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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving: D-11481, CitiGroup Inc. 2009-06; D-11484, Robert W. Baird & Co. Incorporated, 2009-07; D-11490 Raymond James & Associates, Inc., 2009-08; and Northwestern Mutual Investment Services, LLC

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

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

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

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No.

4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

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

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

Citigroup, Inc., Located in New York, New York

[Prohibited Transaction Exemption 2009-06; Exemption Application Number D-11481]

Exemption

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

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:¹

(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

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

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

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 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

²This 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

(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,

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 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 transactions, to fully understand the risks associated with these types of transactions following disclosure by Citigroup of all relevant information.

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.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to the Notice of Proposed Exemption published in the **Federal Register** on November 7, 2008 at 73 FR 66260.

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

[Prohibited Transaction Exemption 2009-07; Exemption Application Number D-11484]

Exemption

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

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:⁴

(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.

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

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

⁴ For purposes of this exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

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;⁵

(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;⁶ 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 paperwork 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.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published in the **Federal Register** on November 7, 2008 at 73 FR 66263.

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

⁵ This 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.

⁶ 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 transactions, to fully understand the risks associated with these types of transactions following disclosure by Baird of all relevant information.

**Raymond James & Associates, Inc.,
Located in St. Petersburg, Florida.**

[Prohibited Transaction Exemption 2009-08;
Exemption Application Number D-11490]

Exemption

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

The restrictions of section 406(a)(1)(A) through (D) and section 406(b) of ERISA, and the sanctions 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:⁷

(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**

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;⁸

(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;⁹ 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

⁹The Department notes that the Act's general standards of fiduciary conduct 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 transactions, to fully understand the risks associated with these types of transactions following disclosure by Raymond James of all relevant information.

⁷ For purposes of this exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

⁸ This 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.

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.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published in the **Federal Register** on November 7, 2008 at 73 FR 66266.

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.

[Prohibited Transaction Exemption 2009-09; Exemption Application Number D-11505]

Exemption

Section I. Transactions

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:¹⁰

(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;¹¹

(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;¹²

(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;

¹⁰ For purposes of this exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

¹¹ 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.

¹² The Department notes that the Act's general standards of fiduciary conduct 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, 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.

(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 exemption 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 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.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published in the **Federal Register** on November 7, 2008 at 73 FR 66268.

FOR FURTHER INFORMATION CONTACT:

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

General Information

The attention of interested persons is directed to the following:

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

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the

transaction which is the subject of the exemption.

Signed at Washington, DC, this 24th day of February 2009.

Ivan Strasfeld,

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

[FR Doc. E9-4235 Filed 2-26-09; 8:45 am]

BILLING CODE 4510-29-P

MILLENNIUM CHALLENGE CORPORATION

[MCC 09-07]

Notice of Quarterly Report (October 1, 2008-December 31, 2008)

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter October 1, 2008 through December 31, 2008 respect to both assistance provided under Section 605 of the Millennium Challenge Act of 2003 (Pub.L. 108-199, Division D (the Act)), and transfers or allocations of funds to other federal agencies pursuant to Section 619(b) of the Act. The following report shall be made available to the public by means of publication in the **Federal Register** and on the Internet Website of the MCC (<http://www.mcc.gov>) in accordance with Section 612(b) of the Act.

ASSISTANCE PROVIDED UNDER SECTION 605

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Madagascar Year: 2009 Quarter 1 Total Obligation: \$109,773,000 Entity to which the assistance is provided: MCA Madagascar Total Quarterly Disbursement: \$6,222,776				
Land Tenure Project	\$36,028,000	Increase Land Titling and Security.	\$17,142,693	Legislative proposal reflecting the National Land Tenure Program submitted to Parliament and passed. Number of land disputes reported and resolved in the target zones and sites of implementation. Percentage of land documents inventoried, restored, and/or digitized. Average time and cost required to carry out property transactions. Percent of reported land conflicts resolved on titled land in zone 3, 4, 5 during the title regularization operations. Percentage of land in the zones that is demarcated and ready for titling.
Finance Project	\$32,445,000	Increase Competition in the Financial Sector.	\$14,549,224	The number of savings accounts and outstanding value of accounts from primary banks. Maximum check clearing delay. Volume of funds in payment system and number of transactions. Increased public awareness of new financial instruments as measured by surveys within intervention zones and large towns.