Register pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on January 8, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 8, 2008 (73 FR 7592).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–10136 Filed 5–8–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open SystemC Initiative

Notice is hereby given that, on March 25, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open SystemC Initiative (''OSCI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Maple Design Automation Co., Ltd., Gwacheon, REPUBLIC OF KOREA; Texas Instruments Incorporated, Stafford, TX; and Virtutech, Inc., San Jose, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSCI intends to file additional written notifications disclosing all changes in membership.

On October 9, 2001, OSCI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 3, 2002 (67 FR 350).

The last notification was filed with the Department on December 11, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 28, 2008 (73 FR 4918).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–10146 Filed 5–8–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Ultrafine Grained Titanium for Near-Net Shape Forging—a Pathway to Titanium Market Expansion

Notice is hereby given that, on December 17, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Ultrafine Grained Titanium for Near-net Shape Forging—A Pathway to Titanium Market Expansion has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: ATI AIlvac, Monroe, NC; and GE Global Research, Niskayuna, NY. The general area of this group research project's planned activity is to develop a novel ultrafine grained titanium billet process that will enable both near-net shape forging of standard alloys into complex components for aviation, energy, transportation and military markets.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–10139 Filed 5–8–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 4–08]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thursday, May 29, 2008, at 1 p.m.

SUBJECT MATTER: Issuance of Proposed Decisions, Amended Proposed Decisions, and Orders in claims against Albania.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC.

Mauricio J. Tamargo,

Chairman.

[FR Doc. 08–1247 Filed 5–7–08; 2:43 pm]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Nos. D–11363 & D–11435]

Proposed Exemptions Involving: D–11363—Citation Box and Paper Co. Profit Sharing Plan and Retirement Trust; and D–11435—Merrill Lynch & Co., Inc. and BlackRock, Inc.

AGENCY: Employee Benefits Security Administration, Labor

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice 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 exemption, 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–5649, 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 application 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 exemption 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 exemption was 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, this notice of proposed exemption is issued solely by the Department.

The application contains representations with regard to the proposed exemption which is summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations.

Citation Box and Paper Co. Profit Sharing Plan and Retirement Trust (the Plan), Located in Chicago, Illinois

[Exemption Application Number: D–11363].

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A) and (D), and sections 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A), (D), and (E) of the Code, shall not apply to the proposed sale of improved real property (the Property) by the Plan to a partnership to be comprised of Anthony J. Kostiuk (the Applicant and Plan Fiduciary), Anthony L. Kostiuk, Edmund Chmiel, Andre Frydl, and David Marinier, each of whom is a party in interest with respect to the Plan, provided that the following conditions are satisfied:

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

(b) As a result of the sale, the Plan receives the greater of: (i) $975,000; (ii) The fair market value of the Property as of the date of the transaction as determined by a qualified, independent appraiser; or (iii) The cost to the Plan to acquire and hold the Property;

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

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

(e) With respect to any lease payments for the occupancy of the Property that were made by the Citation Box and Paper Co. (the Company) to the Plan on or after July 1, 1996 and which (in the opinion of an MAI-certified, qualified independent appraiser) amounted to less than the fair market rental value of the Property at the time of such payment, the Company reimburses the Plan, prior to publication of a final grant of this requested prohibited transaction exemption, for the full amount of all such rental shortfalls in the form of a lump sum payment in arrears plus interest as calculated in conformity with the requirements of section 5(b)(5) of the Department's Voluntary Fiduciary Correction (VFC) Program described at 71 FR 20262 (April 19, 2006); and

(f) To the extent that there are rental shortfalls referenced in paragraph (e), the Applicant shall provide the Department with all relevant documentation pertaining to the calculation of such shortfall (including the fair market rental value of the Property for each applicable lease year, the amount of the rental shortfall for each year, the interest attributable to the rental shortfall for each year, and proof that the reimbursement was paid to the Plan) prior to publication of a final grant of this requested prohibited transaction exemption.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan sponsored by the Citation Box and Paper Co. (the Company), which is headquartered in Chicago, Illinois. As of June 30, 2006, the Plan had approximately 34 participants and total assets of approximately $3,107,545. The Plan's current and sole trustee is the Applicant, who is also a participant in the Plan and the owner of the Company. Anthony L. Kostiuk, Edmund Chmiel, Andre Frydl, and David Marinier are also participants in the Plan and, together with the Applicant, intend to establish a partnership that will purchase a parcel of improved real property (the Property), located at 4700 West Augusta Boulevard in Chicago, Illinois, from the Plan. The Applicant states that, in submitting this exemption application to the Department, he is authorized to represent the interests of his intended co-partners (Messrs. A. L. Kostiuk, Chmiel, Frydl, and Marinier) in the acquisition of the Property from the Plan.

2. The Applicant represents that the Property covers a gross area of 76,444 square feet, and is irregular in shape. The Applicant represents that the Property was acquired by the Plan from the Company on November 18, 1971 at a cost of $294,000.[1] The Property contains a two-story loft industrial structure (the Building) that houses the Company's warehouse and office facilities. The Applicant represents that the surface area of the Building at ground level totals 41,821 square feet.

The Applicant represents that a parcel of land adjacent to the Property (the Adjacent Parcel) previously owned by the Belt Railway Company (the Railway) of Chicago was purchased in 2005 by

[1] The Applicant has provided a copy of the 1984 exemption application (the 1984 Application) submitted on behalf of the Plan which culminated in the grant of PTE 85–7. The 1984 Application states that the Property was originally purchased by the Plan in 1971 for a price of $294,000. According to the Applicant, the 1984 Notice of Proposed Exemption (49 FR 43131, October 26, 1984) contains a typographical error, because it states that the Property was acquired by the Plan for $249,000. In addition, the Notice of Proposed Exemption states that the Property is approximately 76,000 square feet in area; In the current application, as noted above, the Applicant represents that the more precise figure is 76,444 square feet.

Citation Properties, LLC, a single-member limited liability company whose sole member is the Applicant. Prior to its acquisition by the Company, the Applicant represents that Adjacent Parcel had been leased to the Company by the Railway to provide parking facilities, as well as access to and egress from the Property. The Applicant represents that this lease predated the Department's issuance of a previous administrative exemption, PTE 85–7 (50 FR 1006, January 8, 1985), involving the Plan and the Property at issue in this proposal. The Applicant represents that the Adjacent Parcel is rectangular in shape and covers an area of 17,600 square feet. The Applicant represents that the Plan has not paid the Company or Citation Properties, LLC for the use of the Adjacent Parcel since it was acquired from the Railway. The Applicant also represents that the remaining lots adjacent to the Property are owned by persons unrelated to the Company, the Applicant, and the intended co-partners.

3. PTE 85–7 (the Original Exemption) permitted the Plan to lease the Property to the Company on a continuous basis on or after July 1, 1984, provided that ''the terms and conditions of such leasing are at least as favorable to the Plan as those which the Plan could receive in a similar transaction with an unrelated party.'' The material facts and representations supporting the Department's grant of the Original Exemption were contained in a Notice of Proposed Exemption published on October 26, 1984, at 49 FR 43131 (the 1984 Notice).

4. Since it acquired the Property in 1971, the Plan has leased the Property to the Company on a continuous basis. Each of the successive lease agreements executed between the Plan and the Company since the time of the acquisition have been ''absolute net leases'' requiring the company to be responsible for all upkeep, repair, fire insurance premiums, and taxes on the Property. According to the Summary of Facts and Representations contained in the 1984 Notice published prior to the issuance of PTE 85–7, the Original Exemption was intended to permit the continued leasing (the Lease) of the Property by the Plan to the Company until June 30, 1994, with three five-year options from such date.

The 1984 Notice further stated that ''[t]he Lease provides that for each three-year period during the initial ten-year term and during each option period thereafter the rental amount would be adjusted based upon an MAI appraisal report as to the then-current fair rental value.'' The terms of the original Lease executed on January 16, 1984, stipulated that the fair rental value of the Property would be updated two months prior to July 1, 1987 (and triennially thereafter through the year 2008), by an independent, MAI-certified appraiser.

5. According to the 1984 Notice, an independent fiduciary (originally Unibanc Trust Company, subsequently replaced in March of 1986 by Harris Trust and Savings Bank (Harris Trust)) was to exercise authority and control over and have responsibility for the operation of the lease. In addition, the 1984 Notice represented that this fiduciary was to have sole discretion to monitor the lease and enforce the rights of the Plan under the terms and conditions of any such lease.[2] In April of 2004, the Company informed Harris Trust that it was exercising its option under the lease agreement to extend the term of the lease for an additional period of five years beginning on July 1, 2004, and ending on June 30, 2009.

The Applicant represents that Harris Trust notified the Company in April of 2004 that it would no longer serve as an independent fiduciary to the Plan after May 31, 2004, because it was no longer providing retirement plan services to its clients. This line of business was sold by Harris Trust to another financial institution, Wells Fargo Investment and Trust Company (Wells Fargo). Upon receiving notification of Harris Trust's withdrawal, the Plan Fiduciary contacted Wells Fargo to inquire about its willingness to serve as a replacement independent fiduciary with respect to the monitoring of the Lease described in the Original Exemption. While it did assume various retirement plan services for the Plan previously performed by Harris Trust, Wells Fargo declined the Plan Fiduciary's request to serve as an independent fiduciary with respect to the Lease. The Applicant represents that the Plan Fiduciary then approached two other financial institutions to serve as a replacement independent fiduciary. However, neither of these institutions expressed a willingness to serve the Plan in such a capacity.

6. As part of its current exemption application with the Department, the Plan Fiduciary submitted copies of a series of fair market rental appraisals of the Property for several prior lease terms. The applicant represents that each of these prior appraisals was prepared by a qualified, independent appraiser, Urban Real Estate Research, Inc. (Urban Real Estate) of Chicago, Illinois, and signed by Mr. Arthur J. Murphy, MAI, a certified general real estate appraiser licensed by the State of Illinois. In each of these appraisal reports, Urban Real Estate reported that the Property covered an approximate area of 72,844 square feet. In providing this approximate square footage figure (which is less than the 76,444 square foot area represented by the Applicant as the accurate size of the Property), the Applicant represents that Urban Real Estate used the measurement from the Realty Atlas Map. The Applicant also represents that the Realty Atlas Map is almost illegible, and appeared to indicate that the Property occupied approximately 241.31 feet of frontage along the north side of West Augusta Boulevard. The Applicant further represents, however, that a plat of survey conducted by the National Survey Service, Inc. shows that the actual frontage is actually 291.31 feet, a 50-foot difference. The Applicant also acknowledges that, since at least July 1, 2006 (*i.e.*, during the pendency of the current prohibited transaction exemption request), the annual rent paid by the Company to the Plan for the Property has been less than the fair rental value of the Property as determined by Urban Real Estate.

7. The Applicant further represents that a second real estate appraiser, Muriello Appraisal and Consulting (Muriello Appraisal) of Elk Grove Village, Illinois, was retained by the Plan for the purpose of determining the fair market value of the Property in connection with the sale. The Applicant represents that Muriello Appraisal is independent of, and unrelated to, the Company, the Applicant, and the intended co partners. Muriello Appraisal represents that less than 1% of its gross annual revenue was derived from appraisal services performed for the Plan and the Company.

On June 18, 2007, an updated appraisal report was issued by Muriello Appraisal concerning the fair market value of the Property as of June 11, 2007. The updated report was signed by Frank J. Muriello, MAI (a general real estate appraiser licensed by the State of Illinois) and Paul J. Muriello, a senior appraiser also licensed by the State of Illinois. In this updated report, Muriello Appraisal states that consideration was given in the appraisal to three approaches to value: The cost approach, the sales comparison approach, and the income capitalization approach. Relying upon the sales comparison approach, Muriello Appraisal issued a report dated June 18, 2007 which stated that the fair market value of the Property was $975,000 as of June 11, 2007. The

[2] The Department expresses no opinion herein as to whether the Plan's continued ownership and leasing of the Property is consistent with the general fiduciary responsibility provisions of Part 4 of Title I of the Act.

Applicant later determined, however, that the appraisal report improperly aggregated the values of both the Property and the Adjacent Parcel in arriving at the $975,000 figure. The Applicant represents that Paul Muriello has subsequently acknowledged in writing that, if the Adjacent Parcel were disaggregated from the June, 2007, appraisal, the standalone value of the Property may have to be adjusted below $975,000. Nevertheless, the Applicant represents that the proposed partnership is willing to pay the Plan the greater of $975,000 or the fair market value of the Property on the date of the transaction.

8. Accordingly, the Applicant proposes a one-time cash sale of the Property by the Plan to the proposed partnership for the greater of (1) $975,000 or (2) the fair market value of the Property on the date of the transaction as established by a qualified, independent appraiser. The Applicant represents that no Plan assets or monies allocated to individual participant accounts in the Plan will be utilized to purchase the Property. The Applicant further states that the proposed partnership intends to obtain financing from a financial institution to enable the sale of the Property in exchange for cash; the financial institution selected for this purpose shall be independent of and unrelated to the Company, the Applicant, and the intended copartners. Any mortgage obtained by the proposed partnership in connection with the acquisition of the Property shall be a nonrecourse loan with no obligations or liability to the Plan. The Applicant represents that the sale of the Property by the Plan is administratively feasible in that it will be a one-time transaction for cash. The Applicant also represents that the sale is in the interests of the Plan because it would provide additional liquidity to the Plan. In addition, the Applicant represents that the sale is protective of the interests of the Plan because the cash proceeds derived from the sale of the Property will be invested in a manner that diversifies the assets of the Plan.

9. In summary, the proposed transaction satisfies the requirements of section 408(a) of the Act because: (a) The sale is a one-time transaction for cash; (b) As a result of the sale, the Plan receives the greater of (i) $975,000, (ii) the fair market value of the Property as of the date of the transaction as determined by a qualified, independent appraiser, or (iii) the cost to the Plan to acquire and hold the Property; (c) The Plan pays no commissions, fees or other expenses in connection with the sale; (d) The terms and conditions of the sale are at least as favorable as those obtainable in an arm's length transaction with an unrelated third party; (e) With respect to any lease payments for the occupancy of the Property that were made by the Company to the Plan on or after July 1, 1996 and which (in the opinion of an MAI-certified, qualified independent appraiser) amounted to less than the fair market rental value of the Property at the time of such payment, the Company reimburses the Plan, prior to publication of a final grant of this requested prohibited transaction exemption, for the full amount of all such rental shortfalls in the form of a lump sum payment in arrears plus interest as calculated in conformity with the requirements of section 5(b)(5) of the Department's Voluntary Fiduciary Correction (VFC) Program described at 71 FR 20262 (April 19, 2006); and (f) To the extent that there are rental shortfalls referenced in paragraph (e), the Applicant shall provide the Department with all relevant documentation pertaining to the calculation of such shortfall (including the fair market rental value of the Property for each applicable lease year, the amount of the rental shortfall for each year, the interest attributable to the rental shortfall for each year, and proof that the reimbursement was paid to the Plan) prior to publication of a final grant of this prohibited transaction exemption.

Notice to Interested Persons: A copy of this notice of the proposed exemption (the Notice) shall be given to all interested persons in the manner agreed upon by the applicant and the Department within fifteen (15) days of the date of its publication in the **Federal Register**. The Department must receive all written comments and requests for a hearing no later than forty-five (45) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Judge of the Department, telephone (202) 693–8339. (This is not a toll-free number.)

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

[Exemption Application No. D–11435].

Proposed Exemption

Based on the facts and representations set forth in the application, 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):

1. Definitions

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

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

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

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

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

2. General Conditions

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

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

(2) No party in interest with respect to a plan which engages in the covered transactions, other than any Merrill Lynch/BlackRock Related Entity or Entities, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records have not been maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided below in paragraph (b)(2), and notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (a) above are unconditionally available for

examination during normal business hours at their customary location to the following persons or an authorized representative thereof—

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

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

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

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

(2) None of the persons described above in paragraph (b)(1)(ii)–(iv) shall be authorized to examine trade secrets of the Merrill Lynch/BlackRock Related Entity or Entities, or commercial or financial information, which is privileged or confidential; and

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

3. Exemptions From Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers and Banks—Underwritings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If such securities are purchased by the plan from a party in interest or disqualified person with respect to the plan, such party in interest or disqualified person shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the conditions of this exemption are not met. However, if such securities are purchased from a party in interest or disqualified person with respect to the plan, the restrictions of section 406(a) of the Act shall apply to any fiduciary with respect to the plan and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall apply to such party in interest or disqualified person, unless the conditions for exemption of PTE 75–1 (40 FR 50845, October 31, 1975), Part II (relating to certain principal transactions) are met.

4. Exemptions From Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers, Reporting Broker-Dealers and Banks—Market-Making

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

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

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

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

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

(b) As a result of purchasing such securities—

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

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

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

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

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

5. Exemption Involving Mutual Fund In-House Plans

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

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

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

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

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

6. Exemption for Certain Transactions Between Investment Companies and Employee Benefit Plans

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

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

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

prospectus in effect both at the time of the purchase of such shares and at the time of such sale.

(c) The plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. This condition does not preclude the payment of investment advisory fees by the investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940. This condition also does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's *pro rata* share of investment advisory fees paid by the investment company. If, during any fee period for which the plan has prepaid its investment management, investment advisory or similar fee, the plan purchases shares of the investment company, the requirement of this paragraph (c) shall be deemed met with respect to such prepaid fee if by a method reasonably designed to accomplish the same, the amount of the prepaid fee that constitutes the fee with respect to the plan assets invested in the investment company shares (1) is anticipated and subtracted from the prepaid fee at the time of payment of such fee, (2) is returned to the plan no later than during the immediately following fee period, or (3) is offset against the prepaid fee for the immediately following fee period or for the fee period immediately following thereafter. For purposes of this paragraph (c), a fee shall be deemed to be prepaid for any fee period if the amount of such fee is calculated as of a date not later than the first day of such period.

(d) A second fiduciary with respect to the plan, who is independent of and unrelated to the fiduciary/investment adviser or any affiliate thereof, receives a current prospectus issued by the investment company, and full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including the nature and extent of any differential between the rates of such fees, the reasons why the fiduciary/investment adviser may consider such purchases to be appropriate for the plan, and whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations. For purposes of this paragraph (d), such second fiduciary will not be deemed to be independent of and unrelated to the fiduciary/investment adviser or any affiliate thereof if:

(1) Such second fiduciary directly or indirectly controls, is controlled by, or is under common with the fiduciary/investment adviser or any affiliate thereof;

(2) Such second fiduciary, or any officer, director, partner, employee or relative of such second fiduciary is an officer, director, partner, employee or relative of such fiduciary/investment adviser or any affiliate thereof; or

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

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

For purposes of paragraph (d)(1) above, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual, and the term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

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

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

7. Exemption Involving Closed-End Investment Company In-House Plans

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

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

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

(c) All other dealings between the plan and such investment company, the investment adviser, or affiliated person, are on a basis no less favorable to the plan than such dealings are with other

shareholders of the investment company.

8. Exemption for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers

Section I: Definition and Special Rules

The following definitions and special rules apply to this exemption:

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

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

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

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

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

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

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

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

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

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

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

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

Section II: Covered Transactions

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

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

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

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

Section III: Conditions

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

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

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

(2) For purposes of this exemption, Section III(b) will be deemed satisfied for the period commencing September 29, 2006, notwithstanding Merrill Lynch Investment Managers, LLC (MLIM)'s reliance on written authorizations obtained prior to the consummation of the Merger [3], provided that after the closing of the Merger, MLIM notified each such authorizing plan fiduciary of the fact that: (A) As a result of the Merger, MLIM had become a subsidiary of BlackRock; (B) the existing authorization by such authorizing plan fiduciary would continue to permit MLIM to engage in the covered transaction on behalf of the plan; (C) such authorization is terminable at will by the plan, without penalty to the plan, upon receipt by MLIM of written notice from an authorizing plan fiduciary of termination; (D) a form expressly providing an election to terminate the authorization with instructions on the use of such form was supplied to each such authorizing plan fiduciary; and (E) failure to return such termination form would result in the continued authorization of MLIM to engage in the covered transactions on behalf of the plan. Notwithstanding the foregoing, this exception does not apply to new authorizations to engage in covered transactions entered into after the consummation of the Merger.

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

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

(2) Failure to return the form will result in the continued authorization of the authorized Merrill Lynch/BlackRock

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

Related Entity or Entities to engage in the covered transactions on behalf of the plan.

(d) Within three months before an authorization is made, the authorizing plan fiduciary is furnished with any reasonably available information that the Merrill Lynch/BlackRock Related Entity or Entities seeking authorization reasonably believes to be necessary for the authorizing plan fiduciary to determine whether the authorization should be made including (but not limited to) a copy of this exemption, the form for termination of authorization described in Section III(c) of this exemption, a description of the Merrill Lynch/BlackRock Related Entity or Entities' brokerage placement practices, and any other reasonably available information regarding the matter that the authorizing plan fiduciary requests.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) A trustee (other than a nondiscretionary trustee) may only

engage in a covered transaction with a plan that has total net assets with a value of at least $50 million and in the case of a pooled fund, the $50 million net asset requirement will be met if 50 percent or more of the units of beneficial interest in such pooled fund are held by plans each of which has total net assets with a value of at least $50 million.

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

(i) The trustee (other than a nondiscretionary trustee) engaging in a covered transaction furnishes, at least annually, to the authorizing plan fiduciary of each plan the following:

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

(2) The aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms unaffiliated with the trustee;

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

(4) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms unaffiliated with the trustee.

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

Section IV: Exceptions From Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) On the first day of such fiscal year, and immediately following each acquisition of an interest in the pooled fund during the fiscal year by any plan covering employees of any Merrill

Lynch/BlackRock Related Entity or Entities, the aggregate fair market value of the interests in such fund of all plans covering employees of any Merrill Lynch/BlackRock Related Entity or Entities does not exceed twenty percent of the fair market value of the total assets of the fund; and

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

9. Exemption for Cross-Trades of Securities by Index and Model-Driven Funds

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

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

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

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

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

Section II. Specific Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

forth in this exemption. Records documenting each cross-trade transaction will be retained by the Manager.

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

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

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

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

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

(2) Prior to the cross-trade, a fiduciary of the Large Account who is independent of the Manager (other than in the case of any assets of a Manager Plan) [4] has been fully informed of the Manager's cross-trading program, has been provided with the information required in Section II(k) of this exemption, and has provided the Manager with advance written authorization to engage in cross-trading in connection with the restructuring, provided that—

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

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

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

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

Section III. General Conditions

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

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

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

(2) On a Fund by Fund basis, the model prescribed output or trade list which describes: (A) Which securities to buy or sell; and (B) how much of each security to buy or sell; in detail sufficient to allow an independent plan fiduciary to verify that each of the above decisions for the Fund was made in response to specific triggering events; and

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

Such records must be readily available to assure accessibility and maintained so that an independent fiduciary, or other persons identified below in paragraph (b) of this Part, may obtain them within a reasonable period of time. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Manager, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than the Manager shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

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

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

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

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

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

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

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

Section IV. Definitions

The following definitions apply for purposes of this exemption:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) ''Triggering Event'':

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) ''Relative''—A relative is a person that is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(m) ''Nondiscretionary trustee''—A plan trustee whose powers and duties

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

Background

On September 29, 2006, ML&Co. and BlackRock consummated a transaction (the Merger), in which ML&Co. contributed Merrill Lynch Investment Managers, LLC (MLIM) and various other assets and subsidiaries that comprised its investment management business to BlackRock in exchange for approximately 45% of the outstanding voting securities of BlackRock. Prior to the Merger, ML&Co. and its affiliates engaged in various types of transactions, involving employee benefit plans, in reliance on, and in accordance with the conditions of various class exemptions (the Applicable Exemptions) [5] issued by the Department. Also, prior to the Merger, affiliates of ML&Co. engaged in the same transactions as described in the Applicable Exemptions, involving plans, with affiliates of BlackRock for which no exemption was required because ML&Co. had, at most, a *de minimis* ownership interest in BlackRock.

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

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

Summary of Facts and Representations

1. BlackRock, headquartered in New York, NY, is one of the largest publicly-traded investment management firms in the world. BlackRock, through its Securities and Exchange Commission (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 June 30, 2007, BlackRock had approximately $1.2 trillion in assets under management.

2. ML&Co. 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. ML&Co. is subject to group-wide supervision by the SEC.

3. On September 29, 2006, ML&Co. combined its asset management business with BlackRock (*i.e.*, the Merger). Prior to the Merger, PNC Financial Services Group, Inc. (PNC) owned approximately 70.6% of BlackRock. As a result of the Merger, ML&Co. now owns a 50.3% economic interest and an approximate 45% voting interest in BlackRock, and PNC's ownership interest has been reduced to approximately 34% of BlackRock. The remaining interest in BlackRock is owned by the public and by BlackRock employees.

4. All BlackRock capital stock beneficially owned from time to time by ML&Co. and its related companies (other than in certain fiduciary capacities and customer or market-making accounts) is subject to the terms and provisions of a Stockholders' Agreement as amended by Amendment No. 1 thereto (the Stockholders' Agreement), which was entered into on February 15, 2006.

5. The Stockholders' Agreement will remain in effect until ML&Co. beneficially owns less than 20% of BlackRock's voting stock or until five years after the closing date of the Merger (Closing Date), whichever comes later, except that the transfer restrictions will continue to apply until ML&Co. beneficially owns less than 5% of such voting stock. Additionally, the restrictions, obligations and prohibitions on ML&Co. ownership of BlackRock securities may not be modified, amended or waived unless approved by either all of the independent directors of BlackRock or at least two-thirds of the directors of BlackRock. These restrictions, obligations and prohibitions fall into four broad categories: Corporate governance, share ownership, transfer restrictions, and non-competition.

6. ML&Co.'s rights to vote the shares of BlackRock voting stock, communicate with other BlackRock stockholders and to otherwise express its interests are expressly limited in the Stockholders' Agreement as follows: (i) ML&Co. may designate only two directors, each in a separate class, to the 17-member Board of Directors of BlackRock (the Board) and, of the 17-member Board, seven directors were members of the Board prior to the Merger and were independent of BlackRock, ML&Co. and PNC, for purposes of NYSE Listed Company Manual Section 303A.02 and Section 10A of the Securities Exchange Act of 1934, and were not proposed by ML&Co. or PNC; two additional directors were determined by BlackRock's pre-Merger board and satisfy the foregoing independence standard; four directors are members of management (including three from BlackRock and one from pre-Merger MLIM); two directors, as noted, are designated by ML&Co. and two directors are designated by PNC, thereby resulting in a Board with a majority of directors who are independent of management, ML&Co. and PNC, less than 12% of whom are designated by ML&Co. or PNC and nearly 25% of whom are members of BlackRock management; (ii) All committees of the Board (other than its executive committee) must consist solely of independent directors; (iii) ML&Co. must ensure that all of its BlackRock voting stock is present at any stockholder meeting, either in person or by proxy, for purposes of establishing a quorum; (iv) ML&Co. must vote all of its BlackRock voting stock on all matters (including elections of directors) as recommended by the Board as long as consistent with the terms of the Stockholders' Agreement; (v) ML&Co. has agreed that neither it nor its affiliated companies nor any of their directors, officers or agents will seek, solicit or make any statement to BlackRock or its affiliated companies or their boards or managements, any stockholder of BlackRock or any other person regarding any proposal seeking (1) to control or influence the management, the Board or the policies of BlackRock or its affiliated companies,

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

(2) any acquisition of BlackRock stock in excess of its permitted holdings, (3) any acquisition of any securities, assets or business of BlackRock or its affiliated companies, or (4) any recapitalization, business combination or other extraordinary transaction involving BlackRock or its affiliated companies; (vi) Certain limited matters designated in the Stockholders' Agreement require approval by two-thirds of the independent directors of BlackRock (including appointment of a new CEO of BlackRock, sale of BlackRock, major acquisitions and charter amendments), and certain other extraordinary matters require consent from ML&Co. (the ML Consent Rights) (such as sale of BlackRock to a major global competitor of ML&Co., sale of BlackRock within the first five years of the Closing Date, sale in any one year of BlackRock subsidiaries that produce more than 20% of BlackRock's revenue, changes to certain of BlackRock's by-laws which would adversely affect ML&Co.'s interests, settlement of regulatory matters that would result in a loss of license by ML&Co., voluntary bankruptcy, actions that would cause ML&Co. to become a bank holding company or amendment of the parallel arrangements with PNC in a manner materially averse to ML&Co. or materially beneficial to PNC); and (vii) The first three of the ML Consent Rights terminate if there is a change in control of ML&Co., and if such change occurs during the first five years after the Merger, ML&Co. must also reduce its holdings below 25% or exchange all of its shares for nonvoting participating preferred stock.

7. Among the restrictions that ML&Co. has agreed to in the Stockholders' Agreement, there are two fundamental restrictions with respect to its ownership of BlackRock capital stock: (i) ML&Co. and its related companies may not seek to acquire or acquire beneficial ownership of any BlackRock capital stock or equivalent securities if, after giving effect to any such acquisition, ML&Co. and its related companies would beneficially own in excess of 49.8% of the total voting power of all outstanding BlackRock voting securities, or BlackRock voting securities and preferred stock in excess of 49.8% of the outstanding BlackRock voting securities and preferred stock combined on a fully diluted basis; and (ii) ML&Co. must sell stock as necessary to keep its holdings below such levels.

8. In light of the difficulty ML&Co. may experience in acquiring additional BlackRock capital stock if BlackRock issues additional voting securities beyond certain levels, ML&Co. will have the right to purchase additional preferred stock to maintain its then current economic ownership level and to purchase additional voting securities if necessary to prevent dilution below 90% of its voting securities limitation.

9. ML&Co. is prohibited by the terms of the Stockholders' Agreement from transferring any of its BlackRock capital stock to any person who would as a result beneficially own more than 5% of BlackRock's voting stock. ML&Co. is also restricted in the following ways: (i) ML&Co. may sell its BlackRock capital stock only in broadly distributed public offerings, or in ordinary unsolicited broker transactions to persons who will not beneficially own more than 5% of BlackRock's voting stock after such sale (after providing BlackRock with a right to match any offer), or to one of its related companies which agrees in writing with BlackRock to be bound by the Stockholders' Agreement as if it were an initial signatory thereto; (ii) ML&Co. must obtain prior written consent to engage in any transfers not provided for in (i) above; and (iii) If ML&Co. wishes to or is required to transfer an amount of BlackRock voting stock constituting more than 10% of the total voting power, ML&Co. must coordinate such transfer with BlackRock.

10. The Stockholders' Agreement substantially curtails ML&Co.'s ability to compete with BlackRock in the asset management business as well as BlackRock's ability to compete with ML&Co. in the retail securities brokerage business.

11. The transactions described in this proposed exemption are the same as the transactions described in PTEs 75–1, Parts III and IV; PTE 77–3; PTE 77–4; PTE 79–13; PTE 86–128; and PTE 2002–12 (*i.e.*, the Applicable Exemptions), and the conditions would be the same conditions provided for in the Applicable Exemptions. However, the Applicable Exemptions contain definitions of the term ''affiliate'' which might not apply to all of the entities related to ML&Co. and to BlackRock after the Merger. Accordingly, the Applicants have sought the individual exemption proposed herein in order that such entities may continue to engage in the transactions described in the Applicable Exemptions.

12. The Applicants have also requested relief for their related entities which may satisfy this individual exemption in the future. For a variety of business reasons, the Applicants may reorganize their respective businesses or establish new entities that will perform the same or similar functions as existing entities. Further, the Applicants may acquire entities that act as investment advisers or other service providers to plans or may otherwise be considered parties in interest to plans by virtue of their relationship to the Applicants. However, the Applicants are not requesting relief, nor is the Department herein proposing any relief, for an entity that would be a successor of ML&Co. or of BlackRock.

13. The Applicants had discussions concerning the possible ramifications of the Merger with respect to the Applicable Exemptions with the Department both prior to and continuing after the date of the Merger. The Applicants are requesting relief retroactive to September 29, 2006, the date of the Merger, to the extent that they and their related entities have been engaging in transactions described in the Applicable Exemptions in accordance with the conditions therein (other than the definition of ''affiliate'').

14. The Applicants represent that transactions covered by the proposed individual exemption have been engaged in in accordance with the conditions of the Applicable Exemptions following consummation of the Merger. However, with regard to Section VIII of the proposed individual exemption pertaining to PTE 86–128, it should be noted that prior to the effective date of the merger, MLIM, as a subsidiary of ML&Co., engaged in transactions in reliance on, and in accordance with, the conditions of PTE 86–128. In this regard, it is represented that certain independent plan fiduciaries authorized MLIM to utilize the relief provided by PTE 86–128 with respect to transactions involving any broker-dealer that is affiliated with ML&Co. As a result of the Merger, MLIM became a subsidiary of BlackRock and it is represented that MLIM continued to engage in those same transactions for which relief is provided by PTE 86–128. The Applicants maintain that reliance on the existing consents obtained from certain independent plan fiduciaries was appropriate, because MLIM, notwithstanding the fact that it had become a subsidiary of BlackRock, was continuing an existing practice for which it had already obtained affirmative consent in accordance with the requirements of PTE 86–128. Accordingly, instead of seeking new authorization, BlackRock sent a letter to the authorizing plan fiduciary of each client plan and pooled fund subject to the Act or the Code after the closing of the Merger notifying such fiduciaries of the Merger and that the authorization remained in place, unless such fiduciaries elected to terminate such authorization. It is represented that in

the case of plans covered by the Act, a termination form was included with such letter. The Applicants maintain that provision of notice of the Merger and the right to terminate an authorization was consistent with the annual ''negative consent'' provided for in Part III(c) of PTE 86–128. With respect to existing client plans of BlackRock and any of its affiliates, on the effective date of the Merger, and client plans that retained BlackRock or any of its affiliates following the effective date of the Merger, it is represented that BlackRock has implemented a compliance program designed to comply with the requirements of PTE 86–128. In this regard, for BlackRock and any of its affiliates that had not been relying on PTE 86–128 prior to the consummation of the Merger, affirmative consents have been and will be obtained.

15. In summary, the Applicants represent that the subject 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 transactions covered by the proposed exemption are the same as the transactions described in the Applicable Exemptions; (b) The conditions contained in the proposed exemption are the same as those in the Applicable Exemptions (except for the definition of ''affiliate'' therein); (c) The rationale for providing the same exemptive relief as is available under the Applicable Exemptions is the same as providing the proposed exemptive relief described herein; and (d) Absent the requested relief, plan participants and beneficiaries would be precluded from gaining access to certain favorable investment opportunities or receiving certain services from the Applicants and their related entities.

Temporary Nature of Exemption

The Department has determined that the relief provided by this exemption is temporary in nature. The exemption, if granted, will be effective September 29, 2006, and will expire on the day which is five (5) years from the date of the publication of the final exemption in the **Federal Register**. Accordingly, the relief provided by this exemption will not be available upon the expiration of such five year period for any new or additional transactions, as described herein, after such date, but would continue to apply beyond the expiration of such five year period for continuing transactions entered into during the effective dates of this exemption; provided the conditions of this exemption continue to be satisfied. Should the Applicants wish to extend, beyond the expiration of such five year period, the relief provided by this exemption to new or additional transactions, the Applicants may submit another application for exemption. In this regard, the Department would require that prior to filing another exemption application seeking relief for new or additional transactions, the Applicants must document compliance with the conditions of this exemption.

Notice to Interested Persons

The Applicants represent that because those plans proposing to engage in the covered transactions cannot all be identified, the only practical means of notifying independent plan fiduciaries or plan participants of such affected plans is by publication of the proposed exemption in the **Federal Register**. Therefore, any comments from interested persons must be received by the Department no later than *June 9, 2008.*

Written Comments and Hearing Requests

All interested persons are invited to submit written comments and/or requests for a public hearing on the pending exemption to the address, as set forth above, within the time frame, as set forth above. All comments and requests for a public hearing will be made a part of the record. Comments and hearing requests should state the reasons for the writer's interest in the proposed exemption. A request for a public hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. Comments and hearing requests received will also be available for public inspection with the referenced application at the address, as set forth above.

FOR FURTHER INFORMATION CONTACT: Ms. Blessed Chuksorji, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, 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 exemption, 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 exemption, 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 29th day of April, 2008.

Ivan Strasfeld,

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

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0005]

Request for Comments on Proposed Guidance on Workplace Stockpiling of Respirators and Facemasks for Pandemic Influenza

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comments.

SUMMARY: The Department of Labor is inviting comments on its document entitled ''Proposed Guidance on