

Germaine, M.D., be, and it hereby is, revoked. I further order that any pending applications for renewal or modification of his registration be, and they hereby are, denied. This order is effective immediately.

Dated: August 30, 2007.

**Michele M. Leonhart,**

*Deputy Administrator.*

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**Proposed Exemptions; D-11318, Barclays Global Investors, N.A., (BGI) and Its Investment Advisory Affiliates, Including Barclays Global Fund Advisors (BGFA; Together, the Applicants); and D-11420 BlackRock, Inc. (Black Rock) and Merrill Lynch & Co. (Merrill Lynch) (Collectively, the Applicants)**

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

**ACTION:** Notice of proposed exemptions.

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

#### Written Comments and Hearing Requests

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

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5700, U.S. Department of Labor, 200 Constitution

Avenue, NW., Washington, DC 20210. Attention: Application No. \_\_, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov*, or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

#### Notice to Interested Persons

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

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**Barclays Global Investors, N.A., (BGI) and Its Investment Advisory Affiliates, Including Barclays Global Fund Advisors (BGFA; Together, the Applicants), Located in San Francisco, California**

[Application No. D-11318]

#### Proposed Exemption

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

Section I. Transactions Involving Open-End Management Investment Companies Other Than Exchange-Traded Funds

Effective as of September 10, 2007, the restrictions of sections 406(a) and (b) of the Act, section 8477(c)(1) and (c)(2) of FERSA, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the acquisition, sale or exchange by an Account of shares, including through in-kind redemptions of shares or acquisitions of shares in exchange for Account assets transferred in-kind from an Account, of an open-end investment company ("the Fund") registered under the Investment Company Act of 1940 (the 1940 Act), other than an exchange-traded fund (an "ETF"), the Investment Adviser for which is also a fiduciary with respect to the Account (or an affiliate of such fiduciary) (hereinafter, BGI and all its affiliates will be referred to as "Investment Adviser"), and the receipt of fees for acting as an investment adviser for such Funds, as well as fees for providing other services to the Funds which are "Secondary Services," as defined herein, in connection with the investment by the Accounts in shares of the Funds, provided that the conditions set forth in Section II are met.

#### Section II. Conditions

(a) The Account does not pay a sales commission or other similar fees to the Investment Adviser or its affiliates in connection with such acquisition, sale, or exchange.

(b) The Account does not pay a redemption or similar fee to the Investment Adviser in connection with the sale by the Account to the Fund of such shares, and the existence of any other redemption fee is disclosed in the Fund's prospectus in effect at all times.

(c) The Account does not pay an investment management, investment advisory or similar fee with respect to

Account assets invested in Fund shares for the entire period of such investment. This condition does not preclude the payment of investment advisory fees by the Fund under the terms of its investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940 (the 1940 Act). This condition also does not preclude payment of an investment advisory fee by the Account under the following circumstances:

(1) For Accounts billed in arrears, an investment advisory fee may be paid based on total Account assets from which a credit has been subtracted representing the Account's pro rata share of investment advisory fees paid by the Fund;

(2) For Accounts billed in advance, the Investment Adviser must employ a reasonably designed method to ensure that the amount of the prepaid fee that constitutes the fee with respect to the Account assets invested in the Fund shares:

(A) Is anticipated and subtracted from the prepaid fee at the time of payment of such fee,

(B) Is returned to the Account no later than during the immediately following fee period or

(C) 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, 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; or

(3) An investment advisory fee may be paid based on total plan assets if the Account will receive a cash rebate of such Account's proportionate share of all fees charged to the Fund by the Investment Adviser for investment management, investment advisory or similar services no later than one business day after the receipt of such fees by the Investment Adviser.

(d) The rebating, crediting, or offsetting of any fees in paragraph (c) is audited at least annually by the Investment Adviser through a system of internal controls to verify the accuracy of the fee mechanism adopted by the Investment Adviser under paragraph (c).

(e) The combined total of all fees received by the Investment Adviser for the provision of services to an Account, and for the provision of any services to a Fund in which an Account may invest, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act;

(f) The Investment Adviser and its affiliates do not receive any fees payable pursuant to Rule 12b-1 under the 1940

Act in connection with the transactions covered by this proposed exemption;

(g) In advance of any initial investment in a Fund by a Separately Managed Account or by a new Plan investor in a Pooled Fund, a Second Fiduciary with respect to that Plan, who is independent of and unrelated to the Investment Adviser or any affiliate thereof, receives in written or in electronic form, full and detailed written disclosure of information concerning such Fund(s). The disclosure described in this paragraph (g) includes, but is not limited to:

(1) A current prospectus issued by each of the Fund(s);

(2) A statement describing the fees for investment advisory or similar services, any Secondary Services, and all other fees to be charged to or paid by the Account and by the Fund(s), including the nature and extent of any differential between the rates of such fees;

(3) The reasons why the Investment Adviser may consider such investment to be appropriate for the Account;

(4) A statement describing whether there are any limitations applicable to the Investment Adviser with respect to which Account assets may be invested in shares of the Fund(s) and, if so, the nature of such limitations, and

(5) A copy of the proposed exemption and the final exemption if it is published in the **Federal Register**, and any other reasonably available information regarding the transaction described herein that the Second Fiduciary requests.

(h) After receipt and consideration of the information referenced in paragraph (g), the Second Fiduciary of the Separately Managed Account or the new Plan investing in a Pooled Fund approves in writing the investment of Plan assets in each particular Fund and the fees to be paid by a Fund to the Investment Adviser.

(i)(1) In the case of existing Plan investors in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this proposed exemption, unless the Second Fiduciary receives in written or in electronic form, the information described in paragraph (2) of this paragraph (i) not less than 30 days prior to the Investment Adviser's engaging in the covered transactions on behalf of the Pooled Fund pursuant to this proposed exemption.

(2) The information required by paragraph (1) of this section includes:

(A) A notice of the Pooled Fund's intent to engage in the covered transactions described herein, a copy of the notice of proposed exemption, and a copy of the final exemption if it is published in the **Federal Register**;

(B) Any other reasonably available information regarding the covered transactions that a Second Fiduciary requests; and

(C) A Termination Form, within the meaning of paragraph (j).

Approval to engage in any covered transactions pursuant to this proposed exemption may be presumed notwithstanding that the Investment Adviser does not receive any response from a Second Fiduciary.

(j) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to the Investment Adviser will be subject to an annual reauthorization wherein any such prior authorization shall be terminable at will by an Account, without penalty to the Account, upon receipt by the Investment Adviser of written notice of termination. A form expressly providing an election to terminate the authorization ("Termination Form") with instructions on the use of the form will be supplied to the Second Fiduciary no less than annually, in written or in electronic form. The instructions for the Termination Form will include the following information:

(1) The authorization is terminable at will by the Account, without penalty to the Account, upon receipt by the Investment Adviser of written notice from the Second Fiduciary. Such termination will be effected by the Investment Adviser by selling the shares of the Fund held by the affected Account within one business day following receipt by the Investment Adviser of the Termination Form or any other written notice of termination; provided that if, due to circumstances beyond the control of the Investment Adviser, the sale cannot be executed within one business day, the Investment Adviser shall have one additional business day to complete such sale; and provided further that, where a Plan's interest in a Pooled Fund cannot be sold within this time frame, the Plan's interest will be sold as soon as administratively practicable;

(2) Failure of the Second Fiduciary to return the Termination Form will result in continued authorization of the Investment Adviser to engage in the covered transactions on behalf of an Account; and

(3) The identity of BGI, the asset management affiliate of BGI, and the affiliated investment advisers, and the address of the asset management affiliate of BGI. The instructions will state that this exemption is not available, unless the fiduciary of each Plan participating in the covered transactions as an investor in a Pooled

Fund is, in fact, independent of the Investment Adviser. The instructions will also state that the fiduciary of each such Plan must advise the asset management affiliate of BGI, in writing, if it is not a "Second Fiduciary," as that term is defined, below, in Section V(l).

However, if the Termination Form has been provided to the Second Fiduciary pursuant to this paragraph or paragraphs (i), (k), or (l), the Termination Form need not be provided again for an annual reauthorization pursuant to this paragraph unless at least six months has elapsed since the form was previously provided.

(k) In situations where the Fund-level fee is neither rebated nor credited against the Account-level fee, The Second Fiduciary of each Account invested in a particular Fund will receive full disclosure, in written or in electronic form, in a statement which is separate from the Fund prospectus, of any proposed increases in the rates of fees for investment advisory or similar services, and any Secondary Services, at least 30 days prior to the implementation of such increase in fees, accompanied by a Termination Form. In situations where the Fund-level fee is rebated or credited against the Account-level fee, the Second Fiduciary will receive full disclosure, in a Fund prospectus or otherwise, in the same time and manner set forth above, of any increases in the rates of fees to be charged by the Investment Adviser to the Fund for investment advisory services. Failure to return the Termination Form will be deemed an approval of the increase and will result in the continued authorization of the Investment Adviser to engage in the covered transactions on behalf of an Account.

(l) In the event that the Investment Adviser provides an additional Secondary Service to a Fund for which a fee is charged or there is an increase in the rate of any fees paid by the Funds to the Investment Adviser for any Secondary Services resulting from either an increase in the rate of such fee or from a decrease in the number or kind of services provided by the Investment Adviser for such fees over an existing rate for such Secondary Service in connection with a previously authorized Secondary Service, the Second Fiduciary will receive notice, at least 30 days in advance of the implementation of such additional service or fee increase, in written or in electronic form, explaining the nature and the amount of such services or of the effective increase in fees of the affected Fund. Such notice shall be accompanied by a Termination Form. Failure to

return the Termination Form will be deemed an approval of the Secondary Service and will result in continued authorization of the Investment Adviser to engage in the covered transactions on behalf of the Account.

(m) On an annual basis, the Second Fiduciary of an Account investing in a Fund, will receive, in written or in electronic form:

(1) A copy of the current prospectus for the Fund and, upon such fiduciary's request, a copy of the Statement of Additional Information for such Fund which contains a description of all fees paid by the Fund to the Investment Adviser;

(2) A copy of the annual financial disclosure report of the Fund in which such Account is invested, which includes information about the Fund portfolios as well as audit findings of an independent auditor of the Fund, within 60 days of the preparation of the report; and

(3) With respect to each of the Funds in which an Account invests, in the event such Fund places brokerage transactions with the Investment Adviser, the Investment Adviser will provide the Second Fiduciary of such Account, in the same manner described above, at least annually with a statement specifying the following (and responses to oral or written inquiries of the Second Fiduciary as they arise):

(A) The total, expressed in dollars, brokerage commissions of each Fund's investment portfolio that are paid to the Investment Adviser by such Fund;

(B) The total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to the Investment Adviser;

(C) The average brokerage commissions per share, expressed as cents per share, paid to the Investment Adviser by each portfolio of a Fund; and

(D) The average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to the Investment Adviser.

(n) In all instances in which the Investment Adviser provides electronic distribution of information to Second Fiduciaries who have provided electronic mail addresses, such electronic disclosure will be provided in a manner similar to the procedures described in 29 CFR section 2520.104b-1(c).

(o) Any Separately Managed Account does not hold assets of a Plan sponsored by the Investment Adviser or an affiliate. If a Pooled Fund holds assets of a Plan or Plans sponsored by the Investment Adviser or an affiliate, the

total assets of all such Plans shall not exceed 10% of the total assets of such Pooled Fund.

(p) In-kind transactions with an Account shall only involve publicly-traded securities for which market quotations are readily available, as determined pursuant to procedures established by the Funds under Rule 2a-4 of the 1940 Act, and cash in the event that the aforementioned securities are odd lot securities, fractional shares, or accruals on such securities. Such securities will not include:

(1) Securities that, if publicly offered or sold, would require registration under the Securities Act of 1933;

(2) Securities issued by entities in countries that (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds, or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange;

(3) Certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements), that, although liquid and marketable, involve the assumption of contractual obligations, require special trading facilities, or can be traded only with the counter-party to the transaction to effect a change in beneficial ownership;

(4) Cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements);

(5) Other assets that are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable); and

(6) Securities subject to "stop transfer" instructions or similar contractual restrictions on transfer.

(q) Subject to the exceptions described in section (p) above, in the case of an in-kind exchange of assets [in-kind redemptions and in-kind transfers of Plan assets] between an Account and a Fund (other than an ETF), the Account will receive its pro rata portion of the securities of the Fund equal in value to that of the number of shares redeemed, or the Fund shares having a total net asset value (NAV) equal to the value of the assets transferred on the date of the transfer, as determined in a single valuation, using sources independent of the Investment Adviser, performed in the same manner as it would for any other person or entity at the close of the same business day in accordance with the procedures established by the Fund pursuant to Rule 2a-4 under the 1940 Act, and the then-existing valuation procedures

established by its Board of Directors or Trustees, as applicable for the valuation of such assets, that are in compliance with the rules administered by the Securities and Exchange Commission (the SEC). In the case of a redemption, the value of the securities and any cash received by the Account for each redeemed Fund share equals the NAV of such share at the time of the transaction. In the case of any other in-kind exchange, the value of the Fund shares received by the Account equals the NAV of the transferred securities and any cash on the date of the transfer.

(r) The Investment Adviser shall provide the Second Fiduciary with a written confirmation containing information necessary to perform a post-transaction review of any in-kind transaction so that the material aspects of such transaction, including pricing, can be reviewed. Such information must be furnished no later than thirty (30) business days after the completion of the in-kind transaction. This information shall include:

(1) With respect to securities either transferred by, or received, by an Account in-kind in exchange for Fund shares,

(i) the identity of each security either received by the Account pursuant to the redemption, or transferred to the Fund by the Account, (and the related aggregate dollar value of all securities) determined in accordance with Rule 2a-4 under the 1940 Act and the then-existing procedures established by the Board of Trustees of the Fund (using sources independent of the Investment Adviser); and

(ii) the current market price of each security transferred or received in-kind by the Account as of the date of the in-kind transfer.

(2) With respect to Fund shares either transferred by, or received by, an Account in-kind in exchange for securities,

(i) the number of Fund shares held by the Account immediately before the redemption (and the related per share net asset value and the total dollar value of Fund shares, determined in accordance with Rule 2a-4 under the 1940 Act, using sources independent of the Investment Adviser); or

(ii) the number of Fund shares held by the Account immediately after the in-kind transfer (and the related per share net asset value of the Fund shares received and the total dollar value of Fund shares, determined in accordance with Rule 2a-4 under the 1940 Act using sources independent of the Investment Adviser).

(3) The identity of each pricing service or market-maker consulted in determining the value of the securities.

(s) Prior to the consummation of an in-kind transaction, the Investment Adviser must document in writing and determine that such transaction is fair to the Account and comparable to, and no less favorable than, terms obtainable at arm's-length between unaffiliated parties, and that the in-kind transaction is in the best interests of the Account and the participants and beneficiaries of the participating Plans.

(t) All of the Accounts' other dealings with the Funds, the Investment Adviser, or any affiliated person thereof, are on terms that are no less favorable to the Account than such dealings are with other shareholders of the Funds.

(u) BGI 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 Section II(v), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Plan which engages in the covered transactions, other than BGI, 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 Section II(v); and

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

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

(i) Any duly authorized employee or representative of the Department, 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 covered transactions, or any authorized employee or representative of these entities; or

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

(2) None of the persons described, above, in Section II(v)(1)(ii)–(iv) shall be authorized to examine trade secrets of the Investment Adviser, or commercial or financial information which is privileged or confidential; and

(3) Should the Investment Adviser refuse to disclose information on the basis that such information is exempt from disclosure, the Investment Adviser 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.

### Section III. Transactions Involving Exchange-Traded Funds

Effective as of September 10, 2007, the restrictions of sections 406(a) and (b) of the Act, section 8477(c)(1) and (c)(2) of FERSA, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the following transactions involving an Account and an ETF, the Investment Adviser for which is also a fiduciary with respect to the Account (or an affiliate of such fiduciary) (i.e., "Investment Adviser"), and the receipt of fees for acting as an investment adviser for such ETF, as well as fees for providing other services to the ETF which are "Secondary Services," as defined herein, in connection with the investment by the Account in shares of the ETF, provided that the conditions set forth in Section IV are met:

(a) The acquisition, sale or exchange by an Account of ETF shares, including through in-kind exchanges, in a principal transaction with a broker-dealer not an affiliate of the Investment Adviser, registered under the Securities Exchange Act of 1934, including an Authorized Participant.

(b) The acquisition or sale by an Account of ETF shares on a national securities exchange when a broker-dealer not an affiliate of the Investment Adviser, registered under the Securities Exchange Act of 1934, including an Authorized Participant, acts as agent for the Account.

(c) The acquisition, sale or exchange by an Account of ETF shares, including through in-kind exchanges, through an Authorized Participant, acting as an agent dealing directly with the ETF, and the Account is exchanging securities and/or cash for the ETF shares during a Creation process, or exchanging ETF

shares for securities and/or cash during a Redemption process.

#### Section IV. Conditions

(a)(1) In the case of a principal transaction described in Section III(a), the specific terms of the transaction are fixed at the time the Account agrees to exchange the in-kind assets with the broker-dealer.

(2) In the case of a transaction described in Section III(c), the value of the securities transferred to the ETF, in exchange for ETF shares issued at the closing ETF NAV at the end of the business day, and the value of the securities received from the ETF, in exchange for ETF shares redeemed at the closing ETF NAV at the end of the business day is: (A) Determined pursuant to a single valuation using sources independent of the Investment Adviser; and (B) Performed in the same manner as it would for any other person or entity at the end of the same business day. Such valuation is made in accordance with procedures established by the ETF pursuant to Rule 2a-4 under the 1940 Act, and the then existing valuation procedures established by its Board of Directors or Trustees, as applicable, that are in compliance with the rules administered by the SEC.

In the case of a redemption, the value of the securities and any cash received by the Account for each redeemed ETF share equals the NAV of such share at the time of the transaction. In the case of any other in-kind exchange, the value of the ETF shares received by the Account equals the NAV of the transferred securities and any cash on the date of the transfer.

(b) All ETFs are either Index Funds or Model-Driven Funds.

(c) The Authorized Participant is not an affiliate of the Investment Adviser.

(d) Conditions (a) through (p), and (r) through (v) of Section II have been met. For purposes of this Section IV(d), the term "Fund" in Section II includes an ETF.

#### Section V. Definitions

(a) The term "Account" means either a Separately Managed Account or a Pooled Fund in which investments are made by plans described in section 3(3) of the Act and/or section 4975(e)(1) of the Code and a plan covered by The Federal Employees' Retirement System Act of 1986 (FERSA).

(b) An "affiliate" of a person includes any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person; any officer of, director of, highly compensated employee (within the

meaning of Code section 4975(e)(2)(H)) of, or partner in any such person; and any corporation or partnership of which such person is an officer, director, partner or owner, or highly compensated employee (within the meaning of Code section 4975(e)(2)(H)).

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

(d) The term "Authorized Participant" means a broker-dealer registered under the Securities Exchange Act of 1934 which may acquire or redeem ETF Shares directly from ETFs. Such Authorized Participant is not an affiliate of the Investment Adviser.

(e) The term "Fund" means any open end investment company registered under the Investment Company Act of 1940, including exchange-traded funds.

(f) The term "Index" means 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;

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

(2) The index is created and maintained by an organization independent of the Applicants and their affiliates; and,

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

(g) The term "Index Fund" means any investment fund, sponsored, maintained, trustee or managed by the Applicants, 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 independently maintained securities index by either (i) replicating the same combination of securities that compose such index, or (ii) sampling the securities that compose such index based on objective criteria and data;

(2) For which the Applicants do not use their discretion, or data within their control, to affect the identity or amount of securities to be purchased or sold; and

(3) That involves no agreement, arrangement or understanding regarding

the design or operation of the Fund which is intended to benefit the Applicants, their affiliates, or any party in which the Applicants or their affiliates have an interest.

(h) The term "Investment Adviser" means Barclays Global Investors, N.A. or any of its current or future affiliates.

(i) The term "Model-Driven Fund" means any investment fund, sponsored, maintained, trustee or managed by the Applicants, 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 Applicants, to transform an index (as defined in (f), above); and

(2) That involves no agreement, arrangement or understanding regarding the design or operation of the fund or the utilization of any specific objective criteria which is intended to benefit the Applicants, their affiliates, or any party in which the Applicants or their affiliates may have an interest.

(j) The term "Plan" means a plan described in section 3(3) of the Act, a plan described in section 4975(e)(1) of the Code, and a plan covered by FERSA.

(k) The term "Pooled Fund" means any commingled fund sponsored, maintained, advised or trustee by the Investment Adviser, which fund holds Plan assets.

(l) The term "Second Fiduciary" means a fiduciary of a Plan who is independent of and unrelated to the Investment Adviser. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Investment Adviser if:

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

(2) Such fiduciary, or any officer, director, partner, or employee of the fiduciary is an officer, director, partner, employee or affiliate of the Investment Adviser; or

(3) Such fiduciary directly or indirect 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, affiliate or employee of the Investment Adviser is a director of such Second Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment adviser, (B) the approval for the acquisition, sale, holding, and/or exchange of Fund shares by such Plan, and (C) the

approval of any change in fees charged to or paid by the Plan in connection with any of the transactions described herein, then subparagraph (2) above shall not apply.

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

(n) The term "Separately Managed Account" means any Account other than a Pooled Fund, and includes single-employer Plans.

(o) The term "Creation" or "Redemption" refers to a transaction where the ETF is the buyer or seller of large-blocks of ETF shares.

### Summary of Facts and Representations

1. BGI is a national banking association headquartered in San Francisco, California. BGI serves as an investment manager and fiduciary for employee benefit plans governed by the Act which are invested in both separately managed accounts and pooled funds. BGI also manages certain assets for the Federal Thrift Savings Plan established pursuant to the provisions of FERSA. The employee benefit plans to be covered by this exemption, including the Thrift Savings Plan, will be referred to as "Plans."

2. BGI seeks an exemption under the Act, as amended, the Code, and FERSA, for the investment of Plan Account assets in certain open-end investment companies registered under the 1940 Act (*i.e.*, "Funds"), some of which are exchange-traded funds (*i.e.*, "ETFs"), managed or advised by BGI or its investment advisory affiliates, including BGFA.

3. The Applicants represent that the proposed transactions may violate the Act, the Code, and/or FERSA, because the investment of Plan assets in the Funds may constitute a prohibited furnishing of services, or transfer of Plan assets to a party in interest or a fiduciary.

4. The relief sought by the Applicants involves the investment of Separately Managed Accounts, as well as the assets of Pooled Funds, in both "iShares®," which are exchange-traded funds (*i.e.*, ETFs) advised by BGFA, and other open-end investment companies also advised by BGFA. The Applicants represent that BGFA is an investment adviser registered under the Investment Advisers Act of 1940. BGFA provides investment advice to various accounts and funds, including as an investment

adviser or sub-adviser to certain mutual funds and exchange-traded funds.

5. An ETF is an open-end investment company registered under the 1940 Act. Shares issued by each ETF are registered under the Securities Act of 1933. ETF shares are continuously offered to the public in the secondary market through securities exchanges and can be purchased and redeemed on a daily basis. Such shares can be bought and sold by investors on a securities exchange, through brokers, acting as agent, throughout the trading day like other shares of publicly-traded securities. In such a case, the investors would pay the price then prevailing on the exchange plus customary brokerage commissions.<sup>1</sup> There is no minimum investment for such secondary market transactions.

6. Alternatively, an investor who buys or sells iShares may engage in the transaction directly with the broker, which executes as principal. Under this circumstance, the broker (which may or may not be an Authorized Participant) may buy the iShares for its own inventory or sell the iShares from its own inventory (on a principal basis), in which case the customer would pay a mark-up or a mark-down (dealer spread) that is part of the sales price. The Account in this case specifies a set number of iShares that it wants to buy from, or sell to, the broker. The Account and the broker negotiate upfront and agree upon (i) what the purchase or sale price of the iShares will be and (ii) whether the Account will pay or receive (as the case may be) cash, in-kind securities, or a combination of both. Thus, the specific terms of the transaction are fixed at the time the parties agree to enter the transaction.

7. The ETF purchases and redeems shares at the ETF's then net asset value (*i.e.*, "NAV") only in large blocks, generally through an in-kind tender of a basket of securities by a broker-dealer called an "Authorized Participant."<sup>2</sup> Only Authorized Participants may acquire or redeem iShares directly from iShares Funds, and only in large block

<sup>1</sup> In Advisory Opinion 2002-05A (June 7, 2002), the Department considered whether Prohibited Transaction Exemption 77-4 (PTE 77-4, 42 FR 18732, April 8, 1977) applies to purchases or sales of ETF shares through unaffiliated brokers. The Department stated that the term "sales commission" as used in section II(a) of PTE 77-4 does not include brokerage commissions paid to a broker in connection with purchases or sales of shares of registered open-end investment companies on an exchange if the broker is unaffiliated with the fund, its principal underwriter, investment adviser or any affiliate thereof.

<sup>2</sup> Where purchases and redemptions involve an in-kind transaction, cash may be exchanged to make up for any difference between securities exchanged and the NAV of a Fund.

sizes (*e.g.*, 50,000 shares). Such an acquisition and redemption are called "Creation" and "Redemption," respectively. An Authorized Participant may acquire or redeem iShares as principal for its own account, or as agent on behalf of a customer in a transaction directly with an ETF.

8. To effect a purchase or sale through an Authorized Participant on an agency basis where the buyer or seller is the Fund and the process is by creation or redemption, the Investment Adviser, acting as a fiduciary, may approach an Authorized Participant who is not one of the Applicants (or an affiliate) to purchase or sell ETF shares on behalf of an Account. As part of this process, the Authorized Participant may purchase ETF shares on behalf of an Account by assembling a "creation unit" of the securities held by the ETF, such as S&P 500 securities in appropriate weights for an S&P 500 Index ETF. An Account may provide all or part of the securities necessary to make up a "creation unit." For creation units, the Account transfers cash, in-kind securities, or a mix of cash and in-kind securities to the Fund in exchange for iShares using that day's NAV, at the close of business, as determined by the ETF in accordance with the rules governing registered investment companies. For redemptions, the Plan transfers the iShares to the ETF in exchange for in-kind securities and cash, if necessary, using the valuation of the assets used by the ETF in accordance with the rules governing registered investment companies. The purchase and sale price is the NAV of iShares next determined after an order is placed and is the same price that is paid or received for the iShares by any other investor at that time dealing with the ETF. Thus, if an order is placed for shares during the day, it is priced at the NAV at the end of that day. The basket of securities to be delivered or received on account of a creation or redemption is specified by the ETF to all Authorized Participants in advance each day because the securities "called for" each day may be driven by the output of a model which may require deviations from the underlying index. The amount of cash needed to round out the order would be determined as of the time the NAV is calculated based on the difference between the value of the in-kind securities and the Fund NAV as of the time that the NAV is calculated.

9. The Applicants represent that the decision as to which method is used to effect a purchase or sale is a fiduciary decision which is governed by the prudence and exclusive benefit requirements of the Act. Because the

transactions are never executed through an affiliated broker, the Applicants' affiliates do not benefit from the trading. The fiduciary makes the decision for the Plan, as it makes all trading decisions, and bases the decisions on the most cost-effective method for the Plan, where the Plan will receive the most advantageous prices available for the securities with the lowest attendant transaction fees.

10. An Authorized Participant's arrangement with an ETF distributor<sup>3</sup> is subject to an agreement between those two parties. Where the Authorized Participant does not have the requisite ETF shares in its possession, or prefers not to trade such ETF shares, it may assemble a creation unit in exchange for ETF shares, pursuant to its arrangement with the ETF distributor.

11. The Applicants represent that the transactions that would be covered by the proposed exemption are substantially similar to the transactions permitted under PTE 77-4 and similar individual exemptions.<sup>4</sup> As described below, the Investment Adviser will follow similar procedures to those set forth in PTE 77-4 in order to avoid duplicative investment management and advisory fees, and procedures similar to PTE 86-128 and other individual exemptions with respect to obtaining consent for the transactions described herein. In situations where the Fund-level fee is neither rebated nor credited against the Account-level fee, there must be separate disclosure (apart from the prospectus) of any proposed increases in the rates of fees for investment advisory or similar services, and any Secondary Services, at least 30 days prior to the implementation of such increase in fees, accompanied by a Termination Form, made to the Second Fiduciary.

12. The Applicants represent that investment in Funds is customary for Plan investors and is becoming increasingly more popular. If Plans (particularly those invested in Pooled Funds) cannot invest in Funds, they cannot take advantage of a beneficial and liquid investment opportunity. The

Applicants also represent that the more practical rules on negative consent that were adopted by the Department in PTE 86-128 and later exemptions are not included in PTE 77-4 or similar exemptions, making the latter set of exemptions less helpful.

13. The Applicants represent that among the reasons why the Investment Adviser may determine that investment in Funds is appropriate to achieve the investment objectives of an Account is the management of liquidity. Many Accounts require liquidity, especially in the defined contribution plan context, and pooled funds have a particular need for liquidity to deal with inflows and outflows of assets. Fully investing a pooled fund in securities, only to liquidate any time a Plan requests a distribution, creates additional costs that are not in the best interest of these Accounts. On the other hand, cash left idle (or invested in money market instruments, cash funds, or the like) fails to replicate the model or index of the Account, creating tracking error or benchmark drift. The Applicants represent that another reason that Plans may want to invest in Funds is that they also provide a beneficial method of equitizing investment assets.

14. The requested exemption would permit acquisitions, sales and exchanges of Fund shares, both in cash or in-kind. The Applicants represent that in-kind exchanges are appropriate to advance client objectives where, for example, a client is changing managers and wants an Account to have a particular exposure (i.e., exposure to a particular investment strategy) during the transition period.

15. The Applicants represent that if the Account specifies in its order that it will use in-kind (or a combination of in-kind and cash) to acquire the iShares or wants to receive in-kind (or a combination of in-kind and cash) for its iShares, there is a natural hedge between the in-kind securities and the iShares. The market value of the in-kind securities determines the NAV of the iShares. Therefore, as the Account waits for Creation or Redemption to be done at the end of the day, at NAV, if the market value of the in-kind securities goes up or down, the NAV of the iShares will go up or down (as the case may be) in tandem. This is different than a Plan's purchase of mutual fund shares, where the Plan would have exposure to market moves between the time it places an order and the time that the value of any shares (i.e., NAV) purchased or redeemed is determined.

16. The Applicants represent that, although the requested exemption will permit the Investment Adviser to

consider ETFs and other Funds as possible investments, where there are identical investment alternatives, it is up to the investment manager to determine which approach is best for Plans. In some markets, such as certain emerging market equity strategies, other reasonable alternatives may not exist.

17. The Applicants represent that investment in the Funds would only take place when such investment is consistent with the investment guidelines of a Separately Managed Account or Pooled Fund, and where such investment is appropriate to achieve the investment objectives of such account or fund.

18. ETFs have an imbedded management fee (paid to BGFA), and a commission for secondary market purchases may also be paid to unaffiliated brokers with respect to investment in an ETF.

19. The Applicants represent that investment management fees related to investment in the Funds would be offset, credited or waived at the Account level, as provided for in PTE 77-4 and other similar individual exemptions. The Applicants represent that the billing systems and processes at BGI have been designed to correctly rebate or credit the advisory fees from Funds against the Plan level fees or credit the Plan level fees. These processes and systems are part of the billing function of BGI, and with respect to PTE 77-4 compliance, have been tested over the years to ensure compliance.

20. The Applicants represent that often, where Plans are invested in a pooled vehicle, the rules in PTE 77-4 that relate to investment of pooled vehicles in open-end investment companies are expensive to administer, impractical, time consuming and burdensome. In particular, it is represented that it is difficult for many pooled vehicles to comply with written consent requirements similar to those contained in PTE 77-4.

21. The requested exemption would require the Investment Adviser to provide certain disclosures to Separately Managed Accounts, and to Accounts invested in Pooled Funds, prior to investing in the Funds, but would permit "deemed consent" or negative consent to occur where the Investment Adviser receives no response to such disclosures. In addition, the proposed exemption contains disclosure and consent procedures which would apply with respect to existing Account investors in a pooled fund. The proposed exemption contains annual reauthorization requirements, which may be satisfied through the use of a Termination Form,

<sup>3</sup> The "distributor" of a registered investment company is a statutory term under the 1940 Act. The distributor of an ETF or other registered investment company is a registered broker-dealer that accepts orders to purchase or redeem Fund shares from intermediaries on behalf of the Fund.

<sup>4</sup> Although Advisory Opinion 2002-05A addressed whether PTE 77-4 would be available for purchases or sales of ETF shares on an exchange if brokerage commissions were paid to an unaffiliated broker-dealer, the Applicants requested that the transaction described in that Advisory Opinion be included in the relief provided by this proposed exemption so that the Investment Adviser has the ability to comply with the requirements of this proposal rather than PTE 77-4.

similar to the requirements contained in other exemptions similar to PTE 77-4.

22. The proposed exemption would allow disclosures to be provided in written or in electronic form. A Second Fiduciary may request a non-electronic copy of any required disclosure. In all instances in which the Investment Adviser provides electronic distribution of information to Second Fiduciaries who have provided electronic mail addresses, such electronic disclosure will be provided in a manner similar to the procedures described in 29 CFR section 2520.104b-1(c) to ensure that the Investment Adviser's system of providing electronic disclosures results in actual receipt by the intended recipient.

23. The proposed exemption includes a condition which would prohibit Separately Managed Accounts that hold assets of a Plan sponsored by the Investment Adviser from engaging in the proposed transactions. In addition, if a Pooled Fund engaging in the proposed transactions holds assets of a Plan or Plans sponsored by the Investment Adviser or its affiliate, the total assets of all such Plans invested in such Pooled Fund shall not exceed 10% of the total assets of such Pooled Fund.

24. The proposed exemption contains valuation requirements which apply to any in-kind exchange between a Plan and a Fund. In general, the condition requires that the value of securities received by an Account with respect to an in-kind exchange with a Fund will be determined based on the same valuation principles which govern valuation of the underlying securities held by the Fund, and will use the same pricing sources used by the Fund with respect to its assets. Each Fund must also value its assets pursuant to procedures established by the Fund's Board of Directors or Trustees, as applicable, and as required by the 1940 Act.

25. In summary, the Applicants represent that the criteria of section 408(a) of the Act are satisfied for the following reasons: (a) The transactions will allow the Plans to enjoy the advantages of investment in ETFs, which will provide the Plans with liquid investments; (b) Prior to the initial investment of Plan assets in the Funds, a second, independent fiduciary of each Plan will receive full disclosure regarding the proposed investment and the fees to be received by the Investment Adviser, and has the opportunity to approve or disapprove the investment; (c) No sales commissions or similar fees will be paid by the Accounts to the Investment Adviser in connection with such purchase, sale or exchange; (d) No Separately Managed Account holding

assets of a Plan sponsored by the Investment Adviser will engage in the proposed transactions, and if a Pooled Fund engaging in the proposed transactions holds assets of a Plan or Plans sponsored by the Investment Adviser, the total assets of all such Plans invested in such Pooled Fund shall not exceed 10% of the total assets of such Pooled Fund; (e) In-kind transactions with an Account will only involve securities which are publicly-traded and for which market quotations are readily available; (f) The Investment Adviser and its affiliates will not receive any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with the transactions described herein; (g) The Accounts will pay no redemption or similar fees to the Investment Adviser in connection with the sales by the Account to Funds of Fund shares; (h) There will be no double payment of investment management, investment advisory and similar fees to the Investment Adviser by the Accounts; and (i) The combined total of all fees received by the Investment Adviser for the provision of services to an Account, and in connection with the provision of any services to any of the Funds in which an Account may invest, will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary H. Lefkowitz of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

**BlackRock, Inc. (BlackRock), and Merrill Lynch & Co. (Merrill Lynch) (collectively, the Applicants), Located in New York, New York**

[Application No. D-11420]

#### *Proposed Exemption*

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (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—Transactions

If the proposed exemption is granted, the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the purchase of certain securities (the Securities), as defined below in Section III(k), by an Asset Manager, as defined

below in Section III(f), from any person other than a Merrill Lynch/BlackRock Related Entity or Merrill Lynch/BlackRock Related Entities, as defined below in Section III(c), during the existence of an underwriting or selling syndicate with respect to such Securities, where a Merrill Lynch/BlackRock Related Broker-Dealer, as defined below in Section III(b), is a manager or member of such syndicate and the Asset Manager purchases such Securities, as a fiduciary:

(a) On behalf of an employee benefit plan or employee benefit plans (Client Plan(s)), as defined below in Section III(h); or

(b) on behalf of Client Plans, and/or In-House Plans, as defined below in Section III(o), which are invested in a pooled fund or in pooled funds (Pooled Fund(s)), as defined below in Section III(i); provided that the conditions set forth below in Section II, are satisfied (An affiliated underwriter transaction (AUT)).<sup>5</sup>

#### Section II—Conditions

The proposed exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following requirements:

(a)(1) The Securities to be purchased are either—

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a *et seq.*). If the Securities to be purchased are part of an issue that is exempt from such registration requirement, such Securities:

(A) 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,

(B) Are issued by a bank,

(C) Are exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or

(D) 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 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding twelve (12) months; or

<sup>5</sup> For purposes of this proposed exemption an In-House Plan may engage in AUTs only through investment in a Pooled Fund.



(ii) Part of an issue that is an Eligible Rule 144A Offering, as defined in SEC Rule 10f-3 (17 CFR 270.10f-3(a)(4)). Where the Eligible Rule 144A Offering of the Securities is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) The Securities to be purchased are purchased prior to the end of the first day on which any sales are made, pursuant to that offering, at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities, except that—

(i) If such Securities are offered for subscription upon exercise of rights, they may be 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 price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable debt securities offered to the public subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the debt Securities being purchased; and

(3) The Securities to be purchased are offered pursuant to an underwriting or selling 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.

(b) The issuer of the Securities to be purchased pursuant to this proposed exemption must have been in continuous operation for not less than three years, including the operation of any predecessors, unless the Securities to be purchased—

(1) Are non-convertible debt securities rated in one of the four highest rating categories by Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings, Inc., Dominion Bond Rating Service Limited, Dominion Bond Rating Service, Inc., or any successors thereto (collectively, the Rating Organizations); provided that none of the Rating Organizations rates such securities in a category lower than the fourth highest rating category; or

(2) are debt securities issued or fully 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) are debt securities which are fully guaranteed by a person (the Guarantor) that has been in continuous operation for not less than three years, including the operation of any predecessors, provided that such Guarantor has issued other securities registered under the 1933 Act; or if such Guarantor has issued other securities which are exempt from such registration requirement, such Guarantor has been in continuous operation for not less than three years, including the operation of any predecessors, and such Guarantor:

(a) Is a bank, or

(b) Is an issuer of securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(c) Is an issuer of securities that 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 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such securities and that has filed all reports required to be filed hereunder with the SEC during the preceding twelve (12) months.

(c) The aggregate amount of Securities of an issue purchased, pursuant to this proposed exemption, by the Asset Manager with: (i) The assets of all Client Plans; and (ii) the assets, calculated on a *pro-rata* basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the Asset Manager; and (iii) the assets of plans to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3-21(c) does not exceed:

(1) 10 percent (10%) of the total amount of the Securities being offered in an issue, if such Securities are equity securities;

(2) 35 percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in one of the four highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(3) 25 percent (25%) of the total amount of the Securities being offered

in an issue, if such Securities are debt securities rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the sixth highest rating category; and

(4) The assets of any single Client Plan (and the assets of any Client Plans and any In-House Plans investing in Pooled Funds) may not be used to purchase any Securities being offered, if such Securities are debt securities rated lower than the sixth highest rating category by any of the Rating Organizations;

(5) Notwithstanding the percentage of Securities of an issue permitted to be acquired, as set forth in Section II(c)(1), (2), and (3), above, of this proposed exemption, the amount of Securities in any issue (whether equity or debt securities) purchased, pursuant to this proposed exemption, by the Asset Manager on behalf of any single Client Plan, either individually or through investment, calculated on a *pro-rata* basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Securities being offered in such issue, and;

(6) If purchased in an Eligible Rule 144A Offering, the total amount of the Securities being offered for purposes of determining the percentages, described, above, in Section II(c)(1)-(3) and (5), is the total of:

(i) The principal amount of the offering of such class of Securities sold by underwriters or members of the selling syndicate to "qualified institutional buyers" (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class of Securities in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan in purchasing any Securities which are the subject of this proposed exemption, including any amounts paid by any Client Plan or In-House Plan in purchasing such Securities through a Pooled Fund, calculated on a *pro-rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan or In-House Plan prior to such transaction.

(e) The covered transactions are not part of an agreement, arrangement, or understanding designed to benefit any Merrill/Lynch BlackRock Related Entity.

(f) No Merrill Lynch/BlackRock Related Broker-Dealer receives, either directly, indirectly, or through

designation, any selling concession, or other compensation or consideration that is based upon the amount of Securities purchased by any single Client Plan, or that is based on the amount of Securities purchased by Client Plans or In-House Plans through Pooled Funds, pursuant to this proposed exemption. In this regard, a Merrill Lynch/BlackRock Related Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designations generated by purchases of the Securities by the Asset Manager on behalf of any single Client Plan or any Client Plan or In-House Plan in Pooled Funds.

(g)(1) The amount a Merrill Lynch/BlackRock Related Broker-Dealer receives in management, underwriting, or other compensation or consideration is not increased through an agreement, arrangement, or understanding for the purpose of compensating such Merrill Lynch/BlackRock Related Broker-Dealer for foregoing any selling concessions for those Securities sold pursuant to this proposed exemption. Except as described above, nothing in this Section II(g)(1) shall be construed as precluding a Merrill Lynch/BlackRock Related Broker-Dealer from receiving management fees for serving as manager of an underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other compensation or consideration that is not based upon the amount of Securities purchased by the Asset Manager on behalf of any single Client Plan, or on behalf of any Client Plan or In-House Plan participating in Pooled Funds, pursuant to this proposed exemption; and

(2) Each Merrill Lynch/BlackRock Related Broker-Dealer shall provide to the Asset Manager a written certification, signed by an officer of such Merrill Lynch/BlackRock Related Broker-Dealer, stating the amount that each such Merrill Lynch/BlackRock Related Broker-Dealer received in compensation or consideration during the past quarter, in connection with any offerings covered by this proposed exemption, was not adjusted in a manner inconsistent with Section II(e), (f), or (g) of this proposed exemption.

(h) The covered transactions are performed under a written authorization executed in advance by an independent fiduciary of each single Client Plan (the Independent Fiduciary), as defined, below, in Section III(j).

(i) Prior to the execution by an Independent Fiduciary of a single Client Plan of the written authorization

described, above, in Section II(h), the following information and materials (which may be provided electronically) must be provided by the Asset Manager to such Independent Fiduciary:

(1) A copy of the Notice of Proposed Exemption (the Notice) and a copy of the final exemption (the Grant) as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously; and

(2) Any other reasonably available information regarding the covered transactions that such Independent Fiduciary requests the Asset Manager to provide.

(j) Subsequent to the initial authorization by an Independent Fiduciary of a single Client Plan permitting the Asset Manager to engage in the covered transactions on behalf of such single Client Plan, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary requests the Asset Manager to provide.

(k)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this proposed exemption, unless the Asset Manager provides the written information, as described, below, and within the time period described, below, in this Section II(k)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund).

(2) The following information and materials, (which may be provided electronically) shall be provided by the Asset Manager not less than 45 days prior to such Asset Manager engaging in the covered transactions on behalf of a Pooled Fund, pursuant to this proposed exemption; and provided further that the information described, below, in this Section II(k)(2)(i) and (iii) is supplied simultaneously:

(i) A notice of the intent of such Pooled Fund to purchase Securities pursuant to this proposed exemption, a copy of this Notice, and a copy of the Grant, as published in the **Federal Register**;

(ii) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the Asset Manager to provide; and

(iii) A termination form expressly providing an election for the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that such plan (or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund for a period of no more than 30 days after such plan's (or such In-House Plan's) receipt of the initial notice of intent, described, above, in Section II(k)(2)(i), and that the failure of the Independent Fiduciary of such plan (or fiduciary of such In-House Plan) to return the termination form to the Asset Manager in the case of a plan (or In-House Plan) participating in a Pooled Fund by the specified date shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in the covered transactions as an investor in such Pooled Fund.

Further, the instructions will identify the Asset Manager and the Merrill Lynch/BlackRock Related Broker-Dealer and will provide the address of the Asset Manager. The instructions will state that this proposed exemption may be unavailable, unless the fiduciary of each plan participating in the covered transactions as an investor in a Pooled Fund is, in fact, independent of the Merrill Lynch/BlackRock Related Entities. The instructions will also state that the fiduciary of each such plan must advise the Asset Manager, in writing, if it is not an "Independent Fiduciary," as that term is defined, below, in Section III(j).

For purposes of this Section II(k), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this proposed exemption for each plan be independent of the Merrill Lynch/BlackRock Related Entities shall not apply in the case of an In-House Plan.

(l)(1) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this proposed exemption to engage in the covered transactions, the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the fiduciary of such In-House Plan, as the case may be), following the receipt by

such Independent Fiduciary of such plan (or by the fiduciary of such In-House Plan, as the case may be) of the written information described, above, in Section II(k)(2)(i) and (ii); provided that the Notice and the Grant, described, above, in Section II(k)(2)(i) are provided simultaneously.

(2) For purposes of this Section II(l), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this proposed exemption for each plan proposing to invest in a Pooled Fund be independent of the Merrill Lynch/BlackRock Related Entities shall not apply in the case of an In-House Plan.

(m) Subsequent to the initial authorization by an Independent Fiduciary of a plan (or by a fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary of such plan (or the fiduciary of such In-House Plan, as the case may be) requests the Asset Manager to provide.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the Asset Manager shall furnish:

(1) In the case of each single Client Plan that engages in the covered transactions, the information described, below, in this Section II(n)(3)–(7), to the Independent Fiduciary of each such single Client Plan.

(2) In the case of each Pooled Fund in which a Client Plan (or in which an In-House Plan) invests, the information described, below, in this Section II(n)(3)–(6) and (8), to the Independent Fiduciary of each such Client Plan (and to the fiduciary of each such In-House Plan) invested in such Pooled Fund.

(3) A quarterly report (the Quarterly Report) (which may be provided electronically) which discloses all the Securities purchased pursuant to this proposed exemption during the period to which such report relates on behalf of the Client Plan, In-House Plan, or Pooled Fund to which such report relates, and which discloses the terms of each of the transactions described in such report, including:

(i) The type of Securities (including the rating of any Securities which are debt securities) involved in each transaction;

(ii) The price at which the Securities were purchased in each transaction;

(iii) The first day on which any sale was made during the offering of the Securities;

(iv) The size of the issue of the Securities involved in each transaction;

(v) The number of Securities purchased by the Asset Manager for the Client Plan, In-House Plan, or Pooled Fund to which the transaction relates;

(vi) The identity of the underwriter from whom the Securities were purchased for each transaction;

(vii) The underwriting spread in each transaction (*i.e.*, the difference between the price at which the underwriter purchases the securities from the issuer and the price at which the securities are sold to the public);

(viii) The price at which any of the Securities purchased during the period to which such report relates were sold; and

(ix) The market value at the end of the period to which such report relates of the Securities purchased during such period and not sold;

(4) The Quarterly Report contains:

(i) A representation that the Asset Manager has received a written certification signed by an officer of each Merrill Lynch/BlackRock Related Broker-Dealer, as described, above, in Section II(g)(2), affirming that, as to each AUT covered by this proposed exemption during the past quarter, such Merrill Lynch/BlackRock Related Broker-Dealer acted in compliance with Section II(e), (f), and (g) of this proposed exemption, and

(ii) a representation that copies of such certifications will be provided upon request;

(5) A disclosure in the Quarterly Report that states that any other reasonably available information regarding a covered transaction that an Independent Fiduciary (or fiduciary of an In-House Plan) requests will be provided, including, but not limited to:

(i) The date on which the Securities were purchased on behalf of the Client Plan (or the In-House Plan) to which the disclosure relates (including Securities purchased by Pooled Funds in which such Client Plan (or such In-House Plan) invests;

(ii) The percentage of the offering purchased on behalf of all Client Plans (and the *pro-rata* percentage purchased on behalf of Client Plans and In-House Plans investing in Pooled Funds); and

(iii) The identity of all members of the underwriting syndicate;

(6) The Quarterly Report discloses any instance during the past quarter where the Asset Manager was precluded for any period of time from selling Securities purchased under this proposed exemption in that quarter

because of its relationship to a Merrill Lynch/BlackRock Related Broker-Dealer and the reason for this restriction;

(7) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each single Client Plan that engages in the covered transactions that the authorization to engage in such covered transactions may be terminated, without penalty to such single Client Plan, within five (5) days after the date that the Independent Fiduciary of such single Client Plan informs the person identified in such notification that the authorization to engage in the covered transactions is terminated; and

(8) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each Client Plan (and to the fiduciary of each In-House Plan) that engages in the covered transactions through a Pooled Fund that the investment in such Pooled Fund may be terminated, without penalty to such Client Plan (or such In-House 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 non-withdrawing plans, after the date that the Independent Fiduciary of such Client Plan (or the fiduciary of such In-House Plan, as the case may be) informs the person identified in such notification that the investment in such Pooled Fund is terminated.

(o) For purposes of engaging in covered transactions, each Client Plan (and each In-House Plan) shall have total net assets with a value of at least \$50 million (the \$50 Million Net Asset Requirement). For purposes of engaging in covered transactions involving an Eligible Rule 144A Offering,<sup>6</sup> each Client Plan (and each In-House Plan) shall have total net assets of at least \$100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may

<sup>6</sup> SEC Rule 10f-3(a)(4), 17 CFR § 270.10f-3(a)(4), states that the term "Eligible Rule 144A Offering" means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(d)], rule 144A there under [§ 230.144A of this chapter], or rules 501–508 there under [§§ 230.501–230–508 of this chapter];

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to § 230.144A of this chapter.

be) (the \$100 Million Net Asset Requirement).

For purposes of a Pooled Fund engaging in covered transactions, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets with a value of at least \$50 million. Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets with a value of at least \$50 million, the \$50 Million Net Asset Requirement will be met, if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which has total net assets with a value of at least \$50 million. For purposes of a Pooled Fund engaging in covered transactions involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets of at least \$100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be). Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets of at least \$100 million in securities of issuers that are not affiliated with such Client Plan (or In-House Plan, as the case may be), the \$100 Million Net Asset Requirement will be met if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which have total net assets of at least \$100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be), and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset requirements described, above, in this Section II(o), where a group of Client 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 (or in the case of an Eligible Rule 144A Offering, the \$100 Million Net Asset Requirement) may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes in a single master trust.

(p) No more than 20 percent of the assets of a Pooled Fund, at the time of a covered transaction, are comprised of assets of In-House Plans for which the Asset Manager or a Merrill Lynch/BlackRock Related Entity exercises investment discretion.

(q) The Asset Manager and the Merrill Lynch/BlackRock Related Broker-

Dealer, 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 Section II(r), to determine whether the conditions of this proposed exemption have been met, except that—

(1) No party in interest with respect to a plan which engages in the covered transactions, other than the Asset Manager, and the Merrill Lynch/BlackRock Related Broker-Dealer, 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 Section II(r); and

(2) A prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of the Asset Manager, or the Merrill Lynch/BlackRock Related Broker-Dealer, as applicable, such records are lost or destroyed prior to the end of the six-year period.

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

(i) Any duly authorized employee or representative of the Department, 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 covered transactions, or any authorized employee or representative of these entities; or

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

(2) None of the persons described, above, in Section II(r)(1)(ii)–(iv) shall be authorized to examine trade secrets of the Asset Manager, or the Merrill Lynch/BlackRock Related Broker-Dealer, or commercial or financial information which is privileged or confidential; and

(3) Should the Asset Manager, or the Merrill Lynch/BlackRock Related Broker-Dealer refuse to disclose information on the basis that such information is exempt from disclosure,

pursuant to Section II(r)(2), above, the Asset Manager 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.

### Section III—Definitions

(a) The term, “the Applicants,” means BlackRock Inc. and Merrill Lynch & Co, Inc.

(b) The term, “Merrill Lynch/BlackRock Related Broker-Dealer,” means any broker-dealer that is a Merrill Lynch/BlackRock Related Entity that meets the requirements of this proposed exemption. Such Merrill Lynch/BlackRock Related Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member. 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, as defined, below, in Section III(k), being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term, “Merrill Lynch/BlackRock Related Entity(s)” includes all entities listed in this Section III(c)(i) and (ii): (i) Merrill Lynch and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Merrill Lynch, and (ii) BlackRock and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with, BlackRock. For purposes of this proposed exemption, the definition of a Merrill Lynch/BlackRock Related Entity shall include any entity that satisfies such definition in the future.

(d) 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.

(e) The term, “Merrill Lynch Related Entity” or “Merrill Lynch Related Entities,” means Merrill Lynch and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Merrill Lynch.

(f) The term, “Asset Manager,” means a BlackRock Related Entity, as defined, above, in Section III(d). For purposes of this proposed exemption, the Asset Manager must be registered with the

Securities and Exchange Commission as an investment advisor, have total client assets under management in excess of \$5 billion, have shareholders' or partners' equity in excess of \$1 million, and must satisfy the definition of a "qualified professional asset manager" (QPAM), as that term is defined in Part V(a) of PTE 84-14, 49 FR 9494 (Mar. 13, 1984), as amended, 70 FR 49305 (Aug. 23, 2005). Furthermore, the requirement that the Asset Manager must have total client asset under its management and control in excess of \$5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of \$1 million applies whether such Asset Manager, qualifies as a QPAM, pursuant to Part V(a)(1), (a)(2), (a)(3) or (a)(4) of PTE 84-14.

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

(h) The term, "Client Plan(s)," means an employee benefit plan or employee benefit plans that are subject to the Act and/or the Code, and for which plan(s) an Asset Manager exercises discretionary authority or discretionary control respecting management or disposition of some or all of the assets of such plan(s), but excludes In-House Plans, as defined, below, in Section III(o).

(i) The term, "Pooled Fund(s)," means a common or collective trust fund(s) or a pooled investment fund(s): (i) In which employee benefit plan(s) subject to the Act and/or Code invest, (ii) which is maintained by an Asset Manager, and (iii) for which such Asset Manager exercises discretionary authority or discretionary control respecting the management or disposition of the assets of such fund(s).

(j)(1) The term, "Independent Fiduciary," means a fiduciary of a plan who is unrelated to, and independent of any Merrill Lynch/BlackRock Related Entity. For purposes of this proposed exemption, a fiduciary of a plan will be deemed to be unrelated to, and independent of any Merrill Lynch/BlackRock Related Entity, if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for the transactions described, above, in Section I of this proposed exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of any Merrill Lynch/BlackRock Related Entity, and represents that such fiduciary shall advise the Asset Manager

within a reasonable period of time after any change in such facts occur.

(2) Notwithstanding anything to the contrary in this Section III(j), a fiduciary of a plan is not independent:

(i) If such fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with any Merrill Lynch/BlackRock Related Entity;

(ii) If such fiduciary directly or indirectly receives any compensation or other consideration from any Merrill Lynch/BlackRock Related Entity for his or her own personal account in connection with any transaction described in this proposed exemption;

(iii) If any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager responsible for the transactions described, above, in Section I of this proposed exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the sponsor of a plan or of the fiduciary responsible for the decision to authorize or terminate authorization for the transactions described, above, in Section I. However, if such individual is a director of the sponsor of a plan or of the responsible fiduciary, and if he or she abstains from participation in: (A) the choice of such plan's investment manager/adviser; and (B) the decision to authorize or terminate authorization for transactions described, above, in Section I, then Section III(j)(2)(iii) shall not apply.

(3) 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 policy-making function for a Merrill Lynch/BlackRock Related Entity.

(k) The term, "Securities," shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a-2(36)(1996)). For purposes of this proposed exemption, mortgage-backed or other asset-backed securities rated by one of the Rating Organizations, as defined, below, in Section III(n), will be treated as debt securities.

(l) The term, "Eligible Rule 144A Offering," shall have the same meaning as defined in SEC Rule 10f-3(a)(4) (17 CFR 270.10f-3(a)(4)) under the 1940 Act.

(m) The term, "qualified institutional buyer," or the term, "QIB," shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(n) The term, "Rating Organizations," means 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.

(o) The term, "In-House Plan(s)," means an employee benefit plan(s) that is subject to the Act and/or the Code, and that is sponsored by: (i) A Merrill Lynch Related Entity, as defined, above, in Section III(e), or (ii) a BlackRock Related Entity, as defined, above, in Section III(d), for their respective employees.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

*Effective Date:* If granted, this proposed exemption will be effective as of the date the Grant is published in the **Federal Register**.

#### Summary of Facts and Representations

1. BlackRock, based in New York, NY, is a publicly-traded investment management firm. BlackRock, through its SEC-registered investment advisor subsidiaries, currently manages assets for institutional and individual investors worldwide through a variety of equity, fixed income, cash management, and alternative investment products. As of December 31, 2006, BlackRock, through its advisor subsidiaries, had approximately \$1.125 trillion in assets under management. Furthermore, BlackRock's asset managers satisfy the definition of the term, Asset Manager, as set forth in Section III(f) of this proposed exemption.

Merrill Lynch is a holding company that, through its subsidiaries, provides broker-dealer, investment banking, financing, wealth management, advisory, insurance, lending, and related products and services on a global basis. Merrill Lynch is a "Consolidated Supervised Entity" and is subject to group-wide supervision by the SEC.

Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S) is the principal wholly-owned subsidiary of Merrill Lynch. MLPF&S is a Delaware

corporation registered with and regulated by the SEC as a broker-dealer, and is a member of the New York Stock Exchange, and the National Association of Securities Dealers, Inc. MLPF&S is also regulated by the Municipal Securities Rulemaking Board (with respect to municipal securities activities) and the Commodity Futures Trading Commission and the National Futures Association (with respect to the activities of MLPF&S as a futures commission merchant). MLPF&S is a broker and/or dealer in the purchase and sale of corporate equity and debt securities, mutual funds, money market instruments, government securities, high yield bonds, municipal securities, financial futures contracts, and options. As an investment banking firm, MLPF&S provides corporate, institutional, and government clients with a wide variety of financial services including underwriting the sale of securities to the public, structured and derivative financing, private placements, mortgage and lease financing, and financial advisory services, including advice on mergers and acquisitions. MLPF&S also acts as a prime broker for hedge funds. MLPF&S further operates mutual fund advisory programs, in which plans governed by the Act or section 4975 of the Code can receive investment advice in connection with their purchase of shares of mutual funds.

2. On September 29, 2006, Merrill Lynch combined its asset management business with BlackRock (the Merger). The resulting entity retained the BlackRock name and continues to trade on the New York Stock Exchange under the symbol, "BLK". Prior to the Merger, PNC Financial Services Group, Inc. (PNC) owned approximately 70.6 percent (70.6%) of BlackRock. As a result of the Merger, Merrill Lynch now owns a 50.3 percent (50.3%) economic interest and an approximate 45 percent (45%) voting interest in BlackRock, and PNC's ownership interest has been reduced to approximately 34 percent (34%) of BlackRock. The remaining interest in BlackRock is owned by the public and by BlackRock employees.

Merrill Lynch and PNC each have two seats on the Board of Directors of BlackRock, as a result of the Merger. The remaining seats on the Board of Directors, which include a majority of the total board seats, are held by independent directors. The Applicants represent that the Merrill Lynch and PNC board members are, except in limited circumstances, required to cast their votes in the same manner as the independent directors.

3. It is represented that the BlackRock Related Entities and the Merrill Lynch Related Entities to which the proposed exemption applies are regulated by federal government agencies such as the SEC, as well as state government agencies and industry self-regulatory organizations (e.g., the New York Stock Exchange and the National Association of Securities Dealers).

4. The Applicants request an individual administrative exemption that would permit the purchase of securities, including Rule 144A Securities, by an Asset Manager acting on behalf of Client Plans, from underwriting and selling syndicates in which a Merrill Lynch/BlackRock Related Broker-Dealer is a member or a manager, where such purchase would be made by such Asset Manager for such plans from any person other than the Merrill Lynch/BlackRock Related Entities, and such Merrill Lynch/BlackRock Related Broker-Dealer will receive no selling concessions in connection with the securities sold to such plans.

5. The Applicants represent that, prior to the effective date of the Merger, and because BlackRock and Merrill Lynch did not have ownership interests in each other, asset management affiliates of BlackRock routinely purchased, on behalf of plans, securities (including Rule 144A Securities) from underwriting or selling syndicates where a broker-dealer affiliated with Merrill Lynch was a member or manager. Since BlackRock and Merrill Lynch did not have any ownership interest in each other, these purchases could be consummated without relying on Part III of Prohibited Transaction Exemption 75-1 (PTE 75-1, Part III) or on any individual administrative exemption. In addition, prior to the effective date of the Merger, the asset management affiliates of Merrill Lynch could purchase on behalf of plans, subject to the Act, securities in underwritings or selling syndicates where a broker-dealer affiliated with Merrill Lynch was a member in accordance with PTE 75-1, Part III.

6. The Applicants represent that since the effective date of the Merger, BlackRock has had a general policy with respect to Client Plans not to purchase securities, including Rule 144A Securities, from underwriting or selling syndicates with respect to which a Merrill Lynch/BlackRock Related Broker-Dealer is a member or manager out of concern that such purchases may give rise to prohibited transactions under the Act. Notwithstanding the sizable equity stakes in BlackRock, it is not clear that Merrill Lynch or any

subsidiaries of Merrill Lynch will be considered "affiliates" of BlackRock. Among the reasons for the lack of clarity include the stockholder agreements between BlackRock and PNC and BlackRock and Merrill Lynch, each of which severely restricts the ability of Merrill Lynch and PNC, individually or in combination, to control the activities of BlackRock. For example, as noted above, Merrill Lynch and PNC board members are generally required to cast their votes in the same manner as the BlackRock independent directors. In addition, Merrill Lynch has agreed to cap its ownership in BlackRock such that it is not permitted to hold greater than 45 percent (45%) of the voting shares of BlackRock. PNC has a similar cap. Therefore, an argument can be made that neither Merrill Lynch nor PNC are or will be in a position to "control" BlackRock. Nevertheless, when an Asset Manager is a fiduciary with investment discretion with respect to a Client Plan, and such Asset Manager is deciding whether to purchase securities in an underwriting or selling syndicate in which a Merrill Lynch/BlackRock Related Broker-Dealer is a manager or member, it might be argued that the ownership interest of Merrill Lynch in BlackRock could affect such Asset Manager's best judgment as a fiduciary, raising issues under Section 406(b) of the Act. Accordingly, the Applicants seek the requested relief to cover Merrill Lynch/BlackRock Related Broker-Dealers. The Applicants represent that the failure to provide the requested relief will result in Client Plans being unfairly precluded from participating in a significant amount of investment opportunities.

7. Regardless of whether a fiduciary or its affiliate is a manager or merely a member of an underwriting or selling syndicate, the requested exemption modeled on PTE 75-1, Part III would not provide relief for the purchase of unregistered securities. This includes Rule 144A Securities resold to QIBs. Rule 144A is commonly utilized in connection with sales of securities issued by foreign issuers to U.S. investors that are QIBs. Notwithstanding the unregistered nature of such shares, syndicates selling Rule 144A Securities are the functional equivalent of those selling registered securities.

8. The Applicants represent that Merrill Lynch/BlackRock Related Broker-Dealers regularly serve as managers of underwriting or selling syndicates for registered securities, and as managers or members of underwriting or selling syndicates for Rule 144A Securities. Accordingly, Asset Managers are currently refraining

from purchasing on behalf of Client Plans securities where a Merrill Lynch/BlackRock Related Broker-Dealer is the manager of the underwriting or selling syndicate, including Rule 144A Securities sold in such offerings, resulting in such Client Plans being unable to participate in significant investment opportunities.

9. It is represented that many plans have expanded investment portfolios in recent years to include securities issued by foreign entities. As a result, the exemption provided in PTE 75-1, Part III is often unavailable for purchases of domestic and foreign securities that may otherwise constitute appropriate plan investments.

10. The Applicants represent that Asset Managers make their respective investment decisions on behalf of, or render investment advice to, Client Plans pursuant to the governing document of the particular Client Plan or pooled fund and the investment guidelines and objectives set forth in the management or advisory agreement. Because the Client Plans are covered by Title I of the Act, such investment decisions are subject to the fiduciary responsibility provisions of the Act.

11. The Applicants state, therefore, that the decision to invest in a particular offering is made on the basis of price, value, and the investment criteria of a Client Plan, not on whether the securities are currently being sold through an underwriting or selling syndicate. The Applicants further state that, because an Asset Manager's compensation for its services is generally based upon assets under management, such Asset Manager has little incentive to purchase securities in an offering in which a Merrill Lynch/BlackRock Related Broker-Dealer is an underwriter unless such a purchase is in the interests of Client Plans. If the assets under management do not perform well, the Asset Manager will receive less compensation and could lose clients, costs which far outweigh any gains from the purchase of underwritten securities. The Applicants point out that under the terms of the proposed exemption, a Merrill Lynch/BlackRock Related Broker-Dealer may receive no selling concessions, direct or indirect, that are attributable to the amount of securities purchased by the Asset Manager on behalf of Client Plans.

12. The Applicants state that the Asset Managers generally purchase securities in large blocks because the same investments will be made across several accounts. If there is a new offering of an equity or fixed income security that an Asset Manager wishes to purchase, it may be able to purchase

the security through the offering syndicate at a lower price than it would pay in the open market, without transaction costs and with reduced market impact if it is buying a relatively large quantity. This is because a large purchase in the open market can cause an increase in the market price and, consequently, in the cost of the securities. Purchasing from an offering syndicate can thus reduce the costs to Client Plans.

13. The Applicants point out that absent this proposed exemption, if a Merrill Lynch/BlackRock Related Broker-Dealer is a manager of a syndicate that is underwriting an offering of securities, the Asset Managers will be foreclosed from purchasing any securities on behalf of Client Plans from that underwriting syndicate. In this regard, an Asset Manager would have to purchase the same securities in the secondary market. In such a circumstance, the Client Plans may incur greater costs both because the market price is often higher than the offering price, and because there are transaction and market impact costs. In turn, this will cause the Asset Manager to forego other investment opportunities because the purchase price of the underwritten security in the secondary market exceeds the price that the Asset Manager would have paid to the selling syndicate.

#### **Registered Securities Offerings**

14. The Applicants represent that Merrill Lynch/BlackRock Related Broker-Dealers currently manage and participate in firm commitment underwriting syndicates for registered offerings of both equity and debt securities. While equity and debt underwritings may operate differently with regard to the actual sales process, the basic structures are the same. In a firm commitment underwriting, the underwriting syndicate purchases the securities from the issuer and then resells the securities to investors.

15. The Applicants represent that while, as a legal matter, a selling syndicate assumes the risk that the underwritten securities might not be fully sold, as a practical matter, this risk is reduced in marketed deals, through "building a book" (*i.e.*, taking indications of interest from potential purchasers) prior to pricing the securities. Accordingly, there is generally no incentive for the underwriters to use their discretionary accounts (or the discretionary accounts of their affiliates) to buy up the securities as a way to avoid underwriting obligations.

16. It is represented that each selling syndicate has one or more lead managers, who are the principal contact between the syndicate and the issuer and who are responsible for organizing and coordinating the syndicate. The syndicate may also have co-managers, who generally assist in distributing the underwritten securities. While equity syndicates may include additional underwriters that are not managers, more recently, membership in many debt syndicates has been limited to lead and co-managers.

17. It is represented that if more than one underwriter is involved in a selling syndicate, the lead manager and the underwriters enter into an "Agreement among Underwriters" in the form designated by one of the lead managers selected by the issuer. Most lead managers have a standing form of agreement. This master agreement is then commonly supplemented for the particular deal by sending an "invitation wire" or "terms telex" that sets forth particular terms to the other underwriters.

18. The arrangement between the syndicate and the issuer of the underwritten securities is embodied in an underwriting agreement, which is signed on behalf of the underwriters by one or more of the managers. In a firm commitment underwriting, the underwriting agreement provides, subject to certain closing conditions, that the underwriters are obligated to purchase all of the underwritten securities from the issuer in accordance with their respective commitments, if any securities are not purchased. This obligation is met by using the proceeds received from investors purchasing securities in the offering, although there is a risk that the underwriters will have to pay for a portion of the securities in the event that not all of the securities are sold or an investor defaults on its obligation.

19. The Applicants represent that, generally, it is unlikely that in marketed deals all offered securities will not be sold. In marketed deals, the underwriting agreement is not executed until after the underwriters have obtained sufficient indications of interest to purchase the securities from a sufficient number of investors to assure that all the securities being offered will be acquired by investors. Once the underwriting agreement is executed, the underwriters promptly begin contacting the investors to confirm the sales, at first by oral communication and then by written confirmation. Sales may be finalized within hours and sometimes minutes, but in any event prior to the opening of

the market for trading the next day. In registered transactions, the underwriters have a strong interest in completing the sales as soon as possible because, until they “break syndicate,” they cannot recommence normal trading activity, which includes buying and selling the securities for their customers or own account.

20. The Applicants represent that the process of “building a book” or soliciting indications of interest occurs in a registered equity offering, after a registration statement is filed with the SEC. While it is under review by the SEC staff, representatives of the issuer of the securities and the selling syndicate managers conduct meetings with potential investors, who learn about the company and the underwritten securities. Potential investors also receive a preliminary prospectus. The underwriters cannot make any firm sales until the registration statement is declared effective by the SEC. Prior to the effective date, while the investors cannot become legally obligated to make a purchase, such investors indicate whether they have an interest in buying, and the lead managers compile a “book” of investors who are willing to “circle” a particular portion of the issue. Although investors cannot be legally bound to buy the securities until the registration statement is effective, investors generally follow through on their indications of interest.

21. Assuming that the marketing efforts have produced sufficient indications of interest, the Applicants represent that the issuer of the securities, after consultation with the lead manager, will set the price of the securities upon being declared effective by the SEC. After the registration statement has been declared effective by the SEC and the underwriting agreement is executed, the underwriters contact those investors that have indicated an interest in purchasing securities in the offering to execute the sales. The Applicants represent that offerings are often oversubscribed, and many have an over-allotment option that the underwriters can exercise to acquire additional shares from the issuer. Where an offering is oversubscribed, the underwriters decide how to allocate the securities among the potential purchasers. However, if the offering is an initial public offering of an equity security, then the underwriters may not sell the securities to (among others) any person that is a broker-dealer, an associated person of a broker-dealer, a portfolio manager, or an owner of a broker-dealer. Additionally, underwriters may not withhold for their

own account any initial public offering of an equity security.

22. The Applicants represent that debt offerings and certain equity offerings may be “negotiated” offerings, “competitive bid” offerings, or “bought deals.” “Negotiated” offerings are conducted in the same manner as marketed equity offerings with regard to when the underwriting agreement is executed and how the securities are offered. “Competitive bid” offerings, in which the issuer determines the price for the securities through competitive bidding rather than negotiating the price with the underwriting syndicate, are often performed under “shelf” registration statements pursuant to the SEC’s Rule 415 under the 1933 Act (Rule 415) (17 CFR 230.415).<sup>7</sup>

23. In a competitive bid offering, prospective lead underwriters will bid against one another to purchase debt securities, based upon their determinations of the degree of investor interest in the securities. Depending on the level of investor interest and the size of the offering, a bidding lead underwriter may bring in co-managers to assist in the sales process. Most of the securities are frequently sold within hours, or sometimes even less than an hour, after the securities are made available for purchase.

24. It is represented that because of market forces and the requirements of Rule 415, the competitive bid process is generally, though not exclusively, available only to issuers who have been subject to the reporting requirements of the Securities Exchange Act of 1934 (the 1934 Act) for at least one (1) year.

25. Occasionally, underwriters “buy” the entire deal off of a “shelf registration” or in a Rule 144A offering before obtaining indications of interest. These “bought” deals involve issuers whose securities enjoy a deep and liquid secondary market, such that an underwriter has confidence without pre-marketing that it can identify purchasers for the securities.

#### Information Barriers

26. Prior applicants for similar relief have represented that there are internal policies in place that restrict contact and the flow of information between investment management personnel and non-investment management personnel in the same or affiliated financial service firms. The Applicants represent that, notwithstanding the concerns raised herein pertaining to the level of

<sup>7</sup> The Applicants maintain that Rule 415 permits an issuer to sell debt as well as equity securities under an effective registration statement previously filed with the SEC by filing a post-effective amendment or supplemental prospectus.

ownership in BlackRock by Merrill Lynch, the firms are independent businesses, each with policies restricting the distribution of proprietary and other non-public information, and each subject to restrictions on disclosure under the U.S. securities laws. Further, each has a fiduciary obligation not to share proprietary and non-public information outside the firm. Merrill Lynch and BlackRock also represent that they do not share information with each other which is not generally available to the public that may affect the market price of securities.

27. Prior applicants for substantially similar relief have further represented that their business separation policies and procedures are also structured to restrict the flow of any information to or from the Asset Manager that could limit its flexibility in managing client assets, and of information obtained or developed by the Asset Manager that could be used by other parts of the organization, to the detriment of the Asset Manager’s clients. Because BlackRock and Merrill Lynch are independent businesses, no such policies are required.<sup>8</sup>

28. The Applicants represent that major clients of Merrill Lynch/BlackRock Related Broker-Dealers include investment management firms that are competitors of the Asset Manager. Similarly, an Asset Manager deals on a regular basis with broker-dealers that compete with Merrill Lynch/BlackRock Related Broker-Dealers. If special consideration was shown to a Merrill Lynch/BlackRock Related Broker-Dealer, such conduct would likely have an adverse effect on the relationships of the Asset Manager with firms that compete with such Merrill Lynch/BlackRock Related Broker-Dealer. Each of the prior applicants for similar relief have represented that a goal of its business separation policies is to avoid any possible perception of improper flows of information in order to prevent any adverse impact on client and business relationships. Because BlackRock and Merrill Lynch are independent businesses, it is represented that no such policies are required.

#### Underwriting Compensation

29. The Applicants represent that the underwriters are compensated through

<sup>8</sup> The Applicants represent that no BlackRock Related Entity is currently in the business of underwriting or placing securities for third parties. In the event a BlackRock Related Entity engages in such activities, the Applicants represent that appropriate business separation policies and procedures would be instituted.



the “spread,” or difference, between the price at which the underwriters purchase the securities from the issuer and the price at which the securities are sold to the public. The spread is divided into three components.

30. The first component includes the management fee, which generally represents an agreed upon percentage of the overall spread and is allocated among the lead manager and co-managers. Where there is more than one managing underwriter, the way the management fee will be allocated among the managers is generally agreed upon between the managers and the issuer prior to soliciting indications of interest. Thus, the allocation of the management fee is not reflective of the amount of securities that a particular manager sells in an offering.

31. The second component is the underwriting fee, which represents compensation to the underwriters (including the non-managers, if any) for the risks they assume in connection with the offering and for the use of their capital. This component of the spread is also used to cover the expenses of the underwriting that are not otherwise reimbursed by the issuer of the securities.

32. The first and second components of the “spread” are received without regard to how the underwritten securities are allocated for sales purposes or to whom the securities are sold. The third component of the spread is the selling concession, which generally constitutes 60 percent (60%) or more of the spread. The selling concession compensates the underwriters for their actual selling efforts. The allocation of selling concessions among the underwriters generally follows the allocation of the securities for sales purposes. However, a buyer of the underwritten securities may designate other broker-dealers (selling group members) to receive the selling concessions arising from the securities they purchase.

33. Securities are allocated for sales purposes into two categories. The first and larger category is the “institutional pot,” which is the pot of securities from which sales are made to institutional investors. Selling concessions for securities sold from the institutional pot are generally designated by the purchaser to go to particular underwriters or other broker-dealers. If securities are sold from the institutional pot, the selling syndicate managers sometimes receive a portion of the selling concessions, referred to as a “fixed designation” or an “auto pot split” attributable to securities sold in this category, without regard to who

sold the securities or to whom they were sold. For securities covered by this proposed exemption, however, a Merrill Lynch/BlackRock Related Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designation generated by purchases of securities by an Asset Manager on behalf of its Client Plans.

34. The second category of allocated securities is “private client” or “retail,” which are the securities retained by the underwriters for sale to their customers. The underwriters receive the selling concessions from their respective retail retention allocations. Securities may be shifted between the two categories based upon whether either category is oversold or undersold during the course of the offering.

35. The Applicants represent that the inability of a Merrill Lynch/BlackRock Related Broker-Dealer to receive any selling concessions, or any compensation attributable to the fixed designations generated by purchases of securities by an Asset Manager on behalf of Client Plans, removes the primary economic incentive for an Asset Manager to make purchases that are not in the interests of such Client Plans from offerings for which a Merrill Lynch/BlackRock Related Broker-Dealer is an underwriter.

#### **Rule 144A Securities**

36. The Applicants represent that a number of the offerings of Rule 144A Securities in which a Merrill Lynch/BlackRock Related Broker-Dealer participates represent good investment opportunities for the Asset Manager’s Client Plans. Particularly with respect to foreign securities, a Rule 144A offering may provide the least expensive and most accessible means for obtaining these securities. However, as discussed above, PTE 75–1, Part III, does not cover Rule 144A Securities. Therefore, absent an exemption, the Asset Manager is foreclosed from purchasing such securities for its Client Plans in offerings in which a Merrill Lynch/BlackRock Related Broker-Dealer participates.

37. The Applicants state that Rule 144A acts as a “safe harbor” exemption from the registration provisions of the 1933 Act for re-sales of certain types of securities to QIBs. QIBs include several types of institutional entities, such as employee benefit plans and commingled trust funds holding assets of such plans, which own and invest on a discretionary basis at least \$100 million in securities of unaffiliated issuers.

38. Any securities may be sold pursuant to Rule 144A except for those of the same class or similar to a class

that is publicly traded in the United States, or certain types of investment company securities. This limitation is designed to prevent side-by-side public and private markets developing for the same class of securities and is the reason that Rule 144A transactions are generally limited to debt securities.

39. Buyers of Rule 144A Securities must be able to obtain, upon request, basic information concerning the business of the issuer and the issuer’s financial statements, much of the same information as would be furnished if the offering were registered. This condition does not apply, however, to an issuer filing reports with the SEC under the 1934 Act, for which reports are publicly available. The condition also does not apply to a “foreign private issuer” for whom reports are furnished to the SEC under Rule 12g3–2(b) of the 1934 Act (17 CFR 240.12g3–2(b)), or to issuers who are foreign governments or political subdivisions thereof and are eligible to use Schedule B under the 1933 Act (which describes the information and documents required to be contained in a registration statement filed by such issuers).

40. Sales under Rule 144A, like sales in a registered offering, remain subject to the protections of the anti-fraud rules of federal and state securities laws. These rules include Section 10(b) of the 1934 Act and Rule 10b–5 thereunder (17 CFR 240.10b–5) and Section 17(a) of the 1933 Act (15 U.S.C. 77a). Through these and other provisions, the SEC may use its full range of enforcement powers to exercise its regulatory authority over the market for Rule 144A Securities, in the event that it detects improper practices.

41. The Applicants represent that this potential liability for fraud provides a considerable incentive to the issuer of the securities and the members of the selling syndicate to insure that the information contained in a Rule 144A offering memorandum is complete and accurate in all material respects. Among other things, the lead manager typically obtains an opinion from a law firm, commonly referred to as a “10b–5” opinion, stating that the law firm has no reason to believe that the offering memorandum contains any untrue statement of material fact or omits to state a material fact necessary in order to make sure the statements made, in light of the circumstances under which they were made, are not misleading.

42. The Applicants represent that Rule 144A offerings generally are structured in the same manner as underwritten registered offerings. They may be “negotiated” offerings, “competitive bid” offerings or “ought deals.” One difference is that a Rule

144A offering uses an offering memorandum rather than a prospectus that is filed with the SEC. The marketing process is substantially similar, except that the selling efforts are limited to contacting QIBs and there are no general solicitations for buyers (e.g., no general advertising). In addition, contracts for sale may be entered into with investors and securities may be priced before a selling agreement is executed (and this is typically the case with respect to sales of asset-backed securities). Further, generally, there are no non-manager members in a Rule 144A selling syndicate. The Applicants nonetheless request that the proposed exemption extend to authorization for situations where a Merrill Lynch/BlackRock Related Broker-Dealer acts as manager or as a member.

43. The proposed exemption is administratively feasible. In this regard, compliance with the terms and conditions of the proposed exemption will be verifiable and subject to audit.

44. The Applicants represent that the proposed exemption is in the interest of participants and beneficiaries of Client Plans that engage in the covered transactions. In this regard, it is represented that the proposed exemption will greatly increase the investment opportunities and will reduce administrative costs for Client Plans.

Further, the Applicants represent that the proposed exemption is protective of the rights of participants and beneficiaries of affected Client Plans. In this regard, the notification provisions and other requirements in the proposed exemption are similar to the conditions set forth in other exemptions published by the Department in similar circumstances.

45. In summary, it is represented that the proposed transactions meet the statutory criteria for an exemption under Section 408(a) of the Act and Section 4975(c)(2) of the Code because: (a) The Client Plans will gain access to desirable investment opportunities; (b) in each offering, an Asset Manager will purchase the securities for its Client Plans from an underwriter or broker-dealer other than a Merrill Lynch/BlackRock Related Entity; (c) conditions of the proposed exemption will restrict the types of securities that may be purchased, the types of underwriting or selling syndicates and issuers involved, and the price and timing of the purchases; (d) the amount of securities that an Asset Manager may purchase on behalf of Client Plans will be subject to percentage limitations; (e) a Merrill Lynch/BlackRock Related Broker-Dealer

will not be permitted to receive, either directly, indirectly or through designation, any selling concession with respect to the securities sold to an Asset Manager on behalf of an account of a Client Plan; (f) prior to any purchase of securities, an Asset Manager will make the required disclosures to an Independent Fiduciary of each Client Plan and obtain authorization in accordance with the procedures in the proposed exemption; (g) an Asset Manager will provide regular reporting to an Independent Fiduciary of each Client Plan with respect to all securities purchased pursuant to the proposed exemption, if granted; (h) each Client Plan will be subject to net asset requirements, with certain exceptions for Pooled Funds; and (i) an Asset Manager must have total assets under management in excess of \$5 billion and shareholders' or partners' equity in excess of \$1 million, in addition to qualifying as a QPAM, pursuant to Part V(a) of PTE 84-14.

**FOR FURTHER INFORMATION CONTACT:**  
Angelena C. LeBlanc of the Department, telephone (202) 693-8540. (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 of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other

provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of August, 2007.

**Ivan Strasfeld,**

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

[FR Doc. E7-17676 Filed 9-7-07; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-61,744]

#### Risdon International, Danbury, CT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 25, 2007 in response to a worker petition filed by the Connecticut Department of Labor on behalf of workers at Risdon International, Danbury, Connecticut.

The petitioning group of workers is covered by an active certification (TA-W-61,785A) which expires on August 28, 2009. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 28th day of August 2007.

**Linda G. Poole,**

*Certifying Officer, Division of Trade  
Adjustment Assistance.*

[FR Doc. E7-17745 Filed 9-7-07; 8:45 am]

**BILLING CODE 4510-FN-P**