercial aircraft and leasing them to commercial airlines. The managing general partner is Pegasus Aircraft Management Corporation, located in San Francisco, California.

On December 21, 1988, the Plan purchased its Interests for cash during the original offering to the public through Paine Webber Incorporated (Paine Webber), a sales agent.[33] Specifically, the Plan purchased 255 units in Pegasus I at a price of $20 per unit, for a total purchase price of $5,100. The Plan's interest in Pegasus I represents a 0.006% interest in the partnership. As of December 31, 1998, the Plan had received total distributions from Pegasus I in the amount of $4,917.

4. Pegasus II was formed in April, 1989, also for the purpose of acquiring a specified portfolio of used commercial aircraft and leasing them to commercial airlines. The managing general partner is Pegasus Aircraft Management Corporation, located in San Francisco, California.

On December 21, 1989, the Plan purchased for cash from Paine Webber 1,000 units in Pegasus II at a price of $20 per unit, for a total purchase price of $20,000. The Plan's interest represents a 0.136% interest in Pegasus II. As of December 31, 1998, the Plan had received distributions from Pegasus II in the amount of $15,380.

5. PW Equity was formed in May, 1986, for the purpose of investing in a diversified portfolio of existing, newly-constructed, or to-be-built, income-producing real properties such as apartments, shopping centers, hotels, office buildings and industrial buildings. The managing general partner is Second Equity Partners, Inc., located in Boston, Massachusetts.

On June 30, 1987, the Plan purchased for cash from Paine Webber 35,000 units in PW Equity at a price of $1.00 per unit, for a total purchase price of $35,000. The Plan's interest represents a 0.026% interest in PW Equity. As of May 15, 1998, the Plan received distributions from PW Equity totaling $21,675.81.

6. PW Yield was formed in December, 1989, for the purpose of acquiring a portfolio of equipment for leasing to unaffiliated parties. PW Yield's portfolio of equipment includes industrial, materials handling, mining, medical, research and development, transportation, store fixtures, manufacturing testing and office technology equipment. The managing general partner is CAI Equipment Leasing II Corp., located in Denver, Colorado.

On October 30, 1990, the Plan purchased for cash from Paine Webber 37 units in PW Yield at a price of $500 per unit for a total purchase price of $18,500. The Plan's interest in PW Yield represents a 0.026% interest in the partnership. As of December 31, 1998, the Plan had received distributions from the partnership totaling $19,340.

7. Geodyne was formed in May, 1988, for the purpose of engaging in the business of owning interests in producing oil and gas properties located in the continental United States. The general partner is Geodyne Resources, Inc., located in Tulsa, Oklahoma.

On April 15, 1988, the Plan purchased for cash from Paine Webber 250 units in

[33] The Plan's account relating to the holding of the Interests is currently serviced through a Paine Webber office located in Fort Lauderdale, Florida. The Interests were purchased by the Plan through Paine Webber's office in Plantation, Florida, but this office has now closed.

Geodyne at a price of $100 per unit for a total purchase price of $25,000. The Plan's interest represents a 0.079% interest in Geodyne. As of May 15, 1998, the Plan had received distributions from Geodyne totaling $22,022.

8. The partnerships and their general partners are unrelated to ISD, the Company and the Plan. As noted above, the five limited partnerships (the Partnerships) were organized and marketed by Paine Webber.[34] The Partnerships and their underlying assets are valued semiannually by an independent appraiser.

9. The applicant represents that there is no ready market for the Partnerships, and the general partners are under no obligation to aid in the sale of the Interests. The Company's efforts to find a buyer for the Interests have been unsuccessful. As a result, the Plan now proposes to sell the Interests to the Company. The Company will purchase the Interests for the greater of: (i) The cost of the Interests less the distributions received by the Plan from each Partnership (*i.e.,* the adjusted cost); (ii) fair market value of the Interests, as determined on the date of the proposed sale by an independent, qualified appraiser; or (iii) the estimated value of the Interests, as determined by the general partner of each partnership and reported on the most recent account statements available at the time of the sale.

10. Valuations of the Interests are provided to Paine Webber by independent valuation services twice a year. Pegasus I, Pegasus II, PW Equity and PW Yield are valued by the Valuation Group (VG), an independent qualified appraisal firm located in Memphis, Tennessee, and Geodyne is valued by Stanger & Company (SC), an independent qualified appraisal firm located in Shrewsbury, New Jersey. The VG and SC are independent of each Partnership, the Plan and the Company.

In the reports dated June 22, 1999 (the VG Reports), Michael D. Phelan (Mr. Phelan), the president of VG, stated that the aggregate fair market value of: the Pegasus I Interests is $1,173 ($4.60 per unit); the Pegasus II Interests is $4,690 ($4.69 per unit); the PW Equity Interests is $5,600 ($0.16 per unit); and the PW Yield Interests is $481 ($13 per unit). The VG Reports indicate that these investments are generally illiquid, non-tradeable investment vehicles designed to be held by the original investors until the partnership sponsor elects to sell the underlying assets and make liquidating distributions to limited partners. Although there is no readily available market for the Interests, VG conducts a partnership valuation process involving the following procedures: (i) Financial statement analysis and review of the partnership's legal structure and related issues; (ii) research of the underlying assets; and (iii) analysis related to the market for limited partnership interests and similar traded securities.

11. The fair market value determination for Geodyne was prepared by SC on March 31, 1999 and states that the fair market value per each Geodyne Interest is $18.00 per unit for 250 units for a total price of $4500 (SC Report). SC Report states that in estimating the value of a business or its securities, consideration is typically given to the following approaches to value: the Asset Accumulation or Net Asset Approach, the Capital Market Valuation Approach and the Income Approach.

12. On August 1, 1994, the Plan appointed Fidelity Trust Management Company (Fidelity) as trustee and record-keeper for the Plan's assets (excluding the Interests). The applicant represents that Fidelity did not accept trusteeship over the Interests because, due to their illiquid nature, they could not be valued on the same basis as the Plan's other investments.[35] ISD, the prior Plan sponsor, at that time determined that the Interests had no value and ceased allocations to the participants' accounts with respect to the Interests.[36] The applicant states that it subsequently determined that this approach was incorrect. Therefore, the Company filed an application with the Internal Revenue Service (IRS) on April 21, 1997, under its Voluntary Compliance Resolution Program (VCR Program). A compliance statement was issued in September of 1997, approving the correction methodology of allocating the value of the Interests on a pro rata basis to the participants' accounts.

The Company now desires to purchase the Interests from the Plan for cash in order to allow the Plan to accomplish this allocation. The Plan allows its participants to access their account valuations, and to direct the investment of their accounts, on a daily basis. However, the applicant states that the Interests are illiquid and incompatible with the Plan's daily valuation system. The sale of the Interests to the Company would allow the participants to receive an allocation of cash which they could invest in other investment vehicles offered under the Plan, and would facilitate distributions from the Plan.

13. The Company proposes to pay the Plan the greater of: (i) The original purchase price of the Interests less distributions received from the Partnerships (*i.e.,* adjusted cost); (ii) the fair market value as of the date of the sale, as established by a qualified independent appraiser; or (iii) the estimated value of the Interests, as determined by the general partner of each Partnership and reported on the most recent account statements available at the time of the sale. With respect to the valuations noted in item (ii) above, the applicant represents that fair market value of the Interests is determined twice a year by an independent, qualified valuation firm and provided to Paine Webber for the purpose of issuing account statements. The Paine Webber account statements also include an estimated value provided by the general partner of each Partnership, which indicate the amounts noted in item (iii) above. Based on the most recent Paine Webber statements, the Company would buy the Interests for the purchase price shown in the table below.

Partnership	Adjusted cost[37]	Fair market value	Issuer value[38]	Purchase price
Pegasus I	$183	$1,173	$1,877	$1,877
Pegasus II	4,620	4,690	7,210	7,210
PW Equity	13,324	5,600	9,450	13,324
PW Yield	(840)	481	777	777

[34] The applicant represents that Paine Webber is not the general partner of any of the Partnerships; however, Paine Webber's parent company, Paine Webber Group Inc., is the parent company of the following general partners:

Pegasus I—Air Transport Leasing, Inc. (Administrative general partner)

Pegasus II—Air Transport Leasing, Inc. (Administrative general partner)

PW Yield—General Equipment Management, Inc. (Administrative general partner)

PW Equity—Second Equity Partners, Inc. (Managing general partner)

[35] Paine Webber is currently the custodian of the Interests.

[36] The Department is providing no opinion herein regarding whether ISD's determinations with respect to the Interests violated any provision of Part 4 of Title I of the Act.

Partnership	Adjusted cost [37]	Fair market value	Issuer value [38]	Purchase price
Geodyne	2,998	4,500	5,783	5,783
Total	....	....	....	28,971

14. *Certain Repurchase Offers for the Interests.* The applicant states that the general partner of Geodyne is obligated by the terms of the Partnership agreement to annually issue a repurchase offer which is based on the estimated future net revenues from the Partnership's reserves. The most recent repurchase offer was for an amount which was less than either the third party determination of fair market value, or the issuer estimated value. The current repurchase price is in the process of being determined.

Three purchase offers were made in 1998 to the limited partners in PW Equity. First Commercial Guarantee, in an offer dated May 8, 1998, was seeking to acquire up to 0.8% of the outstanding Interests for $0.28 per Interest. Madison Partnership Liquidity Investors 27, LLC, in an offer dated April 29, 1998, was seeking to acquire up to 4.9% of the outstanding Interests for $0.21 per interest. Smithtown Bay, LLC, in an offer dated March 11, 1998, was seeking to acquire approximately 4.9% of the outstanding Interests for $0.20 per Interest. The applicant represents, however, that the managing general partner advised the limited partners of PW Equity that it did not support these offers because such offers were financially inadequate as compared to the managing general partner's recent estimate of the Partnership's value.

A repurchase offer was recently made to the limited partners in Pegasus II. Madison Liquidity Investors 102, LLC, in an offer dated March 23, 1999, was seeking to acquire up to 4.9% of the outstanding Interests for $3.50 per Interest. The offer expired April 30, 1999. The purchase price of $3.50 per Interest was less than the general partners estimate and a third party estimate of value.

15. The applicant represents that the proposed transaction is administratively feasible, and in the best interest and protective of the Plan. The transaction will be for cash and the Plan will pay no costs or commissions associated with the sale. Furthermore, the applicant represents that the Interests are the subject of a Compliance Statement between the IRS and the Company. The Compliance Statement states that the participants' accounts would be credited with their pro rata share of the value of the Interests. Therefore, cash received from the sale of the Interests will be allocated to the participants' accounts in the Plan. Additionally, the Plan has changed to daily recordkeeping, and the Interests cannot be valued on the daily basis. The applicant represents that the Interests are incompatible with the Plan's current investment environment, which allows the participants to obtain the value of their accounts and direct the investment of their accounts on the daily basis. Therefore, liquidating the Interests would generate cash to the Plan that would facilitate any required distributions to the Plan's participants and beneficiaries. The applicant states that if the Interests were sold to an unrelated third party, the Plan would receive substantially less than the amounts the Company is proposing to pay for the Interests. Furthermore, the applicant represents that any amounts received by the Plan as a result of the proposed transaction, which are in excess of the fair market value of the Interests will be treated as a contribution to the Plan, but that this contribution will not exceed limitations of section 415 of the Internal Revenue Code.

16. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The sale will be a one-time transaction for cash; (b) the Plan will pay no commissions or any other expenses relating to the sale; (c) the Plan will receive an amount equal to the greater of: (i) The Plan's cost for the Interests, less all cash distributions received as a result of owning the Interests (*i.e.*, the adjusted cost), (ii) the fair market value of the Interests on the date of the sale, as established by a qualified independent appraiser, or (iii) the estimated value of the Interests, as determined by the general partner and reported on the most recent account statements available at the time of the sale; and (d) the sale will enhance the liquidity and diversification of the Plan's assets and facilitate any required distributions to the participants and beneficiaries.

Tax Consequences of Transaction

The Department of Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or an affiliate thereof) results in the plan either paying less or receiving more than fair market value, such excess may be considered a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested parties (participants and beneficiaries) by first class mail or inter-office mail within ten (10) days of the date of publication of this notice of pendency in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). This supplemental statement will inform all interested persons of their right to comment on the proposed exemption and to request a hearing. All written comments and requests for a hearing are due within forty (40) days of the publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan 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

[37] The adjusted cost is the cost of the Interests less distributions received by the Plan from each Partnership.

[38] This is the estimated value of the Interests as determined by the general partner of each Partnership.

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 18th day of October, 1999.

Ivan Strasfeld,

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

[FR Doc. 99–27520 Filed 10–21–99; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Exploring the Possibility of Using Surplus Pension Assets To Secure Retiree Health Benefits Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Wednesday, November 10, 1999, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to explore the possibility of using surplus pension assets to secure retiree health benefits.

The session will take place in Room N–3437 A–B, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington DC 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately 11:30 a.m., is for working group members to finalize the committee's report to be presented that afternoon to the full Advisory Council.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before November 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by November 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 1.

Signed at Washington, DC, this 18th day of October, 1999

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–27652 Filed 10–21–99; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Issues Surrounding the Trend in the Defined Benefit Plan Market With a Focus on Employer-Sponsored Hybrid Plans Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Tuesday, November 9, 1999, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study issues surrounding trends in the defined benefit market with a focus on employer-sponsored hybrid plans.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon N–3427 A–B, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington DC 20210, is for working group members to complete the committee's report/recommendations for the 1999 topic.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before November 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by November 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 1.

Signed at Washington, DC, this 18th day of October, 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

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