

Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individuals are hereby appointed to serve on the Department's Performance Review Board: John McWilliam, Felix Quintana, Corlis Sellers.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea Burckman, Director, Office of Executive Resources and Personnel Security, Room C5508, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693-7628.

Signed at Washington, DC., this 3rd day of November, 2008.

Elaine L. Chao,
Secretary of Labor.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Nos. and Proposed Exemptions; D-11481, Citigroup, Inc.; D-11484; Robert W. Baird & Co. Incorporated; D-11490, Raymond James & Associates, Inc.; D-11505, Northwestern Mutual Investment Services, LLC, et al.]

Notice of Proposed Exemptions

AGENCY: Employee Benefits Security Administration, Labor

ACTION: Notice of Proposed Exemptions.

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

Written Comments and Hearing Requests

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

include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: moffitt.betty@dol.gov, or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

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

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

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

Citigroup, Inc., Located in New York, New York, Exemption Application Number D-11481.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (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

Section I. Transactions Involving Plans Described In Both Title I and Title II of ERISA

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and section 406(b) of ERISA, 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, effective February 1, 2008, to the following transactions, if the conditions set forth in section III have been met:

- (a) The sale or exchange of an Auction Rate Security (as defined in section IV(b)) by a Plan (as defined in section IV(h)) to the Sponsor (as defined in section IV(g)) of such Plan; or
- (b) A lending of money or other extension of credit to a Plan in connection with the holding of an Auction Rate Security by the Plan, from: (1) Citigroup, Inc. or an affiliate (Citigroup); (2) an Introducing Broker (as defined in section IV(f)); or (3) a Clearing Broker (as defined in section IV(d)); where the loan is: (i) Repaid in accordance with its terms; and (ii) guaranteed by the Plan Sponsor.

II. Transactions Involving Plans Described In Title II of ERISA Only

If the proposed exemption is granted, the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply, effective February 1, 2008, to the following transactions, if the conditions set forth in section III have been met:

- (a) The sale or exchange of an Auction Rate Security by a Title II Only Plan (as defined in section IV(i)) to the Beneficial Owner (as defined in section IV(c)) of such Plan; or
- (b) A lending of money or other extension of credit to a Title II Only Plan in connection with the holding of

¹ For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

an Auction Rate Security by the Title II Only Plan, from: (1) Citigroup; (2) an Introducing Broker; or (3) a Clearing Broker; where the loan is: (i) Repaid in accordance with its terms and; (ii) guaranteed by the Beneficial Owner.

III. Conditions

(a) Citigroup acted as a broker or dealer, non-bank custodian, or fiduciary in connection with the acquisition or holding of the Auction Rate Security that is the subject of the transaction;

(b) For transactions involving a Plan (including a Title II Only Plan) not sponsored by Citigroup for its own employees, the decision to enter into the transaction is made by a Plan fiduciary who is Independent (as defined in section IV(e)) of Citigroup. Notwithstanding the foregoing, an employee of Citigroup who is the Beneficial Owner of a Title II Only Plan may direct such Plan to engage in a transaction described in section II, if all of the other conditions of this section III have been met;

(c) The last auction for the Auction Rate Security was unsuccessful;

(d) The Plan does not waive any rights or claims in connection with the loan or sale as a condition of engaging in the above-described transaction;

(e) The Plan does not pay any fees or commissions in connection with the transaction;

(f) The transaction is not part of an arrangement, agreement or understanding designed to benefit a party in interest;

(g) With respect to any sale described in section I(a) or section II(a):

(1) The sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security; and

(2) For purposes of the sale, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;²

(h) With respect to an in-kind exchange described in section I(a) or section II(a), the exchange involves the transfer by a Plan of an Auction Rate Security in return for a Delivered Security, as such term is defined in section IV(j), where:

(1) The exchange is unconditional;

(2) For purposes of the exchange, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;

(3) The Delivered Security is valued at fair market value, as determined at the time of the in-kind exchange by a third party pricing service or other objective source;

(4) The Delivered Security is appropriate for the Plan and a security that the Plan is otherwise permitted to hold under applicable law;³ and

(5) The total value of the Auction Rate Security (*i.e.*, par plus any accrued but unpaid interest) is equal to the fair market value of the Delivered Security;

(i) With respect to a loan described in section I(b) or II(b):

(1) The loan is documented in a written agreement containing all of the material terms of the loan, including the consequences of default;

(2) The Plan does not pay an interest rate that exceeds one of the following three rates as of the commencement of the loan:

(A) The coupon rate for the Auction Rate Security;

(B) The Federal Funds Rate; or

(C) The Prime Rate;

(3) The loan is unsecured; and

(4) The amount of the loan is not more than the total par value of the Auction Rate Securities held by the Plan.

IV. Definitions

(a) The term "affiliate" means: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "Auction Rate Security" or "ARS" means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) With an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(c) The term "Beneficial Owner" means: The individual for whose benefit

the Title II Only Plan is established and includes a relative or family trust with respect to such individual;

(d) The term "Clearing Broker" means: A member of a securities exchange that acts as a liaison between an investor and a clearing corporation and that helps to ensure that a trade is settled appropriately, that the transaction is successfully completed and that is responsible for maintaining the paper work associated with the clearing and executing of a transaction;

(e) The term "Independent" means a person who is: (1) Not Citigroup or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(f) The term "Introducing Broker" means: A registered broker that is able to perform all the functions of a broker except for the ability to accept money, securities, or property from a customer;

(g) The term "Sponsor" means: A plan sponsor as described in section 3(16)(B) of the Act and any Affiliates;

(h) The term "Plan" means: Any plan described in section 3(3) of the Act and/or section 4975(e)(1) of the Code;

(i) The term "Title II Only Plan" means: Any plan described in section 4975(e)(1) of the Code which is not an employee benefit plan covered by Title I of ERISA;

(j) The term "Delivered Security" means a security that is: (1) Listed on a national securities exchange (excluding OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); or (2) a U.S. Treasury obligation; or (3) A fixed income security that has a rating at the time of the exchange that is in one of the two highest generic rating categories from an independent nationally recognized statistical rating organization (*e.g.*, a highly rated municipal bond or a highly rated corporate bond); or (4) A certificate of deposit insured by the Federal Deposit Insurance Corporation. Notwithstanding the above, the term "Delivered Security" shall not include any Auction Rate Security, or any related Auction Rate Security, including derivatives or securities materially comprised of Auction Rate Securities or any illiquid securities.

Summary of Facts and Representations

1. The Applicant is Citigroup, Inc. and its affiliates (hereinafter, either Citigroup or the Applicant). Citigroup is a holding company whose businesses include the provision of investment advisory and other services to IRAs and pension, profit sharing, and 401(k) plans qualified under section 401(a) of the Code. Among other things, Citigroup acts as a broker and dealer with respect

² This proposed exemption does not address tax issues. The Department has been informed by the Internal Revenue Service and the Department of the Treasury that they are considering providing limited relief from the requirements of sections 72(t)(4), 401(a)(9), and 4974 of the Code with respect to retirement plans that hold Auction Rate Securities. The Department has also been informed by the Internal Revenue Service that if Auction Rate Securities are purchased from a Plan in a transaction described in sections I and II at a price that exceeds the fair market value of those securities, then the excess value would be treated as a contribution for purposes of applying applicable contribution and deduction limits under sections 219, 404, 408, and 415 of the Code.

³ The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner.

Accordingly, a plan fiduciary must act prudently with respect to, among other things: (1) The decision to exchange an Auction Rate Security for a Delivery Security; and (2) the negotiation of the terms of such exchange (or a cash sale or loan described above), including the pricing of such securities. The Department further emphasizes that it expects plan fiduciaries, prior to entering into any of the proposed transactions, to fully understand the risks associated with these types of transactions following disclosure by Citigroup of all relevant information.

to the purchase and sale of securities, including Auction Rate Securities. The Applicant describes Auction Rate Securities and the arrangement by which ARS are bought and sold as follows. Auction Rate Securities (or ARS) are securities (issued as debt or preferred stock) with an interest rate or dividend that is reset at periodic intervals pursuant to a process called a Dutch Auction. Investors submit orders to buy, hold, or sell a specific ARS to a broker-dealer selected by the entity that issued the ARS. The broker-dealers, in turn, submit all of these orders to an auction agent. The auction agent's functions include collecting orders from all participating broker-dealers by the auction deadline, determining the amount of securities available for sale, and organizing the bids to determine the winning bid. If there are any buy orders placed into the auction at a specific rate, the auction agent accepts bids with the lowest rate above any applicable minimum rate and then successively higher rates up to the maximum applicable rate, until all sell orders and orders that are treated as sell orders are filled. Bids below any applicable minimum rate or above the applicable maximum rate are rejected. After determining the clearing rate for all of the securities at auction, the auction agent allocates the ARS available for sale to the participating broker-dealers based on the orders they submitted. If there are multiple bids at the clearing rate, the auction agent will allocate securities among the bidders at such rate on a pro-rata basis.

2. The Applicant states that Citigroup is permitted, but not obligated, to submit orders in auctions for its own account either as a bidder or a seller and routinely does so in the auction rate securities market in its sole discretion. Citigroup may routinely place one or more bids in an auction for its own account to acquire ARS for its inventory, to prevent: (1) A failed auction (*i.e.*, an event where there are insufficient clearing bids which would result in the auction rate being set at a specified rate); or (2) an auction from clearing at a rate that Citigroup believes does not reflect the market for the particular ARS being auctioned.

3. The Applicant states that for many ARS, Citigroup has been appointed by the issuer of the securities to serve as a dealer in the auction and is paid by the issuer for its services. Citigroup is typically appointed to serve as a dealer in the auctions pursuant to an agreement between the issuer and Citigroup. That agreement provides that Citigroup will receive from the issuer auction dealer fees based on the

principal amount of the securities placed through Citigroup.

4. The Applicant states further that Citigroup may share a portion of the auction rate dealer fees it receives from the issuer with other broker-dealers that submit orders through Citigroup, for those orders that Citigroup successfully places in the auctions. Similarly, with respect to ARS for which broker-dealers other than Citigroup act as dealer, such other broker-dealers may share auction dealer fees with Citigroup for orders submitted by Citigroup.

5. According to the Applicant, since February 2008, a minority of auctions have cleared, particularly involving municipalities. As a result, Plans holding Auction Rate Securities may not have sufficient liquidity to make benefit payments, mandatory payments and withdrawals and expense payments when due.⁴

6. The Applicant represents that, in certain instances, Citigroup may have previously advised or otherwise caused a Plan to acquire and hold an Auction Rate Security and thus may be considered a fiduciary to the Plan so that a loan to the Plan by Citigroup may violate section 406(a) and (b) of ERISA; in addition, a sale between a Plan and its sponsor or an IRA and its Beneficial Owner violates section ERISA section 406 and/or section 4975(c)(1) of the Code.⁵ The Applicant is therefore requesting relief for the following transactions, involving all employee benefit plans: (1) The sale or exchange of an Auction Rate Security from a Plan to the Plan's Sponsor; and (2) a lending of money or other extension of credit to a Plan in connection with the holding of an Auction Rate Security from: Citigroup, an Introducing Broker, or a Clearing Broker, where the subsequent repayment of the loan is made in accordance with its terms and is guaranteed by the Plan Sponsor.

7. The Applicant is requesting similar relief for plans covered only by Title II of ERISA. In this regard, the Applicant is requesting relief for: (1) The sale or exchange of an Auction Rate Security from a Title II Only Plan to the

⁴ The Department notes that Class Exemption 80-26 (45 FR 28545 (Apr. 29, 1980), as amended at 71 FR 17917 (Apr. 7, 2006)) permits interest-free loans or other extensions of credit from a party in interest to a Plan if, among other things, the proceeds of the loan or extension of credit are used only—(1) for the payment of ordinary operating expenses of the Plan, including the payment of benefits in accordance with the terms of the Plan and periodic premiums under an insurance or annuity contract, or (2) for a purpose incidental to the ordinary operation of the Plan.

⁵ The relief contained in this proposed exemption does not extend to the fiduciary provisions of section 404 of the Act.

Beneficial Owner of such Plan; and (2) a lending of money or other extension of credit to a Title II Only Plan in connection with the holding of an Auction Rate Security from: Citigroup; an Introducing Broker; or a Clearing Broker; where the subsequent repayment of the loan is made in accordance with its terms and is guaranteed by the Beneficial Owner.

8. The Applicant represents that the proposed transactions are in the interests of the Plans. In this regard, the Applicant states that the exemption, if granted, will provide Plan fiduciaries with liquidity notwithstanding changes that occurred in the Auction Rate Securities markets. The Applicant also notes that, other than for Plans sponsored by the Applicant, the decision to enter into a transaction described herein will be made by a Plan fiduciary who is independent of Citigroup.

9. The proposed exemption contains a number of safeguards designed to protect the interests of each Plan. With respect to the sale of an Auction Rate Security by a Plan, the Plan must receive cash equal to the par value of the Security, plus any accrued interest. The sale must also be unconditional, other than being for payment against prompt delivery. For in-kind exchanges covered by the proposed exemption, the security delivered to the Plan (*i.e.*, the Delivered Security) must be: (1) Listed on a national securities exchange (excluding OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); or (2) a U.S. Treasury obligation; or (3) a fixed income security that has a rating at the time of the exchange that is in one of the two highest generic rating categories from an independent nationally recognized statistical rating organization (*e.g.*, a highly rated municipal bond or a highly rated corporate bond); or (4) a certificate of deposit insured by the Federal Deposit Insurance Corporation. The Delivered Security must also be appropriate for the Plan, and a security that the Plan is permitted to hold under applicable law. The proposed exemption further requires that the Delivered Security be valued at its fair market value, as determined at the time of the exchange from a third party pricing service or other objective source, and must equal the total value of the Auction Rate Security being exchanged (*i.e.*, par value, plus any accrued interest).

10. With respect to a loan to a Plan holding an Auction Rate Security, such loan must be documented in a written agreement containing all of the material terms of the loan, including the

consequences of default. Further, the Plan may not pay an interest rate that exceeds one of the following three rates as of the commencement of the loan: The coupon rate for the Auction Rate Security; the Federal Funds Rate; or the Prime Rate. Additionally, such loan must be unsecured and for an amount that is no more than the total par value of Auction Rate Securities held by the affected Plan.

11. Additional conditions apply to each transaction covered by the exemption, if granted. Among other things, the Plan may not pay any fees or commissions in connection with the transaction and the transaction may not part of an arrangement, agreement, or understanding designed to benefit a party in interest. The exemption expressly prohibits any waiver of rights or claims by a Plan in connection with the sale or exchange of an Auction Rate Security by a Plan, or a lending of money or other extension of credit to a Plan holding an Auction Rate Security.

12. In summary, the Applicant represents that the transactions described herein satisfy the statutory criteria set forth in section 408(a) of the Act and section 4975(c)(2) of the Code because:

(1) Any sale will be:

(A) For no consideration other than cash payment against prompt delivery of the Auction Rate Security; and

(B) At par, plus any accrued but unpaid interest;

(2) Any in-kind exchange will be unconditional, other than being for payment against prompt delivery, and will involve Delivered Securities that are:

(A) Appropriate for the Plan;

(B) Listed on a national securities exchange (but not OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); U.S. Treasury obligations; fixed income securities; or certificates of deposit; and

(C) Securities that the Plan is permitted to hold under applicable law; and,

(3) Any loan will be:

(A) Documented in a written agreement containing all of the material terms of the loan, including the consequences of default;

(B) At an interest rate not in excess of: the coupon rate for the Auction Rate Security, the Federal Funds Rate, or the Prime Rate;

(C) Unsecured; and

(D) For an amount that is no more than the total par value of Auction Rate Securities held by the affected Plan.

Notice to Interested Persons

The Applicant represents that the potentially interested participants and

beneficiaries cannot all be identified and therefore the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Chris Motta of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

Robert W. Baird & Co. Incorporated, Located in Milwaukee, Wisconsin, Exemption Application Number D-11484.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).⁶

Section I. Transactions Involving Plans Described in Both Title I and Title II of ERISA

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and section 406(b) of ERISA, 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, effective February 1, 2008, to the following transactions, if the conditions set forth in section III have been met:

(a) The sale or exchange of an Auction Rate Security (as defined in section IV (b)) by a Plan (as defined in section IV (h)) to the Sponsor (as defined in section IV (g)) of such Plan; or

(b) A lending of money or other extension of credit to a Plan in connection with the Plan's holding of an Auction Rate Security, from: (1) Robert W. Baird & Co. Incorporated or any of its current or future affiliates or subsidiaries (Baird); (2) an Introducing Broker (as defined in section IV (f)); or (3) a Clearing Broker (as defined in section IV (d)); where the loan is: (i) Repaid in accordance with its terms; and (ii) guaranteed by the Plan Sponsor.

⁶ For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

II. Transactions Involving Plans Described in Title II of ERISA Only

If the proposed exemption is granted, the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply, effective February 1, 2008, to the following transactions, if the conditions set forth in section III have been met:

(a) The sale or exchange of an Auction Rate Security by a Title II Only Plan (as defined in section IV(i)) to the Beneficial Owner (as defined in section IV(c)) of such Plan; or

(b) A lending of money or other extension of credit to a Title II Only Plan in connection with the Plan's holding of an Auction Rate Security, from: (1) Baird; (2) an Introducing Broker; or (3) a Clearing Broker; where the loan is: (i) Repaid in accordance with its terms and; (ii) guaranteed by the Beneficial Owner.

III. Conditions

(a) Baird acted as a broker or dealer, non-bank custodian, or fiduciary in connection with the acquisition or holding of the Auction Rate Security that is the subject of the transaction;

(b) For transactions involving a Plan (including a Title II Only Plan) not sponsored by Baird for its own employees, the decision to enter into the transaction is made by a Plan fiduciary who is Independent (as defined in section IV (e)) of Baird. Notwithstanding the foregoing, an employee of Baird who is the Beneficial Owner of a Title II Only Plan may direct such Plan to engage in a transaction described in section II, if all of the other conditions of this section III have been met;

(c) The last auction for the Auction Rate Security was unsuccessful;

(d) The Plan does not waive any rights or claims in connection with the loan or sale as a condition of engaging in the transaction;

(e) The Plan does not pay any fees or commissions in connection with the transaction;

(f) The transaction is not part of an arrangement, agreement or understanding designed to benefit a party in interest;

(g) With respect to any sale described in section I (a) or section II (a):

(1) The sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security; and

(2) For purposes of the sale, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;⁷

(h) With respect to an in-kind exchange described in section I(a) or section II(a), the exchange involves the transfer by a Plan of an Auction Rate Security in return for a Delivered Security, as such term is defined in section IV(j), where:

(1) The exchange is unconditional;

(2) For purposes of the exchange, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;

(3) The Delivered Security is valued at fair market value, as determined at the time of the in-kind exchange by a third party pricing service or other objective source;

(4) The Delivered Security is appropriate for the Plan and a security that the Plan is otherwise permitted to hold under applicable law;⁸ and

(5) The total value of the Auction Rate Security (*i.e.*, par plus any accrued but unpaid interest) is equal to the fair market value of the Delivered Security;

(i) With respect to a loan described in section I(b) or II(b):

(1) The loan is documented in a written agreement containing all of the material terms of the loan, including the consequences of default;

(2) The Plan does not pay an interest rate that exceeds one of the following three rates as of the commencement of the loan:

(A) The coupon rate for the Auction Rate Security;

(B) The Federal Funds Rate; or

(C) The Prime Rate;

(3) The loan is unsecured; and

(4) The amount of the loan is not more than the total par value of the Auction Rate Securities held by the Plan.

IV. Definitions

(a) The term "affiliate" means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "Auction Rate Security" or "ARS" means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) with an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(c) The term "Beneficial Owner" means: The individual for whose benefit the Title II Only Plan is established and includes a relative or family trust with respect to such individual;

(d) The term "Clearing Broker" means: A member of a securities exchange that acts as a liaison between an investor and a clearing corporation and that helps to ensure that a trade is settled appropriately, that the transaction is successfully completed and that is responsible for maintaining the paper work associated with the clearing and executing of a transaction;

(e) The term "Independent" means a person who is: (1) Not Baird or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(f) The term "Introducing Broker" means: A registered broker that is able to perform all the functions of a broker except for the ability to accept money, securities, or property from a customer;

(g) The term "Sponsor" means: A plan sponsor as described in section 3(16)(B) of the Act and any Affiliates;

(h) The term "Plan" means: Any plan described in section 3(3) of the Act and/or section 4975(e)(1) of the Code;

(i) The term "Title II Only Plan" means: Any plan described in section 4975(e)(1) of the Code which is not an employee benefit plan covered by Title I of ERISA;

(j) The term "Delivered Security" means a security that is: (1) Listed on a national securities exchange (excluding OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); or (2) a U.S. Treasury obligation; or (3) A fixed income security that has a rating at the time of the exchange that is in one of the two highest generic rating categories from an independent nationally recognized statistical rating organization (*e.g.*, a highly rated

municipal bond or a highly rated corporate bond); or (4) A certificate of deposit insured by the Federal Deposit Insurance Corporation. Notwithstanding the above, the term "Delivered Security" shall not include any Auction Rate Security, or any related Auction Rate Security, including derivatives or securities materially comprised of Auction Rate Securities or any illiquid securities.

Summary of Facts and Representations

1. The applicant is Baird (hereinafter, either the Applicant or Baird), an employee-owned wealth management, capital markets, asset management and private equity firm headquartered in Milwaukee, Wisconsin. Baird is a registered broker-dealer and a member of the Financial Industry Regulatory Authority. Baird is also a registered investment advisor, providing investment advice and asset management services to clients that include plans described in section 3(3) of the Act and/or section 4975(e)(1) of the Code.

2. The Applicant describes Auction Rate Securities (ARS), and the arrangement by which ARS are bought and sold, as follows. Auction Rate Securities are securities (issued as debt or preferred stock) with an interest rate or dividend that is reset at periodic intervals pursuant to a process called a Dutch Auction. Investors submit orders to buy, hold, or sell a specific ARS to a broker-dealer selected by the entity that issued the ARS. The broker-dealers, in turn, submit all of these orders to an auction agent. The auction agent's functions include collecting orders from all participating broker-dealers by the auction deadline, determining the amount of securities available for sale, and organizing the bids to determine the winning bid. If there are any buy orders placed into the auction at a specific rate, the auction agent accepts bids with the lowest rate above any applicable minimum rate and then successively higher rates up to the maximum applicable rate, until all sell orders and orders that are treated as sell orders are filled. Bids below any applicable minimum rate or above the applicable maximum rate are rejected. After determining the clearing rate for all of the securities at auction, the auction agent allocates the ARS available for sale to the participating broker-dealers based on the orders they submitted. If there are multiple bids at the clearing rate, the auction agent will allocate securities among the bidders at such rate on a pro-rata basis.

3. The Applicant states that Baird is permitted, but not obligated, to submit

⁷ This proposed exemption does not address tax issues. The Department has been informed by the Internal Revenue Service and the Department of the Treasury that they are considering providing limited relief from the requirements of sections 72(t)(4), 401(a)(9), and 4974 of the Code with respect to retirement plans that hold Auction Rate Securities. The Department has also been informed by the Internal Revenue Service that if Auction Rate Securities are purchased from a Plan in a transaction described in sections I and II at a price that exceeds the fair market value of those securities, then the excess value would be treated as a contribution for purposes of applying applicable contribution and deduction limits under sections 219, 404, 408, and 415 of the Code.

⁸ The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, (1) The decision to exchange an Auction Rate Security for a Delivered Security; and (2) the negotiation of the terms of such exchange (or a cash sale or loan described above), including the pricing of such securities. The Department further emphasizes that it expects plan fiduciaries, prior to entering into any of the proposed transactions, to fully understand the risks associated with these types of transactions following disclosure by Baird of all relevant information.

orders in auctions for its own account either as a bidder or a seller and routinely does so in the auction rate securities market in its sole discretion. In this regard, Baird may routinely place one or more bids in an auction for its own account to acquire ARS for its inventory, to prevent: (1) a failed auction (*i.e.*, an event where there are insufficient clearing bids which would result in the auction rate being set at a specified rate); or (2) an auction from clearing at a rate that Baird believes does not reflect the market for the particular ARS being auctioned.

4. The Applicant states that for many ARS, Baird has been appointed by the issuer of the securities to serve as a dealer in the auction and is paid by the issuer for its services. Baird is typically appointed to serve as a dealer in the auctions pursuant to an agreement between the issuer and Baird. That agreement provides that Baird will receive from the issuer auction dealer fees based on the principal amount of the securities placed through Baird.

5. The Applicant states further that Baird may share a portion of the auction rate dealer fees it receives from the issuer with other broker-dealers that submit orders through Baird, for those orders that Baird successfully places in the auctions. Similarly, with respect to ARS for which broker-dealers other than Baird act as dealer, such other broker-dealers may share auction dealer fees with Baird for orders submitted by Baird.

6. According to the Applicant, since February 2008, a minority of auctions have cleared, particularly involving municipalities. As a result, Plans holding Auction Rate Securities may not have sufficient liquidity to make benefit payments, mandatory payments and withdrawals and expense payments when due.⁹ The Applicant is therefore requesting relief for the following transactions, involving all employee benefit plans: (1) The sale or exchange of an Auction Rate Security from a Plan to the Plan's Sponsor; and (2) a lending of money or other extension of credit to a Plan in connection with the holding of an Auction Rate Security from: Baird, an Introducing Broker, or a Clearing Broker, where the subsequent

repayment of the loan is made in accordance with its terms and is guaranteed by the Plan Sponsor.

7. The Applicant is requesting similar relief for plans covered only by Title II of ERISA. In this regard, the Applicant is requesting relief for: (1) The sale or exchange of an Auction Rate Security from a Title II Only Plan to the Beneficial Owner of such Plan; and (2) a lending of money or other extension of credit to a Title II Only Plan in connection with the holding of an Auction Rate Security from: Baird; an Introducing Broker; or a Clearing Broker; where the subsequent repayment of the loan is made in accordance with its terms and is guaranteed by the Beneficial Owner.

8. The Applicant states that relief from section 406(a) and (b) of ERISA is necessary since: (1) Baird may have previously advised or otherwise caused a Plan to acquire and hold the Auction Rate Security that is the subject of the transaction;¹⁰ and (2) the sale of an Auction Rate Security from a Plan to its sponsor (or from an IRA to its Beneficial Owner) violates section ERISA section 406 and/or section 4975(c)(1) of the Code.

9. The Applicant represents that the proposed transactions are in the interests of the Plans. In this regard, the Applicant states that the exemption, if granted, will provide Plan fiduciaries with liquidity notwithstanding changes that occurred in the Auction Rate Securities markets. The Applicant also notes that, other than for Plans sponsored by the Applicant, the decision to enter into a transaction described herein will be made by a Plan fiduciary who is independent of Baird.

10. The proposed exemption contains a number of safeguards designed to protect the interests of each Plan. With respect to the sale of an Auction Rate Security by a Plan, the Plan must receive cash equal to the par value of the Security, plus any accrued interest. The sale must also be unconditional, other than being for payment against prompt delivery. For in-kind exchanges covered by the proposed exemption, the security delivered to the Plan (*i.e.*, the Delivered Security) must be: (1) Listed on a national securities exchange (excluding OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); or (2) a U.S. Treasury obligation; or (3) a fixed income security that has a rating at the time of the exchange that is in one of the two highest generic rating categories from an

independent nationally recognized statistical rating organization (*e.g.*, a highly rated municipal bond or a highly rated corporate bond); or (4) a certificate of deposit insured by the Federal Deposit Insurance Corporation. The Delivered Security must also be appropriate for the Plan, and a security that the Plan is permitted to hold under applicable law. The proposed exemption further requires that the Delivered Security be valued at its fair market value, as determined at the time of the exchange from a third party pricing service or other objective source, and must equal the total value of the Auction Rate Security being exchanged (*i.e.*, par value, plus any accrued interest).

11. With respect to a loan to a Plan holding an Auction Rate Security, such loan must be documented in a written agreement containing all of the material terms of the loan, including the consequences of default. Further, the Plan may not pay an interest rate that exceeds one of the following three rates as of the commencement of the loan: The coupon rate for the Auction Rate Security; the Federal Funds Rate; or the Prime Rate. Additionally, such loan must be unsecured and for an amount that is no more than the total par value of Auction Rate Securities held by the affected Plan.

12. Additional conditions apply to each transaction covered by the exemption, if granted. Among other things, the Plan may not pay any fees or commissions in connection with the transaction and the transaction may not part of an arrangement, agreement, or understanding designed to benefit a party in interest. The exemption also expressly prohibits any waiver of rights or claims by a Plan in connection with the sale or exchange of an Auction Rate Security by a Plan, or a lending of money or other extension of credit to a Plan holding an Auction Rate Security.

13. In summary, the Applicant represents that the transactions described herein satisfy the statutory criteria set forth in section 408(a) of the Act and section 4975(c)(2) of the Code because:

- (1) Any sale will be:
 - (A) For no consideration other than cash payment against prompt delivery of the Auction Rate Security; and
 - (B) At par, plus any accrued but unpaid interest;
- (2) Any in-kind exchange will be unconditional and will involve Delivered Securities that are:
 - (A) Appropriate for the Plan;
 - (B) Listed on a national securities exchange (but not OTC Bulletin Board-eligible securities and Pink Sheets-

⁹The Department notes that Class Exemption 80-26 (45 FR 28545 (Apr. 29, 1980), as amended at 71 FR 17917 (Apr. 7, 2006)) permits interest-free loans or other extensions of credit from a party in interest to a Plan if, among other things, the proceeds of the loan or extension of credit are used only—(1) for the payment of ordinary operating expenses of the Plan, including the payment of benefits in accordance with the terms of the Plan and periodic premiums under an insurance or annuity contract, or (2) for a purpose incidental to the ordinary operation of the Plan.

¹⁰The relief contained in this proposed exemption does not extend to the fiduciary provisions of section 404 of the Act.

quoted securities); U.S. Treasury obligations; fixed income securities; or certificates of deposit; and

(C) Securities that the Plan is permitted to hold under applicable law; and,

(3) Any loan will be:

(A) Documented in a written agreement containing all of the material terms of the loan, including the consequences of default;

(B) At an interest rate not in excess of: The coupon rate for the Auction Rate Security, the Federal Funds Rate, or the Prime Rate;

(C) Unsecured; and

(D) For an amount that is not more than the total par value of Auction Rate Securities held by the affected Plan.

Notice to Interested Persons

The Applicant represents that the potentially interested participants and beneficiaries cannot all be identified and therefore the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**.

Comments and requests for a hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Chris Motta of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

Raymond James & Associates, Inc., Located in St. Petersburg, Florida, Exemption Application Number D-11490.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).¹¹

Section I. Transactions Involving Plans Described In Both Title I and Title II of ERISA

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and section 406(b) of ERISA, 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, effective February 1,

2008, to the following transactions, if the conditions set forth in section III have been met:

(a) The sale or exchange of an Auction Rate Security (as defined in section IV(b)) by a Plan (as defined in section IV(h)) to the Sponsor (as defined in section IV(g)) of such Plan; or

(b) A lending of money or other extension of credit to a Plan in connection with the Plan's holding of an Auction Rate Security, from: (1) Raymond James & Associates, Inc. or any of its current or future affiliates or subsidiaries (Raymond James); (2) an Introducing Broker (as defined in section IV(f)); or (3) a Clearing Broker (as defined in section IV(d)); where the loan is: (i) repaid in accordance with its terms; and (ii) guaranteed by the Plan Sponsor.

II. Transactions Involving Plans Described In Title II of ERISA Only

If the proposed exemption is granted, the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply, effective February 1, 2008, to the following transactions, if the conditions set forth in section III have been met:

(a) The sale or exchange of an Auction Rate Security by a Title II Only Plan (as defined in section IV(i)) to the Beneficial Owner (as defined in section IV(c)) of such Plan; or

(b) A lending of money or other extension of credit to a Title II Only Plan in connection with the Plan's holding of an Auction Rate Security, from: (1) Raymond James; (2) an Introducing Broker; or (3) a Clearing Broker; where the loan is: (i) repaid in accordance with its terms and; (ii) guaranteed by the Beneficial Owner.

III. Conditions

(a) Raymond James acted as a broker or dealer, non-bank custodian, or fiduciary in connection with the acquisition or holding of the Auction Rate Security that is the subject of the transaction;

(b) For transactions involving a Plan (including a Title II Only Plan) not sponsored by Raymond James for its own employees, the decision to enter into the transaction is made by a Plan fiduciary who is Independent (as defined in section IV(e)) of Raymond James. Notwithstanding the foregoing, an employee of Raymond James who is the Beneficial Owner of a Title II Only Plan may direct such Plan to engage in a transaction described in section II, if all of the other conditions of this section III have been met;

(c) The last auction for the Auction Rate Security was unsuccessful;

(d) The Plan does not waive any rights or claims in connection with the loan or sale as a condition of engaging in the transaction;

(e) The Plan does not pay any fees or commissions in connection with the transaction;

(f) The transaction is not part of an arrangement, agreement or understanding designed to benefit a party in interest;

(g) With respect to any sale described in section I(a) or section II(a):

(1) The Sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security; and

(2) For purposes of the sale, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;¹²

(h) With respect to an in-kind exchange described in section (I)(a) or section II(a), the exchange involves the transfer by a Plan of an Auction Rate Security in return for a Delivered Security, as such term is defined in section IV(j), where:

(1) The exchange is unconditional;

(2) For purposes of the exchange, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;

(3) The Delivered Security is valued at fair market value, as determined at the time of the in-kind exchange by a third party pricing service or other objective source;

(4) The Delivered Security is appropriate for the Plan and a security that the Plan is otherwise permitted to hold under applicable law;¹³ and

¹² This proposed exemption does not address tax issues. The Department has been informed by the Internal Revenue Service and the Department of the Treasury that they are considering providing limited relief from the requirements of sections 72(t)(4), 401(a)(9), and 4974 of the Code with respect to retirement plans that hold Auction Rate Securities. The Department has also been informed by the Internal Revenue Service that if Auction Rate Securities are purchased from a Plan in a transaction described in sections I and II at a price that exceeds the fair market value of those securities, then the excess value would be treated as a contribution for purposes of applying applicable contribution and deduction limits under sections 219, 404, 408, and 415 of the Code.

¹³ The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things: (1) The decision to exchange an Auction Rate Security for a Delivered Security; and (2) the negotiation of the terms of such exchange (or a cash sale or loan described above), including the pricing of such securities. The Department further emphasizes that it expects plan fiduciaries, prior to entering into any of the proposed transactions, to fully understand

¹¹ For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

(5) The total value of the Auction Rate Security (*i.e.*, par plus any accrued but unpaid interest) is equal to the fair market value of the Delivered Security;

(i) With respect to a loan described in section I(b) or II(b):

(1) The loan is documented in a written agreement containing all of the material terms of the loan, including the consequences of default;

(2) The Plan does not pay an interest rate that exceeds one of the following three rates as of the commencement of the loan:

(A) The coupon rate for the Auction Rate Security;

(B) The Federal Funds Rate; or

(C) The Prime Rate;

(3) The loan is unsecured; and

(4) The amount of the loan is not more than the total par value of the Auction Rate Securities held by the Plan.

IV. Definitions

(a) The term "affiliate" means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "Auction Rate Security" or "ARS" means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) with an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(c) The term "Beneficial Owner" means: The individual for whose benefit the Title II Only Plan is established and includes a relative or family trust with respect to such individual;

(d) The term "Clearing Broker" means: A member of a securities exchange that acts as a liaison between an investor and a clearing corporation and that helps to ensure that a trade is settled appropriately, that the transaction is successfully completed and that is responsible for maintaining the paper work associated with the clearing and executing of a transaction;

(e) The term "Independent" means a person who is: (1) Not Raymond James or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(f) The term "Introducing Broker" means: A registered broker that is able to perform all the functions of a broker except for the ability to accept money, securities, or property from a customer;

(g) The term "Sponsor" means: A plan sponsor as described in section 3(16)(B) of the Act and any Affiliates;

(h) The term "Plan" means: Any plan described in section 3(3) of the Act and/or section 4975(e)(1) of the Code;

(i) The term "Title II Only Plan" means: Any plan described in section 4975(e)(1) of the Code which is not an employee benefit plan covered by Title I of ERISA;

(j) The term "Delivered Security" means a security that is: (1) Listed on a national securities exchange (excluding OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); or (2) a U.S. Treasury obligation; or (3) a fixed income security that has a rating at the time of the exchange that is in one of the two highest generic rating categories from an independent nationally recognized statistical rating organization (*e.g.*, a highly rated municipal bond or a highly rated corporate bond); or (4) a certificate of deposit insured by the Federal Deposit Insurance Corporation. Notwithstanding the above, the term "Delivered Security" shall not include any Auction Rate Security, or any related Auction Rate Security, including derivatives or securities materially comprised of Auction Rate Securities or any illiquid securities.

Summary of Facts and Representations

1. The applicant is Raymond James (hereinafter, either the Applicant or Raymond James), a Florida-based entity that provides a range of financial services to clients that include plans described in section 3(3) of the Act and/or section 4975(e)(1) of the Code. Raymond James additionally acts as a broker and dealer with respect to the purchase and sale of securities, including Auction Rate Securities.

2. The Applicant describes Auction Rate Securities (ARS), and the arrangement by which ARS are bought and sold, as follows. Auction Rate Securities are securities (issued as debt or preferred stock) with an interest rate or dividend that is reset at periodic intervals pursuant to a process called a Dutch Auction. Investors submit orders to buy, hold, or sell a specific ARS to a broker-dealer selected by the entity that issued the ARS. The broker-dealers, in turn, submit all of these orders to an auction agent. The auction agent's functions include collecting orders from all participating broker-dealers by the auction deadline, determining the amount of securities available for sale, and organizing the bids to determine the winning bid. If there are any buy orders placed into the auction at a specific rate, the auction agent accepts bids with the lowest rate above any applicable minimum rate and then successively higher rates up to the maximum

applicable rate, until all sell orders and orders that are treated as sell orders are filled. Bids below any applicable minimum rate or above the applicable maximum rate are rejected. After determining the clearing rate for all of the securities at auction, the auction agent allocates the ARS available for sale to the participating broker-dealers based on the orders they submitted. If there are multiple bids at the clearing rate, the auction agent will allocate securities among the bidders at such rate on a pro-rata basis.

3. The Applicant states that Raymond James is permitted, but not obligated, to submit orders in auctions for its own account either as a bidder or a seller and routinely does so in the auction rate securities market in its sole discretion. In this regard, Raymond James may routinely place one or more bids in an auction for its own account to acquire ARS for its inventory, to prevent: (1) A failed auction (*i.e.*, an event where there are insufficient clearing bids which would result in the auction rate being set at a specified rate); or (2) an auction from clearing at a rate that Raymond James believes does not reflect the market for the particular ARS being auctioned.

4. The Applicant states that for many ARS, Raymond James has been appointed by the issuer of the securities to serve as a dealer in the auction and is paid by the issuer for its services. Raymond James is typically appointed to serve as a dealer in the auctions pursuant to an agreement between the issuer and Raymond James. That agreement provides that Raymond James will receive from the issuer auction dealer fees based on the principal amount of the securities placed through Raymond James.

5. The Applicant states further that Raymond James may share a portion of the auction rate dealer fees it receives from the issuer with other broker-dealers that submit orders through Raymond James, for those orders that Raymond James successfully places in the auctions. Similarly, with respect to ARS for which broker-dealers other than Raymond James act as dealer, such other broker-dealers may share auction dealer fees with Raymond James for orders submitted by Raymond James.

6. According to the Applicant, since February 2008, a minority of auctions have cleared, particularly involving municipalities. As a result, Plans holding Auction Rate Securities may not have sufficient liquidity to make benefit payments, mandatory payments and withdrawals and expense payments

the risks associated with these types of transactions following disclosure by Raymond James of all relevant information.

when due.¹⁴ The Applicant is therefore requesting relief for the following transactions, involving all employee benefit plans: (1) The sale or exchange of an Auction Rate Security from a Plan to the Plan's Sponsor; and (2) a lending of money or other extension of credit to a Plan in connection with the holding of an Auction Rate Security from: Raymond James, an Introducing Broker, or a Clearing Broker, where the subsequent repayment of the loan is made in accordance with its terms and is guaranteed by the Plan Sponsor.

7. The Applicant is requesting similar relief for plans covered only by Title II of ERISA. In this regard, the Applicant is requesting relief for: (1) The sale or exchange of an Auction Rate Security from a Title II Only Plan to the Beneficial Owner of such Plan; and (2) a lending of money or other extension of credit to a Title II Only Plan in connection with the holding of an Auction Rate Security from: Raymond James; an Introducing Broker; or a Clearing Broker; where the subsequent repayment of the loan is made in accordance with its terms and is guaranteed by the Beneficial Owner.

8. The Applicant states that relief from section 406(a) and (b) of ERISA is necessary since: (1) Raymond James may have previously advised or otherwise caused a Plan to acquire and hold the Auction Rate Security that is the subject of the transaction;¹⁵ and (2) the sale of an Auction Rate Security from a Plan to its sponsor (or from an IRA to its Beneficial Owner) violates section ERISA section 406 and/or section 4975(c)(1) of the Code.

9. The Applicant represents that the proposed transactions are in the interests of the Plans. In this regard, the Applicant states that the exemption, if granted, will provide Plan fiduciaries with liquidity notwithstanding changes that occurred in the Auction Rate Securities markets. The Applicant also notes that, other than for Plans sponsored by the Applicant, the decision to enter into a transaction described herein will be made by a Plan

fiduciary who is independent of Raymond James.

10. The proposed exemption contains a number of safeguards designed to protect the interests of each Plan. With respect to the sale of an Auction Rate Security by a Plan, the Plan must receive cash equal to the par value of the Security, plus any accrued interest. The sale must also be unconditional, other than being for payment against prompt delivery. For in-kind exchanges covered by the proposed exemption, the security delivered to the Plan (*i.e.*, the Delivered Security) must be: (1) Listed on a national securities exchange (excluding OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); or (2) a U.S. Treasury obligation; or (3) a fixed income security that has a rating at the time of the exchange that is in one of the two highest generic rating categories from an independent nationally recognized statistical rating organization (*e.g.*, a highly rated municipal bond or a highly rated corporate bond); or (4) a certificate of deposit insured by the Federal Deposit Insurance Corporation. The Delivered Security must also be appropriate for the Plan, and a security that the Plan is permitted to hold under applicable law. The proposed exemption further requires that the Delivered Security be valued at its fair market value, as determined at the time of the exchange from a third party pricing service or other objective source, and must equal the total value of the Auction Rate Security being exchanged (*i.e.*, par value, plus any accrued interest).

11. With respect to a loan to a Plan holding an Auction Rate Security, such loan must be documented in a written agreement containing all of the material terms of the loan, including the consequences of default. Further, the Plan may not pay an interest rate that exceeds one of the following three rates as of the commencement of the loan: The coupon rate for the Auction Rate Security; the Federal Funds Rate; or the Prime Rate. Additionally, such loan must be unsecured and for an amount that is no more than the total par value of Auction Rate Securities held by the affected Plan.

12. Additional conditions apply to each transaction covered by the exemption, if granted. Among other things, the Plan may not pay any fees or commissions in connection with the transaction and the transaction may not be part of an arrangement, agreement, or understanding designed to benefit a party in interest. The exemption also expressly prohibits any waiver of rights

or claims by a Plan in connection with the sale or exchange of an Auction Rate Security by a Plan, or a lending of money or other extension of credit to a Plan holding an Auction Rate Security.

13. In summary, the Applicant represents that the transactions described herein satisfy the statutory criteria set forth in section 408(a) of the Act and section 4975(c)(2) of the Code because:

(1) Any sale will be:

(A) For no consideration other than cash payment against prompt delivery of the Auction Rate Security; and

(B) At par, plus any accrued but unpaid interest;

(2) Any in-kind exchange will be unconditional and will involve Delivered Securities that are:

(A) Appropriate for the Plan;

(B) Listed on a national securities exchange (but not OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); U.S. Treasury obligations; fixed income securities; or certificates of deposit; and

(C) Securities that the Plan is permitted to hold under applicable law; and,

(3) Any loan will be:

(A) Documented in a written agreement containing all of the material terms of the loan, including the consequences of default;

(B) At an interest rate that is not in excess of: The coupon rate for the Auction Rate Security, the Federal Funds Rate, or the Prime Rate;

(C) Unsecured; and

(D) For an amount that is not more than the total par value of Auction Rate Securities held by the affected Plan.

Notice to Interested Persons

The Applicant represents that the potentially interested participants and beneficiaries cannot all be identified and therefore the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Chris Motta of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

Northwestern Mutual Investment Services, LLC, Located in Milwaukee, Wisconsin, Exemption Application Number D-11505.

¹⁴ The Department notes that Class Exemption 80-26 (45 FR 28545 (Apr. 29, 1980), as amended at 71 FR 17917 (Apr. 7, 2006)) permits interest-free loans or other extensions of credit from a party in interest to a Plan if, among other things, the proceeds of the loan or extension of credit are used only—(1) for the payment of ordinary operating expenses of the Plan, including the payment of benefits in accordance with the terms of the Plan and periodic premiums under an insurance or annuity contract, or (2) for a purpose incidental to the ordinary operation of the Plan.

¹⁵ The relief contained in this proposed exemption does not extend to the fiduciary provisions of section 404 of the Act.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).¹⁶

Section I. Transactions

If the proposed exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective September 30, 2008, to the sale (the Sale) by a Plan (as defined in section II(d)) of an Auction Rate Security (as defined in section II(b) to Northwestern Mutual Investment Services, LLC (NMIS), provided that the following conditions are met:

(a) The Plan acquired the Auction Rate Security (ARS) in connection with brokerage services provided by NMIS;

(b) The last auction for the ARS was unsuccessful;

(c) The Sale is made in connection with a written offer by NMIS (the Offer) containing all of the material terms of the Sale;

(d) The Sale is for no consideration other than cash payment against prompt delivery of the ARS;

(e) The amount of the Sale is equal to the greater of:

(1) The fair market value of the ARS as of the date of the Sale, as determined by a qualified, independent appraiser; or

(2) The sum of the price paid by the Plan for the ARS and any accrued but unpaid interest;¹⁷

(f) The Plan does not waive any rights or claims in connection with the Sale;

(g) The decision to accept the Offer or retain the ARS is made by a Plan fiduciary or Plan participant or IRA owner, who (in all cases) is Independent (as defined in section II(c)) of NMIS;¹⁸

(h) Neither NMIS nor any affiliate exercises investment discretion or renders investment advice [within the meaning of 29 CFR 2510.3–21(c)] with respect to the decision to accept the Offer or retain the ARS;

(i) The Plan does not pay any commissions or transaction costs with respect to the Sale;

(j) The Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(k) NMIS and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Sale such records as are necessary to enable the persons described below in paragraph (l)(i), to determine whether the conditions of this proposed exemption, if granted, have been met, except that—

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

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

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

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission; or

(B) Any fiduciary of any Plan that engages in a Sale, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the

solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to engage (or to not engage) in a Sale. The Department further emphasizes that it expects a plan fiduciary, prior to entering into a Sale (or, alternately, prior to deciding to retain an ARS), to fully understand the risks associated with such a decision, following disclosure by NMIS of all relevant information.

Sale, or any authorized employee or representative of these entities; or

(D) Any IRA owner, participant or beneficiary of a Plan that engages in a Sale, or duly authorized employee or representative of such IRA owner, participant or beneficiary;

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

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

Section II. Definitions

(a) The term “affiliate” means: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term “Auction Rate Security” or “ARS” means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) with an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(c) The term “Independent” means a person who is: (1) Not NMIS or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction; and

(d) The term “Plan” means: any plan described in section 3(3) of the Act and/or section 4975(e)(1) of the Code.

Summary of Facts and Representations

1. The applicant is Northwestern Mutual Investment Services, LLC (hereinafter, either the Applicant or NMIS), a subsidiary of the Northwestern Mutual Life Insurance Company. NMIS is a Wisconsin-based securities brokerage company offering investment products and services in the United States. NMIS makes available brokerage accounts, mutual funds, custodial accounts, individual retirement accounts, money market accounts, and insurance products, among others, and offers advisory and account services. The Applicant represents that, on September 17, 2008, ratings agency Standard & Poor's (S&P) confirmed in a public announcement that Northwestern Mutual remains one of the strongest companies in the life insurance industry and continues to maintain S&P's best

¹⁶ For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

¹⁷ In the event that the fair market value of an ARS exceeds the sum of its par value plus any accrued, but unpaid, interest as of the date of the Sale, NMIS will credit the difference to the Plan, with interest equal to the Federal Funds rate plus 125 basis points.

¹⁸ The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan

possible insurance financial strength rating (AAA).

2. The Applicant states that in early 2006, NMIS began effecting, as broker, the purchase and sale of ARS on behalf of clients including plans described in section 3(3) of the Act and/or section 4975(e)(1) of the Code (*i.e.*, the Plans). In this regard, the Applicant states that, as of September 10, 2008, Plans with respect to which NMIS was the broker of record collectively held \$17.6 million in ARS (IRAs held approximately \$15.225 million in ARS; qualified pension or profit sharing plans held approximately \$2.05 million in ARS; and SEP-IRA's held approximately \$350,000 in ARS). The Applicant describes ARS as nominal long-term debt instruments or preferred shares with short-term interest or dividend rates regularly reset at periodic Dutch auctions. According to the Applicant, NMIS's role in the ARS market has been solely as a broker. The Applicant represents that neither NMIS nor its affiliates have been an issuer, market-maker, underwriter, dealer or auction agent of or for ARS.

3. The Applicant states that, in February 2008, auctions for ARS began to fail as both investors and the investment banks that previously had acted as bidders of last resort declined to bid. The Applicant represents that, to the best of its information and belief, due to the failure of the primary market for ARS as well as the lack of any secondary market for the securities, there were no available unrelated purchasers for the ARS held by the Plans. In view of the foregoing, on September 30, 2008, NMIS made the Offer to the Plans. In this regard, on that date, NMIS sent a written communication to the Plans outlining its offer to purchase ARS with respect to which NMIS was the broker of record. The Offer provides that, if a Plan fiduciary (or Plan participant or IRA owner) that is independent of NMIS so directs, NMIS will purchase each Plan's ARS for the greater of: (a) The fair market value of the ARS as determined by a qualified, independent appraiser; or (b) the price at which the ARS was purchased by the Plan, plus any accrued but unpaid interest. Plans will be able to accept the Offer at any time during the period September 30, 2008 through November 30, 2008, and Plans will not be compelled to accept the Offer since acceptance must occur solely by an independent fiduciary's affirmative consent. The Applicant states that neither NMIS nor its affiliates will provide investment advice or exercise investment discretion with regard to any Sale.

4. The Applicant states that an independent appraiser will determine the fair market value of the ARS for purposes of each Sale. The Applicant represents that the independent appraiser will be experienced in valuing securities such as ARS and will not have received from NMIS, Northwestern Mutual or their affiliates, gross income for its most recent fiscal year that exceeds five percent of the independent appraiser's annual gross income from all sources for the prior fiscal year. That Applicant states that the appraiser's determination of the fair market value of the ARS on any Sale date will be valid as of the date of such Sale. In the event the appraiser determines that the fair market value of an ARS exceeds the sum of its par value plus any accrued interest, NMIS will credit the difference to the Plan, with interest at the Federal Funds rate plus 125 basis points.

5. The proposed exemption contains a number of additional safeguards designed to protect the interests of each Plan. In this regard, each Sale will involve an ARS for which the last Dutch auction was unsuccessful. Additionally, each Sale will be for no consideration other than cash payment against prompt delivery of the ARS. Affected Plans will not waive any rights or claims in connection with a Sale, and will not bear any commissions or transaction costs with respect to such Sale. Each Sale will not be a part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan.

6. The Applicant states that the Sales are in the interest of the Plans. In this regard, that Applicant states that the Sales will provide the Plans with liquid funds for reinvestment that may not exist if the Plans remain invested in the ARS. The Applicant represents also that the requested exemption will be administratively feasible since the Sales will be one-time transactions for cash involving specific, identifiable securities. The Applicant represents further that the transactions will occur during a fixed period at a set price to be verified by an independent appraiser, and will not require monitoring by the Department.

7. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because, among other things:

(a) Each Sale will be for no consideration other than cash payment against prompt delivery of the ARS;

(b) Each affected Plan will receive the greater of:

(1) The fair market value of the ARS as of the date of the Sale, as determined

by a qualified, independent appraiser, or

(2) The sum of the price at which the ARS was purchased by the Plan, plus any accrued but unpaid interest;

(c) A Plan will not be required to waive any rights or claims in connection with any Sale;

(d) The decision to accept the Offer (or retain the ARS) will be made by a Plan fiduciary or Plan participant or IRA owner, who (in all cases) is independent of NMIS;

(e) Plans will not bear any commissions or transaction costs with respect to the Sale; and

(f) In no event will any Sale be part of an arrangement, agreement or understanding designed to benefit a party in interest.

Notice to Interested Persons

Written notice will be provided to a representative of each Plan. The notice shall contain a copy of the proposed exemption as published in the **Federal Register** and an explanation of the rights of interested parties to comment regarding the proposed exemption. Such notice will be provided by personal or express delivery within 15 days of the issuance of the proposed exemption. Any written comments must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

For Further Information Contact:
Chris Motta of the Department,
telephone (202) 693-8554. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

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

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

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

Signed at Washington, DC this 3rd day of November 2008.

Ivan Strasfeld,

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

[FR Doc. E8-26565 Filed 11-6-08; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-63,000]

Chrysler LLC, Manufacturing Truck and Activity Division, Jefferson North Assembly Plant, Including On-Site Leased Workers From Technical Engineering Consultants, Inc., Detroit, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 28, 2008, applicable to workers of Chrysler LLC, Manufacturing Truck and Activity Division, Jefferson North Assembly Plant, Detroit, Michigan. The notice was

published in the **Federal Register** on April 11, 2008 (73 FR 19899).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers assemble Jeep Commanders and Jeep Grand Cherokees.

New information shows that leased workers of Technical Engineering Consultants, Inc. were employed on-site at the Detroit, Michigan location of Chrysler LLC, Manufacturing Truck and Activity Division, Jefferson North Assembly Plant. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Technical Engineering Consultants, Inc. working on-site at the Detroit, Michigan location of the subject firm.

The intent of the Department's certification is to include all workers employed at Chrysler LLC, Manufacturing Truck and Activity Division, Jefferson North Assembly Plant who were adversely affected by increased imports.

The amended notice applicable to TA-W-63,000 is hereby issued as follows:

All workers of Chrysler LLC, Manufacturing Truck and Activity Division, Jefferson North Assembly Plant, including on-site leased workers from Technical Engineering Consultants, Inc., Detroit, Michigan, who became totally or partially separated from employment on or after March 12, 2007, through March 28, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 29th day of October 2008.

Richard Church,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E8-26535 Filed 11-6-08; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-62,273B]

Delphi Corporation, Brake Hose Division, Including On-Site Leased Workers From Barteck, Acro and Securitas Security Services, Dayton, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 25, 2008, applicable to workers of Delphi Corporation, Brake Hose Division, including on-site leased workers from Barteck and Acro, Dayton, Ohio. The notice was published in the **Federal Register** on May 13, 2008 (73 FR 27560).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers of the Brake Hose Division produce brake hose for the automotive industry. New information shows that workers leased from Securitas Security Services were employed on-site at the Dayton, Ohio location of Delphi Corporation, Brake Hose Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Securitas Security Services working on-site at the Brake Hose Division, Dayton, Ohio location of the subject firm.

The amended notice applicable to TA-W-62,273B is hereby issued as follows:

All workers of Delphi Corporation, Brake Hose Division, including on-site leased workers from Barteck, Acro and Securitas Security Services, Dayton, Ohio, who became totally or partially separated from employment on or after October 8, 2006, through April 25, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.