

hazardous substances at or from the Meyers Landfill Site, a former municipal waste disposal facility located on National Forest Service lands administered by the Lake Tahoe Basin Management Unit of the Forest Service, and a declaration of the County's and the City's liability for future response costs incurred by the United States related to the Site. The County filed a counterclaim for contribution against the United States as well as a Third Party Complaint for contribution against a number of third party defendants.

Under the proposed Partial Consent Decree, the County will implement the Operable Unit One ("OU-1") remedy, which involves consolidating the landfill waste and encasing it under an impervious cap and construction of certain enhanced drainage features around the cap. The County will also pay \$1,651,000 to resolve the United States' claim for Past Response Costs (as defined in the proposed Partial Consent Decree) at the Site. In exchange, the County will receive from the United States a covenant not to sue or to take administrative action pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. 9606 and 9607, for the performance of response actions at OU-1 and for the United States' Past Response Costs and Future Oversight Costs (as defined in the proposed Partial Consent Decree).

In addition, the proposed Partial Consent Decree resolves the County's contribution counterclaims against the United States regarding response costs incurred, or to be incurred, by the County at OU-1, referred to in the proposed Partial Consent Decree as "Settling Defendant Past Response Costs" and "Settling Defendant Future OU-1 Response Costs," in exchange for a payment of \$1,612,349 to the County. The County, in turn, must deposit that amount into a special account to fund implementation of the OU-1 remedy.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Partial Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States of America v. El Dorado County, California, et al.*, Civil No. S-01-1520 MCE GGH (E.D. Cal.) (DOJ Ref. No. 90-11-3-06554) (Partial Consent Decree with El Dorado County).

The Partial Consent Decree may be examined at U.S. Department of Agriculture, Office of General Counsel, 33 New Montgomery Street, 17th Floor, San Francisco, CA 94150 (contact Rose Miksovsky, (415) 744-3158). During the public comment period, the Partial Consent Decree may also be examined on the following Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the Partial Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please refer to *United States of America v. El Dorado County, California, et al.*, Civil No. S-01-1520 MCE GGH (E.D. Cal.) (DOJ Ref. No. 90-11-3-06554) (Partial Consent Decree with El Dorado County), and enclose a check in the amount of \$66.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen Katz,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving D-11448, The PNC Financial Services Group, Inc., 2010-19; D-11514, Citigroup Inc. and its Affiliates (Citigroup or the Applicant), 2010-20; D-11527, Barclays California Corporation (Barcal), 2010-21; D-11533 and D-11534, Respectively, CUNA Mutual Pension Plan for Represented Employees and CUNA Mutual Pension Plan for Non-Represented Employees (Together, the Plans), 2010-22

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

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income

Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

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

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

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

- (a) The exemption is administratively feasible;
- (b) The exemption is in the interests of the plan and its participants and beneficiaries; and
- (c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

### Exemption

#### Section I—Exemption for In-Kind Redemption of Assets

The restrictions in sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,

shall not apply<sup>1</sup> to certain in-kind redemptions (the Redemption(s)) by The Employees' Thrift Plan of Mercantile Bankshares Corporation and Participating Affiliates (the Mercantile Plan) that occurred overnight on October 31, 2007, of shares (the Shares) of proprietary mutual funds (the Funds) for which The PNC Financial Services Group, Inc. (PNC) or an affiliate thereof provides investment advisory and other services, provided that the following conditions were satisfied:

(A) No sales commissions, redemption fees, or other similar fees were paid in connection with the Redemptions (other than customary transfer charges paid to parties other than PNC and any affiliates of PNC (PNC Affiliates));

(B) The assets transferred to the Mercantile Plan pursuant to the Redemptions consisted entirely of cash and Transferable Securities, as such term is defined in Section II, below;

(C) In each Redemption, the Mercantile Plan received its *pro rata* portion of the securities with respect to the Capital Opportunities Fund, and certain securities, selected pursuant to a verifiable methodology, that were approved by an independent fiduciary (Independent Fiduciary, as such term is defined in Section II) with respect to the other four Funds covered by this exemption, such that the securities received were equal in value to that of the number of Shares redeemed, as determined in a single valuation (using sources independent of PNC and PNC Affiliates) performed in the same manner and as of the close of business on the same day, in accordance with Rule 2a-4 under the Investment Company Act of 1940, as amended (the 1940 Act) and the then-existing procedures adopted by the Board of Directors of PNC Funds, Inc., which were in compliance with all applicable securities laws;

(D) Neither PNC nor any PNC Affiliate received any direct or indirect compensation or any fees, including any fees payable pursuant to Rule 12b-1 under the 1940 Act, in connection with any Redemption of the Shares;

(E) Prior to a Redemption, the Independent Fiduciary received a full written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary communicated its approval for such Redemption to PNC;

(G) Prior to a Redemption, based on the disclosures provided to the Independent Fiduciary, the Independent Fiduciary determined that the terms of the Redemption were fair to the Mercantile Plan, and comparable to and no less favorable than terms obtainable at arm's length between unaffiliated parties, and that the Redemption was in the best interests of the Mercantile Plan and its participants and beneficiaries;

(H) Not later than thirty (30) business days after the completion of a Redemption, the Independent Fiduciary received a written confirmation regarding such Redemption containing:

(i) The number of Shares held by the Mercantile Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held) for each Fund;

(ii) The identity (and related aggregate dollar value) of each security provided to the Mercantile Plan pursuant to the Redemption, including each security valued in accordance with Rule 2a-4 under the 1940 Act and procedures adopted by the Board of Directors of PNC Funds, Inc. (using sources independent of PNC and PNC Affiliates);

(iii) The current market price of each security received by the Mercantile Plan pursuant to the Redemption; and

(iv) If applicable, the identity of each pricing service or market maker consulted in determining the value of such securities;

(I) The value of the securities received by the Mercantile Plan for each redeemed Share equaled the net asset value of such Share at the time of the transaction, and such value equaled the value that would have been received by any other investor for shares of the same class of the Fund at that time;

(J) Subsequent to the Redemptions, the Independent Fiduciary performed a post-transaction review that included, among other things, a random sampling of the pricing information it received;

(K) Each of the Mercantile Plan's dealings with the Funds, the investment advisors to the Funds, the principal underwriter for the Funds, or any affiliated person thereof, were on a basis no less favorable to the Mercantile Plan than dealings between the Funds and other shareholders holding shares of the same class as the Shares;

(L) Prior to the publication of this final exemption in the **Federal Register** regarding the subject transactions, PNC: (i) Reimbursed The PNC Financial Services Group, Inc. Incentive Savings Plan (the PNC Plan), into which the Mercantile Plan was merged on November 1, 2007, for all brokerage costs incurred by the Mercantile Plan on

November 1, 2007 to liquidate the securities that the Mercantile Plan received in kind pursuant to a Redemption; and (ii) provided the Department with written documentation indicating reimbursement to the PNC Plan for such brokerage costs;

(M) PNC maintains, or causes to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (N) below to determine whether the conditions of this exemption have been met, except that (i) a separate prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of PNC, the records are lost or destroyed prior to the end of the six-year period and (ii) no party in interest with respect to the Mercantile Plan other than PNC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if such records are not maintained or are not available for examination as required by paragraph (N) below;

(N)(1) Except as provided in subparagraph (2) of this paragraph (N), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (M) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission (SEC), (ii) any fiduciary of the PNC Plan as the successor to the Mercantile Plan or any duly authorized representative of such fiduciary, (iii) any participant or beneficiary of the PNC Plan as the successor to the Mercantile Plan or duly authorized representative of such participant or beneficiary, and (iv) any employer whose employees are covered by the PNC Plan as the successor to the Mercantile Plan and any employee organization whose members are covered by such plan;

(2) None of the persons described in paragraphs (N)(1)(ii), (iii) and (iv) shall be authorized to examine trade secrets of PNC or the Funds, or commercial or financial information which is privileged or confidential;

(3) Should PNC or the Funds refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (N)(2) above, PNC or the Funds shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the

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

reasons for the refusal and that the Department may request such information.

### Section II—Definitions

For purposes of this exemption—

(A) The term “affiliate” means:

(1) Any person (including corporation or partnership) directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

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

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

(C) The term “net asset value” means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund’s prospectus and statement of additional information, and other assets belonging to the Fund, less the liabilities charged to each such Fund, by the number of outstanding shares.

(D) The term “Independent Fiduciary” means a fiduciary who is: (i) independent of and unrelated to PNC and its affiliates, and (ii) appointed to act on behalf of the Mercantile Plan with respect to the in-kind transfer of assets from one or more Funds to, or for the benefit of, the Mercantile Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to PNC if: (i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with, PNC; (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption (except that an independent fiduciary may receive compensation from PNC in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon, or in any way affected by, the independent fiduciary’s decision); and (iii) an amount equal to more than one percent (1%) of such fiduciary’s gross income (for federal income tax purposes, in its prior tax year), is paid by PNC and its affiliates to the fiduciary in 2007, the year at issue.

(E) The term “Transferable Securities” means securities (1) for which market quotations are readily available (as determined under Rule 2a–4 of the 1940

Act) from persons independent of PNC and (2) which are not:

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

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

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

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

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

(vi) Securities subject to “stop transfer” instructions or similar contractual restrictions on transfer.

(F) The term “relative” means a “relative” as that term is defined in section 3(15) of the Act (or a “member of the family” as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

*Effective Date:* The exemption is effective as of October 31, 2007.<sup>2</sup>

<sup>2</sup> As a general matter, it is the Department’s view that the model practice to effect an in-kind redemption by a mutual fund to a shareholder-pension plan, subject to Title I of ERISA, is through a *pro rata* distribution because the adoption of such a method ensures that the individual stocks selected for the in-kind redemption are objectively determined. The Department recognizes that the in-kind redemption for which exemptive relief is provided involves unique circumstances because, among other things, it facilitated the transfer of plan assets and the merger of The Employees’ Thrift Plan of Mercantile Bankshares Corporation and Participating Affiliates (the Mercantile Plan) with The PNC Financial Services Group, Inc. Incentive Savings Plan (the PNC Plan). *See also* Facts and Representations #12 contained in the notice of proposed exemption, which summarizes the basis for satisfying the section 408(a) statutory criteria for providing exemptive relief. In this regard, an important condition of this exemption is that PNC paid all brokerage commissions associated with the Mercantile Plan’s sale of the securities received in the Redemptions. *See* Section I(L) of the exemption. Further, the Department encourages applicants, their advisers and counsel to confer, in advance, with EBSA’s Office of Exemption Determinations as to whether a contemplated non-*pro rata* in-kind redemption involving plan assets may qualify for

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 on January 19, 2010 at 75 FR 3060.

### Written Comments

No substantive comments were received by the Department with respect to the notice of proposed exemption.

*For Further Information Contact:* Ms. Karin Weng of the Department, telephone (202) 693–8557. (This is not a toll-free number.)

### Exemption

#### *Section I. Sales of Auction Rate Securities From Plans to Citigroup: Unrelated to a Settlement Agreement*

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan (as defined in Section V(e)) of an Auction Rate Security (as defined in Section V(c)) to Citigroup, where such sale (an Unrelated Sale) is unrelated to, and not made in connection with, a Settlement Agreement (as defined in Section V(f)), provided that the conditions set forth in Section II have been met.<sup>3</sup>

#### *Section II. Conditions Applicable to Transactions Described in Section I*

(a) The Plan acquired the Auction Rate Security in connection with brokerage or advisory services provided by Citigroup to the Plan;

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

(c) Except in the case of a Plan sponsored by Citigroup for its own employees (a Citigroup Plan), the Unrelated Sale is made pursuant to a written offer by Citigroup (the Offer) containing all of the material terms of the Unrelated Sale. Either the Offer or other materials available to the Plan provide: (1) The identity and par value of the Auction Rate Security; (2) the interest or dividend amounts that are due and unpaid with respect to the Auction Rate Security; and (3) the most recent rate information for the Auction

prohibited transaction exemptive relief. Although the applicant requested both retroactive and prospective exemptive relief, the Department is granting only retroactive exemptive relief relating to the October 31, 2007 Redemptions.

<sup>3</sup> For purposes of this exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

Rate Security (if reliable information is available). Notwithstanding the foregoing, in the case of a pooled fund maintained or advised by Citigroup, this condition shall be deemed met to the extent each Plan invested in the pooled fund (other than a Citigroup Plan) receives advance written notice regarding the Unrelated Sale, where such notice contains all of the material terms of the Unrelated Sale;

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

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends;

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

(g) The decision to accept the Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or IRA owner who is independent (as defined in Section V(d)) of Citigroup. Notwithstanding the foregoing: (1) In the case of an IRA (as defined in Section V(e)) which is beneficially owned by an employee, officer, director or partner of Citigroup, the decision to accept the Offer or retain the Auction Rate Security may be made by such employee, officer, director or partner; or (2) in the case of a Citigroup Plan or a pooled fund maintained or advised by Citigroup, the decision to accept the Offer may be made by Citigroup after Citigroup has determined that such purchase is in the best interest of the Citigroup Plan or pooled fund;<sup>4</sup>

(h) Except in the case of a Citigroup Plan or a pooled fund maintained or advised by Citigroup, neither Citigroup 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 Auction Rate Security;

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

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

(k) Citigroup and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (l)(1), to determine whether the conditions of this exemption, if granted, have been met, except that:

(1) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than Citigroup 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)(1); and

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

(l)(1) Except as provided below in paragraph (l)(2), 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;

(B) Any fiduciary of any Plan, including any IRA owner, that engages in an Unrelated Sale, or any duly authorized employee or representative of such fiduciary; and

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Unrelated Sale, or any authorized employee or representative of these entities;

(2) None of the persons described above in paragraphs (l)(1)(B)–(C) shall be authorized to examine trade secrets of Citigroup, or commercial or financial information which is privileged or confidential; and

(3) Should Citigroup refuse to disclose information on the basis that such information is exempt from disclosure, Citigroup shall, by the close of the thirtieth (30th) day following the request, provide a written notice

advising that person of the reasons for the refusal and that the Department may request such information.

### *Section III. Sales of Auction Rate Securities From Plans to Citigroup: Related to a Settlement Agreement*

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan of an Auction Rate Security to Citigroup, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement Agreement, provided that the conditions set forth in Section IV have been met.

### *Section IV. Conditions Applicable to Transactions Described in Section III*

(a) The terms and delivery of the Offer are consistent with the requirements set forth in the Settlement Agreement and acceptance of the Offer does not constitute a waiver of any claim of the tendering Plan;

(b) The Offer or other documents available to the Plan specifically describe, among other things:

(1) *How a Plan may determine:* the Auction Rate Securities held by the Plan with Citigroup; the number of shares or par value of the Auction Rate Securities; the interest or dividend amounts that are due and unpaid with respect to the Auction Rate Securities; and (if reliable information is available) the most recent rate information for the Auction Rate Securities;

(2) The background of the Offer;

(3) That neither the tender of Auction Rate Securities nor the purchase of any Auction Rate Securities pursuant to the Offer will constitute a waiver of any claim of the tendering Plan;

(4) The methods and timing by which Plans may accept the Offer;

(5) The purchase dates, or the manner of determining the purchase dates, for Auction Rate Securities tendered pursuant to the Offer;

(6) The timing for acceptance by Citigroup of tendered Auction Rate Securities;

(7) The timing of payment for Auction Rate Securities accepted by Citigroup for payment;

(8) The methods and timing by which a Plan may elect to withdraw tendered Auction Rate Securities from the Offer;

(9) The expiration date of the Offer;

(10) The fact that Citigroup may make purchases of Auction Rate Securities outside of the Offer and may otherwise buy, sell, hold or seek to restructure,

<sup>4</sup> 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 of the Act 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 sell the Auction Rate Security to Citigroup for the par value of the Auction Rate Security, plus unpaid interest and dividends. 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 this type of transaction following disclosure by Citigroup of all relevant information.

redeem or otherwise dispose of the Auction Rate Securities;

(11) A description of the risk factors relating to the Offer as Citigroup deems appropriate;

(12) How to obtain additional information concerning the Offer; and

(13) The manner in which information concerning material amendments or changes to the Offer will be communicated to the Plan;

(c) The terms of the Settlement Sale are consistent with the requirements set forth in the Settlement Agreement; and

(d) All of the conditions in Section II have been met.

#### Section V. Definitions

For purposes of this exemption:

(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 “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) 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;

(d) A person is “independent” of Citigroup if the person is: (1) not Citigroup or an affiliate; and (2) not a relative (as defined in section 3(15) of the Act) of the party engaging in the transaction;

(e) The term “Plan” means an individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section 3(3) of the Act; or an entity holding plan assets within the meaning of 29 CFR 2510.3–101, as modified by section 3(42) of the Act; and

(f) The term “Settlement Agreement” means a legal settlement involving Citigroup and a U.S. state or federal authority that provides for the purchase of an ARS by Citigroup from a Plan.

*Effective Date:* This exemption is effective as of February 1, 2008.

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 on February 23, 2010 at 75 FR 8128.

*For Further Information Contact:* Brian Shiker of the Department, telephone (202) 693–8552. (This is not a toll-free number.)

#### Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act, section 8477(c)(2) of the Federal Employees’ Retirement System Act of 1986, as amended (FERSA), and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective September 4, 2008, to the cash sales (the Sales) by the Barclays Global Investors “Money Market Fund” and “Cash Equivalent Fund II,” which are short-term collective investment funds (STIFs) managed or maintained by Barclays Global Investors, N.A. (BGI, or together with Barcal and any of their affiliates, collectively, “the Applicant”), of certain short-term debt instruments (the Notes) to Barcal, provided that the following conditions are met:

(a) The Sales were one-time transactions for cash payment made on a delivery versus payment (*i.e.*, same day) basis in the amount described in paragraph (b);

(b) The STIFs received an amount equal to the greater of:

(1) The amortized cost (including accrued and unpaid interest) of the Notes, determined as of the dates of the Sales, or

(2) the fair market value (including accrued and unpaid interest) of the Notes, determined by an independent third party source;

(c) The STIFs did not bear any commissions, transaction costs or other expenses in connection with the Sales;

(d) The terms and conditions of the Sales were at least as favorable to the STIFs as those available in an arm’s-length transaction with an unrelated party.

(e) BGI, as fiduciary of the STIFs, determined that the Sales were in the best interest of the STIFs and any employee benefit plans (the Plans) invested in the STIFs as of the dates of the Sales.

(f) BGI took all appropriate actions necessary to safeguard the interests of the STIFs and any Plans invested in the STIFs in connection with the Sales.

(g) If the exercise of any of Barcal’s rights, claims, or causes of action in connection with its ownership of the Notes results in Barcal recovering from the issuer of the Notes, or from any third party, an aggregate amount that is more than the sum of:

(1) The purchase price paid for such Notes by Barcal; and

(2) the interest due on the notes from and after the date Barcal purchased the Notes from the STIFs, Barcal will refund such excess amount promptly to the

STIFs (after deducting all reasonable expenses incurred in connection with the recovery);

(h) BGI maintains, or causes to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons described below in paragraph (i)(1), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Plan which engages in the covered transactions, other than BGI and its affiliates, 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 (i)(1);

(2) A separate prohibited transaction shall not be considered to have occurred solely because due to circumstances beyond the control of BGI, such records are lost or destroyed prior to the end of the six-year period. (i)(1) Except as provided, below, in paragraph (i)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in paragraph (h) are unconditionally available at their customary location for examination during normal business hours by—

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

(B) Any fiduciary of any Plan that engages in the covered transactions, 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 covered transactions, or any authorized employee or representative of these entities; or

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

(2) None of the persons described, above, in paragraph (i)(1)(B)–(D) shall be authorized to examine trade secrets of BGI, or commercial or financial information which is privileged or confidential; and

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

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 (the Notice) published on March 15, 2010 at 75 FR 12308.

*Effective Date:* This exemption is effective September 4, 2008.

#### Written Comments

The only written comment received by the Department was submitted by the Applicant. The Applicant requested changes with respect to condition (i) of the Notice concerning the entities to whom the records maintained pursuant to condition (h) of the Notice are required to be made available by BGI. First, the Applicant requested that the records need not be made unconditionally available to duly authorized employees or representatives of the Securities and Exchange Commission (the SEC) because, unlike the cases involving Auction Rate Securities, the subject Sales were not required by an SEC settlement; nor are the STIFs within the jurisdiction of the SEC. The Department accepts these representations by the Applicant and has amended the grant accordingly. Second, the Applicant requested that the records need not be made unconditionally available to any participant or beneficiary of a Plan that engages in a covered transaction, or duly authorized employee or representative of such participant or beneficiary. The Applicant noted that there are nearly 1,000 Plans whose fiduciaries will have access to these records. There are millions of participants in these Plans, none of whom have a relationship with the Applicant. In order to protect the confidentiality of Plan arrangements, every time a Plan participant sought to review these records, the Applicant would be required to contact a Plan fiduciary to verify that the participant was in fact a participant in the Plan on the date of the transaction and is still a participant in the Plan. This would cause the Applicant to spend countless hours just so that a participant or his or her representative could review material that the Plan fiduciary already had in its possession. The Applicant stated that this would impose a considerable and unwarranted burden. However, because participants and beneficiaries of the Plans are affected by the subject Sales and have an interest in the fiduciary management of their Plan assets, it is the Department's view that they also should have access to the records maintained by BGI, which are otherwise required to be maintained and made

available pursuant to the grant of exemptive relief. Accordingly, the Department has not made this requested change to the condition contained in section (i) of the Notice.

The Department has given full consideration to the entire record, including the comment letter received. The Department has determined to grant the exemption, with the one change as noted above.

*For Further Information Contact:* Gary H. Lefkowitz of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

#### Exemption

The restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(b)(1), and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (i) the February 20, 2009 cash sale (the Sale), at aggregate cost basis plus interest, by each of the Plans of interests in certain private equity funds (the Funds) to the CUNA Mutual Insurance Society (the Applicant), the sponsor of the Plans and a party in interest with respect to the Plans, pursuant to a contract between the Applicant and the trustee of the Plans concluded on that same date; (ii) the September 14, 2009 payment by the Applicant of certain additional cash amounts, including interest (the Top-Up Payments); to the Plans pursuant to the terms of the foregoing contract; and (iii) the extension of credit between the Plans and the Applicant from the date of the Sale (February 20, 2009) to the date of the Top-Up Payments (September 14, 2009), provided that the following conditions were satisfied:

(a) An independent fiduciary reviewed the terms and conditions of the Sale and of the Top-Up Payments prior to their execution, and determined that both were protective of the interests of the Plans;

(b) The independent fiduciary determined that the terms and conditions of both the Sale and of the Top-Up Payments were at least as favorable to the Plans as those that would have been obtained in an arm's length transaction between unrelated parties;

(c) The terms and conditions of both the Sale and of the Top-Up Payments were at least as favorable to the Plans as those that would have been obtained in an arm's length transaction between unrelated parties; and

(d) The independent fiduciary provided its opinion in written reports on behalf of the Plans as to the fairness and reasonableness of the Sale of the

Plans' interests in the Funds to the Applicant, and determined that the terms of the original Sale and subsequent Top-Up Payments were especially beneficial to each of the Plans because: (i) On February 20, 2009, the Plans received a return of their aggregate cost basis of their interests in the Funds (which cost basis was determined by the independent fiduciary to exceed the aggregate fair market value of the Plans' interests in the Funds as of October 31, 2008), plus interest accrued on the Funds from their date of acquisition by each Plan through the date of the Sale; and (ii) On September 14, 2009, the independent fiduciary determined that, in instances where the fair market value of any Fund on December 31, 2008 exceeded its original cost basis, each of the Plans received a Top-Up Payment on September 14, 2009 comprised of the increased value of such Fund, plus interest accrued on such increased value from December 31, 2008 to the date of the Top-Up Payments (September 14, 2009).

#### Written Comments

The Notice of Proposed Exemption (The Notice), Published in the **Federal Register** on April 2, 2010 beginning on page 16849, invited all interested persons to submit written comments and requests for a hearing to the Department within forty-five (45) days of the date of its publication. At the close of the comment period, the Department received a single written comment from two current beneficiaries of the CUNA Mutual Pension Plan for Non-Represented Employees. While expressing concern about the Plan's initial decision to invest in the Funds, the comment letter was supportive of the proposed exemption for the sale of the Plan's interests in the Funds as described in the Notice. The Department did not receive any other written comments from interested persons with respect to the Notice during the aforementioned 45-day comment period, nor did it receive any requests for a hearing.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the text of the Notice at 75 FR 16849.

*For Further Information Contact:* Mr. Mark Judge of the Department at (202) 693-8550. (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 28th day of June, 2010.

**Ivan Strasfeld,**

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

[FR Doc. 2010-16097 Filed 7-1-10; 8:45 am]

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Application Nos. and Proposed Exemptions; D-11489, Morgan Stanley & Co., Incorporated; L-11609, The Finishing Trades Institute of the Mid-Atlantic Region (the Plan) et al.

**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.

**Warning:** If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

#### 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.

#### 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) and section 4975(c)(2) of the Internal Revenue Code of 1974 (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

#### Section I. Transactions 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 sanctions resulting from the application of sections 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:<sup>1</sup>

(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

<sup>1</sup> For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer also to the corresponding provisions of section 4975 of the Code.