concerned with the management of the public lands.

The Council also is balanced geographically, and BLM will try to find qualified representatives from areas throughout the California Desert District. The District covers portions of eight counties, and includes over 11 million acres of public land in the California Desert Conservation Area and 300,000 acres of scattered parcels in San Diego, western Riverside, western San Bernardino, Orange, and Los Angeles Counties (known as the South Coast).

Any group or individual may nominate a qualified person, based upon their education, training, and knowledge of BLM, the California Desert, and the issues involving BLM-administered public lands throughout southern California. Qualified individuals also may nominate themselves.

Nominations must include the name of the nominee; work and home addresses and telephone numbers; a biographical sketch that includes the nominee's work and public service record; any applicable outside interests or other information that demonstrates the nominees qualifications for the position; and the specific category of interest in which the nominee is best qualified to offer advice and council. Nominees may contact the BLM California Desert District External Affairs staff at (951) 697–5217 or write to the address below and request a copy of the nomination form.

All nominations must be accompanied by letters of reference from represented interests, organizations, or elected officials supporting the nomination. Individuals nominating themselves must provide at least one letter of recommendation. Advisory Council members are appointed by the Secretary of the Interior, generally in late January or early February.

ADDRESSES: Nominations should be sent to the District Manager, Bureau of Land Management, California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553.

FOR FURTHER INFORMATION CONTACT: Stephen Razo, BLM California Desert District External Affairs (951) 697–5217.

Steven J. Borchard,

District Manager.

[FR Doc. E8–22544 Filed 9–24–08; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Pursuant to Clean Air Act

Notice is hereby given that on September 17, 2008, a proposed Consent Decree in *United States* v. City of Winslow, Civil Action No. CV–07–8024–PCT–SMM, was lodged with the United States District Court for the District of Arizona.

In this action, the United States, on behalf of the United States Environmental Protection Agency (''EPA''), sued the City of Winslow, Arizona, City Administrator, John Roche, and former Facility owner William Christie (collectively, ''Defendants'') for violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.,* and the National Emission Standard for Hazardous Air Pollutants for Asbestos, 40 CFR Part 61, Subpart M. The proposed Consent Decree resolves claims against the Defendants for their failure to provide advanced notice to the EPA of the demolition of a nine-building apartment complex in Winslow (''the Facility''), and their failure to comply with applicable regulations during the demolition and subsequent removal of regulated asbestos-containing materials from the Facility.

The proposed Consent Decree requires payment of a $240,400 civil penalty, due jointly and severally from the three Defendants. No injunctive relief is required, as the Facility has been completely demolished and none of the Defendants are in the on-going business of demolition.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of Winslow,* D.J. Ref. 90–5–2–1–09144.

The Consent Decree may be examined at U.S. EPA Region IX at 75 Hawthorne Street, San Francisco, CA 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html* . A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry Friedman,

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

[FR Doc. E8–22525 Filed 9–24–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application Nos. D–11416, D–11435, D–11449, and D–11460]

Prohibited Transaction Exemptions 2008–09 thru 2008–12; Grant of Individual Exemptions Involving D–11416, Wholesale Electronic Supply; D–11435, Merrill Lynch & Co., Inc.; D–11449, Pileco, Inc.; and D–11460, Mellon Bank, NA

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

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.

Wholesale Electronic Supply; Employees Profit Sharing Plan and Trust (the Plan); Located in Dallas, TX

[Prohibited Transaction Exemption 2008–09; Exemption Application No. D–11416]

Exemption

The restrictions in sections 406(a)(1)(A), 406(a)(1)(D), and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (c)(1)(D) through (E) of the Code, shall not apply to the sale of a note (the Note) by the Plan to Levco Enterprises, Inc., a party in interest with respect to the Plan, provided that the following conditions are satisfied:

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

(b) The Plan receives $45,750.00, the outstanding principal balance of the Note;

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

(d) The Plan pays no commissions, costs, nor other expenses in connection with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on March 13, 2008 at 73 FR 13587.

Notice to Interested Persons: The applicant was unable to notify interested persons within the time frame specified in the Notice. However, the applicant stated that interested persons were subsequently notified by May 30, 2008, in the manner and time frame re-negotiated with the Department. The statement accompanying the Notice informed interested persons that they had 30 days to comment to the Department. No written comments were received by the Department.

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

Merrill Lynch & Co., Inc. (ML&Co.) and BlackRock, Inc. (BlackRock); (Collectively, the Applicants); Located in New York, New York

[Prohibited Transaction Exemption 2008–10; Exemption Application No. D–11435]

Exemption

1. Definitions

(a) For purposes of this exemption, the term ''Merrill Lynch/BlackRock Related Entity or Entities'' includes all entities listed in Section 1(a)(1), (a)(2) and (a)(3):

(1) Merrill Lynch & Co., Inc. (*i.e.*, ML&Co.) and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with ML&Co.,

(2) BlackRock, Inc. (*i.e.*, BlackRock) and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with BlackRock, and

(3) Any entity that meets the definition of a Merrill Lynch/BlackRock Related Entity during the term of the exemption.

(b) The term ''Merrill Lynch Related Entity'' or ''Merrill Lynch Related Entities'' means ML&Co. and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with ML&Co.

(c) The term ''BlackRock Related Entity'' or ''BlackRock Related Entities'' means BlackRock and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with BlackRock.

(d) For purposes of sections (a–c), the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

2. General Conditions

(a) The applicable Merrill Lynch/BlackRock Related Entity or Entities maintain(s) or cause(s) to be maintained for a period of six (6) years from the date of any transaction described herein, such records as are necessary to enable the persons described in paragraph (b) below to determine whether the conditions of this exemption were met, except that—

(1) If the records necessary to enable the persons described in paragraph (b)(1)(i)–(iv) below to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of the Merrill Lynch/BlackRock Related Entity or Entities, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest with respect to a plan which engages in the covered transactions, other than any Merrill Lynch/BlackRock Related Entity or Entities, 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 have not been 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 the provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (a) above are unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof—

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

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

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

(iv) Any participant or beneficiary of a plan that engages in the transactions covered herein, or duly authorized representative of such participant or beneficiary;

(2) None of the persons described above in paragraph (b)(1)(ii)–(iv) shall

be authorized to examine trade secrets of the Merrill Lynch/BlackRock Related Entity or Entities, or commercial or financial information, which is privileged or confidential; and

(3) Should the Merrill Lynch/BlackRock Related Entity or Entities refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to paragraph (b)(2) above, the Merrill Lynch/BlackRock Related Entity or Entities shall, by the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

3. Exemptions From Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Underwriters (Modeled After PTE 75–1, Part III)

The restrictions of section 406 of the Act, and the taxes imposed by reason of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the purchase or other acquisition of certain securities by an employee benefit plan during the existence of an underwriting or selling syndicate with respect to such securities, from any person other than a Merrill Lynch/BlackRock Related Entity or Entities, when such Merrill Lynch/BlackRock Related Entity or Entities is a fiduciary with respect to such plan, and a member of such syndicate, provided that the following conditions are met:

(a) No Merrill Lynch/BlackRock Related Entity or Entities which is involved in any way in causing the plan to make the purchase is a manager of such underwriting or selling syndicate. For purposes of this exemption, the term ''manager'' means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the securities being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(b) The securities to be purchased or otherwise acquired are—

(1) Part of an issue registered under the Securities Act of 1933 or, if exempt from such registration requirement, are (i) issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, (ii) issued by a bank, (iii) issued by a common or contract carrier, if such issuance is subject to the provisions of section 20a of the Interstate Commerce Act, as amended, (iv) exempt from such registration requirement pursuant to a Federal statute other than the Securities Act of 1933, or (v) are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781), and the issuer of which has been subject to the reporting requirements of section 13 of the Act (15 U.S.C. 78m) for a period of at least 90 days immediately preceding the sale of securities and has filed all reports required to be filed thereunder with the Securities and Exchange Commission during the preceding 12 months.

(2) Purchased at not more than the public offering price prior to the end of the first full business day after the final term of the securities have been fixed and announced to the public, except that—

(i) If such securities are offered for subscription upon exercise of rights, they are purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such securities are debt securities, they may be purchased at a public offering price on a day subsequent to the end of such first full business day, provided that the interest rates on comparable debt securities offered to the public subsequent to such first full business day and prior to the purchase are less than the interest rate of the debt securities being purchased.

(3) Offered pursuant to an underwriting agreement under which the members of the syndicate are committed to purchase all of the securities being offered, except if—

(i) Such securities are purchased by others pursuant to a rights offering; or

(ii) Such securities are offered pursuant to an over-allotment option.

(c) The issuer of such securities has been in continuous operation for not less than three years, including the operations of any predecessors, unless—

(1) Such securities are non-convertible debt securities rated in one of the four highest rating categories by at least one of the following rating organizations: Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings Inc., Dominion Bond Ratings Service Limited, and Dominion Bond Rating Service, Inc., or any successors thereto;

(2) Such securities are issued or fully guaranteed by a person described in paragraph (b)(1)(i) of this exemption; or

(3) Such securities are fully guaranteed by a person who has issued securities described in paragraph (b)(1)(ii), (iii), (iv) or (v), and this paragraph (c) of this exemption.

(d) The amount of such securities to be purchased or otherwise acquired by the plan does not exceed 3% of the total amount of such securities being offered.

(e) The consideration to be paid by the plan in purchasing or otherwise acquiring such securities does not exceed three percent of the fair market value of the total assets of the plan as of the last day of the most recent fiscal quarter of the plan prior to such transaction, provided that if such consideration exceeds $1 million, it does not exceed 1% of such fair market value of the total assets of the plan.

If such securities are purchased by the plan from a party in interest or disqualified person with respect to the plan, such party in interest or disqualified person shall not be subject to the civil penalty, which 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 conditions of this exemption are not met. However, if such securities are purchased from a party in interest or disqualified person with respect to the plan, the restrictions of section 406(a) of the Act shall apply to any fiduciary with respect to the plan and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall apply to such party in interest or disqualified person, unless the conditions for exemption of PTE 75–1 (40 FR 50845, October 31, 1975), Part II (relating to certain principal transactions) are met.

4. Exemptions From Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Market-Makers (Modeled After PTE 75–1, Part IV)

The restrictions of section 406 of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to any purchase or sale of any securities by an employee benefit plan from or to a Merrill Lynch/BlackRock Related Entity or Entities, which is a market-maker with respect to such securities, when a Merrill Lynch/BlackRock Related Entity or Entities is also a fiduciary with respect to such plan, provided that the following conditions are met:

(a) The issuer of such securities has been in continuous operation for not less than three years, including the operations of any predecessors, unless—

(1) Such securities are non-convertible debt securities rated in one

of the four highest rating categories by at least one of the following rating organizations: Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings Inc., Dominion Bond Ratings Service Limited, and Dominion Bond Rating Service, Inc., or any successors thereto;

(2) Such securities are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(3) Such securities are fully guaranteed by a person described in this paragraph (a).

(b) As a result of purchasing such securities—

(1) The fair market value of the aggregate amount of such securities owned, directly or indirectly, by the plan and with respect to which such Merrill Lynch/BlackRock Related Entity or Entities is a fiduciary, does not exceed 3% of the fair market value of the assets of the plan with respect to which such Merrill Lynch/BlackRock Related Entity or Entities is a fiduciary, as of the last day of the most recent fiscal quarter of the plan prior to such transaction, provided that if the fair market value of such securities exceeds $1 million, it does not exceed one percent of such fair market value of such assets of the plan, except that this paragraph shall not apply to securities described in paragraph (a)(2) of this exemption; and

(2) The fair market value of the aggregate amount of all securities for which such Merrill Lynch/BlackRock Related Entity or Entities is a market-maker, which are owned, directly or indirectly, by the plan and with respect to which such Merrill Lynch/BlackRock Related Entity or Entities is a fiduciary, does not exceed 10% of the fair market value of the assets of the plan with respect to which such Merrill Lynch/BlackRock Related Entity or Entities is a fiduciary, as of the last day of the most recent fiscal quarter of the plan prior to such transaction, except that this paragraph shall not apply to securities described in paragraph (a)(2) of this exemption.

(c) At least one person other than a Merrill Lynch/BlackRock Related Entity or Entities is a market-maker with respect to such securities.

(d) The transaction is executed at a net price to the plan for the number of shares or other units to be purchased or sold in the transaction which is more favorable to the plan than that which such Merrill Lynch/BlackRock Related Entity or Entities acting as fiduciary and acting in good faith, reasonably believes to be available at the time of such transaction from all other market-makers with respect to such securities.

For purposes of this exemption, the term ''market-maker'' shall mean any specialist permitted to act as a dealer, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

5. Exemption Involving Mutual Fund In-House Plans (Modeled After PTE 77–3)

The restrictions of sections 406 and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the acquisition or sale of shares of an open-end investment company registered under the Investment Company Act of 1940 by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, which is a Merrill Lynch/BlackRock Related Entity, employees of any other Merrill Lynch/BlackRock Related Entity, or employees of any affiliated person (as defined in section 2(a)(3) of the Investment Company Act of 1940) of such investment adviser or principal underwriter of such investment company, provided the following conditions are met (whether or not such investment company, investment adviser, principal underwriter or any affiliated person thereof is a fiduciary with respect to the plan):

(a) The plan does not pay any investment management, investment advisory or similar fee to such investment adviser, principal underwriter, affiliated person or Merrill Lynch/BlackRock Related Entity or Entities. This condition does not preclude the payment of investment advisory fees by the investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940.

(b) The plan does not pay a redemption fee in connection with the sale by the plan to the investment company of such shares unless (1) such redemption fee is paid only to the investment company, and (2) the existence of such redemption fee is disclosed in the investment company prospectus in effect both at the time of the acquisition of such shares and at the time of such sale.

(c) The plan does not pay a sales commission in connection with such acquisition or sale.

(d) All other dealings between the plan and the investment company, the investment adviser, the principal underwriter for the investment company, or any other Merrill Lynch/BlackRock Related Entity are on a basis no less favorable to the plan than such dealings are with other shareholders of the investment company.

6. Exemption for Certain Transactions Between Investment Companies and Employee Benefit Plans (Modeled After PTE 77–4)

The restrictions of section 406 of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the purchase or sale by an employee benefit plan of shares of an open-end investment company registered under the Investment Company Act of 1940, where the investment adviser of the investment company is a Merrill Lynch/BlackRock Related Entity and a Merrill Lynch/BlackRock Related Entity is also a fiduciary with respect to the plan, but not an employer of employees covered by the plan, provided that the following conditions are met:

(a) The plan does not pay a sales commission in connection with such purchase or sale.

(b) The plan does not pay a redemption fee in connection with the sale by the plan to the investment company of such shares unless (1) such redemption fee is paid only to the investment company, and (2) the existence of such redemption fee is disclosed in the investment company prospectus in effect both at the time of the purchase of such shares and at the time of such sale.

(c) 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. This condition does not preclude the payment of investment advisory fees by the investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940. This condition also 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. If, during any fee period for which the plan has prepaid its investment management, investment advisory or similar fee, the

plan purchases shares of the investment company, the requirement of this paragraph (c) shall be deemed met with respect to such prepaid fee if by a method reasonably designed to accomplish the same, the amount of the prepaid fee that constitutes the fee with respect to the plan assets invested in the investment company shares: (1) Is anticipated and subtracted from the prepaid fee at the time of payment of such fee, (2) is returned to the plan no later than during the immediately following fee period, or (3) is offset against the prepaid fee for the immediately following fee period or for the fee period immediately following thereafter. For purposes of this paragraph (c), a fee shall be deemed to be prepaid for any fee period if the amount of such fee is calculated as of a date not later than the first day of such period.

(d) A second fiduciary with respect to the plan, who is independent of and unrelated to the fiduciary/investment adviser or any other Merrill Lynch/BlackRock Related Entity, receives a current prospectus issued by the investment company, and full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including the nature and extent of any differential between the rates of such fees, the reasons why the fiduciary/investment adviser may consider such purchases to be appropriate for the plan, and 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. For purposes of this paragraph (d), such second fiduciary will not be deemed to be independent of and unrelated to the fiduciary/investment adviser or any Merrill Lynch/BlackRock Related Entity if:

(1) Such second fiduciary directly or indirectly controls, is controlled by, or is under common control with the fiduciary/investment adviser or any Merrill Lynch/BlackRock Related Entity;

(2) Such second fiduciary, or any officer, director, partner, employee or relative of such second fiduciary is an officer, director, partner, employee or relative of such fiduciary/investment adviser or any Merrill Lynch/BlackRock Related Entity; or

(3) Such second 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 exemption.

If an officer, director, partner, employee or relative of such fiduciary/investment adviser or any Merrill Lynch/BlackRock Related Entity is a director of such second fiduciary, and if he or she abstains from participation in (i) the choice of the plan's investment adviser, (ii) the approval of any such purchase or sale between the plan and the investment company and (iii) the approval of any change of fees charged to or paid by the plan, then paragraph (d)(2) of this exemption shall not apply.

For purposes of paragraph (d)(1) above, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual, and 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.

(e) On the basis of the prospectus and disclosure referred to in paragraph (d), the second fiduciary referred to in paragraph (d) approves such purchases and sales consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act. Such approval may be limited solely to the investment advisory and other fees paid by the mutual fund in relation to the fees paid by the plan and need not relate to any other aspects of such investments. In addition, such approval must be either: (1) Set forth in the plan documents or in the investment management agreement between the plan and the fiduciary/investment adviser, (2) indicated in writing prior to each purchase or sale, or (3) indicated in writing prior to the commencement of a specified purchase or sale program in the shares of such investment company.

(f) The second fiduciary referred to in paragraph (d) above, or any successor thereto, is notified of any change in any of the rates of fees referred to in paragraph (d) and approves in writing the continuation of such purchases or sales and the continued holding of any investment company shares acquired by the plan prior to such change and still held by the plan. Such approval may be limited solely to the investment advisory and other fees paid by the mutual fund in relation to the fees paid by the plan and need not relate to any other aspects of such investment.

7. Exemption Involving Closed-End Investment Company In-House Plans (Modeled After PTE 79–13)

The restrictions of sections 406 and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the acquisition, ownership or sale of shares of a closed-end investment company, which is registered under the Investment Company Act of 1940 and is not a small business investment company as defined in section 103 of the Small Business Investment Company Act of 1958, by an employee benefit plan covering only employees of such investment company, employees of the investment adviser of such investment company, which is a Merrill Lynch/BlackRock Related Entity, employees of any other Merrill Lynch/BlackRock Related Entity, or employees of any affiliated person (as defined in section 2(a)(3) of the Investment Company Act of 1940) of such investment company or investment adviser, provided that the following conditions are met (whether or not such investment company, investment adviser or any affiliated person thereof is a fiduciary with respect to the plan):

(a) The plan does not pay any investment management, investment advisory, or similar fee to such investment adviser, other Merrill Lynch/BlackRock Related Entity or affiliated person. This condition does not preclude the payment of investment advisory fees by the investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940.

(b) The plan does not pay a sales commission in connection with such acquisition or sale to any such investment company, or to any investment adviser, any Merrill Lynch/BlackRock Related Entity or affiliated person; and

(c) All other dealings between the plan and such investment company, the investment adviser, any Merrill Lynch/BlackRock Related Entity or affiliated person are on a basis no less favorable to the plan than such dealings are with other shareholders of the investment company.

8. Exemption for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers (Modeled After PTE 86–128)

Section I: Definition and Special Rules

The following definitions and special rules apply to this exemption:

(a) The term ''Merrill Lynch/BlackRock Related Entity or Entities'' includes affiliates of such entity or entities.

(b) An ''affiliate'' of a Merrill Lynch/BlackRock Related Entity or Entities includes the following:

(1) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), brother, sister, or spouse of a brother or sister, of the Merrill Lynch/BlackRock Related Entity or Entities; and

(2) Any corporation or partnership of which the Merrill Lynch/BlackRock Related Entity or Entities is an officer, director or partner.

A person is not an affiliate of another person solely because such person has investment discretion over the other's assets.

(c) An ''agency cross transaction'' is a securities transaction in which the same Merrill Lynch/BlackRock Related Entity or Entities act(s) as agent for both any seller and any buyer for the purchase or sale of a security.

(d) The term ''covered transaction'' means an action described in Section II (a), (b) or (c) of this exemption.

(e) The term ''effecting or executing a securities transaction'' means the execution of a securities transaction as agent for another person and/or the performance of clearance, settlement, custodial or other functions ancillary thereto.

(f) A plan fiduciary is independent of a Merrill Lynch/BlackRock Related Entity or Entities only if the fiduciary has no relationship to or interest in such Merrill Lynch/BlackRock Related Entity or Entities that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(g) The term ''profit'' includes all charges relating to effecting or executing securities transactions, less reasonable and necessary expenses including reasonable indirect expenses (such as overhead costs) properly allocated to the performance of these transactions under generally accepted accounting principles.

(h) The term ''securities transaction'' means the purchase or sale of securities.

(i) The term ''nondiscretionary trustee'' of a plan means a trustee or custodian whose powers and duties with respect to any assets of the plan are limited to (1) the provision of nondiscretionary trust services to the plan, and (2) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term ''nondiscretionary trust services'' means custodial services and services ancillary to custodial services, none of which services are discretionary. For purposes of this exemption, a person does not fail to be a nondiscretionary trustee solely by reason of having been delegated, by the sponsor of a master or prototype plan, the power to amend such plan.

Section II: Covered Transactions

If each condition of Section III of this exemption is either satisfied or not applicable under Section IV of this exemption, the restrictions of section 406(b) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) and (F) of the Code shall not apply to—

(a) A Merrill Lynch/BlackRock Related Entity or Entities that is a plan fiduciary using its authority to cause a plan to pay a fee to a Merrill Lynch/BlackRock Related Entity or Entities as agent for the plan, for effecting or executing securities transactions, but only to the extent that such transactions are not excessive, under the circumstances, in either amount or frequency;

(b) A Merrill Lynch/BlackRock Related Entity or Entities that is a plan fiduciary acting as the agent in an agency cross transaction for both the plan and one or more other parties to the transaction; or

(c) The receipt by any Merrill Lynch/BlackRock Related Entity or Entities that is a plan fiduciary of reasonable compensation for effecting or executing an agency cross transaction to which a plan is a party from one or more other parties to the transaction.

Section III: Conditions

Except to the extent otherwise provided in Section IV of this exemption, Section II of this exemption applies only if the following conditions are satisfied:

(a) The Merrill Lynch/BlackRock Related Entity engaging in the covered transaction is not an administrator of the plan, or an employer any of whose employees are covered by the plan.

(b)(1) The covered transaction is performed under a written authorization executed in advance by a fiduciary of each plan whose assets are involved in the transaction, which plan fiduciary is independent of the Merrill Lynch/BlackRock Related Entity or Entities engaging in the covered transaction.

(2) For purposes of this exemption, Section III(b) will be deemed satisfied for the period commencing September 29, 2006, notwithstanding Merrill Lynch Investment Managers, LLC (MLIM)'s reliance on written authorizations obtained prior to the consummation of the Merger,[1] provided that after the closing of the Merger, MLIM notified each such authorizing plan fiduciary of the fact that: (A) As a result of the Merger, MLIM had become a subsidiary of BlackRock; (B) the existing authorization by such authorizing plan fiduciary would continue to permit MLIM to engage in the covered transaction on behalf of the plan; (C) such authorization is terminable at will by the plan, without penalty to the plan, upon receipt by MLIM of written notice from an authorizing plan fiduciary of termination; (D) a form expressly providing an election to terminate the authorization with instructions on the use of such form was supplied to each such authorizing plan fiduciary; and (E) failure to return such termination form would result in the continued authorization of MLIM to engage in the covered transactions on behalf of the plan. Notwithstanding the foregoing, this exception does not apply to new authorizations to engage in covered transactions entered into after the consummation of the Merger.

(c) The authorization referred to in paragraph (b) of this Section is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized Merrill Lynch/BlackRock Related Entity or Entities of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (b) of this Section with instructions on the use of the form must be supplied to the authorizing plan fiduciary no less than annually. The instructions for such form must include the following information:

(1) The authorization is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized Merrill Lynch/BlackRock Related Entity or Entities of written notice from the authorizing plan fiduciary or other plan official having authority to terminate the authorization; and

(2) Failure to return the form will result in the continued authorization of the authorized Merrill Lynch/BlackRock Related Entity or Entities to engage in the covered transactions on behalf of the plan.

(d) Within three months before an authorization is made, the authorizing plan fiduciary is furnished with any reasonably available information that the Merrill Lynch/BlackRock Related Entity or Entities seeking authorization reasonably believes to be necessary for the authorizing plan fiduciary to determine whether the authorization should be made, including (but not limited to) a copy of this exemption, the

[1] On September 29, 2006, ML&Co. and BlackRock consummated a transaction (the Merger), in which ML&Co. contributed MLIM and various other assets and subsidiaries that comprised its investment management business to BlackRock in exchange for approximately 45% of the outstanding voting securities of BlackRock.

form for termination of authorization described in Section III(c) of this exemption, a description of the Merrill Lynch/BlackRock Related Entity or Entities' brokerage placement practices, and any other reasonably available information regarding the matter that the authorizing plan fiduciary requests.

(e) The Merrill Lynch/BlackRock Related Entity or Entities engaging in a covered transaction furnishes the authorizing plan fiduciary with either:

(1) A confirmation slip for each securities transaction underlying a covered transaction within ten business days of the securities transaction containing the information described in Rule 10b–10(a)(1–7) under the Securities Exchange Act of 1934, 17 CFR 240.10b–10; or

(2) At least once every three months and not later than 45 days following the period to which it relates, a report disclosing:

(A) A compilation of the information that would be provided to the plan pursuant to subparagraph (e)(1) of this Section during the three-month period covered by the report;

(B) The total of all securities transaction related charges incurred by the plan during such period in connection with such covered transactions; and

(C) The amount of the securities transaction-related charges retained by such Merrill Lynch/BlackRock Related Entity or Entities and the amount of such charges paid to other persons for execution or other services.

For purposes of this paragraph (e), the words ''incurred by the plan'' shall be construed to mean ''incurred by the pooled fund'' when such Merrill Lynch/BlackRock Related Entity or Entities engages in covered transactions on behalf of a pooled fund in which the plan participates.

(f) The authorizing plan fiduciary is furnished with a summary of the information required under paragraph (e)(1) of this Section at least once per year. The summary must be furnished within 45 days after the end of the period to which it relates, and must contain the following:

(1) The total of all securities transaction-related charges incurred by the plan during the period in connection with covered securities transactions.

(2) The amount of the securities transaction-related charges retained by the authorized Merrill Lynch/BlackRock Related Entity or Entities and the amount of these charges paid to other persons for execution or other services.

(3) A description of the Merrill Lynch/BlackRock Related Entity or Entities' brokerage placement practices, if such practices have materially changed during the period covered by the summary.

(4)(i) A portfolio turnover ratio, calculated in a manner which is reasonably designed to provide the authorizing plan fiduciary with the information needed to assist in discharging its duty of prudence. The requirements of this paragraph (f)(4)(i) will be met if the ''annualized portfolio turnover ratio'', calculated in the manner described in paragraph (f)(4)(ii), is contained in the summary.

(ii) The ''annualized portfolio turnover ratio'' shall be calculated as a percentage of the plan assets consisting of securities or cash over which the authorized Merrill Lynch/BlackRock Related Entity or Entities had discretionary investment authority, or with respect to which such Merrill Lynch/BlackRock Related Entity or Entities rendered, or had any responsibility to render, investment advice (the portfolio) at any time or times (management period(s)) during the period covered by the report. First, the ''portfolio turnover ratio'' (not annualized) is obtained by dividing (A) the lesser of the aggregate dollar amounts of purchases or sales of portfolio securities during the management period(s) by (B) the monthly average of the market value of the portfolio securities during all management period(s). Such monthly average is calculated by totaling the market values of the portfolio securities as of the beginning and ending of each management period and as of the end of each month that ends within such period(s), and dividing the sum by the number of valuation dates so used. For purposes of this calculation, all debt securities whose maturities at the time of acquisition were one year or less are excluded from both the numerator and the denominator.

The ''annualized portfolio turnover ratio'' is then derived by multiplying the ''portfolio turnover ratio'' by an annualizing factor. The annualizing factor is obtained by dividing (C) the number twelve by (D) the aggregate duration of the management period(s) expressed in months (and fractions thereof).

(iii) The information described in this paragraph (f)(4) is not required to be furnished in any case where the authorized Merrill Lynch/BlackRock Related Entity or Entities acting as plan fiduciary has not exercised discretionary authority over trading in the plan's account during the period covered by the report.

For purposes of this paragraph (f), the words ''incurred by the plan'' shall be construed to mean ''incurred by the pooled fund'' when such Merrill Lynch/BlackRock Related Entity or Entities engages in covered transactions on behalf of a pooled fund in which the plan participates.

(g) If an agency cross transaction to which Section IV(b) of this exemption does not apply is involved, the following conditions must also be satisfied:

(1) The information required under Section III(d) or IV(d)(1)(B) of this exemption includes a statement to the effect that with respect to agency cross transactions, the Merrill Lynch/BlackRock Related Entity or Entities effecting or executing the transactions will have a potentially conflicting division of loyalties and responsibilities regarding the parties to the transactions;

(2) The summary required under Section III(f) of this exemption includes a statement identifying the total number of agency cross transactions during the period covered by the summary and the total amount of all commissions or other remuneration received or to be received from all sources by the Merrill Lynch/BlackRock Related Entity or Entities engaging in the transactions in connection with those transactions during the period;

(3) The Merrill Lynch/BlackRock Related Entity or Entities effecting or executing the agency cross transaction has the discretionary authority to act on behalf of, and/or provide investment advice to, either (A) one or more sellers or (B) one or more buyers with respect to the transaction, but not both.

(4) The agency cross transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available; and

(5) The agency cross transaction is executed or effected at a price that is at or between the independent bid and independent ask prices for the security prevailing at the time of the transaction.

(h) A Merrill Lynch/BlackRock Related Entity or Entities serving as trustee (other than a nondiscretionary trustee) may only engage in a covered transaction with a plan that has total net assets with a value of at least $50 million and in the case of a pooled fund, the $50 million net asset requirement will be met if 50 percent or more of the units of beneficial interest in such pooled fund are held by plans each of which has total net assets with a value of at least $50 million.

For purposes of the net asset tests described above, where a group of plans is maintained by a single employer or

controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 million net asset requirement may be met by aggregating the assets of such plans, if the assets are pooled for investment purposes in a single master trust.

(i) The Merrill Lynch/BlackRock Related Entity or Entities serving as trustee (other than a nondiscretionary trustee) engaging in a covered transaction furnishes, at least annually, to the authorizing plan fiduciary of each plan the following:

(1) The aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms affiliated with such trustee;

(2) The aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms not affiliated with such trustee;

(3) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms affiliated with such trustee; and

(4) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms not affiliated with such trustee.

For purposes of this paragraph (i), the words ''paid by the plan'' should be construed to mean ''paid by the pooled fund'' when the trustee engages in covered transactions on behalf of a pooled fund in which the plan participates.

Section IV: Exceptions From Conditions

(a) Certain plans not covering employees. Section III of this exemption does not apply to covered transactions to the extent they are engaged in on behalf of individual retirement accounts meeting the conditions of 29 CFR 2510.3–2(d), or plans, other than training programs, that cover no employees within the meaning of 29 CFR 2510.3–3.

(b) Certain agency cross transactions. Section III of this exemption does not apply in the case of an agency cross transaction, provided that the Merrill Lynch/BlackRock Related Entity or Entities effecting or executing the transaction and any other Merrill Lynch/BlackRock Related Entity or Entities:

(1) Does not render investment advice to any plan for a fee within the meaning of section 3(21)(A)(ii) of the Act with respect to the transaction;

(2) Is not otherwise a fiduciary who has investment discretion with respect to any plan assets involved in the transaction, see 29 CFR 2510.3–21(d); and

(3) Does not have the authority to engage, retain or discharge any person who is or is proposed to be a fiduciary regarding any such plan assets.

(c) Recapture of profits. Section III(a) of this exemption does not apply in any case where the Merrill Lynch/BlackRock Related Entity or Entities engaging in a covered transaction returns or credits to the plan all profits earned by that Merrill Lynch/BlackRock Related Entity or Entities in connection with the securities transactions associated with the covered transaction.

(d) Special rules for pooled funds. In the case of a Merrill Lynch/BlackRock Related Entity or Entities engaging in a covered transaction on behalf of an account or fund for the collective investment of the assets of more than one plan (pooled fund):

(1) Section III (b), (c), and (d) of this exemption does not apply if—

(A) The arrangement under which the covered transaction is performed is subject to the prior and continuing authorization, in the manner described in this paragraph (d)(1), of an authorizing plan fiduciary with respect to each plan whose assets are invested in the pooled fund who is independent of the Merrill Lynch/BlackRock Related Entity or Entities. The requirement that the authorizing plan fiduciary be independent of the Merrill Lynch/BlackRock Related Entity or Entities shall not apply in the case of a plan covering only employees of the Merrill Lynch/BlackRock Related Entity or Entities, if the requirements of Section IV(d)(2)(A) and (B) of this exemption are met.

(B) The authorizing plan fiduciary is furnished with any reasonably available information that the Merrill Lynch/BlackRock Related Entity or Entities engaging or proposing to engage in the covered transactions reasonably believes to be necessary for the authorizing plan fiduciary to determine whether the authorization should be given or continued, not less than 30 days prior to implementation of the arrangement or material change thereto, including (but not limited to) a description of the Merrill Lynch/BlackRock Related Entity or Entities' brokerage placement practices, and, where requested, any reasonably available information regarding the matter upon the reasonable request of the authorizing plan fiduciary at any time.

(C) In the event an authorizing plan fiduciary submits a notice in writing to the Merrill Lynch/BlackRock Related Entity or Entities engaging in or proposing to engage in the covered transaction objecting to the implementation of, material change in, or continuation of, the arrangement, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the pooled fund, without penalty to the plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the nonwithdrawing plans. In the case of a plan that elects to withdraw under this subparagraph (d)(1)(C), the withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a plan electing to withdraw.

(D) In the case of plan whose assets are proposed to be invested in the pooled fund subsequent to the implementation of the arrangement and that has not authorized the arrangement in the manner described in subparagraphs (d)(1)(B) and (C) of this Section, the plan's investment in the pooled fund is subject to the prior written authorization of an authorizing plan fiduciary who satisfies the requirements of subparagraph (d)(1)(A).

(2) To the extent that Section III(a) of this exemption prohibits any Merrill Lynch/BlackRock Related Entity or Entities from being the employer of employees covered by a plan investing in a pool managed by the Merrill Lynch/BlackRock Related Entity or Entities, Section III(a) of this exemption does not apply if—

(A) The Merrill Lynch/BlackRock Related Entity or Entities is an ''investment manager'' as defined in section 3(38) of the Act, and

(B) Either (i) the Merrill Lynch/BlackRock Related Entity or Entities returns or credits to the pooled fund all profits earned by the Merrill Lynch/BlackRock Related Entity or Entities in connection with all covered transactions engaged in by the Merrill Lynch/BlackRock Related Entity or Entities on behalf of the fund, or (ii) the pooled fund satisfies the requirements of paragraph IV(d)(3).

(3) A pooled fund satisfies the requirements of this paragraph for a fiscal year of the fund if—

(A) On the first day of such fiscal year, and immediately following each acquisition of an interest in the pooled fund during the fiscal year by any plan covering employees of any Merrill Lynch/BlackRock Related Entity or Entities, the aggregate fair market value of the interests in such fund of all plans covering employees of any Merrill Lynch/BlackRock Related Entity or Entities does not exceed twenty percent of the fair market value of the total assets of the fund; and

(B) The aggregate brokerage commissions received by any Merrill Lynch/BlackRock Related Entity or Entities, in connection with covered transactions engaged in by any Merrill Lynch/BlackRock Related Entity or Entities on behalf of all pooled funds in which a plan covering employees of any Merrill Lynch/BlackRock Related Entity or Entities participates, do not exceed five percent of the total brokerage commissions received by any Merrill Lynch/BlackRock Related Entity or Entities from all sources in such fiscal year.

9. Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (Modeled After PTE 2002–12)

Section I. Exemption for Cross-Trading of Securities by Index and/or Model-Driven Funds

The restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Sections II and III of this exemption, below, are satisfied.

(a) The purchase and sale of securities between an Index Fund or a Model-Driven Fund (either, a Fund; or collectively, the Funds), as defined in Section IV(a) and (b) of this exemption, below, and another Fund, at least one of which holds ''plan assets'' subject to the Act; or

(b) The purchase and sale of securities between a Fund and a Large Account, as defined in Section IV(e) of this exemption, below, at least one of which holds ''plan assets'' subject to the Act, pursuant to a portfolio restructuring program, as defined in Section IV(f) of this exemption, below, of the Large Account;

Notwithstanding the foregoing, this exemption shall apply to cross-trades between two or more Large Accounts pursuant to a portfolio restructuring program if such cross-trades occur as part of a single cross-trading program involving both Funds and Large Accounts for which securities are cross-traded solely as a result of the objective operation of the program.

Section II. Specific Conditions

(a) The cross-trade is executed at the closing price, as defined in Section IV(h) of this exemption below.

(b) Any cross-trade of securities by a Fund occurs as a direct result of a ''triggering event,'' as defined in Section IV(d) of this exemption, and is executed no later than the close of the third business day following such ''triggering event.''

(c) If the cross-trade involves a Model-Driven Fund, the cross-trade does not take place within three (3) business days following any change made by the Manager to the model underlying the Fund.

(d) The Manager has allocated the opportunity for all Funds or Large Accounts to engage in the cross-trade on an objective basis which has been previously disclosed to the authorizing fiduciaries of plan investors, and which does not permit the exercise of discretion by the Manager (e.g., a pro rata allocation system).

(e) No more than twenty (20) percent of the assets of the Fund or Large Account at the time of the cross-trade is comprised of assets of employee benefit plans maintained by the Manager for its own employees (Manager Plans) for which the Manager exercises investment discretion.

(f)(1) Cross-trades of equity securities involve only securities that are widely-held, actively-traded, and for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and are widely recognized as accurate and reliable sources for such information. For purposes of this requirement, the terms ''widely-held'' and ''actively-traded'' shall be deemed to include any security listed in an Index, as defined in Section IV(c) of this exemption; and

(2) Cross-trades of fixed-income securities involve only securities for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and are widely recognized as accurate and reliable sources for such information.

(g) The Manager receives no brokerage fees or commissions as a result of the cross-trade.

(h) As of the date this exemption is granted, a plan's participation in the cross-trading program of a Manager, as a result of investments made in any Index or Model-Driven Fund that holds plan assets is subject to a written authorization executed in advance of such investment by a fiduciary of the plan which is independent of the Manager engaging in the cross-trade transactions. For purposes of this exemption, the requirement that the authorizing plan fiduciary be independent of the Manager shall not apply in the case of a Manager Plan.

(i) With respect to existing plan investors in any Index or Model-Driven Fund that holds plan assets as of the date this exemption is granted, the independent fiduciary is furnished with a written notice, not less than forty-five (45) days prior to the implementation of the cross-trading program, that describes the Fund's participation in the cross-trading program of the Manager, provided that:

(1) Such notice allows each plan an opportunity to object to the plan's participation in the cross-trading program as a Fund investor by providing the plan with a special termination form;

(2) The notice instructs the independent plan fiduciary that failure to return the termination form to the Manager, by a specified date (which shall be at least 30 days following the plan's receipt of the form) shall be deemed to be an approval by the plan of its participation in the Manager's cross-trading program as a Fund investor; and

(3) If the independent plan fiduciary objects to the plan's participation in the cross-trading program as a Fund investor by returning the termination form to the Manager by the specified date, the plan is given the opportunity to withdraw from each Index or Model-Driven Fund without penalty prior to the implementation of the cross-trading program, within such time as may be reasonably necessary to effectuate the withdrawal in an orderly manner.

(j) Prior to obtaining the authorization described in Section II(h) of this exemption, and in the notice described in Section II(i) of this exemption, the following statement must be provided by the Manager to the independent plan fiduciary:

Investment decisions for the Fund (including decisions regarding which securities to buy or sell, how much of a security to buy or sell, and when to execute a sale or purchase of securities for the Fund) will not be based in whole or in part by the Manager on the availability of cross-trade opportunities and will be made prior to the identification and determination of any cross-trade opportunities. In addition, all cross-trades by a Fund will be based solely upon a ''triggering event'' set forth in this exemption. Records documenting each cross-trade transaction will be retained by the Manager.

(k) Prior to any authorization set forth in Section II(h) of this exemption, and at the time of any notice described in Section II(i) of this exemption, the independent plan fiduciary must be furnished with any reasonably available

information necessary for the fiduciary to determine whether the authorization should be given, including (but not limited to) a copy of this exemption, an explanation of how the authorization may be terminated, detailed disclosure of the procedures to be implemented under the Manager's cross-trading practices (including the ''triggering events'' that will create the cross-trading opportunities, the independent pricing services that will be used by the Manager to price the cross-traded securities, and the methods that will be used for determining closing price), and any other reasonably available information regarding the matter that the authorizing plan fiduciary requests. The independent plan fiduciary must also be provided with a statement that the Manager will have a potentially conflicting division of loyalties and responsibilities to the parties to any cross-trade transaction and must explain how the Manager's cross-trading practices and procedures will mitigate such conflicts.

With respect to Funds that are added to the Manager's cross-trading program or changes to, or additions of, triggering events regarding Funds, following the authorizations described in Section II(h) or Section II(i) of this exemption, the Manager shall provide a notice to each relevant independent plan fiduciary of each plan invested in the affected Funds prior to, or within ten (10) days following, such addition of Funds or change to, or addition of, triggering events, which contains a description of such Fund(s) or triggering event(s). Such notice will also include a statement that the plan has the right to terminate its participation in the cross-trading program and its investment in any Index Fund or Model-Driven Fund without penalty at any time, as soon as is necessary to effectuate the withdrawal in an orderly manner.

(l) At least annually, the Manager notifies the independent fiduciary for each plan that has previously authorized participation in the Manager's cross-trading program as a Fund investor, that the plan has the right to terminate its participation in the cross-trading program and its investment in any Index Fund or Model-Driven Fund that holds plan assets without penalty at any time, as soon as is necessary to effectuate the withdrawal in an orderly manner. This notice shall also provide each independent plan fiduciary with a special termination form and instruct the fiduciary that failure to return the form to the Manager by a specified date (which shall be at least thirty (30) days following the plan's receipt of the form) shall be deemed an approval of the subject plan's continued participation in the cross-trading program as a Fund investor. In lieu of providing a special termination form, the notice may permit the independent plan fiduciary to utilize another written instrument by the specified date to terminate the plan's participation in the cross-trading program, provided that in such case the notice explicitly discloses that a termination form may be obtained from the Manager upon request. Such annual re-authorization must provide information to the relevant independent plan fiduciary regarding each Fund in which the plan is invested, as well as explicit notification that the plan fiduciary may request and obtain disclosures regarding any new Funds in which the plan is not invested that are added to the cross-trading program, or any new triggering events (as defined in Section IV(d) of this exemption) that may have been added to any existing Funds in which the plan is not invested, since the time of the initial authorization described in Section II(h) of this exemption, or the time of the notice described in Section II(i) of this exemption.

(m) With respect to a cross-trade involving a Large Account:

(1) The cross-trade is executed in connection with a portfolio restructuring program, as defined in Section IV(f) of this exemption, with respect to all or a portion of the Large Account's investments which an independent fiduciary of the Large Account (other than in the case of any assets of a Manager Plan) has authorized the Manager to carry out or to act as a ''trading adviser,'' as defined in Section IV(g) of this exemption, in carrying out a Large Account-initiated liquidation or restructuring of its portfolio;

(2) Prior to the cross-trade, a fiduciary of the Large Account who is independent of the Manager (other than in the case of any assets of a Manager Plan) [2] has been fully informed of the Manager's cross-trading program, has been provided with the information required in Section II(k) of this exemption, and has provided the Manager with advance written authorization to engage in cross-trading in connection with the restructuring, provided that—

(A) Such authorization may be terminated at will by the Large Account upon receipt by the Manager of written notice of termination.

(B) A form expressly providing an election to terminate the authorization, with instructions on the use of the form, is supplied to the authorizing Large Account fiduciary concurrent with the receipt of the written information describing the cross-trading program. The instructions for such form must specify that the authorization may be terminated at will by the Large Account, without penalty to the Large Account, upon receipt by the Manager of written notice from the authorizing Large Account fiduciary;

(3) All cross-trades made in connection with the portfolio restructuring program must be completed by the Manager within sixty (60) days of the initial authorization (or initial receipt of assets associated with the restructuring, if later) to engage in such restructuring by the Large Account's independent fiduciary, unless such fiduciary agrees in writing to extend this period for another thirty (30) days; and,

(4) No later than thirty (30) days following the completion of the Large Account's portfolio restructuring program, the Large Account's independent fiduciary must be fully apprised in writing of all cross-trades executed in connection with the restructuring. Such writing shall include a notice that the Large Account's independent fiduciary may obtain, upon request, the information described in Section III(a) of this exemption, subject to the limitations described in Section III(b) of this exemption. However, if the program takes longer than sixty (60) days to complete, interim reports containing the transaction results must be provided to the Large Account fiduciary no later than fifteen (15) days following the end of the initial sixty (60) day period and the succeeding thirty (30) day period.

Section III. General Conditions

(a) The Manager maintains or causes to be maintained for a period of six (6) years from the date of each cross-trade the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of this exemption have been met, including records which identify:

(1) On a Fund by Fund basis, the specific triggering events which result in the creation of the model prescribed output or trade list of specific securities to be cross-traded;

(2) On a Fund by Fund basis, the model prescribed output or trade list which describes: (A) Which securities to buy or sell; and (B) how much of each

[2] However, proper disclosures must be made to, and written authorization must be made by, an appropriate plan fiduciary for the Manager Plan in order for the Manager Plan to participate in a specific portfolio restructuring program as part of a Large Account.

security to buy or sell; in detail sufficient to allow an independent plan fiduciary to verify that each of the above decisions for the Fund was made in response to specific triggering events; and

(3) On a Fund by Fund basis, the actual trades executed by the Fund on a particular day and which of those trades resulted from triggering events.

Such records must be readily available to assure accessibility and maintained so that an independent fiduciary, or other persons identified below in paragraph (b) of this Section, may obtain them within a reasonable period of time. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Manager, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than the Manager 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 in paragraph (b)(2) and notwithstanding any provisions of sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are unconditionally available at their customary location for examination during normal business hours by—

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

(B) Any fiduciary of a plan participating in a cross-trading program who has the authority to acquire or dispose of the assets of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer with respect to any plan participating in a cross-trading program or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Manager Plan participating in a cross-trading program, or any duly authorized employee or representative of such participant or beneficiary.

(2) If, in the course of seeking to inspect records maintained by a Manager pursuant to this Section, any person described in paragraph (b)(1)(B) through (D) seeks to examine trade secrets, or commercial or financial information of the Manager that is privileged or confidential, and the Manager is otherwise permitted by law to withhold such information from such person, the Manager may refuse to disclose such information provided that, by the close of the thirtieth (30th) day following the request, the Manager gives a written notice to such person advising the person of the reasons for the refusal and that the Department of Labor may request such information.

(3) The information required to be disclosed to persons described in paragraph (b)(1)(B) through (D) shall be limited to information that pertains to cross-trades involving a Fund or Large Account in which they have an interest.

Section IV. Definitions

The following definitions apply for purposes of this exemption:

(a) ''Index Fund''—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by a Manager or an Affiliate, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an Index, as defined in Section IV(c) of this exemption, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which the Manager does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That either contains ''plan assets'' subject to the Act, is an investment company registered under the Investment Company Act of 1940, or contains assets of one or more institutional investors, which may include, but not be limited to, such entities as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust or other fund which is exempt from taxation under section 501(a) of the Code; and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Index Fund which is intended to benefit a Manager or an Affiliate, or any party in which a Manager or an Affiliate may have an interest.

(b) ''Model-Driven Fund''—Any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by the Manager or an Affiliate in which one or more investors invest, and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of the Manager, to transform an Index, as defined in Section IV(c) of this exemption;

(2) Which either contains ''plan assets'' subject to the Act, is an investment company registered under the Investment Company Act of 1940, or contains assets of one or more institutional investors, which may include, but not be limited to, such entities as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust or other fund which is exempt from taxation under section 501(a) of the Code; and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Model-Driven Fund or the utilization of any specific objective criteria which is intended to benefit a Manager or an Affiliate, or any party in which a Manager or an Affiliate may have an interest.

(c) ''Index''—A securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) A publisher of financial news or information, or

(C) A public securities exchange or association of securities dealers; and

(2) The index is created and maintained by an organization independent of the Manager, as defined in Section IV(i) of this exemption; and

(3) The index is a generally accepted standardized index of securities which is not specifically tailored for the use of the Manager.

(d) ''Triggering Event'':

(1) A change in the composition or weighting of the Index underlying a Fund by the independent organization creating and maintaining the Index;

(2) A material amount of net change in the overall level of assets in a Fund, as a result of investments in and withdrawals from the Fund, provided that:

(A) Such material amount has either been identified in advance as a specified amount of net change relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days following, its inclusion as a ''triggering event'' for such Fund or the

Manager has otherwise disclosed in the description of its cross-trading practices pursuant to Section II(k) of this exemption the parameters for determining a material amount of net change, including any amount of discretion retained by the Manager that may affect such net change, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given; and

(B) Investments or withdrawals as a result of the Manager's discretion to invest or withdraw assets of a Manager Plan, other than a Manager Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options, including such Fund, will not be taken into account in determining the specified amount of net change;

(3) An accumulation in the Fund of a material amount of either:

(A) Cash which is attributable to interest or dividends on, and/or tender offers for, portfolio securities; or

(B) Stock attributable to dividends on portfolio securities; provided that such material amount has either been identified in advance as a specified amount relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Fund, or the Manager has otherwise disclosed in the description of its cross-trading practices pursuant to Section II(k) of this exemption the parameters for determining a material amount of accumulated cash or securities, including any amount of discretion retained by the Manager that may affect such accumulated amount, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given;

(4) A change in the composition of the portfolio of a Model-Driven Fund mandated solely by operation of the formulae contained in the computer model underlying the Model-Driven Fund where the basic factors for making such changes (and any fixed frequency for operating the computer model) have been disclosed in writing to an independent fiduciary of each plan having assets held in the Model-Driven Fund, prior to, or within ten (10) days after, its inclusion as a ''triggering event'' for such Model-Driven Fund; or

(5) A change in the composition or weighting of a portfolio for an Index Fund or a Model-Driven Fund which results from an independent fiduciary's direction to exclude certain securities or types of securities from the Fund, notwithstanding that such securities are part of the index used by the Fund.

(e) ''Large Account''—Any investment fund, account or portfolio that is not an Index Fund or a Model-Driven Fund sponsored, maintained, trusteed (other than a Fund for which the Manager is a nondiscretionary trustee) or managed by the Manager, which holds assets of either:

(1) An employee benefit plan within the meaning of section 3(3) of the Act that has $50 million or more in total assets (for purposes of this requirement, the assets of one or more employee benefit plans maintained by the same employer, or controlled group of employers, may be aggregated provided that such assets are pooled for investment purposes in a single master trust);

(2) An institutional investor that has total assets in excess of $50 million, such as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust or other fund which is exempt from taxation under section 501(a) of the Code; or

(3) An investment company registered under the Investment Company Act of 1940 (*e.g.*, a mutual fund) other than an investment company advised or sponsored by the Manager; provided that the Manager has been authorized to restructure all or a portion of the portfolio for such Large Account or to act as a ''trading adviser'' (as defined in Section IV(g) of this exemption) in connection with a portfolio restructuring program (as defined in Section IV(f) of this exemption) for the Large Account.

(f) ''Portfolio restructuring program''—Buying and selling the securities on behalf of a Large Account in order to produce a portfolio of securities which will be an Index Fund or a Model-Driven Fund managed by the Manager or by another investment manager, or in order to produce a portfolio of securities the composition of which is designated by a party independent of the Manager, without regard to the requirements of Section IV(a)(3) or (b)(2) of this exemption, or to carry out a liquidation of a specified portfolio of securities for the Large Account.

(g) ''Trading adviser''—A Merrill Lynch/BlackRock Related Entity or Entities whose role is limited with respect to a Large Account to the disposition of a securities portfolio in connection with a portfolio restructuring program that is a Large Account-initiated liquidation or restructuring within a stated period of time in order to minimize transaction costs. The Merrill Lynch/BlackRock Related Entity or Entities does not have discretionary authority or control with respect to any underlying asset allocation, restructuring or liquidation decisions for the account in connection with such transactions and does not render investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to such transactions.

(h) ''Closing price''—The price for a security on the date of the transaction, as determined by objective procedures disclosed to investors in advance and consistently applied with respect to securities traded in the same market, which procedures shall indicate the independent pricing source (and alternates, if the designated pricing source is unavailable) used to establish the closing price and the time frame after the close of the market in which the closing price will be determined.

(i) ''Manager''—A Merrill Lynch/BlackRock Related Entity which is:

(1) A bank or trust company, or any Affiliate thereof, which is supervised by a state or federal agency; or

(2) An investment adviser or any Affiliate thereof which is registered under the Investment Advisers Act of 1940.

(j) ''Affiliate''—An affiliate of a Manager is:

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

(2) Any officer, director, employee or relative of such Manager, or partner of any such Manager;

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

(4) Any Merrill Lynch/BlackRock Related Entity.

(k) ''Control''—The power to exercise a controlling influence over the management or policies of a person other than an individual.

(l) ''Relative''—A relative is a person that 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 sister.

(m) ''Nondiscretionary trustee''—A plan trustee whose powers and duties with respect to any assets of the plan are limited to (1) the provision of nondiscretionary trust services to the plan, and (2) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term ''nondiscretionary trust services'' means

custodial services and services ancillary to custodial services, none of which services are discretionary. For purposes of this exemption, a person who is otherwise a nondiscretionary trustee will not fail to be a nondiscretionary trustee solely by reason of having been delegated, by the sponsor of a master or prototype plan, the power to amend such plan.

DATES: *Effective Date:* This exemption is effective September 29, 2006 and will expire at such time as ML&Co.'s equity interest in BlackRock falls below ten percent (10%).

Background

On September 29, 2006, ML&Co. and BlackRock consummated a transaction (i.e., the Merger), in which ML&Co. contributed Merrill Lynch Investment Managers, LLC (MLIM) and various other assets and subsidiaries that comprised its investment management business to BlackRock in exchange for approximately 45% of the outstanding voting securities of BlackRock. Prior to the Merger, ML&Co. and its affiliates engaged in various types of transactions, involving employee benefit plans, in reliance on, and in accordance with the conditions of various class exemptions (the Applicable Exemptions) [3] issued by the Department. Also, prior to the Merger, affiliates of ML&Co. engaged in the same transactions as described in the Applicable Exemptions, involving plans, with affiliates of BlackRock for which no exemption was required because ML&Co. had, at most, a *de minimis* ownership interest in BlackRock.

As a result of the Merger, certain transactions involving companies affiliated with ML&Co. and companies affiliated with BlackRock may now be prohibited transactions as defined in section 406 of the Act. However, the ownership interest existing between ML&Co. and its affiliates and BlackRock and its affiliates may nevertheless not result in the various entities being considered ''affiliates'' of each other as defined in the Applicable Exemptions. As the Applicable Exemptions extend relief only to affiliated entities, as defined thereunder, ML&Co. and its affiliates, and BlackRock and its affiliates may not be able to take advantage of the relief provided by the Applicable Exemptions.

[3] Parts III and IV of PTE 75–1 (40 FR 50845, October 31, 1975); PTE 77–3 (42 FR 18734, April 8, 1977); PTE 77–4 (42 FR 18732, April 8, 1977); PTE 79–13 (44 FR 25533, May 1, 1979); PTE 86–128 (51 FR 41686, November 18, 1986; as amended by 67 FR 64137, October 17, 2002); and PTE 2002–12 (67 FR 9483, March 1, 2002).

Accordingly, the Department is granting an individual exemption which will enable the Applicants to engage in the transactions described in the Applicable Exemptions, provided the conditions contained herein are met.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on May 9, 2008 at 73 FR 26418.

Written Comments and Hearing Requests

The Department received one comment letter with respect to the Notice of Proposed Exemption (the Notice), which was filed by the Applicants. The Applicants addressed several points regarding the Notice in their comment letter. The Applicants' commentary, a discussion of the Department's views in response thereto and the modifications to the proposed exemption are discussed below.

The Applicants note that the Notice provided for temporary relief that would expire five years from the date the final exemption is published in the **Federal Register**. The Applicants contend that they are seeking no relief beyond that provided by the Applicable Exemptions, and that they are not asking that any conditions to relief under the Applicable Exemptions be liberalized. The Applicants point out that the Applicable Exemptions need not be renewed every five years, and the transactions described in the Notice are no more likely to raise self-dealing concerns than those covered by the Applicable Exemptions. The Applicants have recommended, as a more appropriate alternative to the five-year period, that the exemption expire once ML&Co.'s equity ownership in BlackRock falls below ten percent (10%). The Applicants believe that once that point is reached, transactions between the BlackRock Related Entities and the Merrill Lynch Related Entities would not constitute prohibited acts of self-dealing under the Act, and there would no longer be a need for individual exemptive relief. While the Department is not expressing an opinion as to whether ML&Co.'s ownership of less than 10% of BlackRock would ensure that transactions that are entered into between the BlackRock Related Entities and the Merrill Lynch Related Entities would not involve acts of self-dealing in violation of the Act, the Department has determined to adopt the Applicants' comment and, accordingly, has amended the Notice such that the exemption will expire once ML&Co.'s equity ownership in BlackRock falls below ten percent (10%).

The Applicants also commented with respect to the Notice regarding Applicable Exemptions PTE 77–3 (*Exemption Involving Mutual Fund In-House Plans*) and PTE 79–13 (*Exemption Involving Closed-End Investment Company In-House Plans*). The Applicants state that, as drafted, the portion of the proposed exemption modeled on PTE 77–3 covers employees of an ''affiliated person'' (as defined in section 2(a)(3) of the Investment Company Act of 1940) of an investment adviser or principal underwriter; provided that the investment adviser or principal underwriter or their affiliates are a Merrill Lynch/BlackRock Related Entity or Entities. The Applicants point out that the portion of the Notice modeled on PTE 79–13 is similarly drafted.[4] The Applicants represent that under section 2(a)(3) of the Investment Company Act of 1940, it is not clear that the BlackRock Related Entities are affiliates of ML&Co. or the Merrill Lynch Related Entities. The Applicants conclude that, as drafted, a Plan sponsored by a Merrill Lynch Related Entity may not be able to use the portion of the proposed exemption modeled on PTE 77–3 and PTE 79–13 to purchase ''BlackRock'' mutual funds.

The Department agrees with the comment and has modified portions of the operative language of the exemption as it pertains to the Applicable Exemptions PTE 77–3 and PTE 79–13.

The Applicants also commented with respect to the Notice regarding Applicable Exemption PTE 77–4 (*Exemption for Certain Transactions Between Investment Companies and Employee Benefit Plans*). The Applicants state that the first paragraph of the portion of the proposed exemption modeled on PTE 77–4

[4] According to the Applicants, the investment adviser for a ''BlackRock'' mutual fund will be a BlackRock Related Entity. A Merrill Lynch Related Entity may not be an affiliated person (as defined in section 2(a)(3) of the Investment Company Act of 1940) of a BlackRock Related Entity that is acting as an investment adviser to a BlackRock mutual fund. Since ML&Co. owns more than 5% of the outstanding voting securities of BlackRock, ML&Co. would be considered an ''affiliated person'' of BlackRock within the meaning of Section 2(a)(3) of the Investment Company Act of 1940. The Applicants further state that the BlackRock Related Entities are ''affiliated persons'' of BlackRock within the meaning of Section 2(a)(3) of the Investment Company Act, because BlackRock owns more than 5% of the outstanding voting securities of each of the BlackRock Related Entities. However, the Applicants point out that Section 2(a)(3) of the Investment Company Act distinguishes between affiliates with a parent-subsidiary relationship and affiliates that would only be affiliates because of a common parent (*i.e.*, sibling companies). In the latter case, two affiliates of a parent entity are not necessarily affiliates of each other.

provides ''* * * where the investment adviser of the investment company is a Merrill Lynch/BlackRock Related Entity or Entities *who is also a fiduciary with respect to the plan* [emphasis added]* * *'' The Applicants comment that the language in italics suggests that the investment adviser to the mutual fund and the fiduciary must be the same entity. If that were the case, the Applicants point out that a Merrill Lynch Related Entity that is a fiduciary may not be able to cause a Plan to invest in a mutual fund that is advised by a BlackRock Related Entity (or vice versa). The Applicants state that PTE 77–4 is not so restricted. The investment adviser can be a fiduciary or an ''affiliate'' of a fiduciary. Thus, the Applicants request that the portion of the exemption modeled on PTE 77–4 be revised to make clear that if the investment adviser to the mutual fund is a BlackRock Related Entity, the fiduciary can be either a BlackRock Related Entity or a Merrill Lynch Related Entity (and vice versa). The Department has considered the comment and has modified the operative language of the exemption as it pertains to the Applicable Exemption PTE 77–4.

Further, the Applicants commented with respect to the Notice regarding Applicable Exemption PTE 86–128 (*Exemption for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers*). The Applicants state that Section IV(b) of the portion of the Notice modeled on PTE 86–128 provides, ''Section III of this exemption does not apply in the case of an agency cross transaction, provided that the *Merrill Lynch/BlackRock Related Entity or Entities effecting or executing the transaction*'' [emphasis added] meets specific conditions. The Applicants comment that the language in italics suggests that only the Merrill Lynch/BlackRock Related Entity that effects or executes the transaction must meet the specific conditions set forth in Section IV(b) of this portion of the exemption. If that were the case, the Applicants indicate that a Merrill Lynch Related Entity could effect or execute a transaction without complying with the requirements of Section III of the portion of the Notice modeled on PTE 86–128, where a BlackRock Related Entity acted as a fiduciary with investment discretion with respect to plan assets involved in a transaction.

The Applicants then state that in PTE 86–128, Section IV(b) provides: ''Section III of this exemption does not apply in the case of an agency cross transaction, provided that the person effecting or executing the transaction'' meets specific conditions. The Applicants point out that the definition of ''person'' in PTE 86–128 includes the person and affiliates of the person, and therefore, Section IV of PTE 86–128 requires that the person effecting or executing the transaction and its affiliates meet the conditions set forth in Sections IV(b)(1)–(3) of PTE 86–128. To prevent the Notice from providing relief broader than that contained in PTE 86–128, the Applicants recommend that the portion of the Notice modeled on PTE 86–128 should be revised to make clear that the Merrill Lynch/BlackRock Related Entity or Entities effecting or executing the transaction and any other Merrill Lynch/BlackRock Related Entity must meet the conditions set forth in Section IV(b)(1)–(3).

The Department has considered the comment and has modified the operative language of the exemption as it pertains to the Applicable Exemption PTE 86–128.

Additionally, the Applicants commented with respect to the Notice regarding Applicable Exemption PTE 2002–12 (*Exemption for Cross-Trades of Securities by Index and Model-Driven Funds*). The Applicants note that the term ''Manager'' under the portion of the Notice modeled on PTE 2002–12 is defined as (i) Banks or trust companies that are supervised by a state or federal agency, (ii) registered investment advisers and (iii) their respective ''Affiliates''. Under this definition, the Applicants explain that where a BlackRock Related Entity is acting as an investment adviser, the definition of Manager may not include the Merrill Lynch Entities (and vice versa). If the definition of ''Manager'' does not include both the Merrill Lynch Related Entities and the BlackRock Related Entities, the Applicants indicate that the use of ''Manager'' and ''Manager Plans'' throughout the portion of the Proposed Exemption modeled on PTE 2002–12 will lead to unintended consequences, in particular with respect to Sections II(e), (g), (h) and (m). For example, if a Merrill Lynch Related Entity is not considered an ''Affiliate'' of an investment adviser that is a BlackRock Related Entity, the portion of the Notice modeled on PTE 2002–12 could be construed to permit the Merrill Lynch Related Entity to receive a commission in connection with a cross-trade. Similarly, the Applicants explain that where a BlackRock Related Entity is a ''Manager'', plans sponsored by a Merrill Lynch Related Entity may be unable to take advantage of or be restricted by the special rules governing Manager Plans.

To address this issue, the Applicants propose that the definition of ''Affiliate'' be revised to specifically include the Merrill Lynch/BlackRock Related Entities.

The Department has considered the comment and has modified the operative language of the exemption as it pertains to the Applicable Exemption PTE 2002–12.

Finally, the Applicants sought to correct certain facts that appeared in the Notice. For example, the Summary of Facts and Representations included in the Notice states that ''ML&Co. now owns a 50.3% economic interest in BlackRock.'' The Applicants wish to clarify that ML&Co.'s ownership interest in BlackRock fluctuates and that the Stockholders Agreement imposes a 49.8% cap on ML&Co.'s ownership of BlackRock equity and requires ML&Co. to dispose of BlackRock equity if it exceeds the specified ownership cap. The Applicants also sought a number of technical corrections to the Notice which the Department has taken under consideration or otherwise made.

Accordingly, after giving full consideration to the entire record, including the Applicants' written comments, the Department has decided to grant the exemption, as modified herein.

For further information regarding the Applicants' comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11435) 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 Documents Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 9, 2008 at 73 FR 26418.

For Further Information Contact: Mrs. Blessed Chuksorji-Keefe, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

Pileco, Inc. Employees Profit Sharing Plan (the Plan); Located in Houston, Texas

[Prohibited Transaction Exemption 2008–11; Exemption Application No. D–11449]

Exemption

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 of certain unimproved real property (the Property) by the Plan to Pileco, Inc., the sponsor of the Plan, and a party in interest with respect to the Plan, provided that the following conditions are satisfied:

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

(b) At the time of the sale, the Plan receives the greater of either: (1) $280,000; or (2) the fair market value of the Property as established by a qualified, independent appraiser in an updated appraisal of such Property;

(c) The Plan pays no fees, commissions or other expenses associated with the sale;

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

(e) The Plan trustee (1) Determines, among other things, whether it is in the best interest of the Plan to proceed with the sale of the Property; (2) reviews and approves the methodology used in the appraisal that is being relied upon; and (3) ensures that such methodology is applied by the qualified independent appraiser in determining the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 8, 2008 at 73 FR 39175.

For Further Information Contact: Blessed Chuksorji-Keefe of the Department at (202) 693–8567. (This is not a toll-free number).

Mellon Bank N.A. (Mellon); Located in Pittsburgh, Pennsylvania

[Prohibited Transaction Exemption 2008–12; Exemption Application No. D–11460]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply as of January 18, 2008, to the cash sale of certain medium term notes (the Notes) for $28,584,601.46 by the EB Daily Liquidity Money Market Fund (the Fund) to The Bank of New York Mellon Corporation (BNYMC), a party in interest with respect to employee benefit plans invested in the Fund, provided that the following conditions are met.

(a) The sale was a one-time transaction for cash payment made on a delivery versus payment basis in the amount described in paragraph (b);

(b) The Fund received an amount as of the settlement date of the sale which was equal to the greatest of:

(i) The amortized cost of the Notes as of the date of the sale, if the Fund has been valued at amortized cost at any time within the preceding year;

(ii) The price at which the Fund purchased the Notes, if the Fund is valued at fair market value and the Fund has not been valued at amortized cost at any time within the preceding year; or

(iii) The fair market value of the Notes as of the date of the sale, as determined by an independent third party source or independent appraisal (in each case, including accrued but unpaid interest);

(c) The Fund did not bear any commissions or transaction costs with respect to the sale;

(d) Mellon, as trustee of the Fund, determined that the sale of the Notes was appropriate for and in the best interests of the Fund, and the employee benefit plans invested, directly or indirectly, in the Fund, at the time of the transaction;

(e) Mellon took all appropriate actions necessary to safeguard the interests of the Fund, and the employee benefit plans invested in the Fund, in connection with the transactions;

(f) If the exercise of any of BNYMC's rights, claims or causes of action in connection with its ownership of the Notes results in BNYMC recovering from the issuer of the Notes, or any third party, an aggregate amount that is more than the sum of:

(i) The purchase price paid for the Notes by BNYMC (i.e., $28.5 million); and

(ii) The interest due on the Notes from and after the date BNYMC purchased the Notes from the Fund, at the rate specified in the Notes, BNYMC will refund such excess amounts promptly to the Fund (after deducting all reasonable expenses incurred in connection with the recovery).

(g) Mellon and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons described below in paragraph (h)(i), to determine whether the conditions of this exemption have been met, except that—

(i) No party in interest with respect to a plan which engages in the covered transactions, other than Mellon and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (h)(i); and

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

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

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC; or

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

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

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

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

(iii) Should Mellon refuse to disclose information on the basis that such information is exempt from disclosure, Mellon shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on July 8, 2008 at 73 FR 39177.

The Department received no substantive written comments with respect to the Notice. The Department received a clarification from the Applicant regarding the number of direct investors in the Fund as of January 17, 2008, as was stated in the Summary of Facts and Representations and the Notice to Interested Persons sections of the Notice. The Applicant stated that due to an inadvertent error, its submission stated that there were 25 direct investors in the fund as of that date, when in fact there were actually 24.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Lloyd of the Department, telephone (202) 693–8554. (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 describe all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of September 2008.

Ivan Strasfeld,

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

[FR Doc. E8–22486 Filed 9–24–08; 8:45 am]

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DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO); Notice of Open Meeting

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO) was established pursuant to Title II of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006 (Pub. L. 109–233) and Section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, Title 5 U.S.C. app. II). The authority of the ACVETEO is codified in Title 38 U.S. Code, Section 4110.

The ACVETEO is responsible for assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; and assisting to conduct outreach to employers seeking to hire veterans. The ACVETEO will conduct a business meeting on Wednesday, October 22, from 7:30 a.m. to 2 p.m., at the offices of The Home Depot, USA, at 2455 Paces Ferry Road, C–21 Large Conference Room, Atlanta, Georgia. The ACVETEO will discuss programs to assist veterans seeking employment and to raise employer awareness as to the advantages of hiring veterans, with special emphasis on employer outreach and wounded and injured veterans.

Individuals needing special accommodations should notify Bill Offutt at (202) 693–4717 by October 13, 2008.

Signed in Washington, DC, this 19th day of September, 2008.

Charles S. Ciccolella,

Assistant Secretary, Veterans' Employment and Training Service.

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BILLING CODE 4510–79–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before October 27, 2008. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML),