that the above requirements of this exemption continue to be met.

Section IV. Effective Dates

Section I.A. of this exemption is effective as of August 1, 2006, through and until November 15, 2012, and Section I.B. of this exemption is effective as of November 16, 2012.

The Department invited all interested persons to submit written comments with respect to the proposed exemption on or before September 30, 2012. During the comment period, the Department received one email inquiry which generally concerned the individual's difficulty in understanding the notice of proposed exemption. However, the Department received no comments or requests for a hearing from interested persons.

Therefore, after giving full consideration to the entire record, the Department has decided to grant the exemption. For further information regarding the individual exemption, interested persons are encouraged to obtain copies of the exemption application file (Application No. L–11688) that the Department maintains with respect to the individual exemption. The complete application file, as well as supplemental submissions received by the Department, is made available for public inspection in the Public Documents room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the proposed exemption published in the **Federal Register** on August 28, 2012 at 77 FR 52061.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Blinder, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8553. (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) Each 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 an 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 9th day of November 2012.

Lyssa E. Hall,

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

[FR Doc. 2012–27848 Filed 11–15–12; 8:45 am]

BILLING CODE 4510–29–P

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–11610, UBS Financial Services, Inc. D–11666, Central Pacific Bank 401(k) Retirement and Savings Plan (the Plan); D–11672, Studley, Inc. Section 401(k) Plan Profit Sharing Plan (the Plan); and D–11724, EquiLend Holdings LLC (EquiLend).

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 email or FAX. Any such comments or requests should be sent either by email 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 (76 FR 66637, 66644, October 27, 2011).[1] 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.

UBS Financial Services Inc., Located in Weehawken, New Jersey

[Application No. D–11610]

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 (76 FR 66637, October 27, 2011), 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 (D)–(E), shall not apply, effective January 4, 2002, until December 9, 2005, to (1) principal trades by UBS Financial Services Inc. (the Applicant) with 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 the Applicant (collectively, the Transactions); and (2) compensation paid by the IRAs to the Applicant 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) [2] and (2) in a manner consistent with those transactions described in the Applicant's VFC Program application, dated March 5, 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) An independent fiduciary confirmed that the methods utilized to correct the Transactions and Transaction Compensation were sufficient to return each affected IRA to at least the position that it would have been in had the Transactions and Transaction Compensation not occurred, and that the correction methods were properly applied to the Transactions and Transaction Compensation based on a review of a representative sample of the corrections, selected at random by the independent fiduciary.

For purposes of this exemption, a fiduciary is ''independent'' if it is independent of and unrelated to Applicant and its affiliates. In this regard, a fiduciary will not be deemed independent of Applicant and its affiliates if: (1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with Applicant or its affiliates, (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption, except that it may receive compensation for acting as an independent fiduciary from Applicant in connection with the transactions described herein, if the amount or payment of such compensation is not contingent upon, or in any way affected by such fiduciary's decision; or (3) the annual gross revenue received by the fiduciary, in any fiscal year, from Applicant or its affiliates exceeds one percent (1%) of the fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year.

(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 [3] (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.

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

[2] 71 FR 20262 (April 19, 2006).

[3] 67 FR 70623 (Nov. 25, 2002), as amended, 71 FR 20135 (April 19, 2006).

(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 January 4, 2002, until December 9, 2005.

Summary of Facts and Representations

1. The Applicant is UBS Financial Services Inc., a wholly owned subsidiary of UBS AG. The Applicant is a large financial institution headquartered in Basel and Zurich, Switzerland. As of December 31, 2011, UBS AG had invested assets of 2,167 billion CHF.

2. From January 4, 2002, to December 9, 2005, contrary to the Applicant's policies, certain of Applicant's financial advisors (the FAs) caused Applicant to engage in a number of principal transactions involving IRAs for which the Applicant or the FA acted as an ERISA fiduciary. These principal transactions included: (a) 711 principal purchases of bonds from the Applicant, with an aggregate purchase price of $18,359,746 in 88 IRAs (the Bond Purchase Transactions) (b) 110 principal sales of bonds to the Applicant, with an aggregate sales price of $4,257,643 in 45 IRAs (the Bond Sale Transactions); (c) 128 principal purchases of stock from the Applicant, for an aggregate purchase price of $1,882,230 in 37 IRAs (the Stock Purchase Transactions); and (d) 1 principal sale of stock to the Applicant, for a sales price of less than $1 (the Stock Sale Transaction) (collectively, the Bond Purchase Transactions, the Bond Sale Transactions, the Stock Purchase Transactions and Stock Sale Transaction are referred to as the Transactions). A total of 105 IRAs were involved in the Transactions. (Some of the IRAs were involved in more than one type of transaction.)

3. The Transactions caused the payment of compensation to the Applicant (Transaction Compensation). With respect to Bond Purchase Transactions and Bond Sale Transactions, the Applicant was compensated through a ''mark-up'' of the bond price; the aggregate amount of such mark-ups was $115,363. With respect to the Stock Purchase Transactions and the Stock Sale Transaction, the Applicant was compensated through commissions totaling $44,964.

4. Upon discovering that certain of the FAs caused the Applicant to engage in the Transactions, the Applicant implemented changes to its policies and procedures to prohibit the opening of any brokerage accounts that would permit FAs to exercise discretion. The Applicant represents that the FAs can now only open accounts that would permit the exercise of discretion under a discretionary advisory program where principal trades are blocked.

5. 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, both bonds and stocks, between the IRAs and the Applicant was prohibited by Code section 4975(c)(1)(A); (b) both the Transactions and the payment of Transaction Compensation were prohibited by Code section 4975(c)(1)(D); and (c) the Transactions and the receipt of Transaction Compensation were prohibited by Code section 4975(c)(1)(E). 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, if the proposed exemption is not granted, the IRAs would be subject to additional hardship as a result of the resultant uncertainty regarding the correction methodology applied by the Applicant.

6. The Applicant represents that as soon as the Transactions and the Qualified Plan Transactions were discovered it began an investigation that led to 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 March 5, 2010, with respect to the Qualified Plan Transactions, and it received a no-action letter from the Department, dated February 4, 2011, with respect to the Qualified Plan Transactions.

7. 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 for transactions involving IRAs that are outside the scope of relief provided by both the VFC Program and the class exemption under circumstance when, for example, a financial institution received a no action letter applicable only to plans subject to [the VFC Program] for a transaction(s) that involved both plans and * * * IRAs.'' 71 FR 20135, 20137 (April 19, 2006).

8. 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 March 5, 2010, under penalty of perjury. In this regard, the Applicant corrected the Transactions in the manner 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 in Section 7.2(a) 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. The Applicant represents that the Bond Purchase Transactions were conducted at fair market values (FMVs) because, among other things, the transactions were conducted using trading systems and procedures designed to result in trades being conducted at prices that are as favorable as possible to the IRAs under prevailing market conditions and were in fact conducted at prices not less favorable to the IRAs than the prices the FAs could have obtained for the IRAs by conducting the trades in arm's-length transactions with third-party market participants.

(b) With respect to the Bond Sale Transactions and the Stock Sale Transaction, the Applicant corrected these Transactions under the procedures for sale of an asset by a plan 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 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 amount by which the FMV of the asset at the time of original sale exceeds the original sales price, plus the greater of ''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, or the ''Restoration of Profits,'' as described in Section 5(b) of the VFC Program, provided, that, an independent fiduciary determines that the applicable Plan would receive a greater benefit with such correction than by repurchase. 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. The Principal Amount for each of the Bond Sale Transactions and the Stock Sale Transaction was zero because the bond or the stock was sold at FMV.

It was impractical or impossible for the IRAs to repurchase most of the bonds in the Bond Sale Transactions because most of the bonds had been called, matured, were thinly traded or not in the inventory of the Applicant or its affiliates. For the remaining bonds in the Bond Sale Transactions, none of the IRAs elected to repurchase the bond from the Applicant despite the Applicant's offer to sell the bond back to the IRA at the lower of the price for which the IRA originally sold the bond or the FMV of the bond at the time of correction. Therefore, the Applicant corrected all of the Bond Sale Transactions by paying the IRAs the Transaction Compensation, if any, plus Lost Earnings on the Transaction Compensation from the time of the Transaction.

For the Stock Sale Transaction, it was impossible to repurchase the stock because the company had dissolved. Further, because no commissions were charged by the Applicant for the Stock Sale Transaction, no payment to the IRA with respect to compensation was necessary to correct the Stock Sale Transaction. Finally, since the Principal Amount with respect to the Stock Sale Transaction was zero, there were no Lost Earnings on the Principal Amount to pay to the IRA.

(c) With respect to the Stock Purchase Transactions, the Applicant corrected the Stock Purchase Transactions under the procedures for the purchase by a plan 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 who originally sold the asset to the plan or to a person who is not a party in interest for a price equal to the greater of (1) the FMV of the asset at the time of resale, without reduction for the costs of sale, plus restoration to the plan of the party in interest's investment return from the proceeds of the sale, to the extent they exceed the plan's net profits from owning the property, or (2) the plan's original purchase price, plus the greater of Lost Earnings on the plan's original purchase price or the Restoration of Profits, if any. As an alternative, the plan may retain the asset and receive (1) the greater of the Lost Earnings or the Restoration of Profits, if any, on the original purchase price, but only to the extent that such Lost Earnings or Restoration of Profits exceeds the difference between the FMV of the asset as of correction and the original purchase price and (2) the amount by which the original purchase price exceeded the FMV of the asset (at the time of the original purchase), plus the greater of Lost Earnings or Restoration of Profits, if any, on such excess; provided, an independent fiduciary determined that the plan will realize a greater benefit from this correction than it would from the resale described in section 7.4(a)(2)(i) of the VFC Program. The Applicant corrected the Stock Purchase Transactions under the alternative correction methodology, taking into account any prior disposition of the stock by an IRA subsequent to the original purchase.

9. 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 corrective payments; and (b) the Applicant engaged an independent fiduciary, Evercore Trust Company. Evercore Trust Company stated that (x) the methods utilized to correct the Transactions were sufficient to return each affected IRA to at least the position that it would have been in had the Transactions not occurred, (y) the alternative correction method utilized for the Stock Purchase Transactions did not result in the affected IRAs being returned to more unfavorable financial positions than if the general correction method described in 7.4(a) of the VFC Program been used instead, and (z) the correction methods were properly applied to the Transactions based on a review of a representative sample of the corrections.

10. Evercore Trust Company confirmed to the Applicant that (a) during the period beginning with the date on which the earliest Transaction occurred and ending with the date Evercore Trust Company completed its engagement as an independent fiduciary with respect to the Transactions and the Transaction Compensation, it was not an entity that was directly or indirectly controlling, controlled by, or under common control with, the Applicant or its affiliates, (b) the compensation received by Evercore Trust Company from the Applicant for its services as an independent fiduciary with respect to the Transactions and the Transaction Compensation was not contingent upon, or in any way affected by, Evercore Trust Company's determination, and Evercore Trust Company did not, and will not, directly or indirectly receive any other compensation or consideration from the Applicant in connection with the Transactions or Transaction Compensation, and (c) for any fiscal year of Evercore Trust Company, during which, or during part of which, it acted as an independent fiduciary with respect to the Transactions or Transaction Compensation, or received any compensation from the Applicant for its services as an independent fiduciary with respect to the Transactions or Transaction Compensation (Subject Fiscal Year), the annual gross revenue received by Evercore Trust Company and its affiliates from the Applicant or its affiliates for the Subject Fiscal Year did not exceed one percent (1%) of the annual gross revenue received by Evercore Trust Company and its affiliates from all sources (for federal income tax purposes) for their most recent fiscal years that ended prior to the Subject Fiscal Year.

11. The Applicant represents that it credited, or issued a check to, each IRA to which a corrective payment was due.

12. The Applicant believes that the Transactions were inadvertent and resulted in the IRAs paying no more than the market price with respect to the Bond Purchase Transactions and the Stock Purchase Transactions, and receiving at least the market price with respect to the Bond Sale Transactions and the Stock Sale Transaction, because the Transactions were conducted using trading systems and procedures designed to result in trades being conducted at prices that are as favorable as possible to the IRAs under prevailing market conditions and were in fact conducted at prices not less favorable to the IRAs than the prices the FAs could have obtained for the IRAs by conducting the trades in arm's-length transactions with third-party market participants.

13. 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.

14. 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; has put procedures in place to ensure that no similar Transactions occur in the future; and has obtained an opinion from an independent fiduciary, Evercore Trust Company, confirming that the methods utilized to correct the Transactions and Transaction Compensation were sufficient to return each affected IRA to at least the position that it would have been in had the Transactions and Transaction Compensation not occurred, and that the correction methods were properly applied to the Transactions and Transaction Compensation based on a review of a representative sample of the corrections, selected at random by the independent fiduciary; (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 conducted at prices no less favorable to the IRAs than prices the IRAs could have paid or received in arm's-length transactions with third party market participants, that have already been effectively unwound pursuant to the requirements set forth in the VFC Program.

15. 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 Applicant obtained an opinion from an independent fiduciary, Evercore Trust Company, confirming that the methods utilized to correct the Transactions and Transaction Compensation were sufficient to return each affected IRA to at least the position that it would have been in had the Transactions and Transaction Compensation not occurred, and that the correction methods were properly applied to the Transactions and Transaction Compensation based on a review of a representative sample of the corrections, selected at random by the independent fiduciary; (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.)

Central Pacific Bank 401(k) Retirement and Savings Plan (the Plan), Located in Honolulu, HI

[Application No. D–11666]

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).

Section I: Transactions

If the proposed exemption is granted, effective for the period beginning April 11, 2011 and ending May 6, 2011, the restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and 4975(c)(1)(E) of the Code,[4] shall not apply:

(a) To the acquisition of certain subscription right(s) (the Right or Rights) by the individually-directed account(s) (the Account or Accounts) of certain participant(s) in the Plan in connection with an offering (the Offering) of shares of common stock (the Stock) of Central Pacific Financial Corporation (CPFC) by CPFC, a party in interest with respect to the Plan; and

(b) To the holding of the Rights received by the Accounts during the subscription period of the Offering; provided that the conditions, as set forth in Section II of this proposed exemption were satisfied for the duration of the acquisition and holding.

Section II: Conditions

The relief provided in this proposed exemption is conditioned upon adherence to the material facts and representations described, herein, and as set forth in the application file, and upon compliance with the conditions, as set forth in this proposed exemption.

(a) The receipt of the Rights by the Accounts occurred in connection with the Offering, and the Rights were made available by CPFC to all shareholders of the Stock of CPFC, including the Accounts;

(b) The acquisition of the Rights by the Accounts resulted from an independent corporate act of CPFC;

(c) Each shareholder of the Stock, including each of the Accounts, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of Stock held by each such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investment of the Accounts by the individual participants in the Plan, all or a portion of whose Accounts in the Plan held the Stock (the Invested Participant(s));

(e) The decision with regard to the holding and disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights;

(f) If any of the Invested Participants failed to give instructions as to the exercise of the Rights received in the Offering, such Rights were sold in blind transactions on the New York Stock Exchange (NYSE) and the proceeds from such sales were distributed *pro-rata* to the Accounts in the Plan of such Invested Participants;

(g) No brokerage fees, no commissions, and no fees or expenses

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

were paid by the Plan or by the Accounts to any related broker in connection with the sale of any of the Rights or in connection with the exercise of any of the Rights, and no brokerage fees, no commissions, no subscription fees, and no other charges were paid by the Plan or by the Accounts with respect to the acquisition and holding of the Stock; and

(h) Based on the difference ($1.13) between the average proceeds per Right ($6.05) received by other holders who sold Rights during the Offering and the average proceeds per Right ($4.92) received by Invested Participants whose Accounts sold Rights, between April 26, 2011 and May 3, 2011, CPFC will make a corrective payment to the Plan in the amount of $30,618.48 ($1.13 x 27,096 Rights sold), plus a lost earnings component on such amount, calculated at a 2.83% annual rate of interest for the period from May 6, 2011 to the date of the grant of this proposed exemption, and will distribute such corrective payment, and the lost earnings component, *pro rata* to the Accounts of each of the 186 Invested Participants whose Accounts in the Plan sold the 27,096 Rights.

Effective Date: This proposed exemption, if granted, will be effective for the period beginning on April 11, 2011, the commencement date of the Offering, and ending on May 6, 2011, the close of the Offering.

Summary of Facts and Representations

1. The Plan is a defined contribution 401(k) retirement saving plan which provides for a cash and deferred arrangement. The Plan was adopted, effective as of November 1, 1985.[5] The Plan obtained its latest determination letter from the Internal Revenue Service (the IRS) in 2002. Although the Plan has been amended since receiving the determination letter from the IRS, the administrator of the Plan and the tax counsel for the Plan believe that the Plan is designed and is currently being operated in compliance with the applicable requirements of the Code.

As of April 11, 2011, there were 1,115 participants in the Plan. The Plan is a participant directed account plan designed and operated to comply with the requirements of section 404(c) of the Act.

The Plan is funded by elective employee contributions, as well as employer matching contributions, and discretionary employer profit sharing contributions in cash to the ESOP. It is represented that no discretionary contributions were made in 2008, 2009, and 2010. The fair market value of the total assets of the Plan, as of April 11, 2011, was $85,827,254. As of August 30, 2012, the fair market value of the Plan's assets was $90,594,733. 2. CPFC is the sponsor of the Plan. CPFC is a bank holding company, incorporated in the State of Hawaii on February 1, 1982, as ''CPB Inc.'' CPFC's principal place of business is Honolulu, Hawaii.

CPFC, a parent company, through its subsidiaries, offers full-service commercial banking throughout the State of Hawaii and offers limited commercial banking services in certain areas of California. CPFC does not employ any persons other than the officers of the Central Pacific Bank (the Bank) and from time to time the support staff of the Bank. It is represented that substantially all of the activities of CPFC are conducted through the Bank.

According to the Form 10–Q, as of March 3, 2012, on a consolidated basis, CPFC and its subsidiaries had total assets of $4,158,288,000, total liabilities of $3,680,848,000, and total stockholders' equity of $477,440,000.

3. The Bank is a wholly-owned subsidiary of CPFC. The Bank is a full-service commercial bank incorporated in the State of Hawaii on March 16, 1982, with 34 branches and 120 ATMs located throughout the State of Hawaii. The Bank also has an office in California. The Bank offers a broad range of products and services, including accepting time and demand deposits, and originating commercial, construction, and consumer loans, and commercial and residential mortgages. All employees of the Bank, its subsidiaries, and certain other affiliated companies are covered by the Plan.

4. Vanguard Fiduciary Trust Company (Vanguard) is the third party administrator, the trustee, and the custodian of the Plan. Vanguard, as trustee, has the responsibility of investing, holding, collecting, distributing, and accounting for the assets of the Plan in the trust.

5. The Plan is administered by a committee (the Committee), which is composed of certain appointed employees of the Bank. The Committee has the responsibility of selecting the investment options of the trust into which the participants of the Plan can direct their contributions.

6. Participants in the Plan are permitted to self-direct the investments in their Accounts based on certain options held under the Plan. Among the investment options offered to participants are various types of securities, including shares of the Stock held in the CPFC stock fund (the Stock Fund). Investment in the Stock Fund by the Accounts of participants in the Plan is entirely voluntary. It is represented that neither CPFC nor its subsidiaries contribute any capital Stock to the Plan. Instead all employer contributions are made in cash, and the Stock is acquired by the Accounts in the Plan only as a result of participant-directed investment decisions.

The Plan provides that participants are entitled to direct the voting of the Stock held in their Accounts in the Plan. Vanguard, as trustee, has the responsibility of carrying out such directions. As of December 31, 2009, and December 31, 2010, respectively, the Plan investments included 938,180 shares and 893,122 shares of the Stock held in the Stock Fund.

7. The Stock of CPFC is publicly-traded on the NYSE under the symbol ''CPF.'' The Stock has no par value. It is represented that the Stock is the same class of shares available to other investors. The Stock is a ''qualifying employer security,'' as defined under section 407(d)(5) of the Act and 4975(e) of the Code.

Background

8. On February 2, 2011, CPFC effected a one-for-twenty reverse stock split (the Reverse Stock Split) of the outstanding shares of Stock. As a result of the Reverse Stock Split, the outstanding shares of Stock decreased from 30,539,999 shares to 1,528,935 shares.

As part of its recapitalization plan to raise $325 million from accredited investors in a private placement (the Private Placement), CPFC, on February 18, 2011, entered into subscription agreements with affiliates of the Carlyle Group and the Anchorage Capital Group, LLC and with various other investors. In this regard, CPFC sold 32,500,000 shares of Stock at a price of $10 per share.

On the same day, February 18, 2011, CPFC entered into an exchange agreement (the Exchange Agreement) with the United States Department of the Treasury (Treasury), pursuant to which the Treasury agreed, subject to the terms and conditions in the Exchange Agreement, to exchange 135,000 shares of CPFC's preferred stock designated as Fixed Rate Cumulative Preferred Stock, having a liquidation amount of $1,000 per share, held by the Treasury and accrued and unpaid dividends thereon for 5,620,117 shares of CPFC's Stock, and amended a warrant held by the Treasury to reduce the

[5] Effective July 1, 2003, December 31, 2004, December 31, 2006, and July 26, 2007, respectively, the Central Pacific Bank Employee Stock Ownership Plan, the CB Bancshares, Inc. Profit Sharing Retirement Saving Plan, the CB Bancshares, Inc. ESOP, and the Hawaii HomeLoans, Inc. 401(k) Retirement Savings Plan were merged into the Plan.

number of shares of Stock issuable upon exercise of the warrant from 1,585,748 to 79,288 (the TARP Exchange).

Following the closing of the Private Placement and the TARP Exchange, CPFC had 39,649,052 shares of Stock outstanding, as of April 11, 2011. CPFC commenced the Offering whereby shareholders of record, as of 5 p.m. EST on the February 17, 2011 (the Record Date), would receive the Rights. CPFC represents that it conducted the Offering, because it wanted to provide existing shareholders and other investors, including the Accounts of Invested Participants in the Plan, who could not participate in the Private Placement, with the opportunity to purchase the Stock at the same price per share paid by the investors in the Private Placement.

9. The Offering commenced on April 11, 2011, and closed on May 6, 2011. It is represented that 2,000,000 shares of Stock were subscribed for by all shareholders. In this regard, the Offering was fully subscribed. There were valid exercises to purchase an aggregate of 1,325,230 shares, pursuant to directions from holders of the basic Rights. The remaining 674,770 shares available to be issued in the Offering were allocated *pro rata* among the holders entitled to exercise the over-subscription privilege. It is represented that the exercise of the Rights resulted in gross proceeds for CPFC of $20,000,000.

10. At the close of business on April 11, 2011, the date of the Offering, the Stock was trading on the NYSE at $19.43 per share. The closing price of the Stock on the ending date of the Offering on May 6, 2011, was $13.70.

11. Under the terms of the Offering, all shareholders of the Stock, including the Accounts of Invested Participants in the Plan, automatically received the Rights, at no charge. Each of the Rights entitled the shareholders of the Stock, including the Accounts of Invested Participants in the Plan, to purchase, through the exercise of such Rights, the Stock issued by CPFC in connection with the Offering. With respect to the Rights, under the terms of the Offering, one (1) Right was issued for each whole share of the Stock held by each shareholder, including the Accounts of Invested Participants in the Plan, on the Record Date.

12. The Rights entitled the holders thereof to a basic right to subscribe for their *pro rata* share of $20 million dollars' worth of Stock issued by CPFC, as well as an over-subscription privilege to subscribe for additional shares of Stock, subject to certain limitations and allocation procedures, up to the number of shares of Stock that were not subscribed for by the other holders of the Rights, pursuant to their basic Rights.

However, the over-subscription privilege was conditioned on each shareholder first exercising their basic Rights in full. Because the Accounts of Invested Participants in the Plan did not exercise all of their basic Rights in full and, because, as a practical matter it was unlikely that all of the Accounts of Invested Participants in the Plan would do so, given the number of Invested Participants in the Plan whose Accounts held the Stock, the over-subscription privilege was not available to Rights attributable to the Accounts of Invested Participants in the Plan.

13. All shareholders of the Stock, including the Accounts of Invested Participants in the Plan, held the Rights until such Rights were exercised, or such Rights were sold. With regard to the exercise of the Rights, it is represented that the Rights could only be exercised in whole numbers. Upon exercise, each of the Rights permitted a shareholder of the Stock, including each of the Accounts of Invested Participants in the Plan, to purchase 1.3081 shares of Stock at a subscription price of $10.00 per share (such amount is represented to take into account the Reverse Stock Split that occurred on February 2, 2011). Fractional shares of Stock resulting from the exercise of basic Rights on an aggregate basis as to any holder of such Rights, including the Accounts of Invested Participants in the Plan, were rounded down to the nearest whole number.

A shareholder, including each of the Accounts of Invested Participants in the Plan, had the right to choose to exercise some, all, or none of its Rights. The election to exercise, some, all or none of its Rights had to be received by 5 p.m. EST on April 29, 2011, by the tabulation agent, Wells Fargo Bank, NA Shareowner Services (WFSS), in order to allow sufficient processing time. The election to exercise any of the Rights was irrevocable.

14. With regard to the sale of the Rights, it is represented that the Rights were transferable. Further, it is represented that the Rights were traded on the NYSE. Any Rights that were not exercised either as a result of a partial exercise or as a result of insufficient assets in an Account to cover an exercise (excluding the assets in the Stock Fund), or as a result of a failure to timely return the election form were automatically sold on the NYSE to unrelated third parties by Vanguard, as trustee, acting on behalf of each such Account. The proceeds from such sale were credited *pro rata* to the Plan Accounts of Invested Participants.

15. The Invested Participants were notified of the issuance of the Rights in a news release, in a posting on the CPFC's Web site, and in various letters and email communications from CPFC during the month of April 2011. In addition, each of the Invested Participants was also provided detailed information regarding the Rights Offering, including a copy of the prospectus which described the Offering, a document providing frequently asked questions and answers regarding the Offering, an election form, a return envelope addressed to WFSS, the tabulating agent, and a statement indicating the number of shares of Stock each such Invested Participant held in his/her Account in the Plan, as of the Record Date.

16. In order to exercise some or all of the Rights, an Invested Participant [6] had to complete an election form and to submit such election form to WFSS by the close of business on the fifth (5th) business day (April 29, 2011, at 5 p.m. EST), prior to the expiration of the Offering on May 6, 2011.[7]

Each Invested Participant who submitted an election form was required to indicate on such election form a sufficient amount of current investments in the Account of such Invested Participant in the Plan (other than the assets in the Stock Fund) to be liquidated on a pro-rated basis to cover the purchase of Stock in connection with the exercise of the Rights. The pro-rated funds were segregated from the other investments within the Invested Participant's Account into a separate holding fund (the Rights Fund) at Vanguard which was established in anticipation of the Offering. Vanguard placed the order to purchase the Stock with the subscription agent, Wells Fargo Bank, N.A. (Wells Fargo Bank), a registered broker-dealer that is unrelated

[6] It is represented that the Accounts of the Invested Participants in the Plan rely on the relief provide by the statutory exemption, pursuant to section 408(e) of the Act for the exercise of the Rights.

The Department is offering no view, as to whether the requirements of the statutory exemption provided in section 408(e) of the Act have been satisfied. Further, the Department, herein, is not providing any relief with respect to the exercise of the Rights.

[7] It is represented that the extra five (5) business days were required to provide sufficient time to process all such elections by the Accounts of Invested Participants in the Plan to exercise their Rights, tabulate and confirm the results, liquidate each such Invested Participant's funds, confirm the orders and the availability of such funds, and remit payment to purchase the shares. It is represented that non-Plan shareholders were also required to submit their election forms five (5) days prior to the expiration of the Offering.

to CPFC and the Plan. It is represented that the Rights Fund was liquidated, and cash equal to the necessary subscription payment was transferred to the Wells Fargo Bank. Following the closing of the Offering, the purchased shares of Stock were then converted back to the equivalent number of units of the Plan's Stock Fund and credited to the Account of the Invested Participant.

17. As of the Record Date, February 17, 2011, 287 Accounts of Invested Participants in the Plan held the Stock. As of the Record Date, the approximate percentage of the fair market value of the total assets of the Plan invested in the Stock was two percent (2%). Also, as of the Record Date, the shares of Stock held in the Accounts of Invested Participants in the Plan constituted approximately three percent (3%) of the shares of Stock outstanding.

18. It is represented that based on the ratio of one (1) Right for each share of Stock held by the Accounts of Invested Participants, the Plan acquired 46,327 Rights as a result of the Offering. Of the Rights received by the Plan on behalf of Accounts of the Invested Participants, all such Rights were either exercised or sold. None of the Rights expired.

Of the 46,327 Rights received by the Accounts of Invested Participants as a result of the Offering, it is represented that 19,231 Rights held by 102 Accounts of Invested Participants in the Plan were exercised for Stock. It is represented that on May 19, 2011, the Accounts of the Invested Participants in the Plan received the Stock purchased as a result of the exercise of the Rights. It is further represented that the Stock purchased in connection with the Offering was eligible for trading on NYSE by the Accounts of the Invested Participants in the Plan on May 19, 2011.

Unlike the other holders of the Rights, the Invested Participants whose Accounts in the Plan received the Rights were not permitted to sell the Rights throughout the period April 11–25, 2012, due to Plan administrative constraints. However, of the 46,327 Rights received by the Accounts of Invested Participants as a result of the Offering, it is represented that over the period from April 26, 2011 to May 3, 2011, the Invested Participants of 186 Accounts sold 27,096 Rights on the NYSE. On May 9, 2011, the Accounts of those Invested Participants received the proceeds from the sales of such Rights totaling $133,339.44.

Based on the difference ($1.13) between the average proceeds per Right ($6.05) received by other holders who sold Rights during the Offering and the average proceeds per Right ($4.92) received by Invested Participants whose Accounts sold Rights, between April 26, 2011 and May 3, 2011, CPFC will make a corrective payment to the Plan in the amount of $30,618.48 ($1.13 × 27,096 Rights sold). Further, CPFC proposes to include a lost earnings component on the amount of the corrective payment calculated at a 2.83% annual rate of interest for the period from May 6, 2011, to the date of the grant of this proposed exemption. It is represented that the interest rate on the lost earnings component was calculated taking the greater of the weighted average return for all investment funds available under the Plan and the average return for the Retirement Savings Trust (the stable value fund under the Plan in which the proceeds from the sale of the Rights were distributed). CPFC will distribute such corrective contribution, plus the lost earnings component, *pro rata* to each of the 186 Invested Participants whose Accounts in the Plan sold Rights.

19. No brokerage fees, no commissions, no subscription fees, and no other charges were paid by the Plan or by any of the Accounts of Invested Participants in the Plan with respect to the acquisition and holding of the Stock and no brokerage fees, no commissions, and no fees or expenses were paid by the Plan or by any of the Accounts of Invested Participants in the Plan to any related broker in connection with the sale of the Rights or in connection with the exercise of the Rights.

Requested Relief

20. The application was filed on behalf of CPFC. In this regard, CPFC has requested an exemption: (a) For the acquisition of the Rights by the Accounts of the Invested Participants in the Plan in connection with the Offering of Rights by CPFC; and (b) for the holding of the Rights by the Accounts of the Invested Participants in the Plan during the subscription period of the Offering.

It is represented that the Rights acquired by the Accounts of Invested Participants in the Plan satisfy the definition of ''employer securities,'' pursuant to section 407(d)(1) of the Act. However, as the Rights were not stock or a marketable obligation, such Rights do not meet the definition of ''qualifying employer securities,'' as set forth in section 407(d)(5) of the Act. Accordingly, the subject transactions constitute an acquisition and holding on behalf of the Accounts of Invested Participants in the Plan, of employer securities which are not qualifying employer securities, in violation of section 407(a) of the Act, for which CPFC has requested relief from sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act. CPFC has also requested relief from the prohibitions of section 406(b)(1) and 406(b)(2) of the Act.

21. It is represented that the subject transactions have already been consummated. In this regard, the Accounts of Invested Participants in the Plan acquired the Rights pursuant to the Offering on April 11, 2011, and held such Rights pending the closing of the Offering on May 6, 2011, when such Rights either were exercised or sold. As there was insufficient time between the dates when the Accounts of Invested Participants in the Plan acquired the Rights and when such Rights were exercised or sold, to apply for and be granted an exemption, CPFC is seeking a retroactive exemption to be granted, effective from April 11, 2011, the date that the Accounts of Invested Participants in the Plan acquired the Rights, to May 6, 2011, the closing date of the Offering.

22. CPFC represents that the proposed exemption is administratively feasible. In this regard, the acquisition and holding of the Rights by the Accounts of Invested Participants in the Plan were one-time transactions that involved an automatic distribution of the Rights to all shareholders. It is represented that it is customary for corporations to make a rights offering available to all shareholders.

23. CPFC represents that the transactions which are the subject of this proposed exemption are in the interest of the Accounts of Invested Participants in the Plan, because the subject transactions represented a valuable opportunity to such Accounts to buy the Stock at a discount or to sell the Rights. It is represented that this discount could be realized by the Accounts of Invested Participants in the Plan by selling the Stock immediately after the exercise of the Rights and investing the proceeds from such sale of the Stock in other investment options under the Plan.

24. CPFC represents that the proposed exemption provides sufficient safeguards for the protection of the Accounts of Invested Participants in the Plan and the beneficiaries of such Accounts. In this regard, participation in the Offering protected the Accounts of the Invested Participants in the Plan from having their interests in CPFC diluted as a result of the Offering.

It is further represented that the interests of the Accounts of Invested Participants in the Plan were adequately protected in that such Accounts acquired and held the Rights automatically as a result of the Offering. In addition, CPFC made the Rights available on the same terms to all shareholders of the Stock, including the Accounts. In this regard, each shareholder of the Stock, including each of the Accounts, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of Stock held by such shareholder.

The Accounts of Invested Participants in the Plan were protected against economic loss by exercising the Rights or by selling the Rights. It is represented that the closing price of the Stock on May 6, 2011, was $13.70 per share which was in excess of the strike price of $10.00 per share.

25. In summary, CPFC represents that the subject transactions satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The receipt of the Rights by the Accounts occurred in connection with the Offering, and the Rights were made available by CPFC to all shareholders of the Stock of CPFC, including the Accounts;

(b) The acquisition of the Rights by the Accounts resulted from an independent corporate act of CPFC;

(c) Each shareholder of the Stock, including each of the Accounts, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of Stock held by such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investment of the Accounts by the Invested Participants, all or a portion of whose Accounts in the Plan held the Stock;

(e) The decision with regard to the holding and disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights;

(f) If any of the Invested Participants failed to give instructions as to the exercise of the Rights received in the Offering, such Rights were sold in blind transactions on the NYSE and the proceeds from such sales were distributed *pro-rata* to the Accounts in the Plan of such Invested Participants;

(g) No brokerage fees, no commissions, and no fees or expenses were paid by the Plan or by the Accounts to any related broker in connection with the sale of any of the Rights or in connection with the exercise of any of the Rights, and no brokerage fees, no commissions, no subscription fees, and no other charges were paid by the Plan or by the Accounts with respect to the acquisition and holding of the Stock; and

(h) Based on the difference ($1.13) between the average proceeds per Right ($6.05) received by other holders who sold Rights during the Offering and the average proceeds per Right ($4.92) received by Invested Participants whose Accounts sold Rights, between April 26, 2011 and May 3, 2011, CPFC will make a corrective payment to the Plan in the amount of $30,618.48 ($1.13 × 27,096 Rights sold), plus a lost earnings component on such amount calculated at a 2.83% annual rate of interest for the period from May 6, 2011 to the date of the grant of this proposed exemption, and will distribute such corrective payment, and the lost earnings component, *pro rata* to the Accounts of each of the 186 Invested Participants whose Accounts in the Plan sold Rights.

Notice to Interested Persons

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include all Invested Participants whose Accounts in the Plan were invested in the Stock at the time of the Offering.

It is represented that all such interested persons will be notified of the publication of the Notice by first class mail, to each such interested person's last known address within fifteen (15) days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(a)(2), which will advise all interested persons of their right to comment and to request a hearing. All written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

All comments will be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8551. (This is not a toll-free number.)

Studley, Inc. Section 401(k) Profit Sharing Plan (the Plan), Located in New York, NY

[Application No. D–11672]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b) 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), (E) and (F) of the Code, shall not apply to the sale (the Sale) of an 8.828121% partnership interest (the Interest) in the Julien J. Studley N Street Partnership, a general partnership (the JJS Partnership), by the Plan to Studley, Inc. (the Employer), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

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

(b) The terms and conditions of the Sale are at least as favorable to the Plan as those that the Plan could obtain in an arm's length transaction with an unrelated third party;

(c) The Interest is sold for $900,000;

(d) The Sale is consummated within two weeks after the date a final exemption regarding the Sale is published in the **Federal Register**;

(e) If, (1) within seven years of the date of the Sale of the Interest to the Employer, (i) the Employer sells the Interest, (ii) JJS Partnership sells its interest in N19 Associates LLC (N19 Associates), or (iii) N19 Associates sells its building on N Street, Washington, DC, and (2) the net amount realized by the Employer in respect of the Interest upon and by reason of such sale, exceeds the sum of (i) the $900,000 price paid for the Interest, and (ii) any capital contributed by the Employer to the JJS Partnership in respect of the Interest after the date of the Sale and any other funds paid or advanced by the Employer to, or on behalf of, the JJS Partnership in respect of the Interest after the date of the Sale, the Employer will contribute such excess amount to the Plan within two weeks of its receipt by the Employer;

(f) The Plan pays no commissions, fees, or other expenses in connection with the Sale; and

(g) The Plan has not waived or released and does not waive or release any claims, demands, and/or causes of action that the Plan may have against the Employer or the Plan fiduciaries in connection with the acquisition and holding of the Interest or Sale of the Interest to the Employer.

Summary of Facts and Representations

1. The Studley, Inc. Section 401(k) Profit Sharing Plan (the Plan) is sponsored by Studley, Inc. (the Employer or the Applicant), located in New York, New York. Julien Studley (Mr. Studley) was the founder of the Employer. Pursuant to a buyout, all of his shares in the Employer not held in an employee benefit plan were purchased on December 12, 2002, by the Employer, at which time Mr. Studley resigned as a voting member from the Employer's Board of Directors. He remained a non-voting member until June 2004. Since then, Mr. Studley has not held any position with, or interest in, the Employer (other than shares held in employee benefit plans). The Employer is in the business of providing commercial real estate advisory, brokerage and related services.

The Plan had 61 participants and beneficiaries, as of November 14, 2011. Based on the most recently available audited financial statements, the total value of the Plan's assets was $26,830,211, as of December 31, 2010. The Plan's trustee is T. Rowe Price Trust Company. The trust agreement indicates that the trustee takes direction from the named fiduciary (the Named Fiduciary), which is the Employer. The Plan has a non-participant directed profit sharing component in which it holds real estate investments, as well as a 401(k) component which is participant directed.

2. Among the assets of the Plan is an 8.828121% interest (the Interest) in the Julien J. Studley N Street Partnership (JJS Partnership), a general partnership in which the Employer and the Plan are both general partners. The Applicant represents that there are currently eight other members in the JJS Partnership in addition to the Employer and the Plan. No other employee benefit plans are members of the JJS Partnership.

The managing partners of the JJS Partnership are Mr. Studley and Mr. Peter Speier, and neither the Plan nor the Employer has management responsibilities. The JJS Partnership was formed and capitalized on or about December 28, 1976. The Applicant represents that the Interest was acquired by the Plan in 1982 for $45,000 and is held under an ancillary trust agreement (the Ancillary Trust Agreement), with Mitchell Steir and Michael Colacino as trustees.[8] Mr. Steir is the Chairman of the Board and Chief Executive Officer of the Employer while Mr. Colacino is the President of the Employer. Under the Ancillary Trust Agreement, the trustees are subject to the direction of the Employer, as Named Fiduciary, with respect to the investment and disposition of the trust fund assets.

3. The Applicant represents that the JJS Partnership was formed for the purpose of holding an interest in an entity known as N19 Associates. The JJS Partnership holds a 32% interest in N19 Associates, which owns a building on N Street in Washington, DC (the Building). The Plan's effective interest in the Building is 2.825%, which is 8.828121% of 32%.

4. The NYRO opened an investigation of the Plan and found that the Plan's interest in the JJS Partnership is an illiquid and hard-to-value asset.[9] The Plan has been unable, in at least two instances, to make requested distributions to Plan participants because of the Plan's investment in the Interest. In addition, certain recent annual reports (Forms 5500) filed for the Plan have not reflected a current valuation for the Interest.[10] The NYRO and the Applicant agreed that the Plan should liquidate its investment in the JJS Partnership in order to be able to make the distributions to eligible participants. Because the Interest is an illiquid asset, Studley is requesting an exemption that, if granted, would permit Studley to purchase the Interest from the Plan.

5. The Applicant represents that N19 Associates is controlled by Melvin and Edward Lenkin, who are not affiliated with the Employer or the JJS Partnership. The JJS Partnership has commenced litigation against the Lenkins based, in part, upon their refusal to provide current information regarding the Building. Due to the disagreement among the parties, the Applicant represents, among other things, that JJS Partnership has been unable to obtain and provide to the Plan the information that would enable the Plan to obtain a current appraisal of the Interest by an independent appraiser. The most recently available independent appraisal assigns the Interest a value of $670,000, as of November 3, 2006, which reflects a 25% minority discount by reason of the Plan's holding a minority, non-controlling interest. This was the value for the Interest used in the Plan's audited financial statements as of December 31, 2010.

6. The Applicant represents that the most recent expression of interest from an unrelated party [i.e., Goldstar Real Estate Fund II, LP (Goldstar)] in purchasing the Building received by the JJS Partnership on August 2, 2010 was $45 million. However, the potential sale of the Building to Goldstar could not be consummated in the absence of a current independent appraisal of the Building, which is currently not obtainable due to the lack of cooperation among the parties, as described in Representation 5, above. Therefore, the Employer proposes to purchase the Interest from the Plan for $900,000 on the following basis: After deducting N19 Associates' mortgage and other liabilities and expenses associated with the sale, a $45 million purchase price for the Building would result in $900,000 of net proceeds to the Plan in respect of the Interest. It is represented that this price is very favorable to the Plan because it does not reflect any discount for the fact that the JJS Partnership and the Plan hold only minority, non-controlling interests, and the discounting of minority, non-controlling interests is a recognized principle of valuation.[11] Assuming a sale (the Sale) of the Interest for $900,000, the Applicant represents that the Plan will achieve an average annual rate of return of approximately 11.5% per annum, based on Plan records of cash amounts received or paid by the Plan during the term of this investment (except for two years [12] for which no records are available). This calculation includes capital calls paid by the Plan.

The Applicant represents that according to its available records, the Plan has received approximately $167,690 in cash distributions from the JJS Partnership during the time it has

[8] Pursuant to the Ancillary Trust Agreement, a separate trust was established to hold the Plan's real estate investments. As part of its investigation (see Representation 4, below), the Department's New York Regional Office (NYRO) inquired whether the Plan's acquisition of the Interest was a purchase or a contribution by the Employer. The Plan's records are incomplete on this matter.

[9] The reasons for these characterizations are discussed in Representation 5, below.

[10] The Internal Revenue Service (the IRS) examined the Plan and determined that prohibited transactions had been entered into involving loans to the Plan from the Employer for the years 2002 through 2006. The prohibited transactions were corrected on December 22, 2006 and the Employer filed Forms 5330 for the years 2002 through 2006 and paid the resulting excise taxes.

[11] This representation was made by the Applicant to both the Department's Office of Exemption Determinations and the NYRO.

[12] Although no records are available for the years 1982 and 2001, the NYRO reviewed the available pertinent records and concluded that the Sale, based upon the terms described herein, would enable the NYRO to close its investigation.

held the Interest.[13] Specifically, according to the Applicant, the Plan has historically received a portion of the rental income generated by the Building. However, this source of revenue has been retained pending completion of the litigation described above. The Applicant requests that the scope of relief contained in this proposed exemption include relief from section 406(b)(3) of ERISA (as well as section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of ERISA) since the Employer may receive from the Partnership, subsequent to the Sale, the Plan's current share of the undistributed revenue. According to the Applicant, such amount is not currently quantifiable due to the litigation and other factors that are outside of the control of Studley. The Applicant stresses that it is in the best interests of the Plan to consummate the Sale as soon as possible in order to provide liquidity to the Plan, rather than to delay the date of the Sale until after the litigation is resolved. The Applicant reiterates that the amount of the Sale represents the best price the Plan may be expected to receive for the Interest.

7. In addition, the Employer has included in the terms of the proposed Sale a ''true-up'' provision that the Employer will contribute an additional amount to the Plan if (a) within seven years of the date of the Sale of the Interest to the Employer, (i) the Employer sells the Interest, (ii) JJS Partnership sells its interest in N19 Associates, or (iii) N19 Associates sells the Building, and (b) the net amount realized by the Employer in respect of the Interest upon and by reason of such Sale, exceeds the sum of (i) the $900,000 price paid for the Interest, and (ii) any capital contributed by the Employer to the JJS Partnership in respect of the Interest after the date of the Sale and any other funds paid or advanced by the Employer to, or on behalf of, the JJS Partnership in respect of the Interest after the date of the Sale. The Employer will contribute such excess amount to the Plan within two weeks of its receipt by the Employer. Such contribution will be allocated to the Plan accounts of participants who were invested in the Interest at the time of the Sale.[14] The Applicant also represents that if, within seven years of the date of the Sale of the Interest by the Plan to the Employer, the Employer, in its sole discretion, elects to fund any capital call in respect of its own interest (that it owned prior to the subject Sale) in the JJS Partnership, then, and only then, will the Employer be obligated to the Plan to fund such capital call in respect of the Interest.

8. The Applicant represents that the requested exemption for the Sale of the Plan's Interest to the Employer is in the interest of the Plan because it will enable the participants and beneficiaries to realize the value of the Interest and receive requested distributions in respect of their investment therein. The Applicant also represents that the requested exemption is also protective of the rights of the participants and beneficiaries of the Plan because the Sale price reflects the best information available to the Employer of the Interest's current fair market value, with no discount taken for a minority, non-controlling interest. Moreover, according to the Applicant, the ''true-up'' provision gives the participants and beneficiaries of the Plan protection against a down market and allows their full participation in any up market for the next seven years.

The Applicant also represents that the Sale of the Interest will be a one-time transaction for cash, and the Plan will incur no fees, commissions, or other expenses in connection with the Sale. Further, the Employer will bear the costs of the exemption application and notification of interested persons.

9. In consideration of the following conditions, the Department has tentatively determined that the Sale will satisfy the statutory criteria for an exemption under section 408(a) of the Act: (a) The Sale will be a one-time transaction for cash; (b) the terms and conditions of the Sale will be at least as favorable to the Plan as those that the Plan could obtain in an arm's length transaction with an unrelated third party; (c) the Interest will be sold for $900,000; (d) the Sale will be consummated within two weeks after the date a final exemption regarding the Sale is published in the **Federal Register**; (e) If, (1) within seven years of the date of the Sale of the Interest to the Employer, (i) the Employer sells the Interest, (ii) JJS Partnership sells its interest in N19 Associates LLC (N19 Associates), or (iii) N19 Associates sells its building on N Street, Washington, DC, and (2) the net amount realized by the Employer in respect of the Interest upon and by reason of such sale, exceeds the sum of (i) the $900,000 price paid for the Interest, and (ii) any capital contributed by the Employer to the JJS Partnership in respect of the Interest after the date of the Sale and any other funds paid or advanced by the Employer to, or on behalf of, the JJS Partnership in respect of the Interest after the date of the Sale, the Employer will contribute such excess amount to the Plan within two weeks of its receipt by the Employer; (f) the Plan will pay no commissions, fees, or other expenses in connection with the Sale; and (g) the Plan has not waived or released and does not waive or release any claims, demands, and/or causes of action that the Plan may have against the Employer or the Plan fiduciaries in connection with the acquisition and holding of the Interest or Sale of the Interest to the Employer.

Notice to Interested Persons

All comments will be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Mr. Eric A. Raps of the Department, telephone (202) 693–8532. (This is not a toll-free number.)

EquiLend Holdings LLC (EquiLend), Located in New York, New York

[Application No. D–11724]

Proposed Amendment to Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the following amendment to Prohibited Transaction Exemption 2002–30 (67 FR 39069) under the authority of ERISA section 408(a), section 8477(c)(3) of the Federal Employees' Retirement System Act of 1986 (FERSA) and Code section 4975(c)(2), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011), as follows:

Section I. Sale of Equilend Products to Plans

If the proposed exemption is granted, the restrictions of ERISA section 406(a)(1)(A) and (D) and the sanctions resulting from the application of Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) and (D), shall not apply, effective October 1, 2012, to the sale or licensing of certain data and/or analytical tools to a plan by EquiLend, a party in interest with respect to such plan.

[13] The Applicant also represents that the Plan has paid approximately $18,645 in capital calls. Thus, based on the available figures, the Plan has received a net distribution of $149,045.

[14] It is represented that the Plan's recordkeeper T. Rowe Price will determine the affected Plan accounts in connection with both the Sale of the Interest to the Employer and any future additional contribution by the Employer per the true-up provision of the Purchase and Sale Agreement.

This exemption, if granted, would be subject to the following conditions:

(a) The terms of any such sale or licensing are at least as favorable to the plan as the terms generally available in an arm's-length transaction involving an unrelated party;

(b) Any data sold/licensed to the plan will be limited to:

(1) Current and historical data related to transactions, whether or not proposed or occurring on EquiLend's electronic securities lending platform (the Platform) or,

(2) Data derived from current and historical data using statistical or computational techniques; and

(c) Each analytical tool sold/licensed to the plan will be an objective statistical or computational tool designed to permit the evaluation of securities lending activities.

Section II. Use of Platform by Owner Lending Agent/Sale of Equilend Products to Plans Represented by Owner Lending Agent/Provision of Securities Lending Data Involving Plans to Equilend by Owner Lending Agent

If the proposed exemption is granted, the restrictions of ERISA sections 406(a)(1)(A) and (D) and 406(b), FERSA section 8477(c)(2), and the sanctions resulting from the application of Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) and (D) through (F), shall not apply, effective October 1, 2012, to: (1) The participation in the Platform by an equity owner of EquiLend (an Equity Owner), in its capacity as a securities lending agent for a plan (an Owner Lending Agent); (2) the sale or licensing of certain data and/or analytical tools by EquiLend to a plan for which an Equity Owner acts as a securities lending agent; and (3) the provision by an Owner Lending Agent to EquiLend of securities lending data based on off-Platform securities lending transactions conducted by an Owner Lending Agent on behalf of a plan.

This proposed exemption, if granted, would be subject to the following conditions:

(a) In the case of participation in the Platform on behalf of a plan, to the extent an applicable exemption is required, the securities lending transactions conform to the provisions of Prohibited Transaction Class Exemption (PTE) 2006–16 (71 FR 63786 (Oct. 31, 2006)) (or its successor), and/or any applicable individual exemption;

(b) None of the fees imposed by EquiLend for securities lending transactions conducted through the use of the Platform at the direction of an Owner Lending Agent will be charged to a plan;

(c) Each securities lender and securities borrower participating in a securities lending transaction through EquiLend will be notified by EquiLend as to its responsibilities with respect to compliance, as applicable, with ERISA, the Code, and FERSA. This requirement may be met by including such notification in the participation, subscription or other user agreement required to be executed by each participant in EquiLend;

(d) EquiLend will not act as a principal in any securities lending transaction involving plan assets;

(e) Each Owner Lending Agent will provide prior written notice to its plan clients of its intention to participate in EquiLend;

(f)(1) Except as otherwise provided in paragraph (i), the arrangement pursuant to which the Owner Lending Agent utilizes the services of EquiLend on behalf of a plan for securities lending:

(A) Is subject to the prior written authorization of an independent fiduciary (an authorizing fiduciary) as defined in paragraph (b) of Section III). For purposes of subparagraph (f)(1), the requirement that the authorizing fiduciary be independent shall not apply in the case of an Equity Owner Plan;

(B) May be terminated by the authorizing fiduciary, without penalty to the plan, within the lesser of: (i) The time negotiated for such notice of termination by the plan and the Owner Lending Agent, or (ii) five business days. Notwithstanding the foregoing, the requirement for prior written authorization will be deemed satisfied in the case of any plan for which the authorizing fiduciary has previously provided written authorization to the Owner Lending Agent pursuant to PTE 2006–16 (or any predecessor or successor thereto), unless such authorizing fiduciary objects to participation in the Platform in writing to the Owner Lending Agent within 30 days following disclosure of the information described in paragraphs (e) and (g) of this Section to such authorizing fiduciary;

(2) Except as otherwise provided in paragraph (i), each purchase or license of a securities lending-related product from EquiLend on behalf of a plan by an Owner Lending Agent:

(A) Is subject to the prior written authorization of an authorizing fiduciary. For purposes of subparagraph (f)(2), the requirement for prior written authorization shall not apply to any purchase or licensing of an EquiLend securities lending-related product by an Equity Owner Plan if the fee or cost associated with such purchase or licensing is not paid by the Equity Owner Plan; and

(B) May be terminated by the authorizing fiduciary within: (i) The time negotiated for such notice of termination by the plan and the Owner Lending Agent; or (ii) five business days, whichever is lesser, in either case without penalty to the plan, provided that, such authorizing fiduciary shall be deemed to have given the necessary authorization in satisfaction of this subparagraph (f)(2) with respect to each specific product purchased or licensed pursuant thereto unless such authorizing fiduciary objects to the Owner Lending Agent within 15 days after the delivery of information regarding such specific product to the authorizing fiduciary in accordance with paragraph (g) of this exemption; and

(3) Except as otherwise provided in paragraph (i), provision by an Owner Lending Agent to EquiLend of securities lending data based on off-Platform securities lending transactions conducted on behalf of a plan:

(A) Is subject to the prior written authorization of an authorizing fiduciary; and

(B) May be terminated by the authorizing fiduciary with respect to the future provision of data within the lesser of (i) the time negotiated for such notice of termination by the plan and the Owner Lending Agent or (ii) five business days, in either case without penalty to the plan. Notwithstanding the foregoing, the requirement for prior written authorization will be deemed satisfied unless such authorizing fiduciary objects to provision by the Owner Lending Agent to EquiLend of such data in writing to the Owner Lending Agent within 30 days following disclosure of the information described in paragraph (g) of this Section to such authorizing fiduciary.

(g) The authorization(s) described in paragraph (f) of this Section shall not be deemed to have been made unless the Owner Lending Agent has furnished the authorizing fiduciary with any reasonably available information that the Owner Lending Agent reasonably believes to be necessary for the authorizing fiduciary to determine whether such authorization should be made, and any other reasonably available information regarding the matter that the authorizing fiduciary may reasonably request. This includes, but is not limited to: (1) a statement that the Equity Owner, as securities lending agent, has a financial interest in the successful operation of EquiLend, (2) a statement, provided on an annual basis, that the authorizing fiduciary may terminate the arrangement(s) described in (f) above at any time, and (3) a statement that the Owner Lending Agent intends to provide to EquiLend securities lending data based on off-Platform securities lending transactions conducted by the Owner Lending Agent on behalf of the plan;

(h) Any purchase or licensing of data and/or analytical tools with respect to securities lending activities by a plan pursuant to this Section complies with the relevant conditions of Section I and will be authorized in advance by an authorizing fiduciary in accordance with the applicable procedures of paragraphs (f), (g) and (i);

(i) In the case of a pooled separate account maintained by an insurance company qualified to do business in a state or a common or collective trust fund maintained by a bank or trust company supervised by a state or federal agency (Commingled Investment Fund), the requirements of paragraph (f) of this Section shall not apply, provided that—

(1) The information described in paragraph (g) (including information with respect to any material change in the arrangement) of this Section and a description of the operation of the Platform (including a description of the fee structure paid by securities lenders and borrowers), shall be furnished by the Owner Lending Agent to the authorizing fiduciary (described in paragraph (b) of Section III) with respect to each plan whose assets are invested in the account or fund, not less than 30 days prior to implementation of any such arrangement or material change thereto, or, not less than 15 days prior to the purchase or license of any specific securities lending-related product, and, where requested, upon the reasonable request of the authorizing fiduciary. For purposes of this subparagraph, the requirement that the authorizing fiduciary be independent shall not apply in the case of an Equity Owner Plan;

(2) In the event any such authorizing fiduciary notifies the Owner Lending Agent that it objects to participation in the Platform, or to the purchase or license of any EquiLend securities lending-related tool or product, or to the further provision by an Owner Lending Agent to EquiLend of securities lending data based on off-Platform securities lending transactions conducted on behalf of the plan, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the account or fund, without penalty to the plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans. In the case of a plan that elects to withdraw pursuant to the foregoing, such withdrawal shall be effected prior to the implementation of, or material change in, the arrangement or purchase or license, but any existing arrangement need not be discontinued by reason of a plan electing to withdraw; and

(3) In the case of a plan whose assets are proposed to be invested in the pooled account or fund subsequent to the implementation of the arrangements and which has not authorized the arrangements in the manner described in paragraphs (i)(1) and (i)(2), the plan's investment in the account or fund shall be authorized in the manner described in paragraph (f)(1)(A), (f)(2)(A), and (f)(3)(A);

(j) The Equity Owner, together with its affiliates (as defined in Section III(a)), does not own at the time of the execution of a securities lending transaction on behalf of a plan by the Equity Owner (i.e., in its capacity as Owner Lending Agent) through EquiLend or at the time of the purchase, or commencement of licensing, of data and/or analytical tools by the plan, more than 20% of:

(1) If EquiLend is a corporation, including a limited liability company taxable as a corporation, the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of EquiLend, or

(2) If EquiLend is a partnership, including a limited liability company taxable as a partnership, the capital interest or the profits interest of EquiLend;

(k) Any information, authorization, or termination of authorization may be provided by mail or electronically; and

(l) No Equity Owner Plan, as defined in Section III(e), will participate in the Platform, other than through a Commingled Investment Fund in which the aggregate investment of all Equity Owner Plans at the time of the transaction constitutes less than 20% of the total assets of such fund. Notwithstanding the foregoing, this prohibition shall not apply to the participation by an Equity Owner Plan as of the date that the aggregate loan balance of all securities lending transactions entered into through EquiLend by all participants outstanding on such date (excluding transactions entered into on behalf of Equity Owner Plans) is equal to or greater than $10 billion; provided that if such aggregate loan balance is later determined to be less than $10 billion, no additional participation by an Equity Owner Plan (other than through a Commingled Investment Fund) shall occur until such time as the $10 billion threshold amount is again met.

Section III. Definitions

For purposes of this proposed exemption:

(a) An ''affiliate'' of another person means:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in ERISA section 3(15)) of such other person; and

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

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

(b) The term ''authorizing fiduciary'' means, with respect to an Owner Lending Agent, a plan fiduciary who is independent of such Owner Lending Agent. In this regard, an authorizing fiduciary will not be considered independent of an Owner Lending Agent if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Owner Lending Agent; or

(2) Such fiduciary directly or indirectly receives any compensation or other consideration from the Owner Lending Agent or an affiliate for his or her own personal account in connection with any securities lending transaction described herein; provided that Commingled Investment Funds and Equity Owner Plans maintained by such Owner Lending Agent or an affiliate will not be deemed affiliates of such Owner Lending Agent for purposes of this subparagraph (2).

For purposes of Section II, no Equity Owner or any affiliate may be an authorizing fiduciary except in the case of an Equity Owner Plan. Notwithstanding the foregoing, the requirements for consent by an authorizing fiduciary with respect to participation in the Platform, and the annual right of such fiduciary to terminate such participation, shall be deemed met to the extent that the Owner Lending Agent's proposed utilization of the services of EquiLend on behalf of a plan for securities lending has been approved by an order of a United States district court.

(c) The term ''Owner Lending Agent'' means an Equity Owner in its capacity as a fiduciary of a plan acting as securities lending agent in connection with the loan of plan assets that are securities.

(d) The term ''Equity Owner'' means an entity that either directly or through an affiliate owns an equity ownership interest in EquiLend.

(e) The term ''Equity Owner Plan'' means a plan which is established or maintained by an Equity Owner of EquiLend as an employer of employees covered by such plan, or by its affiliate.

(f) The terms ''plan'' means:

(1) An ''employee benefit plan'' within the meaning of ERISA section 3(3), subject to Part 4 of Subtitle B of Title I of ERISA,

(2) A ''plan'' that is within the meaning of Code section 4975(e)(1) and subject to Code section 4975, or

(3) The Federal Thrift Savings Fund.

Effective Date: The proposed exemption would be effective October 1, 2012 with respect to arrangements entered into on or after that date. The provisions of PTE 2002–30 shall continue to apply to arrangements entered into before October 1, 2012.

Summary of Facts and Representations

1. The applicant is EquiLend, a Delaware limited liability company established on May 16, 2001. As of March 15, 2012, the equity owners of EquiLend were as follows: BlackRock, Credit Suisse, JP Morgan Clearing Corp., JP Morgan Chase, Merrill Lynch, Morgan Stanley, State Street, Goldman Sachs, Northern Trust and UBS, or affiliates of the foregoing entities. The applicant represents that, as of March 15, 2012, each equity owner owned 10 percent of EquiLend.

2. The applicant submitted a request that Prohibited Transaction Exemption 2002–30 (67 FR 39069) (PTE 2002–30) be amended. PTE 2002–30 was originally promulgated on June 6, 2002, and it permits: (1) The sale or licensing of certain data and/or analytical tools to an employee benefit plan by EquiLend; (2) participation in the Platform by an equity owner of EquiLend (an Equity Owner), in its capacity as a securities lending agent for the plan (an Owner Lending Agent); and (3) the sale or licensing of certain data and/or analytical tools by EquiLend to a plan for which an Equity Owner acts as an Owner Lending Agent. Unless otherwise noted, the facts and representations of PTE 2002–30, are integrated herein.[15]

3. The applicant represents that, as permitted under Section I of PTE 2002–30, EquiLend currently sells and/or licenses certain data to plans. Consistent with the terms of the individual exemption, this data is: (A) Historical in nature and relates to transactions proposed or occurring on the system; or (B) derived from current and historical data utilizing statistical or computational techniques. In this regard, the applicant notes that Section I(b) of PTE 2002–30 requires that, with respect to the sale or licensing of certain data and/or analytical tools to an employee benefit plan by EquiLend:

> (b) Any data sold/licensed to the plan will be limited to: (1) current and historical data related to transactions proposed or occurring on the Platform or, (2) data derived from current and historical data using statistical or computational techniques.

4. The applicant is seeking to amend Section I(b) of PTE 2002–30, effective October 1, 2012. The applicant notes that Section I(b) of PTE 2002–30 limits the types of data that may be licensed or sold by EquiLend. Specifically, Section I(b) precludes the sale or licensing of data to a plan by Equilend where such data sold/licensed involves the use of current or historical data related to transactions that are proposed or occurring off the Platform. The applicant believes, however, that access to off-Platform securities lending data by plans will further enhance EquiLend's existing client service functionality via the Platform by expanding the information that is available to plans. The applicant states that the addition of additional data to the Platform enhances the ability of a plan to evaluate the performance of lending agents and the returns on lending portfolios.

5. The applicant, therefore, requests that the Department revise Section I(b) of PTE 2002–30 in a manner that would permit, effective October 1, 2012, EquiLend to use, sell or license data relating to transactions occurring off the Platform to plans. If this proposed amendment is granted, Section I(b) of PTE 2002–30 will provide that:

> (b) Any data sold/licensed to the plan will be limited to:
>
> (1) Current and historical data related to transactions, whether or not proposed or occurring on EquiLend's electronic securities lending platform (the Platform) or,
>
> (2) Data derived from current and historical data using statistical or computational techniques.

6. In the applicant's view, affected plans would be adequately protected with respect to the sale and licensing by EquiLend of this off-Platform data. In this regard, the applicant notes that Section I(b) of PTE 2002–30 limits the type of data that may be sold and licensed by EquiLend to current and historical data related to securities lending transactions, or data derived from current and historical data using statistical or computational techniques. Further, the applicant notes that the terms of any sale or licensing of data must be at least as favorable to the plan as the terms generally available in an arm's-length transaction involving an unrelated party. The applicant represents that these limitations/ conditions are sufficient to ensure that plans would be adequately protected to the extent Section I(b) of PTE 2002–30 is revised to include any current and historical data related to transactions proposed occurring off the Platform.[16]

7. The applicant also seeks to amend Section II of PTE 2002–30, effective October 1, 2012. Section II presently permits: (1) Participation in the Platform by an Equity Owner, in its capacity as an Owner Lending Agent; and (2) the sale or licensing of certain data and/or analytical tools by EquiLend to a plan for which an Equity Owner acts as an Owner Lending Agent. The applicant notes that Section II of the individual exemption does not permit the provision by an Owner Lending Agent to EquiLend of securities lending data based on off-Platform securities lending transactions conducted by an Owner Lending Agent on behalf of a plan.

8. However, for the same reasons stated above, the applicant believes that access to off-Platform securities lending data by plans will further enhance EquiLend's existing client service functionality via the Platform by expanding the information that is available to plans. The applicant, therefore, requests that the Department amend PTE 2002–30 to permit, effective October 1, 2012, the provision by an Owner Lending Agent to EquiLend of securities lending data based on off-Platform securities lending transactions conducted by an Owner Lending Agent on behalf of a plan. The applicant notes that, if this proposed amendment is adopted, the three categories of transactions covered by Section II would be: (1) The participation in the Platform by an Equity Owner, in its capacity as an Owner Lending Agent; (2) the sale or licensing of certain data and/

[15] The applicant represents that, to the best of its knowledge, EquiLend has complied with all applicable conditions set forth in PTE 2002–30.

[16] The proposed amended exemption does not provide relief under Section I from ERISA section 406(a)(1)(C) with respect to the use of the Platform on behalf of a plan by a lending fiduciary which is not an Equity Owner. In this regard, the applicant and the lending fiduciaries intend to rely on ERISA section 408(b)(2) to the extent any such relief is necessary.

or analytical tools by EquiLend to a plan for which an Equity Owner acts as a securities lending agent; and (3) the provision by an Owner Lending Agent to EquiLend of securities lending data based on off-Platform securities lending transactions conducted by an Owner Lending Agent on behalf of a plan.

9. The applicant believes that affected plans would be adequately protected with respect to the proposed amendment to Section II. In this regard, a new condition is proposed in Section II that would be applicable to the new category of transactions that would be covered therein. To the extent an Owner Lending Agent provides to EquiLend data based on off-Platform securities lending transactions conducted on behalf of plans, prior to such provision of data, each Owner Lending Agent will disclose to a plan's authorizing fiduciary who is independent of the Owner Lending Agent and EquiLend (other than in case of an Equity Owner Plan) that such Owner Lending Agent intends to provide to EquiLend data based on off-Platform securities lending transactions conducted on behalf the plan. Thereafter, the plan's authorizing fiduciary must consent to provision of such data by the Owner Lending Agent to EquiLend (such authorizing fiduciary will be deemed to have given the required authorization unless such authorizing fiduciary objects in writing to the provision to EquiLend of data based on off-Platform securities lending transactions conducted on behalf of the plan to the Owner Lending Agent within 30 days after disclosure of such information). This authorization may be terminated with respect to the future provision of data by the authorizing fiduciary without penalty to the plan, within the lesser of: (i) The time negotiated for such notice of termination by the plan and the Owner Lending Agent, or (ii) five business days.[17]

[17] The Department notes that ERISA's general standards of fiduciary conduct also would apply. In this regard, ERISA section 404 requires, among other things, a fiduciary to discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, an independent plan fiduciary must act prudently with respect to: (1) The decision to enter into the described arrangement; and (2) the negotiation of the terms of such arrangement including any payment of compensation. The Department further emphasizes that it expects plan fiduciaries, prior to entering into any of the proposed arrangements, to fully understand the extent of the services to be provided, the fee structure and the risks associated with these types of arrangements following disclosure by the service provider of all relevant information. In addition, the Department notes that such plan fiduciaries are responsible for periodically monitoring the services provided.

10. The applicant notes that Section II of PTE 2002–30 contains other conditions that are designed to ensure that plans are adequately protected with respect to this amendment, if adopted. Specifically, conditions (a) through (j) of the individual exemption require that:

(A) In the case of participation in the Platform on behalf of a plan, to the extent applicable the procedures regarding the securities lending activities conform to the provisions of PTE 2006–16 (or its successor), and/or any applicable individual exemption;

(B) None of the fees imposed by EquiLend for securities lending transactions conducted through the use of the Platform at the direction of an Owner Lending Agent will be charged to a plan;

(C) Each securities lender and securities borrower participating in a securities lending transaction through EquiLend will be notified by EquiLend as to its responsibilities with respect to compliance, as applicable, with ERISA, the Code, and FERSA;

(D) Equilend will not act as a principal in any security lending transaction involving plan assets;

(E) Each Equity Owner will provide prior written notice to its plan clients of its intention to participate in EquiLend;

(F) The arrangement pursuant to which the Equity Owner utilizes the services of EquiLend on behalf of a plan:

(1) Is subject to the prior written authorization of an authorizing fiduciary;

(2) May be terminated by the authorizing fiduciary, without penalty to the plan, within the lesser of: (i) The time negotiated for such notice of termination by the plan and the Equity Owner, or (ii) five business days;

(G) With certain limited exceptions, each purchase or license of a securities lending-related product from EquiLend is subject to the prior authorization of an authorizing fiduciary;

(H) The Equity Owner will furnish each authorizing fiduciary with any reasonably available information which the Equity Owner reasonably believes to be necessary to determine whether such authorization should be made or renewed;

(I) The provision by an Owner Lending Agent to EquiLend of data based on off-Platform securities lending transactions conducted on behalf of a plan:

(1) Is subject to the prior authorization of an authorizing fiduciary ;

(2) May be terminated by the authorizing fiduciary with respect to the future provision of data, without penalty to the plan, within the lesser of: (i) The time negotiated for such notice of termination by the plan and the Equity Owner, or (ii) five business days; and

(J) The Equity Owner, together with its affiliates, does not own at the time of the execution of a securities lending transaction on behalf of a plan by the Equity Owner through EquiLend or at the time of the purchase, or commencement of licensing, of data and/or analytical tools by the plan, more than 20% of EquiLend.

11. In summary, the applicant represents that this proposed amendment to PTE 2002–30 satisfies the statutory criteria for an administrative exemption contained in ERISA section 408(a) and Code section 4975(c)(2) because, among other things: (a) The proposed amendment to Section I and Section II of PTE 2002–30 will be administratively feasible and protective of and in the best interests of the plans and their participants and beneficiaries because of the conditions set forth originally and for the same reasons as set forth originally in PTE 2002–30; and (b) the proposed amendment to Section II of PTE 2002–30 will be additionally protective of the rights of participants and beneficiaries because each Owner Lending Agent will disclose to a plan's authorizing fiduciary who is independent of the Owner Lending Agent and EquiLend (other than in case of an Equity Owner Plan) that such Owner Lending Agent intends to provide to EquiLend data based on off-Platform securities lending transactions conducted on behalf a plan. Further, the plan's authorizing fiduciary must consent to the provision of such data by the Owner Lending Agent to EquiLend.

Notice to Interested Parties

The applicant represents that the potentially interested participants and beneficiaries cannot all be identified and therefore the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Brian Shiker of the Department, telephone (202) 693–8552. (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 9th day of November, 2012.

Lyssa E. Hall,

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

[FR Doc. 2012–27849 Filed 11–15–12; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0031]

Standard on 4,4'—Methylenedianiline in Construction; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on 4,4'—Methylenedianiline in Construction (29 CFR 1926.60).

DATES: Comments must be submitted (postmarked, sent, or received) by January 15, 2013.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0031, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2012–0031) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the 4,4'-Methylenedianiline Standard for Construction (the ''MDA Standard'') (29 CFR 1926.60) protect workers from the adverse health effects that may result from their exposure to MDA, including cancer, liver and skin disease. The major paperwork requirements specify that employers must perform initial, periodic, and additional exposure