

Act Funds, as directed by the Congress and the President.

Why are we requesting Emergency Processing? If DOL were to comply with standard PRA clearance procedures, it would not be able to comply with the ARRA-mandated payment schedule because procedures for these payments must be in place immediately. The statute provides that INAP and SCSEP grantees need the means to access the funds as soon as possible. Otherwise, harm to the nation's economic recovery could ensue. Finally, in preparing the guidelines, the Department has taken all necessary steps to consult with INAP and SCSEP grantees in order to minimize the burden of collecting the information while adhering to ARRA payment and monitoring provisions.

**Darrin A. King,**

*Departmental Clearance Officer.*

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**BILLING CODE 4510-FN-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Prohibited Transaction Exemption 2009-12; Exemption Application No. D-11341]

#### **Grant of Individual Exemption To Replace Prohibited Transaction Exemption (PTE) 2000-45, Involving Citigroup Global Markets Inc. (CGMI), Formerly Salomon Smith Barney Inc. (Salomon Smith Barney), Located in New York, NY**

**AGENCY:** Employee Benefits Security Administration, U.S. Department of Labor.

**ACTION:** Grant of individual exemption to replace PTE 2000-45.

This document contains a final exemption before the Department of Labor (the Department) that replaces PTE 2000-45 (65 FR 54315, September 7, 2000), an exemption granted to Salomon Smith Barney. On December 1, 2005, PTE 2000-45 became ineffective due to a material change in the exemption.

PTE 2000-45 related to the operation of the TRAK Personalized Investment Advisory Service (the TRAK Program) and the Trust for Consulting Group Capital Markets Funds (the Trust) as described in a notice of proposed exemption (65 FR 35138, June 1, 2000), which underlies PTE 2000-45.

The final exemption incorporates by reference many of the conditions contained in PTE 2000-45. The exemption also revises and updates

certain facts and representations set forth in PTE 2000-45 to include a new fee offset procedure and the terms of a past merger (the Merger Transaction) between Citigroup Inc. (Citigroup) and Legg Mason, Inc. (Legg Mason). In this regard, the Applicants have requested that a limited and temporary exception to the definition of "affiliate" be incorporated in a new Section IV.

**DATES: Effective Date:** This exemption is effective (1) from December 1, 2005 until March 10, 2006 with respect to the limited exception described in Section IV; (2) as of December 1, 2005 with respect to the Covered Transactions, the General Conditions and the Definitions described in Sections I, II, and III; and (3) as of January 1, 2008 with respect to the new fee offset procedure.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Anna Vaughan or Ms. Jan D. Broady, Office of Exemptions Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8565 or (202) 693-8556. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** On December 23, 2008, the Department published a notice of proposed exemption in the **Federal Register** at 73 FR 78846 from the prohibited transaction restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1)(A) through (D) of the Code. The proposed exemption has been requested in an application filed on behalf of CGMI pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption on or before February 23, 2009.

During the comment period, the Department received 29 telephone calls from participants or beneficiaries in plans with investments in the TRAK Program. All of these comments

concerned the commenters' inability to understand the notice of proposed exemption or the effect of the exemption on the commenters' benefits.

The Department also received one written comment with respect to the proposed exemption. The comment, which was submitted by Citigroup, is intended to clarify and update certain factual information discussed in the proposed exemption, as follows:

1. **TRAK Program Assets.** On page 78847 of the notice of proposed exemption, the first sentence of the first paragraph states that the TRAK Program held assets that were in excess of \$9.4 billion. Citigroup states that the sentence should be revised to read as follows: "As of July 29, 2008, the TRAK Program held assets of approximately \$8.8 billion."

Also, on page 78847 of the proposal, the first sentence in the last paragraph of the third column reads: "The assets sold by Citigroup to Legg Mason included Smith Barney Mutual Funds Management Inc. (now Smith Barney Fund Management LLC) but excluded the Consulting Group and the TRAK Program." Citigroup explains that the first sentence should be revised to read: "The assets sold by Citigroup to Legg Mason included Smith Barney Fund Management LLC, but excluded the Consulting Group and the TRAK Program."

2. **Citigroup Loan to Legg Mason.** On page 78847 of the notice of proposed exemption, the last sentence in the last paragraph of the third column discusses a loan provided by Legg Mason to Citigroup. Citigroup explains that it provided the loan to Legg Mason. Therefore, this sentence should be revised to read as follows: "Also, Citigroup Corporate and Investment Banking provided to Legg Mason approximately \$550 million in the form of a five-year loan facility."

3. **Merger Transaction.** On page 78848 of the notice of proposed exemption, Footnote 6 states that Citigroup Asset Management or "CAM" was sold to Legg Mason subsequent to the Merger Transaction. Citigroup explains that based on its knowledge, CAM was sold to Legg Mason as part of the Merger Transaction.

4. **General Conditions.** On pages 78850 and 78854 of the proposed exemption, Section II(j) makes reference to the "Government Money Investments Portfolio" and the "GIC Fund Portfolio". Citigroup wishes to clarify that these funds have been re-named the "Money Market Investments Portfolio" and the "Stable Value Investments Portfolio," respectively.

Also, on pages 78850 and 78854 of the proposal, Section II(k)(1)(E) uses the term "Financial Consultant." Citigroup explains that it now refers to these employees as "Financial Advisors."

In response to Citigroup's comment letter, the Department has made revisions to the operative language of the final exemption and, where applicable, has taken note of the foregoing clarifications and updates to the Summary of Facts and Representations of the proposed exemption.

For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-11341) 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.

Accordingly, after giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption subject to the modifications described above.

#### 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 section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her 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.

(2) In accordance with section 408(a) of the Act, the Department makes the following determinations:

(a) The exemption is administratively feasible;

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

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

of employee benefit plans participating in the TRAK Program.

(3) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. 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.

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

#### Section I. Covered Transactions

A. The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective December 1, 2005, to the purchase or redemption of shares by an employee benefit plan, an individual retirement account (an IRA), a retirement plan for self-employed individuals (a Keogh Plan), or an individual account pension plan that is subject to the provisions of Title I of the Act and established under section 403(b) of the Code (the section 403(b) Plan; collectively, the Plans) in the Trust for Consulting Group Capital Markets Funds (the Trust), established by Citigroup, Inc. (Citigroup), in connection with such Plans' participation in the TRAK Personalized Investment Advisory Service (the TRAK Program).

B. The restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply, effective December 1, 2005, with respect to the provision, by Citigroup's Consulting Group (the Consulting Group), of (1) investment advisory services or (2) an automatic reallocation option (the Automatic Reallocation Option) to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary), which may result in such fiduciary's selection of a portfolio (the Portfolio) in the TRAK Program for the investment of Plan assets.

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

#### Section II. General Conditions

(a) The participation of Plans in the TRAK Program is approved by an Independent Plan Fiduciary. For

purposes of this requirement, an employee, officer or director of Citigroup Global Markets Inc. (CGMI) and/or its affiliates covered by an IRA not subject to Title I of the Act will be considered an Independent Plan Fiduciary with respect to such IRA.

(b) The total fees paid to the Consulting Group and its affiliates constitute not more than reasonable compensation.

(c) No Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(d) The terms of each purchase or redemption of Trust shares remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) The Consulting Group provides written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria.

(f) Any recommendation or evaluation made by the Consulting Group to an Independent Plan Fiduciary is implemented only at the express direction of such Independent Plan Fiduciary, provided, however, that:

(1) If such Independent Plan Fiduciary elects in writing, on a form designated by CGMI from time to time for such purpose, to participate in the Automatic Reallocation Option under the TRAK Program, the affected Plan or participant account is automatically reallocated whenever the Consulting Group modifies the particular asset allocation recommendation which the Independent Plan Fiduciary has chosen. Such Election continues in effect until revoked or terminated by the Independent Plan Fiduciary in writing.

(2) Except as set forth below in paragraph II(f)(3), at the time of a change in the Consulting Group's asset allocation recommendation, each account based upon the asset allocation model (the Allocation Model) affected by such change is adjusted on the business day of the release of the new Allocation Model by the Consulting Group, except to the extent that market conditions, and order purchase and redemption procedures, may delay such processing through a series of purchase and redemption transactions to shift assets among the affected Portfolios.

(3) If the change in the Consulting Group's asset allocation recommendation exceeds an increase or decrease of more than 10 percent in the absolute percentage allocated to any one investment medium (e.g., a suggested increase in a 15 percent allocation to greater than 25 percent, or a decrease of such 15 percent allocation to less than 5 percent), CGMI sends out a written

notice (the Notice) to all Independent Plan Fiduciaries whose current investment allocation may be affected, describing the proposed reallocation and the date on which such allocation is to be instituted. If the Independent Plan Fiduciary notifies CGMI, in writing, at any time within the period of 30 calendar days prior to the proposed Effective Date that such fiduciary does not wish to follow such revised asset allocation recommendation, the Allocation Model remains at the current level, or at such other level as the Independent Plan Fiduciary then expressly designated, in writing. If the Independent Plan Fiduciary does not affirmatively opt out of the new Consulting Group recommendation, in writing, prior to the proposed Effective Date, such new recommendation is automatically effected by a dollar-for-dollar liquidation and purchase of the required amounts in the respective account.

(4) An Independent Plan Fiduciary receives a trade confirmation of each reallocation transaction. In this regard, for all Plan investors other than Section 404(c) Plan accounts (*i.e.*, 401(k) Plan accounts), CGMI mails trade confirmations on the next business day after the reallocation trades are executed. In the case of Section 404(c) Plan participants, notification depends upon the notification provisions agreed to by the Plan recordkeeper.

(g) The Consulting Group generally gives investment advice in writing to an Independent Plan Fiduciary with respect to all available Portfolios. However, in the case of a Plan providing for participant-directed investments (the section 404(c) Plan), the Consulting Group provides investment advice that is limited to the Portfolios made available under the Plan.

(h) Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio is independent of CGMI and its affiliates.

(i) Immediately following the acquisition by a Portfolio of any securities that are issued by CGMI and/or its affiliates such as Citigroup common stock (the Citigroup Common Stock), the percentage of that Portfolio's net assets invested in such securities does not exceed one percent. However, this percentage limitation may be exceeded if:

(1) The amount held by a Sub-Adviser in managing a Portfolio is held in order to replicate an established third-party index (the Index).

(2) The Index represents the investment performance of a specific segment of the public market for equity securities in the United States and/or

foreign countries. The organization creating the Index is:

- (i) Engaged in the business of providing financial information;
- (ii) A publisher of financial news information; or
- (iii) A public stock exchange or association of securities dealers.

The Index is created and maintained by an organization independent of CGMI and its affiliates and is a generally-accepted standardized Index of securities which is not specifically tailored for use by CGMI and its affiliates.

(3) The acquisition or disposition of Citigroup Common Stock does not include any agreement, arrangement or understanding regarding the design or operation of the Portfolio acquiring the Citigroup Common Stock, which is intended to benefit CGMI or any party in which CGMI may have an interest.

(4) The Independent Plan Fiduciary authorizes the investment of a Plan's assets in an Index Fund which purchases and/or holds Citigroup Common Stock and the Sub-Adviser is responsible for voting any shares of Citigroup Common Stock that are held by an Index Fund on any matter in which shareholders of Citigroup Common Stock are required or permitted to vote.

(j) The quarterly investment advisory fee that is paid by a Plan to the Consulting Group for investment advisory services rendered to such Plan is offset by such amount as is necessary to assure that the Consulting Group retains no more than 20 basis points from any Portfolio (with the exception of the Money Market Investments Portfolio and the Stable Value Investments Portfolio for which the Consulting Group and the Trust retains no investment management fee) which contains investments attributable to the Plan investor.

(k) With respect to its participation in the TRAK Program prior to purchasing Trust shares,

(1) Each Plan receives the following written or oral disclosures from the Consulting Group:

(A) A copy of the Prospectus for the Trust discussing the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing between the Consulting Group, CGMI and its subsidiaries and the compensation paid to such entities.\*

\* The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the Independent Plan Fiduciary from the general fiduciary responsibility

(B) Upon written or oral request to CGMI, a Statement of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize and certain risks attendant to those investments, policies and strategies.

(C) A copy of the investment advisory agreement between the Consulting Group and such Plan which relates to participation in the TRAK Program and describes the Automatic Reallocation Option.

(D) Upon written request of CGMI, a copy of the respective investment advisory agreement between the Consulting Group and the Sub-Advisers.

(E) In the case of Section 404(c) Plan, if required by the arrangement negotiated between the Consulting Group and the Plan, an explanation by a CGMI Consultant to eligible participants in such Plan, of the services offered under the TRAK Program and the operation and objectives of the Portfolios.

(F) A copy of the Proposed Exemption and the Final Exemption pertaining to the exemptive relief described herein.

(2) If accepted as an investor in the TRAK Program, an Independent Plan Fiduciary of an IRA or Keogh Plan is required to acknowledge, in writing, prior to purchasing Trust shares that such fiduciary has received copies of the documents described above in subparagraph (k)(1) of this section.

(3) With respect to a Section 404(c) Plan, written acknowledgement of the receipt of such documents is provided by the Independent Plan Fiduciary (*i.e.*, the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares). Such Independent Plan Fiduciary is required to represent in writing to CGMI that such fiduciary is (a) independent of CGMI and its affiliates and (b) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(4) With respect to a Plan that is covered under Title I of the Act, where investment decisions are made by a trustee, investment manager or a named fiduciary, such Independent Plan Fiduciary is required to acknowledge, in writing, receipt of such documents and

provisions of section 404 of the Act. In this regard, the Department expects the Independent Plan Fiduciary to consider carefully the totality of the fees and expenses to be paid by the Plan, including the fees paid directly to CGMI or to other third parties.

represent to CGMI that such fiduciary is (a) independent of CGMI and its affiliates, (b) capable of making an independent decision regarding the investment of Plan assets and (c) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(l) Subsequent to its participation in the TRAK Program, each Plan receives the following written or oral disclosures with respect to its ongoing participation in the TRAK Program:

(1) The Trust's semi-annual and annual report including a financial statement for the Trust and investment management fees paid by each Portfolio.

(2) A written quarterly monitoring statement containing an analysis and an evaluation of a Plan investor's account to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations.

(3) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly, detailed investment performance monitoring report, in writing, provided to an Independent Plan Fiduciary of such Plan showing Plan level asset allocations, Plan cash flow analysis and annualized risk adjusted rates of return for Plan investments. In addition, if required by such arrangement, Financial Consultants meet periodically with Independent Plan Fiduciaries of Section 404(c) Plans to discuss the report as well as with eligible participants to review their accounts' performance.

(4) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly participant performance monitoring report provided to a Plan participant which accompanies the participant's benefit statement and describes the investment performance of the Portfolios, the investment performance of the participant's individual investment in the TRAK Program, and gives market commentary and toll-free numbers that enable the participant to obtain more information about the TRAK Program or to amend his or her investment allocations.

(5) On a quarterly and annual basis, written disclosures to all Plans of (a) the percentage of each Portfolio's brokerage commissions that are paid to CGMI and its affiliates and (b) the average brokerage commission per share paid by each Portfolio to CGMI and its affiliates, as compared to the average brokerage commission per share paid by the Trust to brokers other than CGMI and its

affiliates, both expressed as cents per share.

(m)(1) CGMI maintains or causes to be maintained for a period of (6) six years the records necessary to enable the persons described in paragraph (m)(2) of this section to determine whether the applicable conditions of this exemption have been met. Such records are readily available to assure accessibility by the persons identified in paragraph (2) of this section.

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

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

(ii) Any fiduciary of a participating Plan or any duly authorized employee of such employer;

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

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

(3) A prohibited transaction is not deemed to have occurred if, due to circumstances beyond the control of CGMI, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than CGMI is subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (2) of this section.

(4) None of the persons described in subparagraphs (ii)–(iv) of this section (m)(2) is authorized to examine the trade secrets of CGMI or commercial or financial information which is privileged or confidential.

### Section III. Definitions

#### *For purposes of this exemption:*

(a) The term “CGMI” means Citigroup Global Markets Inc. and any affiliate of Citigroup Global Markets Inc., as defined in paragraph (b) of this Section III.

(b) An “affiliate” of CGMI includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with CGMI. (For purposes of this subparagraph, the term “control” means the power to exercise a controlling influence over the

management or policies of a person other than an individual);

(2) Any individual who is an officer (as defined in Section III(d) hereof), director or partner in CGMI or a person described in subparagraph (b)(1);

(3) Any corporation or partnership of which CGMI, or an affiliate described in subparagraph (b)(1), is a 10 percent or more partner or owner; and

(4) Any corporation or partnership of which any individual which is an officer or director of CGMI is a 10 percent or more partner or owner.

(c) An “Independent Plan Fiduciary” is a Plan fiduciary which is independent of CGMI and its affiliates and is either:

(1) A Plan administrator, sponsor, trustee or named fiduciary, as the recordholder of Trust shares under a Section 404(c) Plan;

(2) A participant in a Keogh Plan;

(3) An individual covered under (i) a self-directed IRA or (ii) a Section 403(b) Plan, which invests in Trust shares;

(4) A trustee, investment manager or named fiduciary responsible for investment decisions in the case of a Title I Plan that does not permit individual direction as contemplated by Section 404(c) of the Act; or

(5) A participant in a Plan, such as a Section 404(c) Plan, who is permitted under the terms of such Plan to direct, and who elects to direct, the investment of assets of his or her account in such Plan.

(d) The term “officer” means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policymaking function for the entity.

### Section IV. Limited Exception

(a) Notwithstanding the condition set forth in Section II(h) of the General Conditions or the definition of “affiliate” set forth in Section III(b) of the Definitions herein, during the period, December 1, 2005 until March 10, 2006, when Citigroup Inc. (Citigroup) held a 10 percent or greater economic ownership interest in Legg Mason, Inc. (Legg Mason) as a result of the merger transaction (Merger Transaction) consummated on December 1, 2005, between Citigroup and Legg Mason, Brandywine Asset Management LLC (Brandywine) and Western Asset Management Company (Western), both of which are wholly owned subsidiaries of Legg Mason, continued to be deemed “independent” of Citigroup Global Markets Inc. (CGMI) and its affiliates for purposes of Section II(h) of the General Conditions and

Section III(b) of the Definitions, as long as the following conditions were met:

(1) The Merger Transaction resulted in Citigroup receiving, among other things, approximately 4 percent of the Legg Mason voting common stock (Legg Mason Common Stock), and non-voting convertible preferred stock (Legg Mason Preferred Stock) which was convertible into approximately 10 percent of Legg Mason Common Stock (together, Legg Mason Stock).

(2) Following the Merger Transaction, Legg Mason Stock was being held by a subsidiary of Citigroup that is not in the vertical chain of ownership with CGMI, and CGMI was not controlling or controlled by the entity holding Legg Mason Stock.

(3) Legg Mason Preferred Stock was converted into Legg Mason Common Stock only after it was sold by Citigroup.

(4) Citigroup engaged in efforts to sell Legg Mason Preferred Stock within a reasonable amount of time pursuant to an underwritten broadly distributed public offering.

(5) Citigroup reduced its holdings in Legg Mason Stock below 10 percent within three months following the consummation of the Merger Transaction.

(6) Citigroup did not participate in any proxy contest or other activities concerning the management of Legg Mason.

(7) Citigroup did not acquire more than 5 percent of Legg Mason Common Stock at any time.

(8) Brandywine and Western operated as separate and autonomous business units within Legg Mason.

(9) The Consulting Group had no ability to exercise control or influence over the business of Brandywine or Western. Similarly, Brandywine and Western had no ability to exercise control or influence over the business of the Consulting Group.

(10) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, with respect to each Portfolio for which Brandywine or Western currently serves as a Sub-Adviser, the percentage of Portfolio assets allocated for management purposes to these entities by the Consulting Group was not increased.

(11) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, Brandywine and Western were not permitted to manage assets for any other Portfolio in the TRAK Program.

(12) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, the

fee rates paid to Brandywine and Western were not increased.

(13) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, no other affiliates of Legg Mason were retained to act as Sub-Advisers in the TRAK Program.

(14) The Board of Trustees of the Trust for the Consulting Group subjected Brandywine and Western to the same review process and fiduciary requirements as in effect for all other Sub-Advisers, and to the same performance standards.

#### *Section V. Effective Dates*

This exemption is effective: (1) December 1, 2005 until March 10, 2006 with respect to the limited exception described in Section IV; (2) as of December 1, 2005 with respect to the Covered Transactions, the General Conditions and the Definitions that are described in Sections I, II and III; and (3) as of January 1, 2008 with respect to the new fee offset procedure.

Signed at Washington, DC, this 20th day of March, 2009.

**Ivan L. Strasfeld,**

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

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## **DEPARTMENT OF LABOR**

### **Employee Benefits Security Administration**

#### **Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving: 2009-10, Camino Medical Group, Inc. Employee Retirement Plan (the Retirement Plan) D-11336; and 2009-11, JPMorgan Chase Bank, National Association, D-11471**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of Individual Exemptions.

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

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.

Camino Medical Group, Inc. Employee Retirement Plan

(the Retirement Plan)

Located in Sunnyvale, CA

[Prohibited Transaction Exemption

2009-10;

Exemption Application No. D-11336]

#### **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,<sup>1</sup> shall not apply, effective July 1, 2003 until December 14, 2007, to (1) the leasing (the 2003 Leases) of a medical facility (the Urgent Care Facility) and a single family residence

<sup>1</sup> For purposes of this exemption reference to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.