(c) In subsequent years, the formula used to calculate premiums by Prudential or any successor insurer will be similar to formulae used by other insurers providing comparable coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(d) The Plans only contract with insurers with a rating of A or better from A.M. Best Company. The reinsurance arrangement between the insurer and EIC will be indemnity insurance only, *i.e.,* the insurer will not be relieved of liability to the Plans should EIC be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(e) No commissions, costs or other expenses are paid with respect to the reinsurance of such contracts; and

(f) For each taxable year of EIC, the gross premiums and annuity considerations received in that taxable year by EIC for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which EIC is a party in interest by reason of a relationship to such employer described in section 3(14)(E) or (G) of the Act does not exceed 50% of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by EIC. For purposes of this condition (f):

(1) the term ''gross premiums and annuity considerations received'' means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by EIC. This total is to be reduced (in both the numerator and the denominator of the fraction) by experience refunds paid or credited in that taxable year by EIC.

(2) all premium and annuity considerations written by EIC for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

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 May 5, 2011 at 76 FR 25721.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (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 4th day of August, 2011.

Ivan Strasfeld,

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

[FR Doc. 2011–20342 Filed 8–10–11; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

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). This notice includes the following proposed exemptions: D–11601, BB&T Asset Management, Inc. (BB&T AM); and D–11661, Bayer Corporation (Bayer or the Applicant) *et al.*]

DATES: 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.

ADDRESSES: 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.

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.

SUPPLEMENTARY INFORMATION:

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).

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.

BB&T Asset Management, Inc. (BB&T AM)

Located in Winston-Salem, North Carolina

[Application No. D–11601]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the following exemption under the authority of Code section 4975(c)(2), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), as follows:

Section I: Covered Transactions

If the proposed exemption is granted, the sanctions resulting from the application of Code section 4975, by reason of Code section 4975(c)(1)(A) and (C)–(F), shall not apply, effective April 30, 2002 until December 27, 2005, to (1) Directed trades by BB&T AM and its successors in interest (together, the Applicant) as an investment manager and investment adviser to certain plans, subject to Code section 4975, but not subject to Title I of ERISA (the IRAs), which resulted in the IRAs purchasing or selling securities from Scott & Stringfellow, LLC (S&S), an affiliated broker-dealer of BB&T AM (collectively, the Transactions); and (2) compensation paid by the IRAs to S&S in connection with the Transactions (the Transaction Compensation).

This proposed exemption is subject to the conditions set forth below in Sections II and III.

Section II: Specific Conditions

(a) The Transactions and the Transaction Compensation were corrected (1) pursuant to the requirements set forth in the Department's Voluntary Fiduciary Correction Program (the VFC Program) [1] and (2) in a manner consistent with those transactions described in the Applicant's VFC Program application, dated January 22, 2010 (the VFC Program Application), that were substantially similar to the Transactions but that involved plans described in Code section 4975(e)(1) and subject to Title I of ERISA (the Qualified Plan Transactions).

(b) The Applicant received a ''no-action letter'' from the Department in connection with the Qualified Plan Transactions described in the VFC Program Application.

(c) The fair market value of the securities involved in the Transactions was determined in accordance with Section 5 of the VFC Program.

(d) The terms of the Transactions and the Transaction Compensation were at least as favorable to the IRAs as the terms generally available in arm's length transactions between unrelated parties.

(e) The Transactions and Transaction Compensation were not part of an agreement, arrangement or understanding designed to benefit a disqualified person, as defined in Code section 4975(e)(2).

(f) The Applicant did not take advantage of the relief provided by the VFC Program and Prohibited Transaction Exemption 2002–51 [2] (PTE 2002–51) for three (3) years prior to the date of the Applicant's submission of the VFC Program Application.

Section III: General Conditions

(a) The Applicant maintains, or causes to be maintained, for a period of six (6) years from the date of any Transaction such records as are necessary to enable the persons described in Section III(b)(1), to determine whether the conditions of this exemption have been met, except that:

(1) A separate prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of Applicant, the records are lost or destroyed prior to the end of the six-year period; and

(2) No disqualified person with respect to an IRA, other than Applicant, shall be subject to excise taxes imposed by Code section 4975, if such records are not maintained, or are not available for examination, as required by Section III(b)(1).

(b)(1) Except as provided in Section III(b)(2), the records referred to in Section III(a) 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 Securities and Exchange Commission;

(B) Any fiduciary of any IRA that engaged in a Transaction, or any duly authorized employee or representative of such fiduciary; or

(C) Any owner or beneficiary of an IRA that engaged in a Transaction or a representative of such owner or beneficiary.

(2) None of the persons described in Sections III(b)(1)(B) and (C) shall be authorized to examine trade secrets of Applicant, or commercial or financial information which is privileged or confidential.

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

Effective Date: If granted, this proposed exemption will be effective from April 30, 2002 until December 27, 2005.

Summary of Facts and Representations

1. The Applicant consists of BB&T AM and its successors in interest, BB&T AM LLC and Sterling Capital Management LLC (SCM LLC). BB&T AM was a wholly owned subsidiary of BB&T Corporation, a large financial institution, headquartered in Winston-Salem, North Carolina. On September 9, 2010, BB&T AM was reorganized as BB&T AM LLC. On October 1, 2010, BB&T AM LLC was merged into SCM LLC.

[1] 71 FR 20262 (April 19, 2006).

[2] 71 FR 20135 (April 19, 2006).

On September 30, 2010, BB&T AM LLC had total assets under management of $17.3 billion. As of December 31, 2010, BB&T Corporation had total assets of approximately $157 billion.

2. Virginia Investment Counselors, Inc. (VIC) of Norfolk, Virginia is a former asset manager and investment adviser to the IRAs and certain qualified plans described in Code section 4975(e)(1) and subject to Title I of ERISA (collectively, the Plans). In such capacity, VIC was granted discretionary investment authority with respect to such Plans by the Plans' respective plan administrators and beneficial owners. On April 30, 2002, VIC was acquired by the Applicant, *i.e.,* BB&T AM, (the Corporate Transaction) and, thereafter, became a division of the Applicant. Prior to the date of the Corporate Transaction, VIC was an unrelated party to the Applicant.

3. S&S is a registered broker-dealer. At all times relevant hereunder, S&S was a wholly owned subsidiary of BB&T Corporation.

4. Prior to the Corporate Transaction, VIC directed trades that resulted in the Plans purchasing securities from the inventory of S&S or selling securities to S&S. Because VIC and S&S were unrelated parties at that time, these types of transactions were not prohibited under ERISA or the Code.

5. Following the consummation of the Corporate Transaction, from April 30, 2002 to the close of 2006, trading between VIC (now as a division of BB&T AM) and S&S with respect to the Plans continued in the same arm's length manner as before the Corporate Transaction. Such continuation was inadvertent, and it resulted solely from VIC's failure to identify S&S as a disqualified person. During this time period, the Applicant directed 103 IRAs to purchase bonds from S&S 185 times, for an aggregate purchase price of $3,256,925 (the Bond Purchase Transactions), and 10 IRAs to sell bonds to S&S 13 times, for an aggregate sales price of $147,640 (the Bond Sale Transactions). The Applicant also directed one transaction in which an IRA purchased a stock from S&S, for a purchase price of $29,222 (the Stock Purchase Transaction) and 4 Transactions in which an IRA sold stock to S&S, for a sales price of $133,209 (the Stock Sale Transactions and, collectively, the Bond Purchase Transactions, the Bond Sale Transactions, the Stock Purchase Transaction and Stock Sale Transactions being the Transactions). The last Transaction occurred on December 27, 2005.

6. The Transactions caused the payment of compensation to S&S (Transaction Compensation). With respect to Bond Purchase Transactions and Bond Sale Transactions, S&S' compensation was reflected in the purchase price of the applicable bond. That is, S&S was compensated only through a ''mark-up'' of the bond price. With respect to the Stock Purchase Transaction and the Stock Sale Transactions, separate, identifiable commissions and fees totaling $829 were charged by S&S.

7. The Applicant seeks relief with respect to the Transactions and with respect to the payment of the Transaction Compensation. Specifically, the Applicant believes that: (a) The purchase and sale of securities between the IRAs and S&S was prohibited by Code section 4975(c)(1)(A); (b) S&S' provision of brokerage services to the IRAs was prohibited by Code section 4975(c)(1)(C); (c) both the Transactions and the payment of Transaction Compensation were prohibited by Code section 4975(c)(1)(D); and (d) the decision by VIC, in its role as fiduciary, to cause the IRAs to enter into the Transactions and pay the Transaction Compensation to S&S was prohibited by Code section 4975(c)(1)(E) and (F). The Applicant believes that if the proposed exemption is not granted the IRAs would be subject to hardship resulting from the uncertainty of not having the prohibited transactions outlined herein resolved. Further, the IRAs would be subject to additional hardship if the proposed exemption is denied as a result of the resultant uncertainty regarding the correction methodology applied by the Applicant.

8. The Applicant represents that as soon as the Transactions and the Qualified Plan Transactions were discovered it began the correction process. The Applicant corrected the Qualified Plan Transactions pursuant to the requirements set forth in the VFC Program. The Applicant filed a VFC Program Application, dated January 22, 2010, with respect to the Qualified Plan Transactions, and it received a no-action letter from the Department, dated August 31, 2010, with respect to the Qualified Plan Transactions.

9. While the Qualified Plan Transactions were properly corrected under the VFC Program, the Applicant was not able to similarly correct the Transactions and the Transaction Compensation. Despite being substantially similar to the Qualified Plan Transactions, the Transactions and the Transaction Compensation are ineligible for relief under the VFC Program and PTE 2002–51 because they involved IRAs which are not covered under Title I of ERISA. The Applicant, however, believes that granting relief pursuant to the proposed exemption is consistent with the Department's statement that ''[the VFC Program] does not foreclose its future consideration of individual exemption requests of transactions involving IRAs that are outside the scope of relief provided by the VFC Program and the class exemption under circumstance where, for example, a financial institution received a no action letter applicable to plans subject to [the VFC Program] for a transaction(s) that involved both plans and IRAs.'' 71 FR 20135 (April 19, 2006).

10. Consistent with the Department's statement, the Applicant represents that the Transactions were corrected pursuant to the requirements set forth in the VFC Program and in a manner consistent with the Applicant's VFC Program Application, with such representation made in the Applicant's exemption application, dated January 22, 2010, under penalty of perjury. In this regard, the Applicant corrected the Transactions in the manner generally described below:

(a) With respect to the Bond Purchase Transactions, since bonds are debt instruments, the Applicant corrected the Bond Purchase Transactions, based on economic similarity to a loan transaction correction, under the procedures for loans made at a fair market interest rate pursuant to Section 7.2 of the VFC Program. The correction method for a loan, which is set forth in Section 7.2(a)(2) of the VFC program, is for the party in interest to pay back the loan in full, including any prepayment penalties. Section 7.2(a)(2) also requires that an independent commercial lender confirm that the loan was made at a fair market interest rate for a loan with similar terms to a borrower of similar creditworthiness. The Applicant represents that it satisfied the requirements under Section 7.2(a)(3) of the VFC Program by means of a written report prepared by Independent Fiduciary Services, Inc. (IFS), an independent fiduciary services firm, which among other things, compared the actual purchase price of transactions to a written confirmation of the market price on the day of each Bond Purchase Transaction (or the next date a price was available) obtained from two independent pricing services (Standard & Poor's JJ Kenny Pricing Service and Estate Valuation and Pricing Systems) selected by IFS.

(b) With respect to the Bond Sale Transactions and Stock Sale Transactions, the Applicant corrected these Transactions under the procedures for sale of an asset to a party in interest under Section 7.4(b) of the VFC Program. Section 7.4(b)(2)(i) of the VFC Program generally requires that the asset be repurchased from the party in interest at the lower of the price for which it originally sold the property or the fair market value (FMV) of the property at the time of correction. As an alternative, section 7.4(b)(2)(ii) of the VFC Program provides that a plan may receive a cash settlement of the ''Principal Amount,'' defined as the excess of the FMV of the asset at the time of sale over the sales price, plus ''Lost Earnings,'' which is generally defined as the approximate amount that would have been earned by a plan on the Principal Amount but for the prohibited transaction, provided, that, an independent fiduciary determines that the applicable Plan would receive a greater benefit than by repurchase.

It was impractical or impossible to repurchase the bonds in the Bond Sale Transactions. This was due to the fact that some of the bonds were no longer available because they had been called, matured, were thinly traded or not in the inventory of the Applicant or its affiliates. Further, because the Applicant no longer served as investment adviser to the majority of the IRAs at the time of correction, the Applicant did not believe it was in a position to effect the repurchase of the bonds by the IRAs. Therefore, the Applicant corrected the Bond Sale Transaction by paying the IRAs the Principal Amount plus Lost Earnings from the time of the Transaction.

For the Stock Sale Transactions, the IRA was given the option of repurchasing the stock at the price determined under Section 7.4(b) of the VFC Program or receiving a cash settlement amount of the greater of the cash settlement amount determined under Section 7.4(b) or the excess, if any, of the FMV of the stock as of the date of correction over the price for which it originally sold the stock (which is the economic equivalent to repurchasing the security at the price determined under Section 7.4(b) of the VFC Program).

(c) With respect to the Stock Purchase Transaction, the Applicant corrected the Stock Purchase Transaction under the procedures for the purchase of an asset from a party in interest pursuant to Section 7.4(a) of the VFC Program. Section 7.4(a) generally requires that the asset be sold back to the party in interest or to a person who is not a party in interest for a price at least equal to the greater of (1) The FMV of the asset at the time of resale, without reduction for the costs of sale, or (2) the original purchase price, plus Lost Earnings. As an alternative, the asset may be retained along with a payment in the amount of the difference between the original purchase price paid and the FMV of the asset at the time of the purchase, plus lost earnings. Since the IRA involved in the Stock Purchase Transaction was no longer a client of the Applicant at the time of correction, the IRA was deemed to have disposed of the stock at the FMV of the stock on the date the IRA closed its account with the Applicant. The IRA was paid a corrective payment in the amount of the greater of (1) the original purchase price, plus Lost Earnings calculated through the time the IRA's account closed with the Applicant, less the FMV of the stock at the time of the deemed disposition or (2) any excess of the original purchase price over the FMV of the stock at the time of purchase, plus Lost Earnings on such amount calculated through the date of correction.

11. With respect to the Applicant's correction of the Transactions, (a) The Applicant took into account all transaction costs (*e.g.,* Transaction Compensation), if any, paid by the IRAs in calculating the applicable Principal Amount as defined under the VFC Program; (b) Section 5 of the VFC Program was followed to make fair market value determinations; and (c) the Applicant engaged an independent certified public accounting firm to calculate the appropriate correction payments. Since the bonds in the Bond Sale Transactions did not have a generally recognized FMV, the FMVs of the bonds were determined pursuant to a written report prepared by IFS comparing the actual purchase price of transactions to written confirmations of the market price on the applicable date from independent pricing services selected by IFS. For the Stock Purchase Transaction and the Stock Sale Transactions, the FMV of the stocks involved were determined using the average value of the security on the generally recognized market for the security on the date of the applicable transaction as reported by an independent pricing service.

12. The Applicant represents that ''Restoration of Profits,'' as defined under the VFC Program, did not apply with respect to the Transactions because no amounts were used for a specific purpose such that a profit was determinable.

13. The Applicant represents that it sent each IRA involved in a Transaction a letter describing the Transaction(s) applicable to the IRA and, where appropriate, a check for the correction amount.

14. The Applicant believes that the Transactions were inadvertent and resulted in the IRAs receiving at least a market yield-to-maturity with respect to the Bond Purchase Transactions or at least the market price with respect to Bond Sale Transactions, Stock Purchase Transaction and Stock Sale Transactions because the Applicant and S&S operated as independently managed entities and, as a result of the foregoing, the terms of the Transactions were at least as favorable to the IRAs as the terms generally available in arm's length transactions between unrelated parties.

15. The Applicant represents that it has not taken advantage of the relief provided by the VFC Program and PTE 2002–51 for the three (3) years prior to the date of the Applicant's submission of the VFC Program Application, and that the Transactions were not part of an agreement, arrangement or understanding designed to benefit a disqualified person.

16. The Applicant represents that the proposed exemption is: (a) Administratively feasible because the Applicant has corrected the Transactions pursuant to the requirements set forth in the VFC Program, has obtained relief under the VFC Program for the Qualified Plan Transactions and has put procedures in place to ensure that no similar Transactions occur in the future; (b) in the interests of the affected IRAs and their owners and beneficiaries because the Transactions have been corrected pursuant to the procedures set forth in the VFC Program, which are designed to ensure that the corrections are made in a manner that is in the interests of the IRAs and their owners and beneficiaries; and (c) protective of the rights of the owners and beneficiaries of the IRAs because the requested relief is only with respect to past transactions, which the Applicant believes were effectively conducted on an arm's length basis, that have already been effectively unwound pursuant to the requirements set forth in the VFC Program.

17. In summary, the Applicant represents that the Transactions and the Transaction Compensation satisfy the statutory criteria for an administrative exemption contained in Code section 4975(c)(2) because, among other things: (a) The Transactions and Transaction Compensation were substantially similar to the Qualified Plan Transactions; (b) the Transactions and Transaction Compensation were corrected pursuant to the requirements set forth in the VFC Program and in a manner similar to those described in the

Applicant's VFC Program Application; (c) the Applicant received a ''no-action letter'' from the Department in connection with Applicant's VFC Program Application; (d) the FMVs of the IRA bonds and stocks involved in the Transactions were determined in accordance with Section 5 of the VFC Program; (e) the terms of the Transactions and the Transaction Compensation were at least as favorable to the IRAs as the terms generally available in arm's-length transactions between unrelated parties; (f) the Transactions and Transaction Compensation were not part of an agreement, arrangement or understanding designed to benefit a disqualified person; and (g) the Applicant did not take advantage of the relief provided by the VFC Program and PTE 2002–51 for three (3) years prior to the date of the Applicant's submission of the VFC Program Application.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Shiker of the Department, telephone (202) 693–8552. (This is not a toll-free number.)

Bayer Corporation (Bayer or the Applicant)

Located in Pittsburgh, PA

[Application No. D–11661]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[3] If the exemption is granted, the restrictions of sections 406(a)(1)(A) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) and (E) of the Code, shall not apply, effective September 15, 2011, to the one-time, in kind contribution (the Contribution) of certain U.S. Treasury Bills (the Securities) to the Bayer Corporation Pension Plan (the Plan) by the Applicant, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) In addition to the Securities, Bayer contributes to the Plan, by September 15, 2011, such cash amounts as are needed to allow the Plan to attain an Adjusted Funding Target Attainment Percentage (AFTAP) of 90%, as determined by the Plan's actuary (the Actuary);

(b) The fair market value of the Securities is determined by Bayer on the date of the Contribution (the Contribution Date) based on the average of the bid and ask prices as of 3 p.m. Eastern Time, as quoted in The Wall Street Journal on the Contribution Date;

(c) The Securities represent less than 20% of the Plan's assets.

(d) The terms of the Contribution are no less favorable to the Plan than those negotiated at arm's length under similar circumstances between unrelated parties;

(e) The Plan pays no commissions, costs or fees with respect to the Contribution; and

(f) The Plan fiduciaries review and approve the methodology used to value to the Securities and ensure that such methodology is properly applied in determining the fair market value of the Securities.

Effective Date: If granted, this proposed exemption will be effective as of September 15, 2011.

Summary of Facts and Representations

Parties to the Proposed Transaction

1. Bayer, headquartered in Pittsburgh, PA, is a holding company for the business interests of Bayer AG in the United States. Bayer AG is an international health care, nutrition and high-tech materials group based in Leverkusen, Germany. In North America, Bayer had 2010 net sales of approximately $10.86 billion and employed 16,400 at year end. Bayer sponsors the Plan.

2. The Plan is a defined benefit pension plan. As of January 1, 2010, which is the most recent date for which participant and Plan financial information are available, the Plan had 34,766 participants and beneficiaries and total assets of $2,126,444,442. The Plan also had total liabilities of $2,354,042,112 as of this date.

3. The Bayer Corporation Master Trust (the Master Trust) holds the assets of the Plan and five other defined benefit plans (collectively, the ''Plans'') sponsored by Bayer. The Bayer Trust Investment Committee (the Committee) is the named fiduciary with respect to the Master Trust. Bayer serves as the Plan administrator for the Plans. Mellon Bank, N.A. serves as the trustee for the Plans.

Plan Funding for Plan Year 2011

4. The Applicant represents that the Plans participating in the Master Trust are historically funded on an AFTAP funding level ranging from 90% to 96%. In an actuarial report (the Actuarial Report) dated September 30, 2010, Towers Watson, the Plan's Actuary, stated that the Plan's AFTAP as of January 1, 2009 was 90% and as of January 1, 2010, it was 90.08%.

5. The Actuarial Report also provided for the Plan's minimum contribution payment for January 14, 2011 and September 15, 2011. In compliance with the Actuarial Report, Bayer made its scheduled minimum cash contribution payment to the Plan of $3,499,721 as of January 11, 2011. Should Bayer make its next scheduled required minimum cash contribution payment of $12,953,054 on September 15, 2011, the Applicant notes that the Plan's AFTAP would fall below 80% (as measured on January 1, 2011). The Applicant explains that because of a prior year loss in 2008 of 28% to the Plan, the Plan's AFTAP would fall below 80% if Bayer makes only its required minimum contribution for 2011.

6. As a result, the Applicant explains that the benefit restrictions of sections 206(g) of the Act and 436(d)(3) of the Code[4] would be triggered upon the Actuary's certification of the 2011 Actuarial Report. Such restrictions would limit Plan lump sum payments to 50% of the value of a participant's benefit and would defer Plan Social Security level income payouts. These measures could harm current Plan participants nearing benefit commencement.

7. The Applicant represents that these benefit restrictions would affect a significant number of Plan participants. With respect to lump sum payments, the Applicant states that approximately 3,500 active and deferred participants in the Plan are eligible to elect a lump sum upon either retirement or the time of benefit commencement. With respect to Social Security level income benefit elections, the Applicant explains that 5,100 active and deferred vested Plan participants are eligible to make such elections upon retirement or at the time of benefit commencement.

Contribution of the Securities

8. On December 17, 2010, Bayer, in its corporate capacity, purchased the Securities for $299,302,083.30. The CUSIP number for the Securities is 9127952P5. The Applicant represents

[3] For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[4] Section 436(d)(3)(C) of the Code and section 206(g)(3)(C) of the Act provide that if the AFTAP is at least 60% but less than 80%, a single employer defined benefit plan may not pay a prohibited payment to the extent the payment exceeds the lesser of (1) 50% of the amount of the payment that would be paid if the restriction did not apply, or (2) the present value, determined under guidance provided by the Pension Benefit Guaranty Corporation, of the maximum guarantee with respect to the participant under section 4022 of the Act.

that Bayer purchased the Securities on the open market through its broker, Citizens Investment Services, an unrelated party. The Securities will mature on November 17, 2011, with a value of $300,000,000.00 in six denominations each of $50,000,000. The Securities have an effective annual yield of 0.25%. The Securities also represent approximately 12.2% of the Plan's assets.

On January 21, 2011, the Committee determined that contributing the Securities to the Plan on a one-time basis would benefit the Plan's participants. The Committee also determined that the Securities would give the Master Trust a safe and liquid investment without additional transactions costs, would help maintain the Plan's funding level and would prevent potential benefit restrictions mentioned above. Furthermore, the proposed Contribution is substantially similar to contributing cash since the Securities are considered cash equivalents.

9. The proposed Contribution would also benefit Bayer by allowing it to issue public debt at a lower cost. The Applicant states that its credit rating impacts the interest rate payable when it borrows. The Applicant represents that a full cash contribution, which is reported on its financial statements as a use of operating gross cash flow, would have a negative impact on the financial ratios calculated by credit rating agencies. If its credit rating is lowered, the Applicant explains that its cost of borrowing could substantially increase. However, unlike a full cash contribution to the Plan, the Applicant indicates that the proposed Contribution is not reported as a use of operating cash flow. Accordingly, the Applicant maintains that the proposed Contribution would not have a negative impact on its credit rating.

Valuation of the Securities

10. As of March 31, 2011, the Applicant represents that the fair market value of the Securities was $299,451,000. The Applicant states that it applied the average bid and ask price of .183%, as of 3 p.m. on March 31, 2011, as quoted in The Wall Street Journal, to obtain a discount value of $549,000.00. The Applicant explains that it then applied the discount to the face value of the Securities at maturity to obtain $299,451,000, as the fair market value as of March 31, 2011.

11. The fair market value price of the Securities contributed to the Plan will be based on its value on the Contribution Date. The Applicant represents it will select the Contribution Date on which The Wall Street Journal publishes the bid and ask price for U.S. Treasury Bills that mature on November 17, 2011. The Applicant states that it will average the bid and ask price as of 3 p.m. Eastern Time, as published in The Wall Street Journal, to determine the appropriate discount. The Applicant also explains that it will then apply the discount to the Securities to determine the fair market value on the Contribution Date.

Request for Exemptive Relief

12. The Applicant requests exemptive relief from the Department for the proposed Contribution which represents an in kind contribution to the Plan from the Applicant, a party in interest, that would violate sections 406(a)(1)(A) of the Act. The Applicant, which is a fiduciary, is causing both a sale or exchange between a party and interest and the Plan prohibited by section 406(a)(1)(A) of the Act. The Applicant states that the proposed Contribution also would violate sections 406(b)(1) and (2) of the Act. The Applicant, as a fiduciary, is dealing with the assets of the Plan in its own interest or its own account in violation of 406(b)(1) of the Act and is acting in a capacity where its interests are adverse to the interest of the plan or the interests of its participants and beneficiaries in violation of 406(b)(2) of the Act.

Contribution Logistics

13. The Applicant represents that it is committed to making the proposed Contribution as of September 15, 2011. The Applicant represents that it will also make a cash contribution to the Plan, by September 15, 2011, to allow the Plan to attain an AFTAP of 90%, along with the Contribution of the Securities. This additional cash contribution to the Plan is presently estimated at $58 million. The Applicant will know the actual cash contribution amount when it receives the 2011 Actuarial Report from the Actuary. Furthermore, the Applicant represents that should the Plan sell the Securities prior to their maturity, Bayer will pay all costs or fees related to such sale.

Rationale for the Contribution

14. The Applicant represents that there are a number of reasons supporting the Contribution. In this regard, the Applicant states that the proposed Contribution is administratively feasible because it is a one time only transaction that would require no further action by the Department. Moreover, the Plan will pay no fees, commissions or costs in relation to the Contribution.

The Applicant states that the Contribution is in the interests of the Plan, its participants and beneficiaries because the Contribution and an estimated $58 million additional cash contribution will allow the Plan to attain a 90% AFTAP. As noted above, the Plan's required minimum contribution scheduled for September 15, 2011 is $12,953,054. The Securities with a value of $300,000,000 at maturity on November 17, 2011, would exceed the Plan's required minimum contribution by approximately $287 million. An additional cash contribution of approximately $58 million should allow the Plan to attain an AFTAP of 90%, when combined with the Securities. Accordingly, the Applicant states that the Contribution will avoid the benefit restrictions of section 206(g) of the Act and section 436(g) of the Code.

The Applicant further states that the Contribution would be protective of the Plan and its participants and beneficiaries. In this respect, the Applicant explains that the Contribution involves Securities that are cash equivalents and have a readily ascertainable fair market value. Moreover, the Applicant indicates that the Securities will mature within months of the Contribution Date. Should the Plan need to sell the Securities prior to their maturity, the Applicant represents that it will cover all transaction costs that are associated with such sale.

Summary

15. In summary, the Applicant represents that the Contribution will satisfy the statutory requirements for an exemption under section 408(a) of the Act because:

(a) In addition to the Securities, Bayer will contribute to the Plan, by September 15, 2011, such cash amounts as are needed to allow the Plan to attain an AFTAP of 90%, as determined by the Plan's actuary;

(b) The fair market value of the Securities will be determined by Bayer on the Contribution Date based on the average of the bid and ask prices as of 3 p.m. Eastern Time, as quoted in The Wall Street Journal on the Contribution Date;

(c) The Securities will represent less than 20% of the Plan's assets.

(d) The terms of the Contribution will be no less favorable to the Plan than those negotiated at arm's length under similar circumstances between unrelated parties;

(e) The Plan will pay no commissions, costs or fees with respect to the Contribution; and

(f) The Plan fiduciaries will review and approve the methodology used to value the Securities and ensure that such methodology is properly applied in determining the fair market value of the Securities.

Notice to Interested Parties

Notice of the proposed exemption will be given to interested persons within 5 days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will be given to interested persons by first class mail or by return receipt requested electronic mail. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 40 days of the publication of the notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Anh-Viet Ly of the Department at (202) 693–8648. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

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

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

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

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

Signed at Washington, DC, this 2nd day of August, 2011.

Ivan Strasfeld,

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

[FR Doc. 2011–20341 Filed 8–10–11; 8:45 am]

BILLING CODE 4510–29–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Designation of ONDCP SES Performance Review Board Members

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of Designation of ONDCP SES Performance Review Board.

Headings: Designation Pursuant of ONDCP SES Performance Review Board Pursuant to 5 CFR 4 30.310.

SUMMARY: The Director of the Office of National Drug Control Policy has appointed Patrick M. Ward, Robert Denniston, Michele Marx, and Jeffrey Teitz as members of the ONDCP SES Performance Review Board (PRB).

FOR FURTHER INFORMATION CONTACT: Please direct any questions to Briggitte LaFontant, Assistant for Personnel, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20502; (202) 395–6695.

Daniel R. Petersen,

Deputy General Counsel.

[FR Doc. 2011–20422 Filed 8–10–11; 8:45 am]

BILLING CODE 3180–W1–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On July 7, 2011, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on August 8, 2011 to: James G. Bockheim; Permit No. 2012–004.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2011–20409 Filed 8–10–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Request Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 12, 2011. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTAL INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as