

of the annual audit fee. The amount for the late fee is based on 1 hour of staff time.

Proposed Decision

OSHA has performed its annual review of the fees it currently charges to Nationally Recognized Testing Laboratories, as provided under 29 CFR 1910.7(f). Based on this review, OSHA has determined that certain fees warrant change, as detailed in this notice. As a result, OSHA proposes to revise those current fees by adopting the Nationally Recognized Testing Laboratory Program Fees Schedule shown as Table A above, which would become effective on January 1, 2002. As provided in our regulations, this proposed fee schedule would remain in effect until superseded by another fee schedule. OSHA would give the public an opportunity to comment on any future changes to the fees, as we are doing through this notice.

OSHA welcomes public comments, in sufficient detail, as to whether it should adopt the proposed Nationally Recognized Testing Laboratory Program Fees Schedule shown as Table A above. Your comment should consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESS** no later than the last date for comments (see **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above (also see **ADDRESS** no later than the last date for comments (also see **DATES** above). You must include your reason(s) for any request for extension. OSHA will limit an extension to 15 days unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review documents related to the establishment of the fees and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL95-F-1, the permanent record of public information on OSHA NRTL Program fees.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend the final version of the NRTL Program Fees Schedule to the Assistant Secretary. The Agency will publish a public notice of its final version of the Fees Schedule in the **Federal Register**, as provided under 29 CFR 1910.7.

Signed at Washington, DC, this 30th day of November, 2001.

John L. Henshaw,

Assistant Secretary.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D-10848]

Prohibited Transaction Exemption 2001-46; Grant of Individual Exemption; Bank of America Corporation (BAC)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

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

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

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

Statutory Findings

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

(a) The exemption is administratively feasible;

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

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

Bank of America Corporation (BAC), Located in Charlotte, North Carolina

[Prohibited Transaction Exemption 2001-46; Exemption Application No. D-10848]

Exemption

Section I—Exemption for In-Kind Redemption of Assets

The restrictions of section 406(a) and 406(b) of ERISA 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, effective August 1, 2001,¹ to certain in-kind redemptions (the Redemptions) by the NationsBank Cash Balance Plan (the In-house Plan) of shares (the Shares) of proprietary mutual funds (the Portfolios) offered by investment companies for which Bank of America, N.A. (Bank of America) or an affiliate thereof provides investment advisory and other services (the Nations Funds).

This exemption is subject to the following conditions:

(A) The In-house Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemptions (other than customary transfer charges paid to parties other than Bank of America and affiliates of Bank of America (Bank of America Affiliates));

(B) The assets transferred to the In-house Plan pursuant to the Redemptions consist entirely of cash and Transferrable Securities. Notwithstanding the foregoing, Transferrable Securities which are odd lot securities, fractional shares and

¹ BAC anticipates that the Redemptions will take place on or after August 1, 2001 and, for each Portfolio, will be completed in a single transaction on a single day. However, the applicant represents that different Portfolios may effect Redemptions on different dates. As a result, reference to "the Redemptions" throughout this proposed exemption shall include all in-kind redemptions of Shares made pursuant to the exemption regardless of whether such redemptions are made on the same day.

accruals on such securities may be distributed in cash;

(C) With certain exceptions defined below, the In-house Plan receives a pro rata portion of the securities of the Portfolio upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures set forth in Rule 17a-7 under the Investment Company Act of 1940, as amended from time to time (the 1940 Act) (using sources independent of Bank of America and Bank of America Affiliates);

(D) Bank of America, or any affiliate thereof, does not receive any fees, including any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with any redemption of the Shares;

(E) Prior to a Redemption, Bank of America provides in writing to an independent fiduciary, as such term is defined in section II (an Independent Fiduciary), a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written authorization for such Redemption to Bank of America, such authorization being terminable at any time prior to the date of the Redemption without penalty to the In-house Plan, and such termination being effectuated by the close of business following the date of receipt by Bank of America of written or electronic notice regarding such termination (unless circumstances beyond the control of Bank of America delay termination for no more than one additional business day);

(G) Before authorizing a Redemption, based on the disclosures provided by the Portfolios to the Independent Fiduciary, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the In-house Plan, and comparable to and no less favorable than terms obtainable at arms-length between unaffiliated parties, and that the Redemption is in the best interest of the In-house Plan and its participants and beneficiaries;

(H) Not later than thirty (30) business days after the completion of a Redemption, the relevant Fund will provide to an independent fiduciary acting on behalf of the Plan (the Independent Fiduciary) a written confirmation regarding such Redemption containing:

(i) The number of Shares held by the In-house Plan immediately before the

Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) the identity (and related aggregate dollar value) of each security provided to the In-house Plan pursuant to the Redemption, including each security valued in accordance with Rule 17a-7(b)(4),

(iii) the current market price of each security received by the In-house Plan pursuant to the Redemption, and

(iv) the identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the In-house Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Portfolio at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, a random sampling of the pricing information supplied by Bank of America; and

(K) Each of the In-house Plan's dealings with: the Nations Funds, the investment advisors to the Nations Funds (the Investment Advisers), the principal underwriter for the Nations Funds, or any affiliated person thereof, are on a basis no less favorable to the In-house Plan than dealings between the Nations Funds and other shareholders holding shares of the same class as the Shares;

(L) The Bank maintains, or causes to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (M) below to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Bank of America, the records are lost or destroyed prior to the end of the six-year period, (ii) no party in interest with respect to the In-house Plan other than Bank of America 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 such records are not maintained or are not available for examination as required by paragraph (M) below.

(M) (1) Except as provided in subparagraph (2) of this paragraph (M), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (L) above are unconditionally available at their customary locations for

examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission, (ii) any fiduciary of the In-House Plan or any duly authorized representative of such fiduciary, and (iii) any participant or beneficiary of the In-House Plan or duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraphs (M)(1)(ii) and (iii) shall be authorized to examine trade secrets of Bank of America or the Nations Funds, or commercial or financial information which is privileged or confidential.

Section II—Definitions

For purposes of this exemption,

(A) The term "affiliate" means:

(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.

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

(C) The term "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 Portfolio's prospectus and statement of additional information, and other assets belonging to the Portfolio, less the liabilities charged to each such Portfolio, by the number of outstanding shares.

(D) The term "Independent Fiduciary" means a fiduciary who is: (i) independent of and unrelated to Bank of America and its affiliates, and (ii) appointed to act on behalf of the In-house Plan with respect to the in-kind transfer of assets from one or more Portfolios to or for the benefit of the In-house Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to Bank of America if: (i) Such fiduciary directly or indirectly controls, is controlled by or is under common control with Bank of America, (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; except that an independent fiduciary may receive compensation from Bank of

America in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision, (iii) more than three percent (3%) of such fiduciary's gross income, for federal income tax purposes, in its current tax year, will be paid by Bank of America and its affiliates in the fiduciary's current tax year, or (iv) for the period comprising the tax years in which the independent fiduciary represents the In-house Plan, more than two percent (2%) of such fiduciary's aggregate gross income over such period will be paid by Bank of America and its affiliates.

(E) The term "Transferable Securities" shall mean securities (1) for which market quotations are readily available as determined under Rule 17(a)-7 of the 1940 Act; and (2) which are not: (i) Securities which may not be publicly offered or sold without registration under the 1933 Act; (ii) securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Nations Funds, or (b) permit transfers of ownership or securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements); and (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable).

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

Written Comments

The Department received 28 written comments with respect to the proposed exemption. Of this amount, 27 comments sought clarification as to the terms of the proposed exemption. The remaining comment was submitted by BAC. In its letter, BAC stated the following:

(1) The Nations Managed SmallCap Index Fund was incorrectly identified in the proposed exemption (and exemption application) as the Nations Managed SmallCap Value Index Fund;

(2) The amount of fiduciary assets under BAC management was incorrectly stated in the proposed exemption (and exemption application) as totaling \$231,000,000. Such amount, the applicant states, is \$231,000,000,000;

(3) The heading of the proposed exemption should state that Bank of America is located in Charlotte, North Carolina.

In addition, in its letter to the Department, BAC stated that the names of certain parties to the proposed transaction have changed. In this regard, "Bank of America Advisors, Inc." is now "Banc of America Advisors, LLC", and "TradeStreet Investment Associates, Inc." is now "Banc of America Capital Management, LLC". In addition, BAC stated that the "NationsBank Cash Balance Plan" is now "The Bank of America Pension Plan".

BAC stated further that an additional Portfolio, the "Nations MidCap Index Fund", was added as an investment option to BAC's in-house plans in July 2000. Such portfolio may therefore be affected by the exemption. In addition, of the various Nations Funds and Portfolios affected by the exemption, the following have changed their names: "Nations Disciplined Equity Fund" is now "Nations Aggressive Growth Fund"; "Nations Equity Index Fund" is now "Nations LargeCap Index Fund"; "Nations Emerging Growth Fund" is now "Nations MidCap Growth Fund"; "Nations Managed SmallCap Index Fund" is now "Nations SmallCap Index Fund"; and "Nations Small Company Growth Fund" is now "Nations Small Company Fund".

Finally, BAC requests that the definition of Independent Fiduciary, as such term is defined in section II(D) of the proposed exemption, be modified. In this regard, BAC represents that, after reviewing several possible candidates for the position of independent fiduciary with respect to the transactions described herein, it specifically chose IFS to represent the In-house Plan. This decision was based on, among other things, the experience, qualifications and reputation IFS had representing ERISA plans in transactions similar to those contained in this exemption. BAC represents that, in addition to being so qualified, the income IFS has or will receive from BAC or any affiliate in association with the in-kind redemptions is of an amount which ensures IFS's independence. In this regard, BAC represents that for the

period beginning on the date IFS was appointed to represent the In-house Plan and ending on the date the last in-kind redemption is expected to occur, the amount of income IFS will have received from BAC or any affiliate thereof will be less than 2% of IFS's aggregate gross taxable income over such period.

The Department recognizes that, in certain instances, proper representation of a plan may require that an independent plan fiduciary provide a level of services which varies greatly over time. In consideration of, among other things, the size and nature of the transaction involved in this exemption, the Department has decided to modify section II(D) of the proposed exemption to read as follows:

(D) The term "Independent Fiduciary" means a fiduciary who is: (i) independent of and unrelated to Bank of America and its affiliates, and (ii) appointed to act on behalf of the In-house Plan with respect to the in-kind transfer of assets from one or more Portfolios to or for the benefit of the In-house Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to Bank of America if: (i) Such fiduciary directly or indirectly controls, is controlled by or is under common control with Bank of America, (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; except that an independent fiduciary may receive compensation from Bank of America in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision, (iii) more than three percent (3%) of such fiduciary's gross income, for federal income tax purposes, in its current tax year, will be paid by Bank of America and its affiliates in the fiduciary's current tax year, or (iv) for the period comprising the tax years in which the independent fiduciary represents the In-house Plan, more than two percent (2%) of such fiduciary's aggregate gross income over such period will be paid by Bank of America and its affiliates.

Finally, as stated in footnote 6 of the proposed exemption, BAC represented that certain redeemed securities may have different purchase dates and tax bases attached to them as compared with otherwise identical securities remaining in a Portfolio. BAC subsequently clarified this point by noting that for each issue of securities held by a Portfolio, basis will be

allocated pro rata between the securities to be transferred to the In-house Plan and the securities which are to remain in the Portfolio.

Accordingly, after giving full consideration to the entire record, including the written comments noted above, the Department has decided to grant the exemption.

For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-10848) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Christopher Motta of the Department, telephone (202) 693-8544 (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does

not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

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

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

Signed at Washington, DC, this 6th day of December, 2001.

Ivan Strasfeld,

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

[FR Doc. 01-30756 Filed 12-11-01; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Notice of Extension of the Comment Periods for Proposed Exemptions Affected by the Temporary Closure of the Mailroom at the Department of Labor

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor (the Department).

ACTION: Notice of Extension of Comment Periods.

SUMMARY: As a result of the recent anthrax scare, the Department's mailroom was closed between October 22, 2001 and November 26, 2001 in order that protective measures could be taken to ensure the appropriate handling of the mail as well as the general safety of the Department's employees. However, during this time frame, the following proposed individual and class exemptions were published in the **Federal Register** and requested comments from interested persons:

Case No.	FR Citation	Date	Plan/Entity Name
D-10762	66 FR 46830	9/7/01	Key Trust Company of Ohio.
D-10894	66 FR 46837	9/7/01	Brookshire Brothers, Ltd.
D-10913, D-10914	66 FR 46839	9/7/01	The Golden Comprehensive Security Program and The Golden Retirement Savings Program.
D-10954	66 FR 49400	9/27/01	Metropolitan Life Insurance Company.
L-10937	66 FR 49415	9/27/01	Ford Motor Company.
D-10997	66 FR 46843	9/7/01	Exemption to Modify Prohibited Transaction Exemption 97-08 Involving Morgan Stanley Dean Witter & Co. Incorporated.
D-11034	66 FR 49703	9/28/01	Proposed Amendment to Prohibited Transaction Exemption 80-26 for Certain Interest Free Loans to Employee Benefit Plans.

Because no written comments were received from interested persons while the mailroom was closed and the comment periods have since expired for these pendency notices, the Department is hereby extending the comment periods for the above referenced proposed exemptions until December 26, 2001. Therefore, all written comments and/or hearing requests should be sent by regular mail to the address specified in the proposals. Alternatively, interested persons may submit their comments and/or hearing

requests by electronic mail to moffittb@pwba.dol.gov or by facsimile, (202) 219-0204.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mpras, U.S. Department of Labor, telephone (202) 693-8565. (This is not a toll-free number.)

Ivan L. Strasfeld,

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

[FR Doc. 01-30757 Filed 12-11-01; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork