# FEDERAL REGISTER

Vol. 79 No. 228
Wednesday, November 26, 2014

Part II

## Department of Labor

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions; Notice

## 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–11750, United Association of Journeymen and Apprentices of the Plumbers and Pipefitters Local Union No. 189 Pension Plan; D–11751, The Camco Financial & Subsidiaries Salary Savings Plan; D–11752, Wells Fargo Company; L–11775, Craftsman Independent Union Local #1 Health, Welfare & Hospitalization Trust Fund; D–11782, Robert W. Baird & Co. Incorporated; D–11826, First Security Group, Inc. 401(k) and Employee Stock Ownership Plan; and, D–11827, BNP Paribas, S.A.

**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:* All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, 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.

**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.

#### The United Association of Journeymen and Apprentices of the Plumbers and Pipefitters Local Union No. 189 Pension Plan, as Amended (the Plan) Located in Columbus, Ohio

[Application No. D–11750]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[2] If the exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A), (D) and (E) of the Code, shall not apply to the proposed sale (Sale) of certain improved real property (the Property) by the Plan to Local #189 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (the Union),[3] 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) As consideration, the Plan receives the greater of $2,900,000 or the fair market value of the Property as determined by a qualified, independent appraiser (the Appraiser) in a written appraisal (the Appraisal) of the Property, which is updated on the date of Sale (Sale Date);

(c) The Plan pays no commissions, costs or fees with respect to the Sale;

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

(e) The Sale has been reviewed and approved by a qualified, independent fiduciary (I/F), who, among other things: has reviewed and approved the methodology used by the Appraiser and has ensured that the appraisal methodology was properly applied in determining the fair market value of the Property; and has determined that it is prudent to go forward with the Sale.

#### Summary of Facts and Representations

*The Parties*

1. The Plan, with offices located in Columbus, Ohio, is a multiemployer

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

[3] The Plan and the Union are together referred to herein as ''the Applicants.''

defined benefit plan created as of June 1, 1967, to provide retirement and disability benefits to apprentices and journeymen in the plumbing and pipefitting industry. The Plan is maintained pursuant to a collective bargaining agreement between the Union and the Mechanical Contractors Association of Central Ohio, Inc. (the MCACO), an association of central Ohio contractors formed to promote, among other things, cooperation with state and city inspection departments and develop relations between designers and mechanical engineers.

As of December 31, 2013, the Plan had 1,587 participants and beneficiaries who were either active, terminated with a vested interest, or retired and in pay status. As of the same date, the Plan had total assets of approximately $130,319,233.

2. The Plan is administered by a Board of Trustees (the Board) consisting of eight members, four of whom are elected by the Union members and four of whom are designated by the MCACO. The Trustees are fiduciaries, as defined in section 3(21) of the Act, and therefore are parties in interest with respect to the Plan, pursuant to section 3(14)(A) of the Act. The Plan's current Trustees elected by the Union are Bill Steinhausser (Board Chairman), Michael Kelly, Kenneth Davis, and James C. Green. Mr. Kelly also serves as the Union's Business Manager and Mr. Davis also serves as the Union's Financial Secretary. The Plan's current Trustees designated by the MCACO are Michael Stemen (Board Secretary), Dennis Shuman, Neil Harfield, and Terry Griffith. For purposes of the proposed Sale, Messrs. Kelly and Davis, who currently serve in dual roles as Trustees and Union officials, have recused themselves from all determinations in connection therewith.

The Board employs James A. Wright, the Plan Administrator, to oversee the performance of the routine administrative duties of the Plan. Because the Plan Administrator has discretionary control over a nominal level of Plan assets, he is also a fiduciary under section 3(14)(A) of the Act and a party in interest to the Plan.

3. The Union, which is based in Columbus, Ohio, was chartered in 1899. Members of the Union, except for first-year apprentices, are eligible to participate in the Plan. As an employee organization with members covered by the Plan, the Union is a party in interest with respect to the Plan pursuant to section 3(14)(D) of the Act. The Union represents over 1,500 individuals working in the plumbing and mechanical pipefitting industries within central Ohio.

*The Property*

4. On June 11, 1980, the Plan purchased the Property from Buckeye Telephone, Harold Wirtz and Bob Rice, who were unrelated parties, for $600,000 in cash. The Property consists of approximately 4.868 acres of improved real property located on the north side of Kinnear Road in Clinton Township, Franklin County, Ohio. Although the street address for the Property is 1226 through 1250 Kinnear Road, Columbus, Ohio, the Property is more commonly identified as ''1250 Kinnear Road, Columbus, Ohio.'' The Plan owns no other real property besides the Property.

The Property is improved with a building that was constructed in or about 1951 and remodeled in 1999. The building consists of approximately 37,230 square feet of space. The south and east portions of the building are used as Union offices. The north and west portions of the building have classrooms designed to allow access to training. A large portion of the building is a meeting hall with a stage and a kitchen. There are also some unfinished storage areas.

*Leasing of the Property*

5. On October 30, 1980, the Plan entered into a lease of the Property with the Union (the 1980 Lease) for a 20-year period, effective January 1, 1981. Under the terms of the 1980 Lease, the Union was obligated to: (a) Pay taxes assessed by any governmental taxing authority during the term; (b) maintain insurance on the Property; and (c) maintain the buildings on the Property in good condition at its sole cost and expense. The 1980 Lease was amended several times over the ensuing years. Currently, the Union pays the Plan monthly rent of $10,433.99 or $125,207.89, annually.

According to the Applicants, the Plan and the Union have relied on Prohibited Transaction Exemption (PTE) 76–1, 71 FR 12740 (March 26, 1976, as corrected, 41 FR 16620, April 20, 1976) and PTE 77–10, 42 FR 33918 (July 1, 1977) with respect to the 1980 Lease and the amendments to this lease.[4]

*Plan's Holding Costs and Net Income Related to the Property*

6. For the period from January 31, 1981, to March 31, 2014, the Plan incurred total unaudited expenses of $801,109, in connection with the structural maintenance of the Property, as well as expenses related to that portion of the Property that the Plan retained. Such expenses included $670,005 for repairs and maintenance, $84,187 for property tax and administrative office expenses, and $46,917 for utilities, insurance and other expenses. During this same period, the Plan received total rental income of $2,924,898. Therefore, the Plan's net income for this period is $2,123,789.

*Sale Transaction and Rationale*

7. The Applicants request an individual exemption from the Department that would permit the Plan to sell the Property to the Union. The Applicants represent that the Sale is in the interest of the participants and beneficiaries of the Plan for the following reasons. First, the Sale will be a one-time transaction for cash, which will transfer a non-liquid asset from the Plan. Second, the Plan will receive the greater of $2,900,000 or the fair market value of the Property as determined by an Appraiser, and set forth in an Appraisal of the Property, which will be updated on the Sale Date. Third, the Plan will pay no commissions, costs or fees with respect to the Sale.

Further, as described in more detail below, the Plan does not want to risk a substantial diminution in the value of the Property if it loses the Union as its tenant, so the Plan wishes to sell the Property, at this time, to the Union while the current value of the Property reflects the fact that it is largely occupied.

Following the Sale, the Plan intends to enter into a lease whereby the Union will lease to the Plan the space currently occupied by the Plan.[5] The Applicants represent that the Plan Trustees, who are Union officials, will recuse themselves from any consideration of the proposed sale and leasing arrangement described above, and they will not otherwise exercise any fiduciary authority, control or responsibility in connection with these transactions.

*Request for Exemptive Relief*

8. The Applicants are requesting exemptive relief from section 406(a)(1)(A) and (D) of the Act and section 406(b)(1) and (b)(2) of the Act for the Sale of the Property by the Plan to the Union. In this regard, section 406(a)(1)(A) of the Act provides, in part, that a fiduciary with respect to a plan

[4] The Department expresses no opinion herein as to whether the conditions of PTEs 76–1 and 77–10 have been met.

[5] According to the Applicants, the lease between the Union and the Plan will be consistent with section 408(b)(2) of the Act and the regulations promulgated thereunder.

shall not cause the plan to engage in a transaction if he knows or should know that such transaction constitutes a direct or indirect sale of any property between a plan and a party in interest. In addition, section 406(a)(1)(D) of the Act provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction if he knows or should know that such transaction constitutes a direct or indirect transfer to or use by or for the benefit of a party in interest of any assets of the plan. Further, section 406(b)(1) of the Act prohibits any fiduciary from dealing with plan assets in his own interest or for his own account. Moreover, section 406(b)(2) of the Act prohibits any fiduciary from acting, in his individual or any other capacity, in any transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan or its participants or beneficiaries.

The term ''party in interest'' is defined under section 3(14)(A) of the Act to include a fiduciary with respect to the Plan, such as the Trustees, or an employee organization any of whose employees are covered by such plan, as defined under section 3(14)(D), such as the Union.

Accordingly, in the absence of a statutory or administrative exemption, the Sale would violate the foregoing provisions of the Act.

*The Appraisal*

9. In an independent appraisal report dated January 31, 2014 (the 2014 Appraisal), Thomas R. Horner, MAI, SRA, ASA (the Appraiser) of Ohio Real Estate Consultants, Inc., updated a July 6, 2012, appraisal (the 2012 Appraisal) that was prepared by his firm, in which the fair market value of the Property in fee simple was placed at $2,650,000, as of July 6, 2012. The Appraiser is President of Ohio Real Estate Consultants, Inc., which is located in Dublin, Ohio. The Appraiser is an Ohio certified general real estate appraiser with approximately 30 years of appraisal experience. The Appraiser is also a member of the Appraisal Institute and the American Society of Appraisers and has served as an expert witness in the Ohio and Michigan judicial systems.

10. The Appraiser represents that he has no present or prospective interest in the Property and has no personal interest with respect to the parties involved. Further, the Appraiser represents that he has derived less than 1% of his annual income from any party in interest involved in the transaction or such party's affiliates for the years 2012, 2013 and 2014.

11. In the 2014 Appraisal, the Appraiser estimated the Property's land value, as if vacant, and compared the land value to the value of the Property, as improved, to determine its highest and best value. The Appraiser did not develop the Income Capitalization Approach to valuation because, among other things, the Property is currently occupied by entities related to the ownership and the rental rates are not considered to reflect market conditions. Likewise, the Appraiser did not develop the Cost Approach to valuation because he determined that the Property's improvements are at or near the end of their useful life.

Using the Sales Comparison Approach to valuation for the land value, if vacant, the Appraiser placed the fair market value of the Property in fee simple at $2,900,000 as of January 27, 2014. As of the same date, using the Sales Comparison Approach to valuation for the Property, as improved, the Appraiser placed the fair market value of the improved Property at $2,250,000.

12. The Appraiser considered the Sales Comparison Approach to value the Property's land, if vacant, to be the best indication of the Property's market value because: (a) Most of the comparables have been redevelopment sites and redevelopment continues to occur throughout the neighborhood; and (b) the Property's existing improvements have reached the end of their economic life and no longer contribute value to the Property other than in an interim use. In this regard, the Appraiser represents that the Property is located in an area that is in transition from older industrial uses to high-density residential and high-tech business and research uses. The Appraiser further represents that Ohio State University (OSU) has purchased many buildings in the area for these uses and that The Commons, a multifamily development located just east of the Property, was developed in 2000. Based upon surrounding land uses in the Property's neighborhood, as well as the Kinnear Road engineering and the increased demand for housing created by OSU, the Appraiser believes that a high-density residential use is probable. Taking into consideration those uses that are legally permissible, physically possible and financially feasible, the Appraiser believes that the highest and best use of the Property, if vacant, is for future high-density residential use.

13. Accordingly, after reconciling the Sales Comparison Approach for the land value, if vacant, and the Sales Comparison Approach for the Property, as improved, the Appraiser represents that in his professional opinion the market value, fee simple estate, of the Property, as a whole, in its present condition, in terms of financial arrangements equivalent to cash, ''as-is'', as of January 27, 2014, is $2,900,000.

*The I/F*

14. Pursuant to an engagement letter dated March 20, 2013 (the Engagement Letter), SEI Investments Management Corporation (SEI), was retained on behalf of the Plan by the Plan Administrator to serve as the qualified independent fiduciary. SEI provides investment management and advisory services and is a federally registered investment adviser with the Securities and Exchange Commission under the Investment Advisers Act of 1940.

15. The I/F estimates that it will receive approximately $1,236,000 from the Plan in 2014 for its institutional fiduciary investment management services, $0 of which is specifically related to the services described herein.[6] The I/F represents that its revenue from all sources related to its institutional fiduciary investment management services (excluding fixed, nondiscretionary retirement income) for 2013 is estimated to be $187,000,000. Therefore, the I/F represents that its revenue from the Plan for its institutional fiduciary investment management services is expected to comprise approximately 0.7% of its estimated annual institutional fiduciary management gross revenue, 0% of which is attributable to services rendered in connection with the proposed Sale. Further, the I/F states that it does not receive any amount from a party in interest to the Plan.

16. The I/F represents that it is qualified to represent the Plan's interests with respect to the Sale because it has a demonstrated strong understanding of fiduciary duties under the Act for the following reasons. First, the I/F states that it already serves as an independent fiduciary of the Plan, overseeing the Plan's investments. In this regard, the I/F states that it is generally responsible for providing guidance to the Plan's Board of Trustees on matters pertaining to the investment of the Plan's assets, including investment selection and monitoring the Plan's performance and compliance with its investment guidelines. Second, the I/F represents that it has general financial management experience in

[6] The I/F represents that it agreed to provide the services described herein without the receipt of compensation in order to save the Plan the expense of paying for such services and because it expected its engagement to be narrow in scope.

evaluating asset allocations, financial transactions, projected risk and return expectations and certain real estate transactions on behalf of plans gained through its previous fiduciary investment management experience and from overseeing real estate investment trusts.

In addition, the I/F represents that it has engaged Morgan, Lewis & Bockius LLP, a law firm that has experience in dealing with matters under the Act's fiduciary responsibility rules, as outside legal counsel to advise the I/F with regard to the exercise of its fiduciary duties with respect to its engagement on this matter to the extent that this engagement is outside of the I/F's typical role for its clients.

17. Pursuant to the Engagement Letter, the I/F agreed to perform certain services on the Plan's behalf with respect to the Sale. Among other things, the I/F agreed to: (a) Analyze the prudence of the proposed Sale, from an investment standpoint, taking into consideration certain things such as the 2014 Appraisal, the Plan's investment guidelines and objectives, and the interests of the Plan and its participants and beneficiaries with respect to any subsequent leasing of the Property; and (b) issue a written report to the Plan that would include, among other things, a complete analysis of the proposed Sale, a determination of whether the proposed Sale is consistent with the Plan's investment guidelines and financial objectives, a determination as to the financial effects of the proposed Sale, and a determination as to whether the proposed Sale is in the interests of and protective of the Plan and its participants and beneficiaries. The I/F is also authorized to take all appropriate actions to safeguard the interests of the Plan in connection with the Sale and, during the pendency of the subject transaction, to: (a) Monitor the transaction on behalf of the Plan on a continuing basis; (b) ensure that the transaction remains in the interest of the Plan and, if not, to take any appropriate actions available under the circumstances; and (c) enforce compliance with all conditions and obligations imposed on any party dealing with the Plan with respect to the Sale.

18. Based on its analysis of the proposed Sale, the I/F has determined that the Sale is in the interests of the Plan and its participants and beneficiaries, and is protective of the rights of such participants and beneficiaries. In the ''Report of Independent Fiduciary'' (the I/F Report) dated March 25, 2014 (which updated an I/F Report of March 20, 2013), the I/F sets forth the following reasons for its opinion. First, the I/F has analyzed the proposed Sale terms, as well as the Plan's reasons for the proposed Sale, as stated above in Representation 7, which include the Plan's desire to avoid the risk of a substantial diminution in the value of the Property if the Plan should lose the Union as tenant. The I/F notes that the proposed Sale will allow the Plan to sell the Property at a time when its value reflects the fact that it is largely occupied.

19. In addition, the I/F represents that the proposed Sale is consistent with the Plan's investment guidelines. As provided in the Plan's Investment Policy Statement, the I/F states that the primary financial objective is to increase the value of the Plan's assets and a secondary financial objective is to avoid significant downside risk. The I/F represents that the objectives of the Plan must be considered with respect to any investment of the Plan. In particular, the I/F states that consideration must be given to the return and risk expectations of the Plan and how such investment fits within the total portfolio, as well as to the liquidity needs of the Plan. The I/F represents that the current actuarial return assumption of the Plan is 7.50%. The I/F explains that portfolios should be constructed to target expected long-term return of the total portfolio of investments in excess of this target with a reasonable level of annual variation of return.

Further, the I/F opines that ownership of the Property inhibits the Plan from the full ability to rebalance its portfolio and to avail itself of liquid assets should it need to do so for outflow purposes. The I/F states that if the Plan should divest itself of the Property and invest the proceeds across its other portfolio asset classes, the Plan would enhance the expected return of the portfolio as a whole while not affecting the risk level of the portfolio (as measured by standard deviation of returns). The I/F represents that this action would also provide additional liquidity to the Plan by exchanging the investment in a single property for the investment in a collective trust holding many properties or for other diversified fund asset classes within the portfolio.

20. Finally, the I/F confirms that it has reviewed the methodology used by the Appraiser in the 2014 Appraisal and that the methodology is consistent with industry standards in the valuation of commercial properties of this type. The I/F therefore agrees that the Appraiser's methodology has been properly applied to arrive at the Property's fair market value.

*Summary*

21. In summary, the Applicants represent that the Sale will satisfy the statutory requirements for an exemption under section 408(a) of the Act because:

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

(b) As consideration, the Plan will receive the greater of $2,900,000, or the fair market value of the Property as determined by the Appraiser in a written Appraisal of the Property, which is updated on the Sale Date;

(c) The Plan will pay no commissions, costs, or fees;

(d) The terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; and

(e) The Sale has been reviewed and approved by an I/F, who, among other things: Has reviewed and approved the methodology used by the Appraiser, and has ensured that such methodology was properly applied in determining the fair market value of the Property; and has determined that it is prudent to go forward with the Sale.

*Notice to Interested Parties*

Notice of the proposed exemption (consisting of a copy of the proposed exemption, as published in the **Federal Register**, and the supplemental statement required by 29 CFR 2570.43(b)(2), (together, the Notice)) will be given to interested persons within 15 days of the publication of the Notice in the **Federal Register**. The Notice will be given to interested persons by posting in the Union hall for active Plan participants and by first class mail for inactive Plan participants. Active Plan participants are those Plan participants for whom a participating employer contributed to the Plan within the 60 days before the Notice is distributed. Inactive Plan participants are those participants for whom a participating employer is not currently contributing under a collectively bargained agreement, and includes any deferred vested participant (i.e, a participant who is not drawing retirement benefits and for whom no contributions are being made by a participating employer, either because they are not working or because they are working for a non-contributing employer) and any retiree (a participant who is currently drawing retirement benefits). Written comments are due within 45 days of the publication of the Notice 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. Anna Mpras Vaughan of the Department at (202) 693–8565. (This is not a toll-free number.)

**The Camco Financial & Subsidiaries Salary Savings Plan (the Plan) and Huntington Bancshares, Inc. (Huntington) Located in Cambridge, OH and Columbus, OH**

[Application No. D–11751]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended, (the Act or ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Section I: Transactions

If the proposed exemption is granted, 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 sections 4975(c)(1)(A) and (E) of the Code,[7] shall not apply to the acquisition and holding of certain warrants (the Warrants) by the individually-directed account(s) (the Account(s)) of certain participant(s) in the Plan in connection with an offering (the Offering) of shares of common stock (the Stock) of Camco Financial Corporation (Camco), the sponsor of the Plan and a party in interest with respect to the Plan.

Section II: Proposed Conditions

(a) The Accounts acquired the Warrants in connection with the exercise of subscription rights (the Rights) to purchase Stock by the Plan's directed trustee (the Directed Trustee) on behalf of Plan participants;

(b) Each stockholder, including each of the Accounts holding Stock on behalf of Plan participants, received the same proportionate number of Rights based on the number of shares of Stock held as of July 29, 2012 (the Record Date), and the same proportionate number of Warrants based on the number of Rights exercised during the Offering;

(c) The Plan participant whose Account received the Warrants made, or will make, all decisions with respect to the holding or exercise of such Warrants;

(d) The Plan did not pay, nor will it pay, any brokerage fees, commissions, or other fees or expenses to any related broker in connection with the acquisition, holding, and/or exercise of the Rights or Warrants;

(e) The acquisition of the Rights by the Accounts resulted from an independent corporate act of Camco; and

(f) The Rights and Warrants were acquired pursuant to and in accordance with, provisions under the Plan for individually directed investments of the Accounts holding Stock on behalf of Plan participants.

*Effective Date:* This proposed exemption, if granted, will be effective from November 1, 2012, until the Warrants are exercised or expire.

**Summary of Facts and Representations**[8]

*Background*

1. The Camco Financial & Subsidiaries Salary Savings Plan (the Plan) and Huntington Bancshares Incorporated (Huntington, and together with the Plan, the Applicants) request the prohibited transaction exemption proposed herein. At the time of the transaction described herein, Camco Financial Corporation (Camco), the original sponsor of the Plan, was engaged in the financial services business in Ohio, Kentucky, and West Virginia through its wholly-owned subsidiary, Advantage Bank (Advantage). Advantage is an Ohio savings bank that operates branch offices in Ohio, Kentucky, and West Virginia. The Applicants represent that on October 9, 2013, Camco entered into a definitive agreement with Huntington, by which Huntington acquired Camco and Advantage in a cash and stock transaction (the Acquisition) that allowed Camco shareholders to receive, in exchange for each of their Camco shares, either a fractional share of Huntington stock or $6.00 per Camco share. The Applicants represent that Camco filed proxy materials describing the proposed merger with the SEC and distributed those materials to its shareholders.

2. The Plan is a 401(k) plan qualified under section 401(a) of the Internal Revenue Code of 1986, as amended (the Code) and intended to comply with ERISA section 404(c) with respect to accounts subject to participant investment direction. Camco established the Plan on February 1, 1987. The Plan was taken over by Huntington in connection with the Acquisition and has not been merged into any other plans sponsored by Huntington. The Applicants represent that the Plan, as amended and restated, operates in compliance with applicable Code requirements. As of December 31, 2011, approximately 249 participants had account balances in the Plan and total combined assets of approximately $9,374,142. The fair market value of the Plan's shares of Camco common stock (the Stock) as of December 31, 2011, was $288,615, which represented approximately 3% of the Plan's total assets.

3. Prior to the Acquisition, all employees of Camco and Advantage were eligible to participate in the Plan, which allows each participant to choose the investments in his or her Account. Prior to 2008, Camco made profit-sharing contributions to the Plan on behalf of participants, portions of which were automatically invested in shares of the Stock, but the Plan was amended effective January 1, 2009, to make all accounts fully participant-directed. Each Plan participant could choose from a variety of investment options, including any combination of mutual funds, Camco common stock, common/collective funds, and other investment securities.[9] Therefore, starting in 2009, any Plan participant who chose to invest in the Stock did so voluntarily. The Applicants represent that the Stock was a ''qualifying employer security'' as defined under section 407(d)(5) of ERISA and section 4975(e) of the Code.

4. Prior to the Acquisition, the Plan was administered by Camco, which adopted an investment policy that provided for a Plan committee called the ''401(k) Retirement Planning Committee'' (the Committee). The Committee met periodically (typically at least twice a year) and monitored and selected the investment options under the Plan. Jim Huston, Camco's Chairman, CEO, and President, was a member of the Committee.

[7] 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.

[8] The Summary of Facts and Representations is based on the Applicants' representations and does not reflect the views of the Department, unless indicated otherwise.

[9] The Plan's directed trustee, Charles Schwab Trust Company or its affiliates, manage certain investment funds offered within the Plan.

*The MOU, Consent Order, and Rights Offering*

5. Camco was regulated by the Federal Reserve Board (FRB), and Advantage is primarily regulated by the State of Ohio Department of Commerce, Division of Financial Institutions (the Ohio Division) and the Federal Deposit Insurance Corporation (FDIC). The Applicants state that on March 4, 2009, Camco entered into a Memorandum of Understanding (MOU) with the FRB that prohibits Camco from: (1) Declaring or paying dividends to stockholders; and (2) repurchasing the Stock without the prior written approval of the FRB. On August 5, 2009, Camco and the FRB entered into a written agreement that required Camco to obtain FRB approval prior to: (1) Declaring or paying dividends; (2) receiving dividends or any other form of payment representing a reduction in capital from Advantage; (3) making distributions of interest, principal, or other sums or subordinated debentures or trust preferred securities; (4) incurring, increasing, or guaranteeing any debt; or (5) repurchasing any Camco stock. The written agreement also required Camco to develop a capital plan and submit it to the FRB for approval. On February 9, 2012, the FDIC and the Ohio Division executed a Consent Order, which required Advantage to, among other things: (1) Raise its Tier 1 Leverage Capital ratio to 9%; (2) raise its total Risk-Based Capital ratio to 12%; and (3) seek regulatory approval prior to declaring or paying any cash dividend.

6. According to the Applicants, the Camco board of directors chose to raise equity capital through a rights offering (the Offering) in order to improve Advantage's capital position, retain additional capital at Camco, and give stockholders the opportunity to limit ownership dilution by buying additional shares of the Stock. Camco's Offering commenced on September 24, 2012. Through the Offering, Camco offered up to 5,714,286 shares of the Stock at a subscription price of $1.75 per share (the Subscription Price).

7. The Applicants state that on or about September 26, 2012, Camco sent detailed information regarding the Rights Offering to each Plan participant. In this regard, the Applicants represent that Plan participants were provided with a copy of the prospectus that described the Offering, a Q&A entitled *''Important Information Regarding the Rights Offering for Plan Participants,''* an election form, a return envelope addressed to Camco, and a statement indicating the number of shares of Stock each participant held in his or her Account, as of the Record Date. Camco informed stockholders that the proceeds from the Offering would be used to improve Advantage's capital position and to retain additional capital at Camco. Additionally, Camco informed stockholders that even if the Offering was fully subscribed, Advantage would not meet the Consent Order's capital requirements.

8. Under the terms of the Offering, all stockholders, including the Plan participants whose Accounts held shares of the Stock, received at no charge, non-transferable subscription rights (the Rights) to purchase their share of $10 million worth of the Stock. Stockholders could execute their Rights through a ''basic subscription privilege'' and an ''oversubscription privilege.'' The ''basic subscription privilege'' gave each stockholder the opportunity to purchase one share of Stock, for $1.75 per share (the Subscription Price), for every one share of Stock owned as of July 29, 2012 (the Record Date). The Applicants state further that, if a stockholder exercised all of his or her Rights through the basic subscription privilege, that stockholder was also entitled to an ''over-subscription privilege,'' which allowed the stockholder to purchase a proportional share of the Stock that was not subscribed for by other stockholders under their basic subscription privileges.

9. The Applicants represent that for every two Rights a stockholder exercised, the stockholder received one Warrant to purchase one share of Stock at a future date for $2.10 per share. The Applicants represent that the Warrants are exercisable for a period of five years from the close of the Offering. The Applicants state further that the Warrants are not transferrable, except: (1) By will or the laws of descent and distribution upon a Warrant holder's death; and (2) through a distribution of Warrants to a Plan participant whose Account holds the Warrants, assuming that particular participant is eligible to receive a distribution. Moreover, the Applicants state that Camco did not issue any fractional Warrants; instead, Camco rounded the number of Warrants down. Furthermore, the number of shares for which Warrants may be exercised and the exercise price applicable to the Warrants would be proportionately adjusted if Camco paid dividends on the Stock or made a distribution of common stock, or subdivided, combined, or reclassified outstanding shares of common stock such as through a stock split or a reverse stock split. The Applicants represent further that any shares of Stock purchased upon exercise of the Warrants held by a Plan participant's Account would be allocated to a common stock investment option where it would remain subject to further investment direction from the Plan participant.

10. The Offering was originally scheduled to close on October 31, 2012, at 5:00 p.m. Eastern Time. Camco reserved the right to extend the Offering one or more times, but in no event later than December 31, 2012. The Offering was extended one day due to Hurricane Sandy and officially closed on November 1, 2012, at 5:00 p.m. EST. The Applicants represent that the Rights Offering was fully subscribed so that Camco received gross proceeds of $10,000,000 and net proceeds estimated at $9,361,000.[10]

*Early Exercise*

11. The Applicants explain that each Plan participant who desired to exercise Rights was required to make an election to exercise any or all of the Rights in his or her Account. According to the Applicants, the Directed Trustee had to aggregate all such elections and place a single order to exercise Rights on behalf of the Plan as a whole, through a process known as an ''early exercise.'' [11] The early exercise required Plan participants to place orders to exercise his or her Account's Rights by the close of business on the fifth business day prior to the close of the Offering (*i.e.,* October 24, 2012, at 5:00 p.m. EST) so that the Directed Trustee had enough time to combine all of the orders. Additionally, Camco informed all stockholders that their election to exercise the Rights was irrevocable. According to the Applicants, in order to protect Plan participants from a drop in the stock price between October 24, 2012 (Plan participant's early election date), and November 1, 2012, (the close of the Offering), Camco informed Plan participants that the Directed Trustee would not place the order if the closing price of the Stock was below the Subscription Price on October 31, 2012, the business day immediately before the Offering closed.

12. The Applicants represent that on October 31, 2012, there was a discrepancy with respect to the Stock's closing price, as reported on NASDAQ. According to the Applicants, over the

[10] The Applicants represent that expenses related to the Rights Offering included: Legal fees, accounting fees, printing and mailing fees, subscription/escrow/warrant agent fees, and financial advisor fees.

[11] The Applicants note that brokers and stockholders who hold shares for the benefit of third parties commonly utilize this process.

course of the day, the Stock traded between $1.65 and $1.90 per share. The Applicants contend that after the markets closed, Jim Huston and the Plan's counsel checked the NASDAQ official Web site, which indicated an ''Official Close Price'' of $1.85. The Applicants note that The Standard, the Plan's recordkeeper, also used its internal systems to verify that the closing price was $1.85 and informed the Directed Trustee that it could submit the Plan's order to exercise the Rights.[12] Then, according to the Applicants, on November 1, 2012, Camco's financial advisor for the Offering, Paracap Group LLC (Paracap), and Camco's attorney noted that the Web sites for SNL Financial and Yahoo! showed the closing price as $1.70. Additionally, on November 1, 2012, Paracap was aware that NASDAQ's Web site also showed the closing price as $1.70. However, according to the Applicants, the internal computer terminal of a Paracap analyst continued to show the closing price of the Stock as $1.85. Ultimately, the Directed Trustee deferred to Camco and The Standard's reliance on $1.85 as the closing price and caused the Plan to participate in the Offering by exercising the Rights on behalf of electing participants. Accordingly, the Plan purchased and allocated 941,909 shares of Stock and 470,946 Warrants to the Accounts of 47 Plan participants. The Plan paid $1,648,340.75 for the Stock in connection with the Offering, or roughly 16% of the $10 million available in the Offering.

13. After the Offering closed, Plan fiduciaries contacted a NASDAQ employee at the NASDAQ Market Intelligence Desk (the Representative) for an explanation of the price discrepancy. The Applicants represent that the Representative explained that the NASDAQ Official Closing Price is the last trade that occurs on the NASDAQ platform whereas the ''Previous Close'' is based on the last trade across all places where the Stock is traded.[13] According to the Applicants, the Representative confirmed that the last trade on the NASDAQ platform on October 31, 2012, was for $1.85, but there were two later trades on another exchange. Notably, the last trade of the day on October 31, 2012, was for $1.70 per share.[14] Consequently, the Directed Trustee and other Plan fiduciaries caused the Plan to participate in the Offering despite the fact that the Stock's closing price was below $1.75 on October 31, 2012. As described in further detail in paragraph 18, Camco filed a form 5330 with the IRS with respect to the Plan's acquisition and holding of the Rights.

*Exercise of the Rights and Acquisition of the Warrants*

14. The Applicants explain that each Plan participant was instructed to transfer assets in his or her Account into a specially designated investment alternative, the Morley Stable Value Fund (the Fund), in order to purchase the Stock. The Applicants state that if a Plan participant's Account did not hold sufficient assets in the Fund, the Directed Trustee exercised the participant's request to the fullest extent possible based on the cash value of the participant's Fund.

15. The Applicants state that Camco's subscription agent, Registrar and Transfer Company (Registrar), issued the purchased shares of Stock to each subscriber, along with any excess payment from the subscriber, and forwarded the payments to Camco. According to the Applicants, Camco issued the Stock and accompanying Warrants to stockholders, including the Plan, on November 7, 2012.

16. The Applicants represent that Camco paid all expenses associated with the Offering, and the Plan paid no brokerage fees, commissions, subscription fees, or other charges with respect to the acquisition, holding, or exercise of the Rights, Warrants, or Stock.

17. The Applicants also represent that upon completion of the Acquisition, Huntington assumed the Camco Warrant Agreement, dated November 2, 2012, between Camco and Registrar, and each outstanding Warrant was converted into a warrant to purchase Huntington common stock, as adjusted based on an exchange ratio of 0.7264 Huntington warrants for each Camco warrant.

*Requested Relief*

18. The Applicants originally requested retroactive exemptive relief to cover the Plan's acquisition and holding of both the Rights and the Warrants. However, given the uncertainty regarding whether the proper closing price was used for purposes of the Plan's acquisition and holding of the Rights, as discussed above, Camco filed a Form 5330 with the IRS disclosing a prohibited transaction with no related loss amount.[15] Therefore, the Department is proposing relief only for the acquisition and holding of the Warrants (the Warrants Transaction).

19. The Applicants explain that the Warrants Transaction constitutes the acquisition and holding of ''employer securities'' as defined under section 407(d)(1) of the Act. However, the Warrants do not satisfy the definition of ''qualifying employer securities'' as defined under section 407(d)(5) of the Act because they are not stock or marketable securities. Under section 407(a)(1)(A) of the Act, a plan may not acquire or hold any ''employer security'' which is not a ''qualifying employer security.'' Moreover, section 406(a)(1)(E) of the Act prohibits the acquisition, on behalf of a plan, of any ''employer security in violation of section 407(a) of the Act.'' Finally, section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan to permit the plan to hold any ''employer security'' that violates section 407(a) of the Act. Therefore, the acquisition and holding of the Warrants constitute prohibited transactions in violation of sections 406(a)(1)(E) and 406(a)(2) of the Act.

20. Additionally, the Applicants explain that other provisions of the Act that are implicated by the Warrants Transaction include section 406(a)(1)(A) of the Act and the fiduciary self-dealing and conflict of interest provisions of section 406(b)(1) and (b)(2) of the Act. In relevant part, section 406(a)(1)(A) of the Act provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction if the fiduciary knows or should know that the transaction is a prohibited sale or exchange of any property between a plan and a party in interest. Because the Plan fiduciaries acquired the Warrants on behalf of Plan participants through the exercise of the Rights in the Offering, the Warrants Transaction also constituted a sale or exchange of property between a Plan and a party in interest, in violation of section 406(a)(1)(A) of the Act. Section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a

[12] The Applicants explain that The Standard uses only the official NASDAQ closing price when reporting prices for the Stock held by the Plan, and The Standard did not contact anyone at NASDAQ in connection with its interpretation.

[13] The Stock was traded on 11 exchanges: (1) NASDAQ Stock Market, (2) NASDAQ BX, (3) NASDAQ PSX, (4) Archipelago, (5) National, (6) Bats, (7) Bats Y, (8) DirectEdge EDGA, (9) DirectEdge EDGX, (10) CBOE Stock Exchange, and (11) the Chicago Stock Exchange. Trades that occur off exchanges are reported to NASDAQ via two trade reporting facilities, the FINRA/NASDAQ TRF and FINRA/NYSE TRF.

[14] The Department notes that the NASDAQ now reports $1.70 as the closing price for October 31, 2012.

[15] The Department is taking no view herein regarding whether Camco properly filed the Form 5330, including properly reporting such loss amount.

fiduciary with respect to a plan from acting in any transaction involving the plan on behalf of a party, or represent a party, whose interests are adverse to the interests of the plan or its participants and beneficiaries. In causing the Plan to engage in the Warrants Transaction, the Plan fiduciaries may have violated sections 406(b)(1) and 406(b)(2) of the Act. Therefore, the Applicants request that the Department grant an exemption from the prohibitions 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 sections 4975(c)(1)(A) and (E) of the Code, for the Warrants Transaction.

21. The Applicants state that the acquisition of the Warrants has been completed, and although all Accounts that received the Warrants could have held the Warrants until exercised for Stock or until the Warrants expire, five years from the date that the Offering closed, some Plan participants may have already exercised some or all of their Accounts' Warrants. The Applicants requested retroactive relief because Camco sought to comply with the Consent Order with the FDIC and the Ohio Division. Therefore, according to the Applicants, Camco determined that it was in the best interest of all its stockholders, including the Plan, to issue the Rights as soon as possible after the Securities and Exchange Commission approved the Offering documents. Moreover, because of the tight time frame, Camco decided not to wait for a granted exemption before it completed the Offering.

*Statutory Findings*

22. The Applicants represent that the proposed exemption with respect to the Warrants is administratively feasible because all shareholders of Camco, including the Plan, were, and will be treated in the same manner with respect to any acquisition, holding and exercise or other disposition of the Warrants.

23. The Applicants represent that the proposed exemption for the acquisition and holding of the Warrants by the Plan is in the interest of and beneficial to the Plan and to the participants and beneficiaries of the Plan. The Applicants explain that to the extent that the Plan is a shareholder, the Offering and subsequent issuance of Warrants was designed to: (1) Strengthen the financial condition of Camco by improving its capital position; and (2) give shareholders the opportunity to limit ownership dilution by buying additional shares of the Stock. The Applicants represent that Camco's ability to achieve these objectives had significant value to its shareholders, including the Plan. Moreover, the Applicants explain that participants and beneficiaries whose Accounts received the Warrants have been provided with the opportunity to acquire additional equity in Camco at a discount and either: (1) Have exercised the Warrants to purchase the Stock for less than its fair market value; or (2) have the potential opportunity to exercise the Warrants to purchase the Stock for less than its fair market value.

24. The Applicants represent that the proposed exemption is protective of the rights of the participants and beneficiaries of the Plan because decisions with regard to the acquisition, holding and exercise or other disposition of the Warrants were made, and will be made, by each Plan participant in accordance with the provisions under the Plan for individually-directed accounts.

*Summary*

25. In summary, the Applicants state that the proposed exemption satisfies the statutory criteria for an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code because:

(a) The Accounts acquired the Warrants in connection with the exercise of the Rights by the Directed Trustee on behalf of Plan participants;

(b) Each stockholder, including each of the Accounts holding Stock on behalf of Plan participants, received the same proportionate number of Rights based on the number of shares of Stock held as of the Record Date and the same proportionate number of Warrants based on the number of Rights exercised during the Offering;

(c) The Plan participant whose Account received the Warrants made or will make all decisions with respect to the holding or exercise of such Account's Warrants;

(d) The Plan did not pay, nor will it pay, any brokerage fees, commissions, or other fees or expenses to any related broker in connection with the acquisition, holding, and/or exercise of the Rights or Warrants;

(e) The acquisition of the Rights by the Accounts resulted from an independent corporate act of Camco; and

(f) The Rights and Warrants were acquired pursuant to and in accordance with, provisions under the Plan for individually directed investments of the Accounts holding Stock on behalf of Plan participants.

**Notice to Interested Persons**

The Applicants will provide notice of the proposed exemption to all Plan participants within fifteen (15) days of the date of publication of the proposed exemption in the **Federal Register**. The Applicants will provide the notice by email to all Plan participants who are actively employed by Huntington in accordance with the Department's procedures for electronic disclosure to active employees under 29 CFR 520.104b–1(c). The Applicants will provide notice to all other Plan participants, including individuals who were Plan participants at the time of the Offering, via first-class mail. In addition to the proposed exemption, as published in the **Federal Register**, the Applicants will provide Plan participants with a supplemental statement, as required, under 29 CFR 2570.43(a)(2). The supplemental statement will inform the Plan participants of their right to comment on and to request a hearing with respect to this proposed exemption. The Department must receive all written comments and/or requests for a hearing 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:** Mr. Erin S. Hesse of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

**Wells Fargo Company (WFC), Located in San Francisco, California**

[Application No. D–11752]

*Proposed Exemption*

The Department of Labor (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, as amended, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[16]

Section I. Covered Transactions

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A)

[16] 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.

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 purchase of certain securities (the Securities), as defined in Section V(j), during the existence of an underwriting or selling syndicate with respect to such Securities by an asset management affiliate of WFC (the Asset Manager(s)), as defined in Section V(f), from any person other than such Asset Manager, where the Asset Manager purchases such Securities, as a fiduciary: (1) On behalf of an employee benefit plan or employee benefit plans (Client Plan(s)), as defined in Section V(g); or (2) on behalf of Client Plans and/or In-House Plan(s), as defined in Section V(m), which are invested in a pooled fund or in pooled funds (Pooled Fund(s)), as defined in Section V(h), under the following circumstances:

(a) Where a broker-dealer affiliated with WFC (an Affiliated Broker-Dealer), as defined in Section V(d), is a manager or member of such syndicate (an affiliated underwriter transaction (AUT)); or

(b) Where an Affiliated Broker-Dealer is a manager or member of such syndicate and a servicer affiliated with WFC (an Affiliated Servicer), as defined in Section V(n), serves as servicer of a trust that issues commercial mortgage backed securities (CMBS), as defined in Section V(r), including servicing one or more of the commercial mortgage backed loans in such trust (an affiliated underwriter and affiliated servicer transaction (AUT and AST)); or

(c) Where an Affiliated Servicer serves as servicer of a trust that issues CMBS, including servicing one or more of the commercial mortgage backed loans in such trust (AST); or

(d) Where a trustee affiliated with WFC (an Affiliated Trustee), as defined in Section V(o), serves as trustee of a trust that issues the Securities (whether or not debt securities) or serves as indenture trustee of Securities that are debt securities (an affiliated trustee transaction (ATT)); or

(e) Where an Affiliated Broker-Dealer is a manager or member of such syndicate and where an Affiliated Trustee serves as trustee of a trust that issues the Securities (whether or not debt securities) or serves as an indenture trustee of Securities that are debt Securities (an affiliated underwriter and affiliated trustee transaction (AUT and ATT).

Section II. Conditions for Transactions Described in Section I(A), (B), (D) and (E)

The transactions described in Section I(a), (b), (d), and (e) are conditioned upon satisfaction of the general conditions, as set forth in Section IV, and upon satisfaction of the following requirements:

(a)(1) In the case of a transaction described in Section I(b), the Securities to be purchased are CMBS, as defined in Section V(r). In the case of transactions described in Section I(a), (d), and (e) the Securities to be purchased are either—

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a *et seq.*). If the Securities to be purchased are part of an issue that is exempt from such registration requirement, such Securities:

(A) Are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States;

(B) Are issued by a bank;

(C) Are exempt from such registration requirement pursuant to a federal statute other than the 1933 Act; or

(D) Are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding twelve (12) months; or

(ii) Part of an issue that is an eligible Rule 144A offering (Eligible Rule 144A Offering), as defined in SEC Rule 10f–3 (17 CFR 270.10f–3(a)(4)).[17] Where the Eligible Rule 144A Offering of the Securities is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosures in the offering memorandum;

(2) The Securities to be purchased are purchased prior to the end of the first day on which any sales are made, pursuant to that offering, at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities, except that—

(i) If such Securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such Securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable debt securities offered to the public subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the debt Securities being purchased; and

(3) The Securities to be purchased are offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the Securities being offered, except if—

(i) Such Securities are purchased by others pursuant to a rights offering; or

(ii) Such Securities are offered pursuant to an over-allotment option.

(b) The issuer of the Securities to be purchased must have been in continuous operation for not less than three (3) years, including the operation of any predecessors, unless the Securities to be purchased—

(1) Are non-convertible debt securities rated in one of the four highest rating categories by a rating agency (a Rating Agency or collectively, Rating Agencies), as defined in Section V(q); provided that none of the Rating Agencies rates such securities in a category lower than the fourth highest rating category; or

(2) Are debt securities issued or fully guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(3) Are debt securities which are fully guaranteed by a person (the Guarantor)

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[17] SEC Rule 10f–3(a)(4), 17 CFR 270.10f–3(a)(4), states that the term, ''Eligible Rule 144A Offering'' means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the 1933 Act [15 U.S.C. 77d(d)], rule 144A thereunder [§ 230.144A of this chapter], or rules 501–508 thereunder [§§ 230.501–230–508 of this chapter];

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to § 230.144A of this chapter.

that has been in continuous operation for not less than three (3) years, including the operation of any predecessors, provided that such Guarantor has issued other securities registered under the 1933 Act; or if such Guarantor has issued other securities which are exempt from such registration requirement, such Guarantor has been in continuous operation for not less than three (3) years, including the operation of any predecessors, and such Guarantor:

(i) Is a bank; or

(ii) Is an issuer of securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(iii) Is an issuer of securities that are the subject of a distribution and are of a class which is required to be registered under section 12 of the 1934 Act (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such securities and that has filed all reports required to be filed hereunder with the SEC during the preceding twelve (12) months.

(c) The aggregate amount of Securities of an issue purchased by the Asset Manager with the assets of all Client Plans, and the assets, calculated on a *pro rata* basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the Asset Manager, and the assets of plans to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3–21(c) does not exceed:

(1) 10 percent (10%) of the total amount of the Securities being offered in an issue, if such Securities are equity securities; or

(2) 35 percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in one of the four highest rating categories by at least one of the Rating Agencies; provided that none of the Rating Agencies rates such Securities in a category lower than the fourth highest rating category; and

(3) The assets of any single Client Plan (and the assets of any Client Plans and any In-House Plans investing in Pooled Funds) may not be used to purchase any Securities being offered, if such Securities are debt securities rated lower than the fourth highest rating category by any of the Rating Agencies; and

(4) Notwithstanding the percentage of Securities of an issue permitted to be acquired, as set forth in Section II(c)(1), and (2), the amount of Securities in any issue (whether equity or debt securities) purchased pursuant to transactions described in Section I(a), (b), (d), and (e) by the Asset Manager on behalf of any single Client Plan, either individually or through investment, calculated on a *pro rata* basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Securities being offered in such issue, and;

(5) If purchased in an Eligible Rule 144A Offering, the total amount of the Securities being offered for purposes of determining the percentages described in Section II(c)(1),(2) and (4) is the total of:

(i) The principal amount of the offering of such class of Securities sold by underwriters or members of the selling syndicate to ''qualified institutional buyers'' (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class of Securities in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan in purchasing any Securities described in Section I(a), (b), (d), and (e), including any amounts paid by any Client Plan or In-House Plan in purchasing such Securities through a Pooled Fund, calculated on a *pro-rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan or In-House Plan prior to such transaction.

(e) If the transaction is an AUT as described in Section I(a), (b), and (e), the Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession, or other compensation or consideration that is based upon the amount of Securities purchased by any single Client Plan, or that is based upon the amount of Securities purchased by Client Plans or In-House Plans through Pooled Funds, pursuant to this proposed exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designations generated by purchases of the Securities by the Asset Manager on behalf of any single Client Plan or on behalf of any Client Plan or In-House Plan in Pooled Funds.

(f)(1) If the transaction is an AUT as described in Section I(a), (b), and (e), the amount the Affiliated Broker-Dealer receives in management, underwriting, or other compensation or consideration is not increased through an agreement, arrangement, or understanding for the purpose of compensating such Affiliated Broker-Dealer for foregoing any selling concessions for those Securities sold. Except as described above, nothing in this Section II(f)(1) shall be construed as precluding an Affiliated Broker-Dealer from receiving management fees for serving as manager of an underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other compensation or consideration that is not based upon the amount of Securities purchased by the Asset Manager on behalf of any single Client Plan, or on behalf of any Client Plan or In-House Plan participating in Pooled Funds; and

(2) Each Affiliated Broker-Dealer shall provide, on a quarterly basis, to the Asset Manager a written certification, signed and dated by an officer, as defined in Section V(s), of such Affiliated Broker-Dealer, stating that the amount that each such Affiliated Broker-Dealer received in compensation or consideration during the past quarter, in connection with any transactions described in Section I(a), (b), (d), and (e), was not adjusted in a manner inconsistent with Section II(e), (f), or Section IV(d).

(g)(1) The transactions described in Section I(a), (b), (d), and (e), are performed under a written authorization executed in advance by an Independent Fiduciary of each single Client Plan (the Independent Fiduciary), as defined in Section V(i); and

(2) The authorization described in Section II(g)(1), to engage in the transactions described in Section I(a), (b), (d), and (e), may be terminated at will by the Independent Fiduciary of a single Client Plan, without penalty to such single Client Plan, within five (5) days after receipt by the Asset Manager of a written notification from such Independent Fiduciary that the authorization to engage, on behalf of such single Client Plan, in such transactions is terminated.

(h) Prior to the execution by an Independent Fiduciary of a single Client Plan of the written authorization described in Section II(g)(1), the following information and materials (which may be provided electronically) must be provided by the Asset Manager to such Independent Fiduciary:

(1) A copy of the Notice of Proposed Exemption (the Notice) and, if granted, a copy of the final exemption (the Grant) as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously; and

(2) Any other reasonably available information regarding the transactions described in Section I(a), (b), (d), and

(e), that such Independent Fiduciary requests the Asset Manager to provide.

(i)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in any transactions described in Section I(a), (b), (d), and (e), unless the Asset Manager provides the written information, as described below, and within the time period described below in this Section II(i)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund);

(2) The following information and materials (which may be provided electronically) shall be provided by the Asset Manager not less than 45 days prior to such Asset Manager engaging in the transactions described in Section I(a), (b), (d), and (e) on behalf of a Pooled Fund, and provided further that the information described in this Section II(i)(2)(i) and (iii), is supplied simultaneously:

(i) A notice of the intent of such Pooled Fund to purchase Securities, pursuant to this proposed exemption for the transactions described in Section I(a), (b), (d), and (e), a copy of this Notice, and if granted, a copy of the Grant, as published in the **Federal Register**;

(ii) Any other reasonably available information regarding the transactions described in Section I(a), (b), (d), and (e), that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the Asset Manager to provide; and

(iii) A termination form (the Termination Form), as defined in Section V(p); and

(3) The Independent Fiduciary of an existing employee benefit plan investor (or fiduciary of an In-House Plan) participating in a Pooled Fund has an opportunity to withdraw the assets of such plan (or such In-House Plan) from a Pooled Fund for a period of no more than thirty (30) days after such plan's (or such In-House Plan's) receipt of the initial notice of intent described in Section II(i)(2)(i), and to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Failure of the Independent Fiduciary of an existing employee benefit plan investor (or fiduciary of such In-House Plan) to return the Termination Form to the Asset Manager in the case of such plan (or In-House Plan) participating in a Pooled Fund within the time period specified in Section V(p), shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in the transactions described in Section I(a), (b), (d), and (e), as an investor in such Pooled Fund.

(j) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this proposed exemption to engage in the transactions described in Section I(a), (b), (d), and (e), the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the fiduciary of such In-House Plan, as the case may be), following the receipt by such Independent Fiduciary of such plan (or by the fiduciary of such In-House Plan, as the case may be) of the written information described in Section II(i)(2)(i) and (ii), provided that the Notice and the Grant described in Section II(i)(2)(i) are provided simultaneously.

(k) At least once every three months, and not later than 45 days following the period to which such information relates the Asset Manager shall furnish:

(1) In the case of each single Client Plan that engages in the transactions described in Section I(a), (b), (d), and (e), the information described in this Section II(k)(3)–(7) to the Independent Fiduciary of each such single Client Plan;

(2) In the case of each Pooled Fund in which a Client Plan (or in which an In-House Plan) invests, the information described in this Section II(k)(3)–(6) and (8) to the Independent Fiduciary of each such Client Plan (and to the fiduciary of each such In-House Plan) invested in such Pooled Fund;

(3) A quarterly report (the Quarterly Report) (which may be provided electronically) which discloses all the Securities purchased during the period to which such report relates, on behalf of the Client Plan, In-House Plan, or Pooled Fund to which such report relates, and which discloses the terms of each of the transactions described in such report, including:

(i) The type of Securities (including the rating of any Securities which are debt securities) involved in each of the transactions;

(ii) The price at which the Securities were purchased in each of the transactions;

(iii) The first day on which any sale was made during the offering of the Securities;

(iv) The size of the issue of the Securities involved in each of the transactions;

(v) The number of Securities purchased by the Asset Manager for the Client Plan, In-House Plan, or Pooled Fund to which each of the transactions relates;

(vi) The identity of the underwriter from whom the Securities were purchased for each of the transactions;

(vii) In the case of AUTs as described in Section I(a), (b), and (e), the underwriting spread in each of the transactions (*i.e.,* the difference, between the price at which the underwriter purchases the Securities from the issuer and the price at which the Securities are sold to the public);

(viii) In the case of ATTs as described in Section I(d), and (e), the basis upon which the Affiliated Trustee is compensated in each of the transactions;

(ix) The price at which any of the Securities purchased during the period to which such report relates were sold;

(x) The market value at the end of the period to which such report relates of the Securities purchased during such period and not sold; and

(xi) In the case of an AST as described in Section I(b), the basis upon which the Affiliated Servicer is compensated;

(4) The Quarterly Report contains:

(i) In the case of AUTs, as described in Section I(a), (b), and (e), a representation that the Asset Manager has received a written certification signed by an officer, as defined in Section V(s), of the Affiliated Broker-Dealer as described in Section II(f)(2), affirming that, as to each such AUT during the past quarter, such Affiliated Broker-Dealer acted in compliance with Section II(e), (f), and Section IV(d);

(ii) In the case of ATTs as described in Section I(d) and (e), a representation by the Asset Manager affirming that, as to each such ATT, the transaction was not part of an agreement, arrangement, or understanding designed to benefit the Affiliated Trustee;

(iii) In the case of an AST as described in Section I(b), a representation of the Asset Manager affirming that, as to each such AST, the transaction was not part of an agreement, arrangement, or understanding designed to benefit the Affiliated Servicer; and

(iv) A representation that copies of such certifications will be provided upon request;

(5) A disclosure in the Quarterly Report that states that any other reasonably available information regarding the transactions described in Section I(a), (b), (d), and (e), that an Independent Fiduciary (or fiduciary of

an In-House Plan) requests will be provided, including, but not limited to:

(i) The date on which the Securities were purchased on behalf of the Client Plan (or the In-House Plan) to which the disclosure relates (including Securities purchased by Pooled Funds in which such Client Plan (or such In-House Plan) invests;

(ii) The percentage of the offering purchased on behalf of all Client Plans (and the *pro-rata* percentage purchased on behalf of Client Plans and In-House Plans investing in Pooled Funds); and

(iii) The identity of all members of the underwriting syndicate;

(6) The Quarterly Report discloses any instance during the past quarter where the Asset Manager was precluded for any period of time from selling Securities purchased for the transactions described in Section I(a), (b), (d), and (e), in that quarter because of its status as an affiliate of an Affiliated Broker-Dealer and, as applicable, as an affiliate of an Affiliated Trustee, or as an affiliate of an Affiliated Servicer and the reason for this restriction;

(7) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each single Client Plan that engages in any of the transactions described in Section I(a), (b), (d), and (e) that the authorization to engage in such covered transactions may be terminated, without penalty to such single Client Plan, within five (5) days after the date that the Independent Fiduciary of such single Client Plan informs the person identified in such notification that the authorization to engage in such transactions is terminated; and

(8) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each Client Plan (and to the fiduciary of each In-House Plan) that engages in any of the transactions described in Section I(a), (b), (d), and (e) through a Pooled Fund, that the investment in such Pooled Fund may be terminated, without penalty to such Client Plan (or such In-House 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, after the date that that the Independent Fiduciary of such Client Plan (or the fiduciary of such In-House Plan, as the case may be) informs the person identified in such notification that the investment in such Pooled Fund is terminated.

(l) The Asset Manager, the Affiliated Broker-Dealer, the Affiliated Trustee, and the Affiliated Servicer, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any of the transactions described in Section I(a), (b), (d), and (e), such records as are necessary to enable the persons described in Section II(m) to determine whether the conditions of this proposed exemption have been met, except that—

(1) No party in interest with respect to a plan which engages in any of the transactions described in Section I(a), (b), (d), and (e), other than WFC, the Asset Manager, the Affiliated Broker-Dealer, the Affiliated Trustee, and the Affiliated Servicer, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination, as required by Section II(m); and

(2) A separate prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of WFC, the Asset Manager, the Affiliated Broker-Dealer, and the Affiliated Trustee, or the Affiliated Servicer, as applicable, such records are lost or destroyed prior to the end of the six (6) year period.

(m)(1) Except as provided in Section II(m)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section II(l) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC; or

(ii) Any fiduciary of any plan that engages in any of the transactions described in Section I(a), (b), (d), and (e), or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in any of the transactions described in Section I(a), (b), (d), and (e), or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a plan that engages in any of the transactions described in Section I(a), (b), (d), and (e), or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in Section II(m)(1)(ii)—(iv) shall be authorized to examine trade secrets of WFC, the Asset Manager, the Affiliated Broker-Dealer, the Affiliated Trustee, or the Affiliated Servicer, or commercial or financial information which is privileged or confidential; and

(3) Should WFC, the Asset Manager, the Affiliated Broker-Dealer, the Affiliated Trustee, or the Affiliated Servicer refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to Section II(m)(2), the Asset Manager shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising the person who requested such information of the reasons for the refusal and that the Department may request such information.

(o) An indenture trustee whose affiliate has, within the prior 12 months, underwritten any Securities for an obligor of the indenture Securities must resign as indenture trustee, if a default occurs upon the indenture Securities, within a reasonable amount of time of such default.

Section III. Conditions for Transactions Described In Section I(c)

The transaction described in Section I(c) is conditioned upon satisfaction of the general conditions, as set forth in Section IV and upon satisfaction of the following requirements:

(a) The Securities to be purchased are CMBS, as defined in Section V(r).

(b) The purchase of the CMBS meets the conditions of an applicable underwriter exemption (the Underwriter Exemption(s)).[18]

(c)(1) The aggregate amount of CMBS of an issue purchased by the Asset Manager with:

(i) The assets of all Client Plans;

(ii) The assets, calculated on a *pro rata* basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the Asset Manager; and

(iii) The assets of plans to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3–21(c) does not exceed 35 percent (35%) of the total amount of the CMBS being offered in an issue;

(2) Notwithstanding the percentage of CMBS of an issue permitted to be acquired, as set forth in Section III(c)(1), the amount of CMBS in any issue purchased by the Asset Manager on behalf of any single Client Plan, either

[18] The Underwriter Exemptions are a group of individual exemptions granted by the Department to provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding, and disposition by plans of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The most recent amendment to the Underwriter Exemptions is the Amendment to Prohibited Transaction Exemption 2007–05, 72 FR 13130 (March 20, 2007), Involving Prudential Securities Incorporated, *et. al.,* To Amend the Definition of ''Rating Agency'' (Prohibited Transaction Exemption 2013–08, 78 FR 41090 (July 9, 2013)).

individually or through investment, calculated on a *pro rata* basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such CMBS being offered in such issue; and

(3) If purchased in an Eligible Rule 144A Offering, the total amount of the CMBS being offered for purposes of determining the percentages described in this Section III(c) is the total of:

(i) The principal amount of the offering of such class of CMBS sold by underwriters or members of the selling syndicate to QIBs; plus

(ii) The principal amount of the offering of such class of CMBS in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan in purchasing any CMBS, including any amounts paid by any Client Plan or In-House Plan in purchasing such CMBS through a Pooled Fund, calculated on a *pro rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan or In-House Plan prior to such transaction.

(e)(1) The transaction described in Section I(c) is performed under a written authorization executed in advance by an Independent Fiduciary of each single Client Plan, as defined in Section V(i); and

(2) The authorization described in Section III(e)(1) to engage in the transaction described in Section I(c) may be terminated at will by the Independent Fiduciary of a single Client Plan, without penalty to such single Client Plan within five (5) days after receipt by the Asset Manager of a written notification from such Independent Fiduciary that the authorization to engage, on behalf of such single Client Plan, in such transactions is terminated.

(f) The following information and materials (which may be provided electronically) must be provided by the Asset Manager to the Independent Fiduciary of a single Client Plan not less than 45 days prior to such Asset Manager engaging in the transaction described in Section I(c), pursuant to this proposed exemption:

(1) A notice of the intent of the Asset Manager to purchase CMBS, pursuant to Section I(c), a copy of the Notice, and, if granted, a copy of the Grant, as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously;

(2) A notice describing the relationship of the Affiliated Servicer to the Asset Manager;

(3) The basis upon which the Affiliated Servicer is compensated and a representation by the Asset Manager affirming that, the transaction described in Section I(c) was not part of an agreement, arrangement, or understanding designed to benefit the Affiliated Servicer; and

(4) Any other reasonably available information regarding the transaction described in Section I(c) that the Independent Fiduciary of such single Client Plan requests the Asset Manager to provide.

(g)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in a transaction, pursuant to Section I(c), unless the Asset Manager provides the written information, as described below and within the time period described below in this Section III(g)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund);

(2) The following information and materials, (which may be provided electronically) shall be provided by the Asset Manager not less than 45 days prior to such Asset Manager engaging in a transaction described in Section I(c) on behalf of a Pooled Fund, pursuant to this proposed exemption; and provided further that the information described in this Section III(g)(2)(i), (ii), (iii), and (v) is supplied simultaneously:

(i) A notice of the intent of such Pooled Fund to purchase CMBS, pursuant to this proposed exemption for a transaction described in Section I(c), a copy of this Notice, and a copy of the Grant, as published in the **Federal Register**;

(ii) A notice describing the relationship of the Affiliated Servicer to the Asset Manager;

(iii) Information on the basis upon which the Affiliated Servicer is compensated and a representation by the Asset Manager affirming that, such transaction, as described in Section I(c), was not part of an agreement, arrangement, or understanding designed to benefit the Affiliated Servicer;

(iv) Any other reasonably available information regarding such transaction described in Section I(c) that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the Asset Manager to provide; and

(v) A Termination Form, as defined in Section V(p); and

(3) The Independent Fiduciary of an existing employee benefit plan investor (or fiduciary of an In-House Plan) participating in a Pooled Fund has an opportunity to withdraw the assets of such plan (or such In-House Plan) from a Pooled Fund for a period of no more than thirty (30) days after such plan's (or such In-House Plan's) receipt of the initial notice of intent described in Section III(g)(2)(i) and to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Failure of the Independent Fiduciary of an existing employee benefit plan investor (or fiduciary of such In-House Plan) to return the Termination Form to the Asset Manager in the case of such plan (or In-House Plan) participating in a Pooled Fund within the time period specified in Section V(p), shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in a transaction described in Section I(c), as an investor in such Pooled Fund.

(h)(1) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this proposed exemption for a transaction described in Section I(c), the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the fiduciary of such In-House Plan, as the case may be), following the receipt by such Independent Fiduciary of the plan (or by the fiduciary of the In-House Plan, as the case may be) of the written information described in Section III(g)(2); provided that the Notice and, if granted, the Grant described in Section III(g)(2)(i) are provided simultaneously.

(i) The requirements of Section IV are met.

Section IV. General Conditions for Transactions Described in Section I

(a) For purposes of engaging in the transactions described in Section I, each Client Plan (and each In-House Plan) shall have total net assets with a value of at least $50 million (the $50 Million Net Asset Requirement). For purposes of engaging in the transactions described in Section I, involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be) (the $100 Million Net Asset Requirement).

For purposes of a Pooled Fund engaging in the transactions described

in Section I, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets with a value of at least $50 million. Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets with a value of at least $50 million, the $50 Million Net Asset Requirement will be met, if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (and by In-House Plans) each of which has total net assets with a value of at least $50 million.

For purposes of a Pooled Fund engaging in the transactions described in Section I involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be). Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or In-House Plan, as the case may be), the $100 Million Net Asset Requirement will be met if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (and by In-House Plans) each of which have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be), and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset requirements described in Section IV(a), where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 Million Net Asset Requirement (or in the case of an Eligible Rule 144A Offering, the $100 Million Net Asset Requirement) may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes in a single master trust.

(b) The Asset Manager is a ''qualified professional asset manager'' (QPAM), as that term is defined under Section V(a) of Prohibited Transaction Exemption (PTE 84–14),[19] as amended from time to time, or any successor exemption thereto. In addition to satisfying the requirements for a QPAM under Section V(a) of PTE 84–14, the Asset Manager also must have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million.

(c) At the time a transaction described in Section I is entered into, no more than 20 percent of the assets of a Pooled Fund are comprised of assets of In-House Plans for which WFC, the Asset Manager, the Affiliated Broker-Dealer, the Affiliated Trustee, the Affiliated Servicer, or any affiliate thereof exercises investment discretion.

(d) The transactions described in Section I are not part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or any affiliate.

(e) For purposes of Section II(i), Section II(j), Section III(g) and Section III(h), the requirement that the fiduciary responsible for the decision to authorize the transactions described in Section I, as applicable, for each plan proposing to invest in a Pooled Fund be independent of WFC and its affiliates shall not apply in the case of an In-House Plan.

(f) Subsequent to the initial authorization, pursuant to Section II(g) and Section III(e), by an Independent Fiduciary of a single Client Plan permitting the Asset Manager to engage in transactions described in Section I, as applicable, and subsequent to the initial authorization, pursuant to Section II(i), Section II(j), Section III(g), and Section III(h), by an Independent Fiduciary of a plan (or by a fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the transactions described in Section I, as applicable, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding such transactions that the Independent Fiduciary of such plan, such Client Plan (or of such In-House Plan, as the case may be) requests the Asset Manager to provide.

(g) The Independent Fiduciary of each Client Plan (and the fiduciary of each In-House Plan) that engages in the transactions described in Section I through a Pooled Fund may terminate the investment in such Pooled Fund, without penalty to such Client Plan (or such In-House 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, after the date that that the Independent Fiduciary of such Client Plan (or the fiduciary of such In-House Plan, as the case may be) informs the Asset Manager that the investment in such Pooled Fund is terminated.

(h) The Applicant establishes internal policies that restrict the contact and the flow of information between investment management personnel and non-investment management personnel in the same or affiliated financial service firms.

(i) The Applicant establishes business separation policies and procedures for WFC and its affiliates which are also structured to restrict the flow of any information to or from the Asset Manager that could limit its flexibility in managing client assets, and of information obtained or developed by the Asset Manager that can be used by other parts of the organization, to the detriment of the Asset Manager's clients.

Section V. Definitions

(a) The term ''the Applicant'' means WFC.

(b) The term ''affiliate'' of a person includes:

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

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

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

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

(d) The term ''Affiliated Broker-Dealer'' means any broker-dealer affiliate, as the term ''affiliate'' is defined in Section V(b)(1), of the Applicant, as the term ''Applicant'' is defined in Section V(a), that meets the requirements of this proposed exemption. Such Affiliated Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member.

(e) The term ''manager'' used in Section V(d) above and Section V(f) below, means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the Securities, as defined in Section V(j), being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(f) The term ''Asset Manager(s)'' means WFC or an affiliate of WFC, as

[19] 49 FR 9494 (March 13, 1984), *as amended at,* 75 FR 38837 (July 6, 2010).

the term ''affiliate'' is defined in Section V(b)(1), which entity acts as the fiduciary with respect to Client Plan(s), as the term ''Client Plan(s)'' is defined in Section V(g), or as the fiduciary with respect to Pooled Fund(s), as the term ''Pooled Fund(s)'' is defined in Section V(h). For purposes of this proposed exemption, the Asset Manager must qualify as a QPAM, as that term is defined under Section V(a) of PTE 84–14, 49 FR 9494, (March 13, 1984), *as amended at,* 75 FR 38837, (July 6, 2010). In addition to satisfying the requirements for a QPAM under Section V(a) of PTE 84–14, the Asset Manager must also have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million.

(g) The term ''Client Plan(s)'' means an employee benefit plan or employee benefit plans that are subject to the Act and/or the Code, and for which plan(s) an Asset Manager exercises discretionary authority or discretionary control respecting management or disposition of some or all of the assets of such plan(s). The term ''Client Plan(s)'' excludes In-House Plans, as defined in Section V(m).

(h) The term ''Pooled Fund(s)'' means a common or collective trust fund(s) or a pooled investment fund(s):

(1) In which employee benefit plan(s) subject to the Act and/or Code invest;

(2) Which is maintained by an Asset Manager, as defined in Section V(f); and

(3) For which such Asset Manager exercises discretionary authority or discretionary control respecting the management or disposition of the assets of such fund(s).

(i)(1) The term ''Independent Fiduciary'' means a fiduciary of a plan who is unrelated to, and independent of WFC, and is unrelated to, and independent of any affiliate of WFC. For purposes of this proposed exemption, a fiduciary of a plan will be deemed to be unrelated to, and independent of WFC, and unrelated to, and independent of any affiliate of WFC, if such fiduciary represents in writing that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for the transactions described in Section I is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of WFC, or of any affiliate of WFC, and represents that such fiduciary shall advise the Asset Manager within a reasonable period of time after any change in such facts occur;

(2) Notwithstanding anything to the contrary in this Section V(i), a fiduciary of a plan is not independent:

(i) If such fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with WFC, or any affiliate of WFC;

(ii) If such fiduciary directly or indirectly receives any compensation or other consideration from WFC, or from any affiliate of WFC for his or her own personal account in connection with any transaction described in this proposed exemption; and

(iii) If any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager responsible for the transactions described in Section I is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the sponsor of a plan or of the fiduciary responsible for the decision to authorize or terminate authorization for the transactions described in Section I. However, if such individual is a director of the sponsor of a plan or of the responsible fiduciary, and if he or she abstains from participation in: (A) The choice of such plan's investment manager/adviser; and (B) the decision to authorize or terminate authorization for the transactions described in Section I, then Section V(i)(2)(iii) shall not apply.

(j) The term ''Securities'' shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a 2(36)(1996)). For purposes of this proposed exemption, mortgage-backed or other asset backed securities rated by one of the Rating Agencies, as defined in Section V(q), will be treated as debt securities.

(k) The term ''Eligible Rule 144A Offering'' shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270.10f-3(a)(4))under the 1940 Act.

(l) The term ''qualified institutional buyer'' or the term, ''QIB,'' shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(m) The term ''In-House Plan(s)'' means an employee benefit plan or employee benefit plans that is/are subject to the Act and/or the Code, and that is/are sponsored by WFC or by an affiliate of WFC, as the term, affiliate is defined in Section V(b)(1), for its own employees.

(n) The term ''Affiliated Servicer'' means any affiliate of WFC, as defined in Section V(b)(1), that serves as a servicer of a trust that issues CMBS (including servicing one or more of the commercial mortgage loans in such trust).

(o) The term ''Affiliated Trustee'' means any affiliate of WFC, as affiliate is defined in Section V(b)(1), which is a bank or trust company that serves as trustee of a trust that issues Securities which are asset-backed securities or as indenture trustee of Securities which are either asset-backed securities or other debt securities that meet the requirements of Section II of this proposed exemption. For purposes of this proposed exemption, other than Section II(o), performing services as custodian, paying agent, registrar, or similar ministerial capacities is, in each case, also considered as serving as trustee or indenture trustee.

(p) The term ''Termination Form'' is a form provided by the Asset Manager to the Independent Fiduciary of each such plan participating in a Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund) which expressly provides an election for the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Such form shall include instructions specifying how to use the form. Specifically, the instructions must explain that such plan (or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund for a period of no more than thirty (30) days after such plan's (or such In-House Plan's) receipt of the initial notice of intent described in Section II(i)(2)(i) or in Section III(g)(2)(i), as applicable, and that the failure of the Independent Fiduciary of such plan (or fiduciary of such In-House Plan) to return the Termination Form to the Asset Manager in the case of a plan (or In-House Plan) participating in a Pooled Fund within the time period, specified in Section II(i)(2)(iii) or in Section III(g)(2)(iii), as applicable, shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in the transactions described in Section I, as applicable, as an investor in such Pooled Fund.

Further, the instructions will identify WFC, the Asset Manager, the Affiliated Broker-Dealer, and as applicable, the Affiliated Trustee, or the Affiliated Servicer, and will provide the address of the Asset Manager. The instructions will state that this proposed exemption will not be available, unless the fiduciary of each plan participating in any of the transactions described in Section I, as applicable, as an investor in a Pooled Fund is, in fact, independent of WFC,

the Asset Manager, the Affiliated Broker-Dealer, and, as applicable, the Affiliated Trustee or the Affiliated Servicer. The instructions will also state that the fiduciary of each such plan must advise the Asset Manager, in writing, if it is not an ''Independent Fiduciary,'' as that term is defined in Section V(i).

(q) The term ''Rating Agency'' or collectively, ''Rating Agencies'' means a credit rating agency that:

(1) Is currently recognized by the SEC as a nationally recognized statistical ratings organization (NRSRO);

(2) Has indicated on its most recently filed SEC Form NRSRO that it rates ''issuers of asset-backed securities;'' and

(3) Has had, within a period not exceeding twelve (12) months prior to the initial issuance of the securities, at least three (3) ''qualified ratings engagements.'' A ''qualified ratings engagement'' is one:

(i) Requested by an issuer or underwriter of securities in connection with the initial offering of the securities;

(ii) For which the credit rating agency is compensated for providing ratings;

(iii) Which is made public to investors generally; and

(iv) Which involves the offering of securities of the type that would be granted relief by the Underwriter Exemptions.

(r) The term ''CMBS'' means pass-through certificates or trust certificates that represent a beneficial ownership interest in the assets of an issuer which is a trust and which entitle the holder to payments of principal, interest, and/or other payments made with respect to the assets of such trust and the corpus or assets of which consist solely of obligations that bear interest or are purchased at a discount and which are secured by commercial real property (including obligations secured by leasehold interests on commercial real property) that are rated in one of the four highest rating categories by the Rating Agencies; provided that none of the Rating Agencies rates such securities in a category lower than the fourth highest rating category.

(s) The term ''officer'' means a president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), or any other officer who performs a policy-making function for WFC or any affiliate thereof.

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

*Effective Date:*

If granted, this proposed exemption will be effective as of the date the Grant is published in the **Federal Register**.

**Summary of Facts and Representations**

1. WFC (or the Applicant) is headquartered in San Francisco, California. WFC is a diversified financial services company organized under the laws of Delaware and is registered as a bank holding company and financial holding company under the Bank Holding Company Act of 1956. WFC engages in banking and a variety of related financial services businesses. Subsidiaries of the Applicant manage institutional portfolios for mutual funds, corporations, employee benefit plans, endowments, foundations, health care organizations, public agencies, sovereign organizations, and insurance companies. These affiliates act as fiduciaries to employee benefit plans, providing trustee, recordkeeping, consulting services, and investment management services. The Applicant states that certain affiliates of the Applicant act as the fiduciary with respect to Client Plan(s), or as the fiduciary with respect to Pooled Fund(s), and qualify as a ''QPAM,'' as that term is defined under Section V(a) of PTE 84–14, 49 FR 9494 (March 13, 1984), *as amended at,* 75 FR 38837, (July 6, 2010). In addition to satisfying the requirements for a QPAM under Section V(a) of PTE 84–14, such affiliates of the Applicant must also have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million.

As of March 31, 2013, WFC, through its affiliates, had approximately $463 billion in assets under management. The activities of WFC and its affiliates are subject to oversight and regulation by the SEC, the Federal Reserve Board, and the Office of the Comptroller of the Currency.

2. The proposed exemption involves the transactions described in Section I engaged in by single Client Plans (and by Client Plans and In-House Plans invested in Pooled Funds). In this regard, the Applicant represents that there is no feasible manner to identify specific information on all such plans.

3. The Applicant requests an individual administrative exemption that would permit the purchase of certain Securities, including Rule 144A Securities, by an Asset Manager acting as a fiduciary on behalf of single Client Plans or acting on behalf of Client Plans and In-House Plans which are invested in Pooled Funds, from any person other than such Asset Manager or an affiliate, thereof, during the existence of an initial offering of such Securities in which an Affiliated Broker-Dealer is a manager or a member of the underwriting or selling syndicate with respect to such Securities. Such a transaction is described, herein, as an AUT.

4. The Applicant also seeks an individual administrative exemption for certain transactions arising pursuant to an arrangement whereby an Affiliated Broker-Dealer is a manager or member of an underwriting syndicate, and an Affiliated Servicer serves as servicer of a trust that issues CMBS (including servicing one or more of the commercial mortgage backed loans in such trust) which are purchased by an Asset Manager, acting as a fiduciary on behalf of single Client Plans (or acting on behalf of Client Plans and In-House Plan invested in Pooled Funds, as applicable). Such transactions are described herein as an AUT and AST.

5. Further, the Applicant requests an individual administrative exemption for certain transactions arising pursuant to an arrangement whereby an Affiliated Servicer serves as servicer of a trust that issues CMBS where an Affiliated Broker-Dealer is not a manager or member of the underwriting syndicate for such securities. Such a transaction is described, herein, as an AST.

6. In addition, the Applicant seeks an individual administrative exemption for certain transactions arising from an arrangement whereby an Affiliated Trustee serves as trustee of a trust that issues certain Securities (whether or not debt securities) or serves as indenture trustee of such Securities that are debt securities. Such a transaction is described, herein, as an ATT.

7. Finally, the Applicant has requested an individual administrative exemption for certain transactions arising from an arrangement whereby an Affiliated Broker-Dealer is a manager or member of the underwriting syndicate for Securities and an Affiliated Trustee serves as trustee of a trust that issued the Securities (whether or not debt securities) or serves as an indenture trustee of Securities that are debt Securities and where such Securities are purchased by an Asset Manager, acting as a fiduciary on behalf of single Client

Plans (or acting on behalf of Client Plans and In-House Plan which are invested in Pooled Funds). Such transactions are described, herein, as an AUT and ATT.

The Applicant argues that absent an individual administrative exemption, Client Plans (and In-House Plans, as applicable) potentially could be cut off from primary market participation in a significant number of offerings of securities in which affiliates of WFC fill one or more of the roles, described above.

8. When an Asset Manager affiliated with WFC is a fiduciary with investment discretion with respect to the assets of single Client Plans (or with respect to the assets of Client Plans and In-House Plans invested in a Pooled Fund, as applicable), and such Asset Manager decides to engage in any of the transactions described in Section I above, the fact that WFC has an ownership interest in the Asset Manager, the Affiliated Broker-Dealer, and, as applicable, the Affiliated Trustee, or the Affiliated Servicer, raises issues under section 406(a)(1)(A) and (D) and section 406(b) of the Act, because one or more affiliates of such Asset Manager may be receiving compensation as a result of the purchase of the Securities involved in such transactions by Client Plans (or by In-House Plans, as applicable).

*AUTs*

9. In 2007, WFC obtained a Prohibited Transaction Exemption 2007–14 (PTE 2007–14) [20] from the Department, which provides relief for AUTs only. In connection with this proposed exemption, the Applicant requests that PTE 2007–14 be restated, with any updates required and/or granted in the interim by the Department. In Section I(a) of this proposed exemption, the Department has restated the AUT described in PTE 2007–14 and has updated and amended the conditions under which relief for such transaction is provided. Further, the Applicant has requested, and the Department in this proposed exemption has expanded, the relief which was provided in PTE 2007–14. In this regard, this proposed exemption also provides relief for the transactions, described in Section I(b), (c), (d), and (e), provided certain conditions are satisfied.

10. The Applicant represents that, in accordance with Prohibited Transaction Class Exemption 75–1 (PTE 75–1),[21] an asset manager acting as a fiduciary on behalf of a plan may purchase underwritten securities for such plan when an affiliated broker-dealer is a member of the underwriting or selling syndicate. In this regard, Part III of PTE 75–1 provides limited relief from the prohibited transaction provisions of the Act for plan fiduciaries that purchase certain securities from an underwriting or selling syndicate where the fiduciary or an affiliate is only a member of such syndicate. However, such relief is not available if the affiliated broker-dealer is a manager of the underwriting or selling syndicate.

11. Further, the Applicant explains, PTE 75–1 does not provide relief for the purchase of unregistered securities. Unregistered securities include securities purchased by a broker-dealer for resale to a ''qualified institutional buyer'' (QIB), pursuant to the SEC's Rule 144A under the 1933 Act. The Applicant explains that Rule 144A is commonly utilized in connection with sales of securities issued by foreign corporations to investors in the United States that are QIBs. Notwithstanding the unregistered status of such securities, the Applicant states that syndicates selling Rule 144A Securities are the functional equivalent of syndicates selling registered securities.

12. The Applicant represents that Affiliated Broker-Dealers regularly serve as managers of underwriting or selling syndicates for registered securities, and as managers or members of underwriting or selling syndicates for Rule 144A Securities. The Applicant states that an Asset Manager makes its investment decisions on behalf of, or renders investment advice to single Client Plans (or to Client Plans and In-House Plans invested in Pooled Funds, as applicable), pursuant to the governing document of the particular Client Plan or Pooled Fund and the investment guidelines and objectives set forth in the management or advisory agreement. Because single Client Plans (and In-House Plans) are covered by Title I of the Act, such investment decisions are subject to the fiduciary responsibility provisions of the Act.

13. The Applicant states, therefore, that the decision to invest in a particular offering is made on the basis of price, value, and the investment criteria of Client Plans (or of In-House Plans, as applicable), not on whether the Securities are currently being sold through an underwriting or selling syndicate. The Applicant further states that, because an Asset Manager's compensation for its services is generally based upon assets under management, such Asset Manager has little incentive to purchase Securities in an offering in which an Affiliated Broker-Dealer is an underwriter, unless such a purchase is in the interests of Client Plans (and in the interest of Client Plans and In-House Plans invested in Pooled Funds, as applicable). If the assets under management do not perform well, the Asset Manager will receive less compensation and could lose clients, costs which far outweigh any gains from the purchase of underwritten securities. The Applicant points out that under the terms of the proposed exemption, an Affiliated Broker-Dealer may not receive selling concessions, direct or indirect, that are attributable to the amount of Securities purchased by the Asset Manager on behalf of Client Plans (and on behalf of Client Plans and In-House Plans invested in Pooled Funds, as applicable).

14. The Applicant states that the Asset Manager generally purchases securities in large blocks, because the same investments will be made across several accounts. If there are new offerings of an equity or fixed income Securities that an Asset Manager wishes to purchase, it may be able to purchase such Securities through the offering syndicate at a lower price than it would pay in the open market, without transaction costs and with reduced market impact, if it is buying a relatively large quantity. This is because a large purchase in the open market can cause an increase in the market price and, consequently, in the cost of the Securities. Purchasing from an offering syndicate can thus reduce the costs to Client Plans (and to Client Plans and In-House Plans invested in Pooled Funds, as applicable).

15. The Applicant points out that absent the relief requested in this proposed exemption, if an Affiliated Broker-Dealer is a manager of a syndicate that is underwriting an offering of Securities, an Asset Manager will be foreclosed from purchasing any Securities on behalf of Client Plans (or, on behalf of Client Plans and In-House Plans invested in Pooled Funds, as applicable) from that underwriting syndicate. In this regard, such Asset Manager would have to purchase the same Securities in the secondary market. In such a circumstance, Client Plans (and Client Plans and In-House Plans invested in Pooled Funds, as applicable) may incur greater costs both because the market price is often higher than the offering price, and because there are transaction cost and market impact costs. In turn, this will cause the Asset Manager to forego other investment opportunities because the purchase price of the underwritten Securities in the secondary market exceeds the price that the Asset

[20] 72 FR 51467, September 7, 2007.

[21] 40 FR 50845, October 31, 1975.

Manager would have paid to the selling syndicate.

*ATTs*

16. With respect to ATTs and the types of trustees that would be covered by the proposed exemption, the Applicant states that in transactions involving asset-backed securities, there is generally a trustee who is the legal owner of the receivables held by the trust. In more traditional public debt offerings, there is generally only an indenture trustee, who holds the debt obligation of the obligor, holds any assets pledged as collateral to secure payment of the debt obligation, makes required payments, keeps records, and in the event of a default, acts for the note holders. The Applicant represents that the functions and obligations of an indenture trustee are aligned with the interests of the note holders, because such a trustee is generally appointed only to perform ministerial functions (*i.e.,* hold collateral, maintain records, and make payments when due). In this regard, the proposed exemption would also cover situations where the affiliate of the Asset Manager serves as a custodian, paying agent, registrar or other similar ministerial capacities.

17. The Applicant states that the Affiliated Broker-Dealer is frequently involved in underwriting offerings of asset backed securities and other securities where an affiliate of the Asset Manager serves as a trustee for the trust which issues such securities. The inability of the Asset Manager to purchase asset backed securities or other securities for its Client Plans (and for Client Plans and In-House Plans invested in Pooled Funds) in such cases can be detrimental to those accounts, because the accounts can lose important fixed income investment opportunities that are relatively less expensive or qualitatively better than other available opportunities in such securities.

18. The Applicant states that the trustee in a structured finance transaction for asset backed securities, while involved in complex calculations and reporting, typically does not perform any discretionary functions. Such a trustee operates as a stakeholder and strictly in accordance with the explicit terms of the governing agreements, so that the intent of the crafters of the transaction may be honored. These functions are essentially ministerial and include establishing accounts, receiving funds, making payments, and issuing reports, all in a predetermined manner. Unlike trustees for corporate or municipal debt, trustees in structured finance transactions for asset backed securities do not take on discretionary responsibility to protect the interests of debt holders in the event of default or bankruptcy, because responsibility for collections with respect to the underlying assets which serve as the source of payment on the debt is in the hands of the unaffiliated asset servicer. The Applicant represents that there is no ''issuer'' outside the structured transaction to pursue for repayment of the debt. The trustee's role is defined by a contract-explicit structure that outlines the actions to be taken upon the happening of specified events. The Applicant states that there is no opportunity (or incentive) for the trustee in a structured finance transaction, by reason of its affiliation with an underwriter, asset manager, or otherwise, to take or not to take actions that might benefit the underwriter or asset manager to the detriment of plan investors.

With respect to offerings of more traditional public debt securities that are not part of a structured finance transaction, the Applicant states that an indenture trustee may have more discretion when the issuer of the securities is not bankruptcy remote.[22] In such instances, indenture trustees generally exercise meaningful discretion only in the context of a default, at which time the indenture trustee has the duty to act for the bondholders, in a manner consistent with the interests of investing plans (and other investors) and not with the interests of the issuer. In such situations, an indenture trustee may be an affiliate of an underwriter for the securities. In the event of a default, the duty of an indenture trustee in pursuing the bondholders' rights against the issuer might conflict with the indenture trustee's other business interests. However, the Applicant represents that under the Trust Indenture Act of 1939 (the Trust Indenture Act), which applies to many, but not all, trust debt offerings,[23] an indenture trustee whose affiliate has, within the prior twelve (12) months, underwritten any securities for an obligor of the indenture securities generally must resign as indenture trustee, if a default occurs upon the indenture securities. Thus, the Applicant maintains that this requirement and other provisions of the Trust Indenture Act are designed to protect bondholders from conflicts of interest to which an indenture trustee may be subject.

19. According to the Applicant, the role of the underwriter in a structured financing for a series of asset backed securities involves, among other things, assisting the sponsor or originator of the applicable receivables or other assets in structuring the contemplated transaction. The trustee becomes involved later in the process, after the principal parties have agreed on the essential components, to review the proposed transaction from the limited standpoints of technical workability and potential trustee liability. After the issuance of securities to plan investors in a structured financing, while the trustee performs its role as trustee over the life of the transaction, the underwriter of the securities has no further role in the transaction (unless it is a continuous offering, such as for a commercial paper conduit).[24] In addition, the trustee has no opportunity to take or not take action, or to use information in ways that might advantage the underwriter to the detriment of plan investors. The Applicant states that an underwriter, in order to protect its reputation, clearly wants the transaction to succeed as it was structured, which includes the trustee performing in a manner independent of the underwriter.

20. The Applicant represents that, in some offerings of asset backed securities or other securities, the trustee's fee is a fixed dollar amount that does not depend on the size of the offering. In such cases, the Asset Manager has no conflict of interest, because it cannot increase the trustee's fee by causing plans to participate in the offering. Where the trustee's fee is a portion of the principal amount of outstanding securities to be offered, the Asset Manager could conceivably cause plans to participate to affect the size of the offering and thus the trustee's fee.[25]

[22] The Applicant represents that the amount of discretion possessed by an indenture trustee will depend on the terms of the particular indenture, and factual issues, such as whether a default has occurred.

[23] In connection with the applicability of the Trust Indenture Act to trust debt offerings, the Applicant further represents that market practice with respect to certain types of non-registered securities offerings is to structure the offering to include both an indenture and an indenture trustee, despite the fact that such offerings are not required to use the indenture structure mandated by the Trust Indenture Act. In such instances, the Applicant represents, it is typically the case that the various requirements of the Trust Indenture Act (including the default provision referenced in Representation 18) will be incorporated (either expressly or by reference) in the trust indenture.

[24] The Applicant further represents that, in a limited number of situations where the offering of the security is ongoing or continuous, the underwriter will have a continuing role in selling the additional securities that are sold over time.

[25] The Applicant represents that this theoretical conflict is directly addressed by the protective conditions in the so-called ''Underwriter Exemptions.'' In this regard, the Applicant states that the proposed exemption, if granted, will apply only to firm commitment underwriters, where, by

Continued

However, in virtually all circumstances, the size of the offering is determined before any sales to plans are discussed, so that the risk of this situation occurring is very small. The Applicant further represents that the protective conditions of the requested exemption (*e.g.,* the requirement of advance approval by an Independent Fiduciary and reporting of the basis for the trustee's fee) render this possibility remote.

In this regard, the Applicant states that the conditions of the proposed exemption, which are based on the prior individual exemptions granted by the Department for AUT, impose adequate safeguards as well for ATT in order to prevent possible abuse. First, there are significant limitations on the quantity of securities that an Asset Manager may acquire for Client Plans (and for Client Plans and In-House Plans invested in Pooled Funds), meaning not only that there will be significant limitations on the ability of the Asset Manager to affect the fees of its affiliate, but also insuring that significant numbers of independent investors also decided that the securities were an appropriate purchase. Second, the Asset Manager must obtain the consent of an independent fiduciary to engage in these transactions. Third, regular reporting of the subject transactions to an Independent Fiduciary will take place. Fourth, an Independent Fiduciary must be provided information on how securities purchased actually performed. Finally, the consent of the Independent Fiduciary may be revoked if, for example, it suspects that purchases by the Asset Manager have been motivated by a desire to generate fees for its affiliate.

*ASTs*

21. With regard to ASTs, the Applicant has requested relief for the purchase by a Client Plan (and by Client Plans and In-House Plans invested in Pooled Funds, as applicable) of CMBS issued by a trust where an Affiliated Servicer originates or services the trust, including servicing one or more commercial mortgage loans in such trust. Specifically, the Applicant asserts that the timing of events relating to the formation of the trust and the marketing of the securities is such that a purchaser (a Client Plan and/or Client Plans and In-House Plans invested in Pooled Funds, as applicable) could not provide additional income or otherwise confer any additional benefit on WFC or the Affiliated Servicer for the origination or servicing of the loan. The Applicant observes that ASTs can arise in situations that happen to need an AUT exemption (*i.e.,* where the Asset Manager is related to a managing underwriter or member of the syndicate and to a servicer of the trust that issues the CMBS), or where the Asset Manager is only related to a servicer of the trust that issued the CMBS, including servicing one or more commercial mortgage loans in such trust.

*Registered Securities Offerings*

22. The Applicant represents that Affiliated Broker-Dealers currently manage and participate in firm commitment underwriting syndicates for registered offerings of both equity and debt securities. While equity and debt underwritings may operate differently with regard to the actual sales process, the basic structures are the same. In a firm commitment underwriting, the underwriting syndicate purchases the securities from the issuer and then resells the securities to investors.

23. The Applicant represents that while, as a legal matter, a selling syndicate assumes the risk that the underwritten securities might not be fully sold, as a practical matter, this risk is reduced in marketed deals, through ''building a book'' (*i.e.,* taking indications of interest from potential purchasers) prior to pricing the securities. Accordingly, there is generally no incentive for the underwriters to use their discretionary accounts (or the discretionary accounts of their affiliates) to buy up the securities as a way to avoid underwriting obligations.

24. It is represented that if more than one underwriter is involved in a selling syndicate, the lead manager and the underwriters enter into an ''Agreement among Underwriters'' in the form designated by one of the lead managers selected by the issuer. Most lead managers have a standing form of agreement. This master agreement is then commonly supplemented for the particular deal by sending an ''invitation wire'' or ''terms telex'' that sets forth particular terms to the other underwriters.

25. The arrangement between the syndicate and the issuer of the underwritten securities is embodied in an underwriting agreement, which is signed on behalf of the underwriters by one or more of the managers. In a firm commitment underwriting, the underwriting agreement provides, subject to certain closing conditions, that the underwriters are obligated to purchase all of the underwritten securities from the issuer in accordance with their respective commitments, if any securities are not purchased. This obligation is met by using the proceeds received from investors purchasing securities in the offering, although there is a risk that the underwriters will have to pay for a portion of the securities in the event that not all of the securities are sold or an investor defaults on its obligation.

26. The Applicant represents that, generally, it is unlikely that in marketed deals that all offered securities will not be sold. In marketed deals, the underwriting agreement is not executed until after the underwriters have obtained sufficient indications of interest to purchase the securities from a sufficient number of investors to assure that all the securities being offered will be acquired by investors. Once the underwriting agreement is executed, the underwriters promptly begin contacting the investors to confirm the sales, at first by oral communication and then by written confirmation. Sales may be finalized within hours and sometimes minutes, but in any event prior to the opening of the market for trading the next day. In registered transactions, the underwriters have a strong interest in completing the sales as soon as possible because, until they ''break syndicate,'' they cannot recommence normal trading activity, which includes buying and selling the securities for their customers or own account.

27. The Applicant represents that the process of ''building a book'' or soliciting indications of interest occurs in a registered equity offering, after a registration statement is filed with the SEC. While it is under review by the SEC staff, representatives of the issuer of the securities and the selling syndicate managers conduct meetings with potential investors, who learn about the company and the underwritten securities. Potential investors also receive a preliminary prospectus. The underwriters cannot make any firm sales until the registration statement is declared effective by the SEC. Prior to the effective date, while the investors cannot become legally obligated to make a purchase, such investors indicate

definition, the entire issue of Securities will be purchased, either by the public or the underwriters. Thus, where the trustee's fee would be a fixed percentage of the total dollar amount of the Securities issued in the offering, the amount of the trustee's fee would be, in fact, a fixed dollar amount that would be known to plan investors as part of disclosures made relating to the offering (*e.g.,* the prospectus or private placement memorandum). In this connection the Department notes that plan fiduciaries would have a duty to adequately review, and effectively monitor, all fees paid to service providers, including those paid to parties affiliated with an Asset Manager.

whether they have an interest in buying, and the lead managers compile a ''book'' of investors who are willing to ''circle'' a particular portion of the issue. Although investors cannot be legally bound to buy the securities until the registration statement is effective, investors generally follow through on their indications of interest.

28. Assuming that the marketing efforts have produced sufficient indications of interest, the Applicant represents that the issuer of the securities, after consultation with the lead manager, will set the price of the securities upon being declared effective by the SEC. After the registration statement has been declared effective by the SEC and the underwriting agreement is executed, the underwriters contact those investors that have indicated an interest in purchasing securities in the offering to execute the sales. The Applicant represents that offerings are often oversubscribed, and many have an over-allotment option that the underwriters can exercise to acquire additional shares from the issuer. Where an offering is oversubscribed, the underwriters decide how to allocate the securities among the potential purchasers. However, if the offering is an initial public offering of an equity security, then the underwriters may not sell the securities to (among others) any person that is a broker-dealer, an associated person of a broker-dealer, a portfolio manager, or an owner of a broker-dealer. Additionally, underwriters may not withhold for their own account any initial public offering of an equity security.

29. The Applicant represents that debt offerings and certain equity offerings may be ''negotiated'' offerings, ''competitive bid'' offerings, or ''bought deals.'' ''Negotiated'' offerings are conducted in the same manner as marketed equity offerings with regard to when the underwriting agreement is executed and how the securities are offered. ''Competitive bid'' offerings, in which the issuer determines the price for the securities through competitive bidding, rather than negotiating the price with the underwriting syndicate, are often performed under ''shelf'' registration statements pursuant to the SEC's Rule 415 under the 1933 Act (Rule 415) (17 CFR 230.415).[26]

30. In a competitive bid offering, prospective lead underwriters will bid against one another to purchase debt securities, based upon their determinations of the degree of investor interest in the securities. Depending on the level of investor interest and the size of the offering, a bidding lead underwriter may bring in co-managers to assist in the sales process. Most of the securities are frequently sold within hours, or sometimes even less than an hour, after the securities are made available for purchase.

31. It is represented that because of market forces and the requirements of Rule 415, the competitive bid process is generally, though not exclusively, available only to issuers who have been subject to the reporting requirements of the 1934 Act for at least one (1) year.

32. Occasionally, underwriters ''buy'' the entire deal off of a ''shelf registration'' or in a Rule 144A offering before obtaining indications of interest. These ''bought'' deals involve issuers whose securities enjoy a deep and liquid secondary market, such that an underwriter has confidence without pre-marketing that it can identify purchasers for the securities.

*Information Barriers*

33. The Applicant represents that there are internal policies in place that restrict contact and the flow of information between investment management personnel and non-investment management personnel in the same or affiliated financial service firms. These policies are designed to protect against ''insider trading'' (*i.e.,* trading on information not available to the general public that may affect the market price of the securities.) Diversified financial services firms must be concerned about insider trading problems because one part of the firm (*e.g.,* the mergers and acquisitions group) could come into possession of non-public information regarding an upcoming transaction involving a particular issuer, while another part of the firm (*e.g.,* the investment management group) could be trading in the securities of that issuer for its clients.

34. Further, the applicant represents business separation policies and procedures of WFC and its affiliates are also structured to restrict the flow of any information to or from the Asset Manager that could limit its flexibility in managing client assets, and of information obtained or developed by the Asset Manager that could be used by other parts of the organization, to the detriment of the Asset Manager's clients.

35. The Applicant represents that major clients of WFC and its affiliates include investment management firms that are competitors of the Asset Manager. Similarly, an Asset Manager deals on a regular basis with broker-dealers that compete with Affiliated Broker-Dealers. If special consideration was shown to an Affiliated Broker-Dealer, such conduct would likely have an adverse effect on the relationships of the Affiliated Broker-Dealer and of the Asset Manager with firms that compete with such affiliate. Therefore, it is represented that a goal of the Applicant's business separation policies is to avoid any possible perception of improper flows of information between the Affiliated Broker-Dealer and the Asset Manager in order to prevent any adverse impact on client and business relationships.

*Underwriting Compensation*

36. The Applicant represents that the underwriters are compensated through the ''spread,'' or difference, between the price at which the underwriters purchase the securities from the issuer and the price at which the securities are sold to the public. The spread is divided into three components.

37. The first component includes the management fee, which generally represents an agreed upon percentage of the overall spread and is allocated among the lead manager and co-managers. Where there is more than one managing underwriter, the way the management fee will be allocated among the managers is generally agreed upon between the managers and the issuer prior to soliciting indications of interest. Thus, the allocation of the management fee is not reflective of the amount of securities that a particular manager sells in an offering.

38. The second component is the underwriting fee, which represents compensation to the underwriters (including the non-managers, if any) for the risks they assume in connection with the offering and for the use of their capital. This component of the spread is also used to cover the expenses of the underwriting that are not otherwise reimbursed by the issuer of the securities.

39. The first and second components of the ''spread'' are received without regard to how the underwritten securities are allocated for sales purposes or to whom the securities are sold. The third component of the spread is the selling concession, which generally constitutes 60 percent (60%) or more of the spread. The selling concession compensates the underwriters for their actual selling efforts. The allocation of selling concessions among the underwriters generally follows the allocation of the securities for sales purposes. However,

[26] The Applicant maintains that Rule 415 permits an issuer to sell debt as well as equity securities under an effective registration statement previously filed with the SEC by filing a post-effective amendment or supplemental prospectus.

a buyer of the underwritten securities may designate other broker-dealers (who may be other underwriters, as well as broker-dealers outside the syndicate) to receive the selling concessions arising from the securities they purchase.

40. Securities are allocated for sales purposes into two categories. The first and larger category is the ''institutional pot,'' which is the pot of securities from which sales are made to institutional investors. Selling concessions for securities sold from the institutional pot are generally designated by the purchaser to go to particular underwriters or other broker-dealers. If securities are sold from the institutional pot, the selling syndicate managers sometimes receive a portion of the selling concessions, referred to as a ''fixed designation'' or an ''auto pot split'' attributable to securities sold in this category, without regard to who sold the securities or to whom they were sold. However, for securities covered by this proposed exemption, an Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designation generated by purchases of securities by an Asset Manager on behalf of its Client Plans (or on behalf of Client Plan and In-House Plan in Pooled Funds, if applicable).

41. The second category of allocated securities is ''private client'' or ''retail,'' which are the securities retained by the underwriters for sale to their customers. The underwriters receive the selling concessions from their respective retail retention allocations. Securities may be shifted between the two categories based upon whether either category is oversold or undersold during the course of the offering.

42. The Applicant represents that the inability of an Affiliated Broker-Dealer to receive any selling concessions, or any compensation attributable to the fixed designations generated by purchases of securities by an Asset Manager on behalf of Client Plans (or on behalf of Client Plans and In-House Plans invested in Pooled Funds, if applicable), removes the primary economic incentive for an Asset Manager to make purchases that are not in the interests of such Client Plans (and Client Plans and In-House Plans invested in Pooled Funds, if applicable) from offerings for which an Affiliated Broker-Dealer is an underwriter. The reason is that the Affiliated Broker-Dealer will not receive any additional fees as a result of such purchases by the Asset Manager.

*Rule 144A Securities*

43. The Applicant represents that a number of the offerings of Rule 144A Securities in which an Affiliated Broker-Dealer participates represent good investment opportunities for the Asset Manager's Client Plans (and for Client Plans and In-House Plans invested in Pooled Funds, as applicable). Particularly with respect to foreign securities, a Rule 144A offering may provide the least expensive and most accessible means for obtaining these securities. However, as discussed above, PTE 75–1, Part III, does not cover Rule 144A Securities. Therefore, absent an exemption, the Asset Manager is foreclosed from purchasing such securities for its Client Plans (and for Client Plans and In-House Plans invested in Pooled Funds, if applicable) in offerings in which an Affiliated Broker-Dealer participates.

44. The Applicant states that Rule 144A acts as a ''safe harbor'' exemption from the registration provisions of the 1933 Act for re-sales of certain types of securities to QIBs. QIBs include several types of institutional entities, such as employee benefit plans and commingled trust funds holding assets of such plans, which own and invest on a discretionary basis at least $100 million in securities of unaffiliated issuers.

45. Any securities may be sold pursuant to Rule 144A except for those of the same class or similar to a class that is publicly traded in the United States, or certain types of investment company securities. This limitation is designed to prevent side-by-side public and private markets developing for the same class of securities and is the reason that Rule 144A transactions are generally limited to debt securities.

46. Buyers of Rule 144A Securities must be able to obtain, upon request, basic information concerning the business of the issuer and the issuer's financial statements, much of which is the same information as would be furnished if the offering were registered. This condition does not apply, however, to an issuer filing reports with the SEC under the 1934 Act, for which reports are publicly available. The condition also does not apply to a ''foreign private issuer'' for whom reports are furnished to the SEC under Rule 12g3–2(b) of the 1934 Act (17 CFR 240.12g3–2(b)), or to issuers who are foreign governments or political subdivisions thereof and are eligible to use Schedule B under the 1933 Act (which describes the information and documents required to be contained in a registration statement filed by such issuers).

47. Sales under Rule 144A, like sales in a registered offering, remain subject to the protections of the anti-fraud rules of federal and state securities laws. These provisions include Section 10(b) of the 1934 Act and Rule 10b–5 thereunder (17 CFR 240.10b–5) and Section 17(a) of the 1933 Act (15 U.S.C. 77a). Through these and other provisions, the SEC may use its full range of enforcement powers to exercise its regulatory authority over the market for Rule 144A Securities, in the event that it detects improper practices.

48. The Applicant represents that this potential liability for fraud provides a considerable incentive to the issuer of the securities and the members of the selling syndicate to insure that the information contained in a Rule 144A offering memorandum is complete and accurate in all material respects. Among other things, the lead manager typically obtains an opinion from a law firm, commonly referred to as a ''10b–5'' opinion, stating that the law firm has no reason to believe that the offering memorandum contains any untrue statement of material fact or omits to state a material fact necessary in order to make sure the statements made, in light of the circumstances under which they were made, are not misleading.

49. The Applicant represents that Rule 144A offerings generally are structured in the same manner as underwritten registered offerings. They may be ''negotiated'' offerings, ''competitive bid'' offerings or ''bought deals.'' One difference is that a Rule 144A offering uses an offering memorandum rather than a prospectus that is filed with the SEC. The marketing process is substantially similar, except that the selling efforts are limited to contacting QIBs and there are no general solicitations for buyers (*e.g.,* no general advertising). In addition, contracts for sale may be entered into with investors and securities may be priced before a selling agreement is executed (and this is typically the case with respect to sales of asset backed securities). The role of Affiliated Broker-Dealer in these offerings is typically that of a lead or co-manager. Further, generally, there are no non-manager members in a Rule 144A selling syndicate. The Applicant nonetheless requests that the relief offered by the proposed exemption extend to authorization for situations where an Affiliated Broker-Dealer acts as manager or as a member.

50. The proposed exemption is administratively feasible, because the exemption involves easily identified transactions which will require limited ongoing monitoring by the Department.

In this regard, compliance with the terms and conditions of the proposed exemption will be verifiable and subject to audit.

51. The Applicant represents that the proposed exemption is in the interest of participants and beneficiaries of Client Plans that engage in the covered transactions. In this regard, it is represented that the proposed exemption will enable the Asset Manager to cause Client Plans (and Client Plans and In-House Plans invested in Pooled Funds, as applicable) to participate in desirable investment opportunities by purchasing Securities under circumstances described in Section I, where such purchases are determined to be appropriate for and in the best interest of such Client Plans (and Client Plans and In-House Plans invested in Pooled Funds, as applicable).

52. The Applicant represents that the proposed exemption is protective of the rights of participants and beneficiaries of affected Client Plans (and Client Plans and In-House Plans invested in Pooled Funds, as applicable). In this regard, the notification provisions and other requirements in the proposed exemption are similar to the conditions, including consent and the imposition of volume and quality restrictions, set forth in other exemptions published by the Department in similar circumstances.

53. In summary, it is represented that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Client Plans (and Client Plans and In-House Plans invested in Pooled Funds, as applicable) will gain access to desirable investment opportunities;

(b) In each offering, an Asset Manager will purchase the Securities for single Client Plans (and for Client Plans and In-House Plans invested in Pooled Funds, as applicable) from an underwriter or broker-dealer other than the Asset Manager or an affiliate thereof;

(c) Conditions similar to those found in PTE 75–1, Part III, will restrict the types of Securities that may be purchased, the types of underwriting or selling syndicates and issuers involved, and the price and timing of the purchases;

(d) The amount of Securities that an Asset Manager may purchase on behalf of single Client Plans (and on behalf of Client Plans and In-House Plans invested in Pooled Funds, as applicable) will be subject to percentage limitations;

(e) An Affiliated Broker-Dealer will not be permitted to receive, either directly, indirectly or through designation, any selling concession with respect to the Securities sold to an Asset Manager on behalf of a single Client Plans (or Client Plans and In-House Plans invested in Pooled Funds, as applicable);

(f) Prior to any purchase of Securities, an Asset Manager will make the required disclosures to an Independent Fiduciary of each single Client Plan (and the fiduciary of each Client Plan invested in Pooled Funds, as applicable) and obtain authorization to engage in the covered transactions in accordance with the procedures set forth in this proposed exemption;

(g) The Asset Manager will provide regular reporting to the Independent Fiduciary of each single Client Plan (and the fiduciary of each Client Plan and In-House Plan invested in Pooled Funds, as applicable) with respect to all Securities purchased in accordance with the procedures set forth in this proposed exemption;

(h) Each single Client Plan (and each Client Plan and In-House Plan invested in Pooled Funds) will be subject to net asset requirements, with certain exceptions for Client Plans and In-House Plans invested in Pooled Funds; and

(i) An Asset Manager must have total assets under management in excess of $5 billion and shareholders' or partners' equity in excess of $1 million, in addition to qualifying as a QPAM, pursuant to Part V(a) of PTE 84–14.

**Notice to Interested Persons**

WFC represents that the class of persons interested in this proposed exemption is comprised of the relevant Independent Fiduciary of each existing single Client Plan (and the Independent Fiduciary of each existing Client Plan and fiduciary of each existing In-House Plan the assets of which are invested in Pooled Funds) of the Asset Manager(s) that intend(s) to rely upon the proposed exemption, if granted. In this regard, it is represented that WFC shall provide notification of the publication of the Notice of Proposed Exemption (the Notice) in the **Federal Register** to all such interested persons via first class mail to each such interested person's most recent address maintained in the records of the administrator of the relevant Client Plans and In-House Plans. Such notification 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 such interested persons of their right to comment and to request a hearing. WFC will provide such notification to all such interested persons within fifteen (15) days of the date of publication of the Notice in the **Federal Register**. All written comments and/or requests for a hearing must be received by the Department from such interested persons no later than 45 days after publication of the Notice 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:** Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

### Craftsman Independent Union Local #1 Health, Welfare & Hospitalization Trust Fund (the Plan) Cape Girardeau, Missouri

[Application No. L–11775]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) of the Act shall not apply to the sale by the Plan of a parcel of improved real property (the Property) to the Craftsman Independent Union Local #1 (the Union), 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 sales price for the Property is the greater of either: (1) $250,000; or (2) the fair market value of the Property as established by qualified independent appraisers (the Appraisers) in an appraisal of the Property that is updated on the date of the sale;

(c) RMI, as the qualified independent fiduciary (the I/F), reviews and approves the methodology used by the Appraisers to ensure that such methodology is properly applied in determining the fair market value of the Property, and determines that it is prudent to go forward with the sale;

(d) RMI represents the interests of the Plan at the time the sale is consummated;

(e) The Plan pays no real estate fees or commissions in connection with the sale;

(f) The Union reimburses the Plan for 50% of the costs of the exemption application and pays all recording charges, attorney's fees, title insurance premiums, and any transfer fees or taxes; and

(g) The terms of the sale are no less favorable to the Plan than the terms the Plan would receive under similar circumstances in an arm's length transaction with an unrelated party.

**Summary of Facts and Representations**

1. RMI (or the Applicant), which is located in Brentwood, Tennessee, acts as and provides support services to court-appointed independent fiduciaries or court-appointed receivers of: Federally-regulated pension plans, and health and welfare benefit funds; state regulated insurance companies; health maintenance organizations and workers compensation trusts; state regulated trust companies; state regulated finance companies; and securities companies. On June 20, 2011, the United States District Court for the Eastern District of Missouri (the Court) appointed RMI to serve as the I/F of the Plan.

2. The Union is located in Cape Girardeau, Missouri. The Union represents certain workers in the construction and skilled trades industries, generally in Missouri, Illinois, Tennessee, and Arkansas. Bilfinger Industrial Services Inc. (Bilfinger), which is headquartered in Ballwin, Missouri, is the Union's sole contributing employer. Bilfinger provides construction and engineering services to five primary markets: Consumer Products, Pulp and Paper, Chemical and Petrochemical, Food and Beverage, and Power, Energy and Utilities.

3. Members of the Union are eligible to participate in the Plan. The Plan is a self-funded health plan that provides health benefits to the eligible employees of contributing employers pursuant to the employers' collective bargaining agreements with the Union. The Plan began its operations in 1984 in Missouri and presently has offices in Cape Girardeau, Missouri. As of May 31, 2014, the Plan covered 57 participants and 65 beneficiaries. Also, as of May 31, 2014, the Plan had total net assets of $2,074,545.39.

The Plan does not currently have any trustees. As explained in Representation 6, the Plan trustees were removed in 2011 by judicial order. RMI, as independent fiduciary of the Plan, is authorized to exercise full authority and control over the management and disposition of the Plan's assets.

4. In 1987, the Plan purchased the Property, located at 2709 Bloomfield Road in Cape Girardeau, Missouri, from Marshall Maxwell and Marion Maxwell, unrelated third parties, for a purchase price of $76,000. The Plan's former trustees made the original decision to purchase the Property as a long-term growth investment for the Plan. The Property consists of a 2,000 square foot office building with a 2,000 square foot full basement, and 11,600 square feet of concrete and asphalt paved driveways and parking spaces. The Applicant represents that no parties in interest with respect to the Plan own or lease any property adjacent to the Property.

5. On May 21, 1999, the Plan began leasing office space in the Property to the Union for a monthly rental charge of $775. Also on this date, the Craftsman International Union (the International Union) [27] began leasing office space in the Property from the Plan for a monthly rental charge of $355. The Union currently pays the Plan $900 per month under its amended lease, and the International Union still pays the Plan $355 per month under its lease. A total of 3,000 square feet of leased office space is occupied by these tenants. The Plan uses the remainder of the Property for its own office space. The Plan trustees, some of whom were officers of both Unions, approved the specific terms of each lease. Both leases contain automatic renewal provisions.[28]

[27] The Applicant represents that officers and members of the International Union are not eligible to participate in the Plan. However, it is possible for an individual to be a member or an officer of both the Union and the International Union, and that such individual could become eligible for coverage under the Plan by reason of his or her status with the Union. Therefore, the International Union would be considered a party in interest with respect to the Plan.

[28] According to the Applicant, the leases have always complied with the terms and conditions of PTE 76–1 (41 FR 12740, March 26, 1976, as corrected at 41 FR 16620 (April 20, 1976)), and PTE 77–10 (42 FR 33918, July 1, 1977). Part C of PTE 76–1 provides exemptive relief from the prohibited transaction provisions of sections 406(a) and 407(a) of the Act for the leasing of office space, or the provision of administrative services, or the sale or leasing of goods by a multiple employer plan to a participating employee organization, participating employer or another multiple employer plan. PTE 77–10, which complements PTE 76–1, provides exemptive relief from the prohibited transaction provisions of section 406(b)(2) of the Act with respect to the sharing of office space, administrative services or goods, or the leasing of office space, or the provision of administrative services or the sale or leasing of goods.

Notwithstanding the Applicant's assertion that the past and continued leasing arrangements of the Property by the Plan and the Union and the Plan and the International Union are covered by PTEs 76–1 and 77–10, the Department notes that such leasing has resulted in violations of section 406(b)(1) of the Act because some of the Plan trustees are officers of both Unions. PTEs 76–1 and 77–10 do not cover such violations, however, pursuant to the Consent Judgment, described in Representation 6, the Department, the Plan, the Union, the International Union, and other parties expressly agreed to waive any and all claims of any nature that each may have against the other.

6. In 2011, William Kitchen, Jerry Dewrock and Terrance Kelley were removed as trustees of the Plan by a judicial order. As stated above, on June 20, 2011, the Court appointed RMI to serve as the independent fiduciary of the Plan. According to the Consent Judgment issued by the Court, RMI is authorized to exercise full authority and control with respect to the management or disposition of the assets of the Plan. Pursuant to the Consent Judgment, RMI also has the authority to liquidate Plan assets, effectuate the termination of the Plan, identify all legitimate claimants of the Plan and pay the amount of their claims, distribute the Plan's assets for the benefit of eligible participants and to pay service providers. The principal individuals responsible for the actions of RMI are Ms. Jeanne Barnes Bryant and Mr. Robert E. Moore, Jr.

7. Aside from paying the $76,000 purchase price for the Property, excluding interest payments made under the loan from the Cape County Bank, the Plan has incurred certain holding costs of approximately $173,674.76, since it has owned the Property, through April 1, 2014. These costs include property taxes ($25,636.47), utilities ($71,535.59), insurance ($25,037.27), property maintenance expenses ($23,020.29), building repairs ($16,885.84), and labor repairs ($11,559.30). During that same time period, the Applicant represents that the Plan has received rents totaling $246,350.00.

The Applicant represents that the above expense amounts are gross expenses (*i.e.,* the amounts attributable to the Plan's usage of the Property are included in the above expenses). If the Plan's prorated share of the expenses (25% or $43,418.59) is subtracted from the above expenses ($173,674.76), the Plan's expenses are $130,256.17. Thus, the Plan's estimated acquisition and holding costs associated with the Property are $206,256.17 ($76,000 + $130,256.17). Because the Plan earned rental income totaling $246,350, it has received a projected net profit of $40,093.83 ($246,350 − $206,256.17) as of April 2014.

8. The Plan now seeks to sell the Property. In this regard, RMI believes that the Property's value has plateaued, and that it would be prudent for the Plan to dispose of illiquid assets such as the Property. The Applicant represents that the most expeditious way to sell the Property is to offer it to the Union, given the slow real estate market conditions in

Cape Girardeau, Missouri. The Applicant further maintains that selling the Property to an unrelated third party might result in the Plan having to relocate its offices, which would result in additional costs. Therefore, the Applicant requests an administrative exemption from the Department with respect to the proposed sale.[29]

9. The proposed sale violates section 406(a)(1)(A) and (D) of the Act. In this regard, section 406(a)(1)(A) and (D) of the Act provides, in relevant part, that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect sale or transfer to, or use by or for the benefit of a party in interest of any assets of the plan. The term ''party in interest'' is defined under section 3(14)(D) of the Act to include, among other things, an employee organization any of whose employees or members are covered by such plan, such as the Union.

10. In connection with the sale, the Union will pay the Plan the greater of $250,000 or the fair market value of the Property, as determined by the Appraisers (see Representations 11–13) in an appraisal that is updated at closing. The consideration will be paid in cash. Thus, the sales price for the Property will represent approximately 12% of the Plan's assets. The existing lease between the Plan and the Union will expire by operation of law once the sale is consummated.[30]

Both the Union and the Plan will be required to pay 50% of the escrow agent's fees and 50% of the costs of preparing and obtaining an individual prohibited transaction exemption from the Department for the proposed transaction. However, the Union will reimburse the Plan for 50% of the Plan's costs in preparing and obtaining an exemption. The Union will also be required to pay all recording charges, attorney fees, title insurance premiums, and any transfer fees or taxes. Finally, the Plan will pay all of RMI's fees.

11. RMI retained Mr. John M. Karnes and Ms. Holly L. Schneider of Dockins Valuation Company (DVC) to serve as the Appraisers and, in such capacity, to prepare the appraisal of the Property. The Appraisers are both Certified General Real Estate Appraisers in Missouri. The Appraisers' gross revenues received from parties in interest with respect to the Plan, including the appraisal report, represent less than 1% of their 2014 gross revenues.

12. In an appraisal report (the Appraisal Report) dated August 11, 2014, the Appraisers describe the Property as an irregularly-shaped site having frontage of 163.24 feet along Bloomfield Road and containing approximately 0.80 acres. The Appraisers further explain that the site is improved with a 2,000 square foot brick office building with a full basement of 2,000 square feet and approximately 11,600 square feet of concrete and asphalt paved driveways and parking spaces.

13. According to the Appraisers, the Cost Approach to valuation is a good indicator of value if the property being appraised is new or relatively new and the improvements represent the highest and best use of the land. However, in this appraisal, the Appraisers noted a sizable amount of depreciation. For this reason, the Cost Approach value was not developed for the Property.

The Appraisers also considered the Income Approach in their valuation of the Property. The income stream, according to the Appraisers, is often the primary decision-making tool for investment decisions involving income-producing property, such as the Property. Thus, it is the Appraisers' opinion that the Income Approach is a strong indicator of value of the Property. Using this approach, the Appraisers placed the fair market value of the Property at $240,000.

Finally, the Appraisers considered the Sales Comparison Approach in their valuation of the Property. According to the Appraisers, this approach is based upon a comparison between the subject Property and similar properties, which have sold. The Appraisers state that sales of similar properties within the subject's market area were available for comparison with a reasonable degree of comparability to subject. Thus, the Sales Comparison Approach was also considered a strong indicator of value in this appraisal to the Appraisers. Under this approach, the Appraisers placed the fair market value of the Property at $265,000.

In the Appraisers' opinion, the value of the subject Property lay somewhere between the Income Approach and the Sales Comparison Approach. Therefore, based on their analysis and conclusions as to the market value, the Appraisers placed the fair market value of the Property, in fee simple, at $250,000 as of July 7, 2014.

14. RMI represents that it has the appropriate training, experience, and facilities to act on behalf of the Plan regarding the proposed transaction in accordance with the fiduciary duties and responsibilities prescribed by the Act. RMI further represents that it has not, and does not, expect to receive any revenues from any party in interest of the Plan for the current or immediately prior federal income tax year. RMI also represents that it has no relationship with any other party in interest with respect to the Plan.

As the Plan's independent fiduciary, RMI will review and approve the methodology used by the Appraisers, ensure that such methodology is properly applied in determining the fair market value of the Property, and determine whether it is prudent to go forward with the proposed transaction. In addition, RMI will represent the interests of the Plan at the time the proposed transaction is consummated.

15. RMI represents that the exemption request is administratively feasible because the proposed transaction will be a one-time transaction that will alleviate the administrative burdens that come with the annual valuation and holding of an illiquid asset. RMI also represents that the requested exemption is in the interest of Plan participants and beneficiaries because the sale of the Property will enable the Plan to have more liquid assets and diversify its reserve investments. Further, RMI states that the exemption request is protective of the rights of the Plan's participants and beneficiaries because the proposed transaction will enhance the Plan's ability to continue to provide benefits to its members and their beneficiaries. Finally, RMI notes that the Union will reimburse the Plan for 50% of the costs associated with this exemption application and the proposed transaction.

16. RMI asserts that the Plan's need for liquidity is real and immediate. If the proposed transaction is not approved, the Plan will continue to have the burden of paying real estate taxes and utility and other expenses to maintain the Property, including obtaining and paying for an annual valuation of the Property for financial reporting purposes. Finally, RMI represents that that Plan will be forced

[29] In conjunction with the sale, the Plan proposes to lease office space in the Property from the Union. The Applicant states that the leaseback will comply with section 408(b)(2) of the Act, and the regulations that have been promulgated thereunder. Section 408(b)(2) of the Act provides statutory exemptive relief from section 406(a) of the Act for contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid. The Department expresses no opinion herein on whether the requirements of section 408(b)(2) of the Act will be satisfied with respect to the leasing of the Property by the Union to the Plan.

[30] Similarly, the existing lease between the Plan and the International Union will terminate by operation of law.

to continue to hold a relatively illiquid investment, with no assurance that it can ever be sold to an unrelated third party.

17. In summary, RMI represents that the proposed transaction will satisfy the statutory requirements for an exemption under section 408(a) of the Act because:

(a) The sale will be a one-time transaction for cash;

(b) The sales price for the Property will be the greater of either: (1) $250,000; or (2) the fair market value of the Property as established by the Appraisers in an appraisal of the Property that is updated on the date of the sale;

(c) RMI will review and approve the methodology used by the Appraisers to ensure that such methodology is properly applied in determining the fair market value of the Property, and will determine that it is prudent to go forward with the sale;

(d) RMI will represent the interests of the Plan at the time the sale is consummated;

(e) The Plan will pay no real estate fees or commissions in connection with the sale;

(f) The Union will reimburse the Plan for 50% of the costs of the exemption application and pay all recording charges, attorney's fees, title insurance premiums, and any transfer fees or taxes; and

(g) The terms of the sale will be no less favorable to the Plan than the terms the Plan would receive under similar circumstances in an arm's length transaction with an unrelated party.

**Notice to Interested Persons**

Notice of the proposed exemption will be given to interested persons within 10 days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will be given to interested persons by first class mail, with postage prepaid. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 40 days of the publication of the notice of proposed exemption in the **Federal Register**.

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:** Mrs. Blessed Chuksorji-Keefe of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

**Robert W. Baird & Co. Incorporated Located in: Milwaukee, Wisconsin**

[Application No. D–11782]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[31]

Section I: Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D) and 406(b) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(D), (E), and (F) of the Code, shall not apply to:

(a) The acquisition, sale or exchange by an Account of shares of an open-end investment company (the Fund) registered under the Investment Company Act of 1940 (the 1940 Act), the investment adviser for which is also a fiduciary with respect to the Account (or an affiliate of such fiduciary) (hereinafter, Robert W. Baird and all its affiliates will be referred to as Investment Adviser),

(b) the in-kind redemptions of shares or acquisitions of shares of the Fund in exchange for Account assets transferred in-kind from an Account,

(c) the receipt of fees for acting as an investment adviser for such Funds, in connection with the investment by the Accounts in shares of the Funds, and

(d) the receipt of fees for providing Secondary Services to the Funds in connection with the investment by the Accounts in shares of the Funds, provided that the applicable conditions set forth in Sections II and III are met.

Section II: General Conditions

(a) The Account does not pay a sales commission or other similar fees to the Investment Adviser or its affiliates in connection with such acquisition, sale, or exchange;

(b) The Account does not pay a purchase, redemption or similar fee to the Investment Adviser in connection with the acquisition of shares by the Account or the sale by the Account to the Fund of such shares.

(c) The Account may pay a purchase or redemption fee to the Fund in connection with an acquisition or sale of shares by the Account, that is fully disclosed in the Fund's prospectus in effect at all times. Furthermore, any purchase fee paid by the Account to the Fund (1) is intended to approximate the difference between ''bid'' and ''asked'' prices on the fixed income securities that the Fund will purchase using the proceeds from the sale of Fund shares to the Account; and (2) is not charged on any assets transferred in-kind to the Fund;

(d) The Account does not pay an investment management, investment advisory or similar fee with respect to Account assets invested in Fund shares for the entire period of such investment. This condition does not preclude the payment of investment advisory fees by the Fund under the terms of its investment advisory agreement adopted in accordance with section 15 of the 1940 Act. This condition also does not preclude payment of an investment advisory fee by the Account under the following circumstances:

(1) For Accounts billed in arrears, an investment advisory fee may be paid based on total Account assets from which a credit has been subtracted representing the Account's pro rata share of investment advisory fees paid by the Fund;

(2) For Accounts billed in advance, the Investment Adviser must employ a reasonably designed method to ensure that the amount of the prepaid fee that constitutes the fee with respect to the Account assets invested in the Fund shares:

(A) Is anticipated and subtracted from the prepaid fee at the time of payment of such fee, and

(B) Is returned to the Account no later than during the immediately following fee period, or

(C) Is offset against the prepaid fee for the immediately following fee period or for the fee period immediately following thereafter. For purposes of this paragraph, a fee shall be deemed to be prepaid for any fee period if the amount of such fee is calculated as of a date not later than the first day of such period; or

(3) An investment advisory fee may be paid by an Account based on the total

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

assets of the Account, if the Account will receive a cash rebate of such Account's proportionate share of all fees charged to the Fund by the Investment Adviser for investment management, investment advisory or similar services no later than one business day after the receipt of such fees by the Investment Adviser;

(e) The crediting, offsetting or rebating of any fees in Section II(d) is audited at least annually by the Investment Adviser through a system of internal controls to verify the accuracy of the fee mechanism adopted by the Investment Adviser under Section II(d). Instances of non-compliance must be corrected and identified, in writing, in a separate disclosure to affected Accounts within 30 days of such audit;

(f) The combined total of all fees received by the Investment Adviser for the provision of services to an Account, and for the provision of any services to a Fund in which an Account may invest, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act;

(g) The Investment Adviser and its affiliates do not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions covered by this exemption, if granted.

(h) In advance of any initial investment by a Separately Managed Account in a Fund or by a new Plan investor in a Pooled Fund, a Second Fiduciary with respect to that Plan, who is independent of and unrelated to the Investment Adviser or any affiliate thereof, receives in written or in electronic form, full and detailed written disclosure of information concerning such Fund(s). The disclosure described in this Section II(h) includes, but is not limited to:

(1) A current prospectus issued by each of the Fund(s);

(2) A statement describing the fees for investment advisory or similar services, any Secondary Services, and all other fees to be charged to or paid by the Account and by the Fund(s), including the nature and extent of any differential between the rates of such fees;

(3) The reasons why the Investment Adviser may consider such investment to be appropriate for the Account;

(4) A statement describing whether there are any limitations applicable to the Investment Adviser with respect to which Account assets may be invested in shares of the Fund(s) and, if so, the nature of such limitations; and

(5) A copy of this proposed exemption and the final exemption, if granted, and any other reasonably available information regarding the transaction described herein that the Second Fiduciary requests, provided that the notice of proposed exemption and notice of grant of exemption may be given within 15 calendar days after the date that the final exemption is published in the **Federal Register**, in the event that the initial investment in a Fund by a Separately Managed Account or by a new Plan investor in a Pooled Fund has occurred prior to such date.

(i) After receipt and consideration of the information referenced in Section II(h), the Second Fiduciary of the Separately Managed Account or the new Plan investing in a Pooled Fund approves in writing the investment of Plan assets in each particular Fund and the fees to be paid by a Fund to the Investment Adviser.

(j)(1) In the case of existing Plan investors in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, if granted, unless the Second Fiduciary receives in written or in electronic form, the information described in subparagraph (2) of this Section II(j) not less than 30 days prior to the Investment Adviser's engaging in the covered transactions on behalf of the Pooled Fund pursuant to this exemption, if granted;

(2) The information referred to in subparagraph (1) of this Section II(j) includes:

(A) A notice of the Pooled Fund's intent to engage in the covered transactions described herein, and a copy of the notice of proposed exemption, and a copy of the final exemption, if granted, provided that the notice of the proposed exemption and notice of grant of exemption may be given within 15 calendar days after the date that the final exemption is granted and published in the **Federal Register**, in the event that the Investment Advisor engaged in the covered transactions on behalf of the Pooled Fund prior to such date.

(B) Any other reasonably available information regarding the covered transactions that a Second Fiduciary requests, and

(C) A ''Termination Form,'' within the meaning of Section II(k). Approval to engage in any covered transactions pursuant to this exemption may be presumed notwithstanding that the Investment Adviser does not receive any response from a Second Fiduciary.

(k) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to the Investment Adviser will be subject to an annual reauthorization wherein any such prior authorization shall be terminable at will by an Account, without penalty to the Account, upon receipt by the Investment Adviser of written notice of termination. A form expressly providing an election to terminate the authorization (the Termination Form) with instructions on the use of the form will be supplied to the Second Fiduciary no less than annually, in written or in electronic form. The instructions for the Termination Form will include the following information:

(1) The authorization is terminable at will by the Account, without penalty to the Account, upon receipt by the Investment Adviser of written notice from the Second Fiduciary. Such termination will be effected by the Investment Adviser by selling the shares of the Fund held by the affected Account within one business day following receipt by the Investment Adviser of the Termination Form or any other written notice of termination; provided that if, due to circumstances beyond the control of the Investment Adviser, the sale cannot be executed within one business day, the Investment Adviser shall have one additional business day to complete such sale; and provided further that, where a Plan's interest in a Pooled Fund cannot be sold within this timeframe, the Plan's interest will be sold as soon as administratively practicable;

(2) Failure of the Second Fiduciary to return the Termination Form or provide any other written notice of termination will result in continued authorization of the Investment Adviser to engage in the covered transactions on behalf of an Account; and

(3) The identity of Baird, the asset management affiliate of Baird, the affiliated investment advisers, and the address of the asset management affiliate of Baird. The instructions will state that the exemption, if granted, is not available, unless the fiduciary of each Plan participating in the covered transactions as an investor in a Pooled Fund is, in fact, independent of the Investment Adviser. The instructions will also state that the fiduciary of each such Plan must advise the asset management affiliate of Baird, in writing, if it is not a ''Second Fiduciary,'' as that term is defined, below, in Section IV(h).

However, if the Termination Form has been provided to the Second Fiduciary pursuant to this Section II(k) or Sections II(j), (l), or (m), the Termination Form need not be provided again for an annual reauthorization pursuant to this paragraph unless at least six months has elapsed since the form was previously provided.

(l) In situations where the Fund-level fee is neither rebated nor credited

against the Account-level fee, the Second Fiduciary of each Account invested in a particular Fund will receive full disclosure, in written or in electronic form, in a statement, which is separate from the Fund prospectus, of any proposed increases in the rates of fees for investment advisory or similar services, and any Secondary Services, at least 30 days prior to the implementation of such increase in fees, accompanied by a Termination Form. In situations where the Fund-level fee is rebated or credited against the Account-level fee, the Second Fiduciary will receive full disclosure, in a Fund prospectus or otherwise, in the same time and manner set forth above, of any increases in the rates of fees to be charged by the Investment Adviser to the Fund for investment advisory services. Failure to return the Termination Form will be deemed an approval of the increase and will result in the continued authorization of the Investment Adviser to engage in the covered transactions on behalf of an Account.

(m) In the event that the Investment Adviser provides an additional Secondary Service to a Fund for which a fee is charged or there is an increase in the rate of any fees paid by the Funds to the Investment Adviser for any Secondary Services resulting from either an increase in the rate of such fee or from a decrease in the number or kind of services provided by the Investment Adviser for such fees over an existing rate for such Secondary Service in connection with a previously authorized Secondary Service, the Second Fiduciary will receive notice, at least 30 days in advance of the implementation of such additional service or fee increase, in written or in electronic form, explaining the nature and the amount of such services or of the effective increase in fees of the affected Fund. Such notice shall be accompanied by a Termination Form. Failure to return the Termination Form will be deemed an approval of the Secondary Service and will result in continued authorization of the Investment Adviser to engage in the covered transactions on behalf of the Account.

(n) On an annual basis, the Second Fiduciary of an Account investing in a Fund, will receive, in written or in electronic form:

(1) A copy of the current prospectus for the Fund and, upon such fiduciary's request, a copy of the Statement of Additional Information for such Fund, which contains a description of all fees paid by the Fund to the Investment Adviser;

(2) A copy of the annual financial disclosure report of the Fund in which such Account is invested, which includes information about the Fund portfolios as well as audit findings of an independent auditor of the Fund, within 60 days of the preparation of the report; and

(3) With respect to each of the Funds in which an Account invests, in the event such Fund places brokerage transactions with the Investment Adviser, the Investment Adviser will provide the Second Fiduciary of such Account, in the same manner described above, at least annually with a statement specifying the following (and responses to oral or written inquiries of the Second Fiduciary as they arise):

(A) The total, expressed in dollars, brokerage commissions of each Fund's investment portfolio that are paid to the Investment Adviser by such Fund,

(B) The total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to the Investment Adviser,

(C) The average brokerage commissions per share, expressed as cents per share, paid to the Investment Adviser by each portfolio of a Fund, and

(D) The average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to the Investment Adviser.

(o) In all instances in which the Investment Adviser provides electronic distribution of information to Second Fiduciaries who have provided electronic mail addresses, such electronic disclosure will be provided in a manner similar to the procedures described in 29 CFR 2520.104b–1(c).

(p) No Separately Managed Account holds assets of a Plan sponsored by the Investment Adviser or an affiliate. If a Pooled Fund holds assets of a Plan or Plans sponsored by the Investment Adviser or an affiliate, the total assets of all such Plans shall not exceed 15% of the total assets of such Pooled Fund.

(q) All of the Accounts' other dealings with the Funds, the Investment Adviser, or any person affiliated thereto, are on terms that are no less favorable to the Account than such dealings are with other shareholders of the Funds.

(r) Baird and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons, described, below, in Section II(s), to determine whether the conditions of this exemption have been met, except that—

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

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

(s)(1) Except as provided, below, in Section II(s)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in Section II(r) 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 SEC, or

(B) Any fiduciary of any Plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary, or

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

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

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

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

Section III: Additional Conditions for In-Kind Transactions

(a) In-kind transactions with an Account shall only involve: (1) Publically-traded securities for which market quotations are readily available, as determined pursuant to procedures established by the Funds under Rule

2a–4 of the 1940 Act; (2) securities that are deemed to be liquid and that are valued based upon prices obtained from a reliable well-established third-party pricing service that is independent of the Investment Adviser (*e.g.,* Interactive Data Pricing and Reference Data, LLC) pursuant to then-existing procedures established by the Board of Directors or Trustees of the Funds under the 1940 Act and applicable Securities and Exchange Commission (SEC) rules, regulations and guidance thereunder (SEC Guidance); and (3) cash in the event that the aforementioned securities are odd lot securities, fractional shares, or accruals on such securities. Securities for which prices cannot be obtained from a third-party pricing service will not be transferred in-kind. Furthermore, in-kind transfers of securities will not include:

(1) Securities that, if publicly offered or sold, would require registration under the Securities Act of 1933, as amended (the 1933 Act), other than securities issued under Rule 144A of the 1933 Act;

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

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

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

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

(6) Securities subject to ''stop transfer'' instructions or similar contractual restrictions on transfer; provided however that the foregoing restrictions shall not apply to securities eligible for resale pursuant to Rule 144A under the 1933 Act, or commercial paper or other short-term instruments issued pursuant to Section 4(2) of the 1933 Act so long as such securities are deemed to be liquid and are valued based upon prices obtained from a reliable, well-established third-party pricing service that is independent of the Investment Adviser pursuant to then-existing procedures established by the Board of Directors or Trustees of the Funds under the 1940 Act and applicable SEC Guidance.

(b) Subject to the exceptions described in Section III(a) above, in the case of an in-kind exchange of assets (in-kind redemptions and in-kind transfers of Plan assets) between an Account and a Fund, the Account will receive its pro rata portion of the securities of the Fund equal in value to that of the number of shares redeemed, or the Fund shares having a total net asset value (NAV) equal to the value of the assets transferred on the date of the transfer, as determined in a single valuation, using sources independent of the Investment Adviser, performed in the same manner as it would for any other person or entity at the close of the same business day in accordance with the procedures established by the Fund pursuant to Rule 2a–4 under the 1940 Act, and the then-existing valuation procedures established by its Board of Directors or Trustees, as applicable for the valuation of such assets, that are in compliance with the rules administered by the SEC. In connection with a redemption of Fund shares, the value of the securities and any cash received by the Account for each redeemed Fund share equals the NAV of such shares at the time of the transaction. In the case of any other in-kind exchange, the value of the Fund shares received by the Account equals the NAV of the transferred securities and any cash on the date of the transfer.

(c) The Investment Adviser shall provide the Second Fiduciary with a written confirmation containing information necessary to perform a post-transaction review of any in-kind transaction so that the material aspects of such transaction, including pricing, can be reviewed. Such information must be furnished no later than thirty (30) business days after the completion of the in-kind transaction. In the case of a Pooled Fund, the Investment Adviser can satisfy the requirement with a single aggregate report furnished to the Second Fiduciary containing the required information for each in-kind transaction taking place during a month. This aggregate report must be furnished to the Second Fiduciary no later than thirty (30) business days after the end of that month. The information to be provided pursuant to this Section III(c) shall include:

(1) With respect to securities either transferred or received by an Account in-kind in exchange for Fund shares,

(A) the identity of each security either received by the Account pursuant to the redemption, or transferred to the Fund by the Account, and the related aggregate dollar value of all such securities determined in accordance with Rule 2a–4 under the 1940 Act and the then-existing procedures established by the Board of Directors or Trustees of the Fund (using sources independent of the Investment Adviser), and

(B) the current market price of each security transferred or received in-kind by the Account as of the date of the in-kind transfer;

(2) With respect to Fund shares either transferred or received by an Account in-kind in exchange for securities,

(A) the number of Fund shares held by the Account immediately before the redemption and the related per share net asset value and the total dollar value of such Fund shares, determined in accordance with Rule 2a–4 under the 1940 Act, using sources independent of the Investment Adviser, or

(B) the number of Fund shares held by the Account immediately after the in-kind transfer and the related per share net asset value of the Fund shares received and the total dollar value of such Fund shares, determined in accordance with Rule 2a–4 under the 1940 Act using sources independent of the Investment Adviser; and

(3) The identity of each pricing service or market-maker consulted in determining the value of the securities.

(d) Prior to the consummation of an in-kind exchange, the Investment Adviser must document in writing and determine that such transaction is fair to the Account and comparable to, and no less favorable than, terms obtainable at arm's-length between unaffiliated parties, and that the in-kind transaction is in the best interests of the Account and the participants and beneficiaries of the participating Plans.

Section IV. Definitions

(a) The term ''Account'' means either a Separately Managed Account or a Pooled Fund in which investments are made by Plans.

(b) An ''affiliate'' of a person includes any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person; any officer of, director of, highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of, or partner in any such person; and any corporation or partnership of which such person is an officer, director, partner or owner, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code).

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

(d) The term ''Fund'' means any open end investment company registered under the 1940 Act.

(e) The term ''Investment Adviser'' means Robert W. Baird or any of its current or future affiliates.

(f) The term ''Plan'' means a plan described in section 3(3) of the Act and a plan described in section 4975(e)(1) of the Code.

(g) The term ''Pooled Fund'' means any commingled fund sponsored, maintained, advised or trusteed by the Investment Adviser, which fund holds Plan assets.

(h) The term ''Second Fiduciary'' means a fiduciary of a Plan who is independent of and unrelated to the Investment Adviser. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Investment Adviser if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Investment Adviser;

(2) Such fiduciary, or any officer, director, partner, or employee of the fiduciary is an officer, director, partner, employee or affiliate of the Investment Adviser; or

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption. If an officer, director, partner, affiliate or employee of the Investment Adviser is a director of such Second Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment adviser, (B) the approval for the acquisition, sale, holding, and/or exchange of Fund shares by such Plan, and (C) the approval of any increase in fees charged to or paid by the Plan in connection with any of the transactions described herein, then subparagraph (2) above shall not apply.

(i) The term ''Secondary Service'' means a service other than an investment management, investment advisory or similar service which is provided by the Investment Adviser to the Funds, including but not limited to custodial, accounting, brokerage, administrative or any other similar service.

(j) The term ''Separately Managed Account'' means any Account other than a Pooled Fund, and includes single-employer Plans.

*Effective Date:* If granted, this proposed exemption will be effective as of April 1, 2014.

**Summary of Facts and Representations**

*Background*

1. Robert W. Baird & Co. Incorporated (Baird or the Applicant) is an employee-owned wealth management, capital markets, asset management and private equity firm. Baird is headquartered in Milwaukee, Wisconsin, and has offices in the United States, Europe and Asia. Baird is a registered broker-dealer under the Securities Exchange Act of 1934 (the 1934 Act) and a member of the Financial Industry Regulatory Authority. Baird is also a federally-registered investment advisor. It provides trade execution, custody and other standard brokerage services, as well as investment advice and asset management services, to individual, trust, institutional, corporate and other clients, including pension, profit-sharing and retirement plans and accounts (Plans) described in section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (the Act) and/or section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the Code).

2. Baird represents that it provides investment management services to institutional clients including defined benefit Plans seeking to address the volatility and interest rate sensitivity that have made maintenance of these Plans problematic since the interest rate sensitivity and resulting volatility can significantly affect a Plan's funded status and the sponsoring organization's operating results. According to the Applicant, the strategy Baird utilizes to support these Plans, often called ''liability-driven investing'' or ''LDI,'' seeks to reduce the interest rate sensitivity ''gap'' between a Plan's assets and its pension liabilities, which in turn will reduce the variability of the funded status of the Plan and dampen the swings in the Plan's minimum annual funding requirements. Specifically, Baird's LDI strategy utilizes a separate account structure that invests in long maturity (duration) U.S. dollar-denominated, investment-grade quality bonds that are primarily issued by the U.S. Government or corporate entities.

3. The Applicant represents that all current Plan clients invested in Baird's LDI strategy are mid to large sized Plans able to achieve the necessary portfolio diversification through a separate account structure. According to Baird, a separately managed account is not always the optimum vehicle for smaller defined benefit Plan sponsors who wish to maintain their Plans and implement the LDI strategy. In this regard, the Applicant states that the size of the long-dated corporate bond portion of a small to mid-sized Plan's LDI portfolio does not permit it to obtain optimum diversification and ''round lot'' transaction cost efficiencies through the purchase of individual bonds by such a Plan's separate account. Baird explains that corporate bonds are typically traded in ''round lots'' of $1 million par value or higher and best price execution is achieved at these amounts. Anything smaller is considered an ''odd lot'' which can carry additional premiums when buying and discounts when trying to sell, thus widening the ''bid/ask spread'' for odd lot position sizes and increasing transaction costs. The Applicant notes that a separate account structure is only effective if the client has sufficient assets to achieve proper diversification and advantageous pricing in purchasing round lot positions of long-dated corporate bonds in a separate account. To resolve this issue, Baird intends to establish an open-end mutual fund (the Fund), registered under the Investment Company Act of 1940 (the 1940 Act), which would hold the long-dated investment grade corporate bonds as part of the LDI strategy.

4. The Applicant represents that these smaller Plans would benefit by investing in the Fund, because of efficiencies and economies of scale inherent in a pooled investment vehicle. In this regard, according to Baird, the Fund can readily purchase long-dated corporate bonds in round lots, thus reducing costs, and achieve greater issuer diversification given the larger pool of assets to invest. Investments in U.S. Government bonds and futures would continue to be effected in separate accounts for each Plan and not in the Fund.

At this time, the Applicant represents that it desires to launch one Fund, but states that Baird may create additional Funds in the future with different bond exposures, but still consistent with an LDI strategy, to better meet the needs of certain defined benefit Plans. The Applicant notes, for example, that some Plans may want a higher quality long dated corporate bond strategy, and a potential additional Fund would address this by investing only in A-rated or better bonds.

5. The Applicant notes that, even though LDI strategies have been the focus of discussion for traditional pension plans over the last several years, most small to mid-sized plans have not started implementing their LDI de-risking strategy for various reasons.

According to Baird, one reason they have delayed the implementation has been the lack of customized solutions that can accommodate the smaller asset size of their Plans and still offer adequate corporate bond diversification and attractive pricing of the product. The Applicant suggests that the few smaller Plans that have started implementing LDI strategies have implemented a separate account structure that generates a less-than-adequately diversified corporate bond strategy, coupled with higher-than-average transaction costs because they cannot achieve the round lot efficiencies. Other Plans that have attempted to avoid these issues chose to use whatever pooled vehicle they could find that invested in long maturity bonds, even though the solution wasn't necessarily an LDI-focused strategy. The Applicant contends further that, due to these sub-optimal choices, many Plans have chosen to delay implementing an LDI strategy, and many smaller Plans that have begun such a strategy have a less than optimum diversification of the bonds they hold.

*Purchase Fee*

6. The Applicant states that, in order to avoid adverse economic effects on existing Plan investors in the Fund from the transaction costs of investing the cash investments, the Fund would have a fully disclosed purchase fee paid to the Fund, rather than a redemption fee paid to the Fund. The Applicant represents that the purchase fee is not a commission, trailer or other type of sales charge, and neither the advisor nor its affiliates will receive this fee. Baird explains that, like a redemption fee, the purchase fee is paid directly to the Fund and is intended to protect the existing Plan shareholders in the Fund from the transaction costs incurred when a new Plan invests in the Fund and the Fund is required to purchase additional long-dated corporate bonds.

7. According to Baird, the SEC has stated that ''a purchase fee differs from, and is not considered to be, a front-end sales load because a purchase fee is paid to the fund (not to a broker) and is typically imposed to defray some of the fund's costs associated with the purchase.'' The SEC requires mutual funds that have a purchase fee to disclose that fee in the Fees and Expenses section of the prospectus under a category that is separate from a sales charge or distribution (12b–1) fee.[32]

[32] See the SEC's Web site at *http://www.sec.gov/answers/mffees.htm.*

8. The Applicant represents that purchase fees are helpful because of the transaction costs associated with fixed-income investments. According to the Applicant, when bonds are purchased in a separate account or a mutual fund, the account pays the ask (offered) price to the broker/dealer which represents the price at which the broker/dealer is willing to sell and is higher than the bid price which represents the price at which the broker/dealer is willing to buy the bonds. Baird states further that this ''bid/ask spread'' is the mark-up paid to broker/dealers for trading bonds and represents the transaction costs incurred when bonds are traded. However, according to the Applicant, as is commonly the case with mutual funds, the Fund will value its portfolio of fixed income securities at their closing bid prices each day because those prices more accurately reflect the prices at which the portfolio securities could be sold by the Fund in the ordinary course of business. Therefore, when a Plan invests in the Fund, the Fund will have to use the proceeds to purchase bonds at or near the higher ''ask'' price and immediately at the close of business that day those newly purchased bonds will be valued at the lower ''bid'' price. The Applicant states that this will cause an immediate decline in the value of those securities that will impact the existing Plan shareholders in the Fund through a small reduction in the Fund's net asset value (NAV). Thus, the Applicant represents that the purchase fee is intended to cover the transaction costs incurred by this ''ask price to bid price reversion'' that occurs on all bond purchases.

9. Baird represents that the ask price to bid price reversion is more pronounced for long-dated corporate bonds than for Treasury securities or shorter-term fixed income securities, and long-dated corporate bonds constitute the LDI investment strategy adopted for the Fund by Baird. The purchase fee represents the estimated costs to the current shareholders of the Fund of the likely difference between the prices paid by the Fund for corporate bonds using a Plan's cash investment in the fund and the prices at which those bonds are valued for purposes of calculating the Fund's net asset value. Baird represents that, effectively, by utilizing a purchase fee paid to the Fund, the Plan investing in the Fund is appropriately allocated the transaction costs required to purchase long-dated corporate bonds so that existing shareholders do not bear those costs.

*Request for Exemptive Relief*

10. Baird requests relief from section 406(a)(1)(D) and 406(b) of the Act for its investment managers to cause a Plan's acquisition, sale or exchange of shares of the Fund through a separately managed account or a pooled fund in which Plans could invest (each, an Account), in cash or in kind, including publically traded securities and securities sold in reliance on Rule 144A (Rule 144A Securities) under the Securities Act of 1933 (the 1933 Act), and to receive an advisory fee and certain other fees from the Fund that constitute fees for ''secondary services.''

The Applicant states that section 406(a)(1)(D) of the Act prohibits a fiduciary with respect to a plan from causing such plan to engage in a transaction, if he knows or should know, that such transaction constitutes a transfer to, or use by or for the benefit of, a party in interest, of any assets of such plan. Sections 3(14)(A) and (B) of the Act define the term ''party in interest'' to include, respectively, any fiduciary of a plan and any person providing services to a plan. Under section 3(21)(A)(i) of the Act, a person is a fiduciary with respect to a plan, to the extent such person exercises authority or control with respect to the management or disposition of the assets of a plan. Additionally, under section 3(21)(A)(ii) a person is a fiduciary with respect to a plan to the extent such person renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of a plan or has any authority or responsibility to do so.

Furthermore, the Applicant notes that under 406(b) of the Act, a fiduciary with respect to a plan may not: (1) Deal with the assets of a plan in his own interest or for his own account, (2) in his individual or in any other capacity act in any transaction involving a plan on behalf of a party (or represent a party) whose interests are adverse to the interests of such plan or the interests of its participants or beneficiaries, or (3) receive any consideration for his own personal account from any party dealing with a plan in connection with a transaction involving the assets of such plan.

The Applicant represents that Baird entities may currently serve, and may in the future serve, as investment advisors, investment managers, or other fiduciaries with respect to their client Plans (Client Plans). Accordingly, the Applicant and various other Baird affiliates may currently be, or may in the future be parties in interest with respect to Client Plans which engage in the

proposed transactions. In this regard, the investment of assets of a Client Plan in a Fund advised by Baird, in cash or in kind, including Rule 144A Securities, may raise issues under sections 406(a)(1)(D), 406(b)(1), 406(b)(2), and 406(b)(3) of the Act, and the corresponding provisions of the Code, unless an exemption is available, for the transactions themselves and for the receipt of fees from the Fund.

*Fees*

11. The Applicant represents that investment management fees related to investment in the Fund would be offset, credited or waived at the Account level, as provided for in Class Prohibited Transaction Exemption (PTE) 77–4 [33] and other similar individual exemptions based on PTE 77–4 (the Similar Exemptions).[34] The Applicant represents that the billing systems and processes at Baird have been designed to correctly rebate or credit the advisory fees from the Fund against the Plan level fees or credit the Plan level fees against the advisory fees. According to the Applicant, these processes and systems are part of the billing systems of Baird, and they have been tested over the years to ensure compliance with the conditions for exemptive relief in connection with Baird's reliance on PTE 77–4.

*Disclosure and Consent*

12. The Applicant states that the proposed exemption contains disclosure and consent requirements that are based upon PTE 77–4 and the Similar Exemptions.[35] In this regard, the Applicant represents that often, where Plans are invested in a pooled investment vehicle that invests in the Fund, the rules in PTE 77–4 that relate to disclosure and consent are expensive to administer, impractical, time consuming and burdensome. In particular, Baird represents that it is difficult for many pooled investment vehicles to comply with the written consent requirements described above.

13. Currently, the Applicant represents that there is no intention to create a pooled fund in which Plans could invest which would hold shares of the Fund, but that strategy could be employed in the future if small clients preferred to hold interests in a pooled fund rather than hold the shares of the Fund directly. Consequently, Baird requests that the proposed exemption would require the Applicant to provide all of the disclosures currently required by PTE 77–4 to the fiduciaries of a Plan, prior to investing in the Fund, but rather than require written consent, the proposed exemption would permit "deemed consent" or negative consent to occur where Baird receives no response to such disclosures. In addition, the proposed exemption contains disclosure and consent procedures which would apply with respect to existing investors in a pooled fund. In addition, the proposed exemption contains a requirement that a plan fiduciary receive an Annual Termination Form, similar to the requirements contained in Similar Exemptions.

14. The proposed exemption would also allow disclosures to be provided in written or in electronic form. Nevertheless, a Second Fiduciary may request a non-electronic copy of any required disclosure. Moreover, the Applicant states that in all instances in which Baird provides electronic distribution of information to Second Fiduciaries who have provided electronic mail addresses, such electronic disclosure will be provided in a manner similar to the procedures described in 29 CFR 2520.104b–1(c) [36] to ensure that the Baird's system of providing electronic disclosures results in actual receipt by the intended recipient.

*In-Kind Exchanges*

15. The Applicant represents that if a Plan currently holds securities which are appropriate for the Fund, and an investment in the Fund is consistent with the investment guidelines of the Plan, acquisition of Fund shares may be made in cash or in kind. According to the Applicant, an asset manager's ability to hold and transfer in-kind securities for its client Plans can be helpful to those accounts because the accounts will gain important investment opportunities and avoid significant transaction costs. When a Plan invests in the Fund in-kind, no purchase fee would be charged.

According to the Applicant, the transfers in-kind would comply with Rule 17a–7 under the 1940 Act, including with respect to Rule 144A Securities.[37] The Applicant represents

[33] See 42 FR 18732, April 8, 1977.

[34] See, *e.g.,* Barclays Global Investors, N.A. (BGI) and its Investment Advisory Affiliates, including Barclays Global Fund Advisors (BGFA, together, the Applicants), PTE 2008–01, 73 FR 3274, January 17, 2008).

[35] The Applicant notes that PTE 77–4 requires that each Plan investor provide advance written consent to the investment in the Fund and provide advance written consent to any change in fees. In this regard, PTE 77–4 requires that a second fiduciary with respect to the Plan, who is independent of and unrelated to the fiduciary/investment advisor or its affiliates, receives a current prospectus issued by the Fund, and full and written detailed disclosure of the investment advisory and other fees charged to or paid by the Plan and the Fund, including the nature and extent of any differential between the rates of such fees, the reasons why the fiduciary/investment adviser may consider such purchases to be appropriate for the Plan, and whether there are limitations on the fiduciary/investment adviser with respect to which Plan assets may be invested in shares of the Fund and, if so, the nature of such limitations. Furthermore, PTE 77–4 requires that, on the basis of such prospectus and disclosure, a second fiduciary, who is independent of and unrelated to the fiduciary/investment adviser or affiliate, approves purchases and sales consistent with the responsibilities contained within Part 4 of Title I of the Act and such approval must be either: (1) set forth in the Plan documents or in the investment management agreement between the Plan and the fiduciary/investment adviser, (2) indicated in writing prior to each purchase or sale, or (3) indicated in writing prior to the commencement of a specified purchase or sale program in the shares of the Fund. Additionally, PTE 77–4 requires that the second fiduciary, or any successor thereto, is notified of any changes in the rates of fees and approves in writing the continuation of purchases and sales, and the continued holding of any shares of the Fund acquired by the Plan, and such approval may be limited to the investment advisory and other fees paid by the Fund in relation to the fees paid by the Plan.

[36] 29 CFR 2520.104b–1(c) sets forth conditions under which a Plan administrator furnishing documents through electronic media (*e.g.,* email) will be deemed to satisfy the requirements of 29 CFR 2520.104b–1(b)(1), which provides that disclosures required under Title I of ERISA must be furnished using "measures reasonably calculated to ensure actual receipt of the material by [P]lan participants, beneficiaries and other specified individuals."

[37] The Applicant explains that Rule 17a–7 under the 1940 Act provides a safe harbor from the general prohibitions contained in section 17(a) of the Investment Company Act against certain transactions between a mutual fund and affiliated persons, including accounts managed by the investment adviser to the fund. Such transactions include a purchase or sale of securities by a mutual fund from or to an affiliated person. Without Rule 17a–7, section 17(a) would prohibit an investment adviser to both a mutual fund and a separate client account from causing the client to make an in-kind transfer of securities in the client's account to the mutual fund. Rule 17a–7 permits such in-kind transfers, provided that certain conditions are met.

Specifically, the Applicant states that Rule 17a–7 provides that a purchase or sale transaction between registered investment companies, or separate series of registered investment companies, which are affiliated persons, or affiliated persons of affiliated persons, of each other, between separate series of a registered investment company or between a registered investment company or a separate series of a registered investment company, and a person which is an affiliated person of such registered investment company (or an affiliated person of such person) solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers, is exempt from section 17(a) of the Act, provided that:

- The transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available;
- The transaction is effected at the independent current market price of the security;
- The transaction is consistent with the policy of each registered investment company and separate series of a registered investment company participating in the transaction, as recited in its registration statement and reports filed under the 1940 Act;

that Rule 17a–7 is relevant to the proposed transactions for which relief has been requested because securities, including Rule 144A Securities, may be contributed in kind from client Plans in exchange for shares of the Fund. The Applicant states that the SEC, through a series of no-action letters, permits mutual funds to effect purchase and sale transactions with affiliated persons on an ''in-kind'' basis rather than for cash in reliance on Rule 17a–7.[38] In addition, the Applicant states that in many other instances, *e.g.* PTE 97–41, the Department has relied on the protective conditions of the Rule to make a finding that the exemption is protective of participants.

The Applicant represents that many fixed income offerings of Rule 144A Securities represent good investment opportunities for the asset manager's client Plans. Particularly with respect to long-dated corporate bonds, an offering of Rule 144A Securities may provide the least expensive and efficient way for issuers to sell such securities, and as QIBs, the Applicant's clients are able to participate in this market.

16. According to Baird, reliance on Rule 144A has become a common way in which corporate bonds are issued and traded. The Applicant states that Rule 144A, which was adopted in 1990, acts as a ''safe harbor'' exemption from the registration provisions of the 1933 Act for sales of certain types of securities to Qualified Institutional Buyers (QIBs). QIBs include several types of institutional entities, such as Plans and commingled trust funds holding assets of such Plans, which own and invest on a discretionary basis at least $100 million in securities of unaffiliated issuers. Any securities may be sold pursuant to Rule 144A except for those of the same class or similar to a class that is publicly traded in the United States, or certain types of investment company securities. The Applicant explains that this limitation is designed to prevent side-by-side public and private markets developing for the same class of securities. Furthermore, the Applicant represents that buyers of Rule 144A securities must be able to obtain, upon request, basic information concerning the business of the issuer and the issuer's financial statements, much of the same information as would be furnished if the offering were registered.[39]

17. The Applicant represents further that sales under Rule 144A, like sales in a registered offering, remain subject to the protections of the anti-fraud rules of federal and state securities laws.[40] Through these and other provisions, the Applicant explains, the SEC may use its full range of enforcement powers to exercise its regulatory authority over the market for Rule 144A Securities, in the event that it detects improper practices. According to Baird, this potential liability for fraud provides a considerable incentive to the issuer and offering syndicate to ensure that the information contained in a Rule 144A offering memorandum is complete and accurate in all material respects.

18. The Applicant represents further that Rule 144A offerings generally are structured in the same manner as underwritten registered offerings. According to Baird, the major difference is that a Rule 144A offering uses an offering memorandum rather than a prospectus that is filed with the SEC. Furthermore, the marketing process is the same in most respects, except that the selling efforts are generally limited to QIBs and no general advertisements or general solicitations are used.

19. The Applicant represents that although Rule 144A corporate bonds are traded by QIBs, the market for Rule 144A corporate bonds is liquid and mutual funds are able to treat Rule 144A Securities as liquid securities under the 1940 Act. As such, the Applicant states that syndicates selling Rule 144A Securities are functionally equivalent to syndicates selling securities in registered offerings.[41]

*Valuation*

20. The proposed exemption also contains valuation requirements which apply to any in-kind exchange between a Plan and a Fund. In general, according to the Applicant, the condition requires that the value of Fund shares received by a Plan with respect to an in-kind exchange with a Fund will be determined based on the same valuation principles which govern valuation of the underlying securities held by the Fund, and will use the same pricing sources used by the Fund with respect to its assets. In this regard, the Applicant states that the Fund's valuation policies are consistent with the requirements of the 1940 Act, and transfers in-kind will be effected in accordance with Rule 17a–7 under the 1940 Act, described above. Specifically, the Applicant represents that the Fund will value Rule 144A Securities at their evaluated bid prices obtained through a well-established third party pricing service (Interactive Data Pricing and Reference Data, LLC). Any securities for which prices cannot be obtained from a third party pricing service will not be transferred in-kind.

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- No brokerage commission, fee (except for customary transfer fees) or other remuneration is paid in connection with the transaction;
- The board of directors of the investment company, including a majority of the directors who are not interested persons of the investment company, adopts procedures pursuant to which such purchase or sale transactions may be effected for the investment company and determines no less frequently than quarterly that all such purchases or sales made during the preceding quarter were effected in compliance with such procedures;
- The board of directors of the investment company satisfies the fund governance standards defined in 14 CFR 270.0–1(a)(7); and
- The investment company maintains and preserves a written copy of the procedures and a record of each such purchase and sale transaction for the period of six years, the first two years in an easily accessible place.

[38] According to the Applicant, while Rule 17a–7 on its face only appears to permit mutual funds to buy or sell securities from or to affiliated persons for no consideration other than cash, the SEC no-action letters allow for in-kind transfers of securities. The Applicant represents that, in these no-action letters, the SEC staff stated that in-kind transfers of securities by affiliated persons to a mutual fund in exchange for mutual fund shares instead of cash would be permitted so long as the securities being transferred are valued in accordance with the mutual fund's valuation methods used to calculate net asset value and are consistent with how securities need to be valued under Rule 17a–7; the mutual fund shares being issued in exchange for the securities transferred in-kind are valued at their net asset value; the securities being transferred in-kind are consistent with the fund's investment objectives and principal strategies; the transfer does not involve payment of any brokerage commission, fee or other remuneration; the investment adviser and its affiliates do not have a beneficial interest in the account that is transferring the securities in-kind; and the mutual fund complies with Rule 17a–7(e) and (f) in that the fund's board of directors has adopted procedures related to the transactions and satisfies applicable corporate governance standards. See DFA Investment Trust SEC No-Action Letter (March 21, 1996); Federated Investors SEC No-Action Letter (April 21, 1994); First National Bank of Chicago SEC No-Action Letter (September 22, 1992); and American Medical Association SEC No-Action Letter (January 15, 1987).

[39] The Applicant notes that this condition does not apply, however, to an issuer filing reports with the SEC under the 1934 Act, for which reports are publicly available, to a ''foreign private issuer'' for whom reports are furnished to the SEC under Rule 12g3–2(b) of the 1934 Act (17 CFR 240.12g3–2(b)), or to issuers who are foreign governments or political subdivisions thereof.

[40] The Applicant states that these rules include Section 10(b) of the 1934 Act and Rule 10b–5 thereunder (17 CFR 240.10b–5) and Section 17(a) of the 1933 Act (15 U.S.C. 77a).

[41] The Applicant notes that the Rule 144A debt market has significant economic importance to firms raising capital and investors looking to participate in the market. According to the Applicant, in 2010 alone, firms issued over $1 trillion in registered and Rule 144A bonds with over half of that debt, $582 billion, issued through the 144A market. The Applicant states further that this represents approximately three times the $201 billion raised by initial public offerings and secondary offerings in the same year. Accordingly, the Applicant contends that the 144A market is a viable and primary means for firms to raise capital and research on Rule 144A bonds can further the understanding of a market responsible for a significant source of capital and avenue of investment.

21. The Applicant states that the Fund must also value its assets pursuant to procedures established by the Fund's Board of Directors or Trustees, as applicable, and as required by the 1940 Act. The Applicant represents that Fund investors, including the Plans, will receive notice of any material changes to the Fund's valuation policies. According to Baird, the Plan fiduciary could, if it disagreed with the change, instruct the investment manager to sell the shares, which are freely redeemable on any day in which the markets are open.

*Secondary Services*

22. The Applicant states that they will receive from the Fund various fees and expenses for providing or arranging for the provision of administrative, recordkeeping, accounting, custody, transfer agency, shareholder and similar services. The Applicant represents that all such services are ''Secondary Services'' under the 1940 Act and under the exemptions that the Department has granted seeking similar relief to that requested here. According to the Applicant, under Similar Exemptions granted by the Department, ''Secondary Services'' has been defined to mean a service other than an investment management service, an investment advisory service, and any similar service, which is provided to a Fund by the investment adviser to that Fund, including but not limited to custodial, accounting, administrative, recordkeeping, transfer agency, shareholder, and other services. All fees for Secondary Services received by Baird are paid to Baird directly by the Fund. The Applicant requests relief from the prohibitions of section 406(b)(1)–(3) for those payments. According to the Applicant, no relief is required from section 406(a) because the services are provided by Baird to the Fund, which does not hold plan assets.

*Statutory Findings*

23. Baird represents that the proposed exemption is administratively feasible because it does not require review by the Department. Furthermore, the Applicant states that compliance with its terms can be measured against market quotations and can be readily audited, because the Plan fiduciary will have received substantial disclosure and a copy of the mutual Fund prospectus to guide its decision making. Finally, Baird represents that the fee offset provisions are easily administered.

24. The Applicant represents that the proposed exemption is in the interest of Plans and their participants and beneficiaries, because the LDI strategy and economies of scale offered by an investment in the Fund serve as a hedge against interest rate fluctuations that could make Plans significantly underfunded and endanger the pension benefits of participants and beneficiaries. Moreover, an investment in the Fund will allow smaller Plans to hold a more diversified array of bonds, including long-dated corporate bonds, and the in-kind exchange provisions will avoid the transaction and execution costs inherent in requiring a cash investment in the Funds. In addition, according to the Applicant, no sales commissions or similar fees will be paid by the Plans to Baird or its affiliates in connection with a purchase, sale or exchange of Fund shares, with the exception of the purchase fee, which will be paid to the Fund (not Baird), in order to protect Plans that are invested in the Fund from paying the transaction costs of other investors in the Fund.

Moreover, the Applicant represents that that it is important to be able to transfer Rule 144A Securities in kind because Plans being managed in separate accounts will have purchased such bonds as an important component of an LDI strategy for their accounts. Baird represents that, if a Plan had to sell its Rule 144A Securities before investing in the Fund, rather than transferring them in kind, it would incur transaction costs and execution costs in selling the Rule 144A Securities. In addition, according to Baird, the Fund would incur similar transaction costs and execution costs in using the cash transferred from the investing plan to reinvest in these same securities, causing unnecessary costs for all Plan investors in the Fund.

25. The Applicant represents that the proposed exemption is protective of the rights of participants and beneficiaries of the Plans because it is conditioned on several requirements that ensure that Plans are being treated fairly and at arm's length, using conditions that have been found to be protective in class exemptions and in the Similar Exemptions. In this regard, among other conditions, Baird states that prior to the initial investment of Plan assets in the Fund, the Second Fiduciary of each Plan will receive full disclosure regarding the proposed investment and the fees to be received by the Applicant, and has the opportunity to approve or disapprove the investment. Additionally, Baird represents that no plan sponsored by the Investment Adviser will engage in the proposed transactions.

The Applicant represents that neither Baird and nor its affiliates will receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions described herein, and there will be no double payment of investment management, investment advisory and similar fees to the Applicant by the Plan.

According to the Applicant, the Plan will pay no redemption or similar fees to the Applicant in connection with the sales by the Plan of Fund shares. In addition, the Applicant represents that the Plans will not be paying a purchase fee on assets transferred in kind. Furthermore, Baird states that the combined total of all fees received by the Applicant for the provision of services to a Plan, and in connection with the provision of any services to the Fund in which a Plan may invest, will not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

26. The Applicant states that in-kind transactions with a plan will only involve securities which are publicly-traded and for which market quotations are readily available or Rule 144A Securities that are valued based on prices obtained from a reliable third-party pricing service. Additionally, the Applicant represents that the Fund will only allow in-kind transfers of securities in compliance with the 1940 Act that meet the Fund's stated investment objective and principal investment strategies disclosed in the Fund's prospectus.

As represented by the Applicant, the Baird portfolio management team will review the securities proposed to be exchanged in-kind to ensure they are in compliance with the Fund's stated investment objective and principal investment strategies as defined in the Fund's prospectus filed with the SEC. In addition, the Applicant states that the Fund's Board of Directors must review and approve all in-kind transfers into and out of the Fund. A component of this review is to ensure securities coming into the Fund via an in-kind transfer are appropriate Fund investments and comply with the Fund's stated investment objective and principal investment strategies, as detailed in the Fund's prospectus.

27. Finally, the Applicant notes that the market for Rule 144A Securities is active and liquid, and trades for Rule 144A Securities are reported through the Trade Reporting and Compliance Engine (TRACE) system administered by the Financial Industry Regulatory Authority (FINRA), thus enabling a third party pricing service to value the securities using objective trade data.

*Summary*

In summary, the Applicant represents that the criteria of section 408(a) of the Act are satisfied for the following reasons:

(a) The Account does not pay a sales commission or other similar fees to the Investment Adviser or its affiliates in connection with the acquisition, sale, or exchange of shares of the Fund.

(b) The Account does not pay a purchase, redemption or similar fee to the Investment Adviser in connection with the acquisition of shares by the Account or the sale by the Account to the Fund of such shares.

(c) The Account may pay a purchase or redemption fee to the Fund in connection with an acquisition or sale of shares by the Account, that is fully disclosed in the Fund's prospectus in effect at all times. Furthermore, any purchase fee paid by the Account to the Fund (1) is intended to approximate the difference between ''bid'' and ''asked'' prices on the fixed income securities that the Fund will purchase using the proceeds from the sale of Fund shares to the Account; and (2) is not charged on any assets transferred in-kind to the Fund.

(d) The Account does not pay an investment management, investment advisory or similar fee with respect to Account assets invested in Fund shares for the entire period of such investment provided the investment advisory fees may be paid if the payment of such fees complies with the rebating, crediting, or offsetting requirements of Section II(d) of the exemption.

(e) The crediting, offsetting or rebating of any fees in Section II(d) of the exemption is audited at least annually by the Investment Adviser through a system of internal controls to verify the accuracy of the fee mechanism adopted by the Investment Adviser.

(f) The combined total of all fees received by the Investment Adviser for the provision of services to an Account, and for the provision of any services to a Fund in which an Account may invest, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(g) The Investment Adviser and its affiliates do not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions covered by this exemption.

(h) Baird will comply with the disclosure and authorization requirements set forth in Section II(h)–(o) of the exemption.

(i) No separately managed account investing in the Fund holds assets of a Plan sponsored by Baird or its affiliate. If a pooled fund holds assets of a Plan or Plans sponsored by Baird or its affiliate, the total assets of all such Plans shall not exceed 15% of the total assets of such pooled fund.

(j) In-kind transactions with an Account shall only involve publically-traded securities for which market quotations are readily available, securities that are deemed to be liquid and that are valued based upon prices obtained from a reliable well-established third-party pricing service that is independent of Baird pursuant to then-existing procedures established by the Board of Directors or Trustees of the Funds under the 1940 Act and applicable SEC rules, regulations and guidance, and cash in the event that the aforementioned securities are odd lot securities, fractional shares, or accruals on such securities. Securities for which prices cannot be obtained from a third-party pricing service will not be transferred in-kind, nor will any securities specified in Section III(a)(1)–(6) of the exemption.

(k) Subject to the exceptions described in Section III(a) of the exemption, in the case of an in-kind exchange of assets between an Account and the Fund, the Account will receive its pro rata portion of the securities of the Fund equal in value to that of the number of shares redeemed, or the Fund shares having a total net asset value (NAV) equal to the value of the assets transferred on the date of the transfer, as determined in a single valuation, using sources independent of the Investment Adviser, performed in the same manner as it would for any other person or entity at the close of the same business day in accordance with the procedures established by the Fund pursuant to Rule 2a–4 under the 1940 Act, and the then-existing valuation procedures established by its Board of Directors or Trustees, as applicable for the valuation of such assets, that are in compliance with the rules administered by the SEC. In connection with a redemption of Fund shares, the value of the securities and any cash received by the Account for each redeemed Fund share equals the NAV of such shares at the time of the transaction. In the case of any other in-kind exchange, the value of the Fund shares received by the Account equals the NAV of the transferred securities and any cash on the date of the transfer.

(l) Baird will comply with the disclosure requirements of Section III(c) in order to facilitate a post-transaction review of any in-kind transaction so that the material aspects of such transaction, including pricing, can be reviewed.

(m) Prior to the consummation of an in-kind exchange, Baird must document in writing and determine that such transaction is fair to the Account and comparable to, and no less favorable than, terms obtainable at arm's-length between unaffiliated parties, and that the in-kind transaction is in the best interests of the Account and the participants and beneficiaries of the participating Plans.

(n) All of the Accounts' other dealings with the Funds, Baird, or any person affiliated thereto, are on terms that are no less favorable to the Account than such dealings are with other shareholders of the Funds.

(o) Baird and its affiliates, as applicable, will comply with the record-keeping and retention requirements specified in the exemption.

**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 separate account investment management client Plans that may be interested in investing in the Fund.

It is represented that all such interested persons will be notified of the publication of the Notice by electronic delivery within fifteen (15) days of publication of the Notice in the **Federal Register**. The notification 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. Jennifer Erin Brown of the Department at (202) 693–8352. (This is not a toll-free number.)

**First Security Group, Inc. 401(k) and Employee Stock Ownership Plan (the Plan) Located in Chattanooga, TN**

[Application No. D–11826]

*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 (76 FR 66637, 66644, October 27, 2011).

Section I: Transactions

If the proposed exemption is granted, effective for the period beginning August 21, 2013, and ending on September 20, 2013, the restrictions of sections 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)(E) of the Code,[42] 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 (the Invested Participant(s)) in connection with an offering (the Offering) by First Security Group, Inc. (FSG), of shares of common stock (the Common Stock) of FSG, the sponsor of the Plan and a party in interest with respect to the Plan; and

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

**Section II: Conditions**

(a) The receipt of the Rights by the Accounts of Invested Participants occurred in connection with the Offering, and the Rights were made available by FSG on the same material terms to all shareholders of record of the Common Stock of FSG, including the Accounts of Invested Participants;

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

(c) Each shareholder of the Common Stock, including each of the Accounts of Invested Participants, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of Common 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 Invested Participants, all or a portion of whose Accounts in the Plan held the Common Stock;

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

(f) No commissions, no fees and no expenses were paid by the Plan or by the Accounts of Invested Participants to any related broker in connection with the exercise of any of the Rights or with regard to the acquisition of the Common Stock through the exercise of such Rights, and no brokerage fees, no commissions, no subscription fees, and no other charges were paid by the Plan or by the Accounts of Invested Participants with respect to the acquisition and holding of the Rights;

(g) FSG did not influence any Invested Participant's decision to exercise the Rights or influence an Invested Participant's decision to allow such Rights to expire; and

(h) The terms of the Offering were described to the Invested Participants in clearly written communications, including but not limited to the prospectus for the Rights Offering.

*Effective Date:* This proposed exemption, if granted, will be effective for the period beginning on August 21, 2013, the commencement date of the Offering, and ending on September 20, 2013, the closing date of the Offering.

**Summary of Facts and Representations**

*Background*

1. The Plan, established on August 1, 1999, is tax-qualified under section 401(a) of the Code. The Plan contains a cash or deferred arrangement under section 401(k) of the Code, and is designed to qualify as a leveraged employee stock ownership plan (ESOP), pursuant to section 4975(e)(7) of the Code. FSGBank, National Association (FSGBank) serves as the trustee of the Plan.

The Plan provides for participants to self-direct the investment of their Accounts and is intended to operate in accordance with section 404(c) of the Act. The participants in the Plan are the only persons who have investment discretion over the assets in the Accounts involved in the subject transactions.

In addition to investment in certain mutual funds and a collective trust fund, Plan participants may invest amounts held in their Accounts in the common stock of FSG (Common Stock) through the ESOP portion of the Plan. Investment in Common Stock by Plan participants is voluntary. The Common Stock held in Plan Accounts is no different from the Common Stock held by other FSG shareholders.

Of the shares of Common Stock issued, as of April 10, 2013 (the Record Date), the Accounts in the Plan held 102,501.746735 shares. As of August 21, 2013, the commencement of the Offering, there were 237 participants in the Plan of which 152 were active participants and 85 were terminated participants. Of these 237 participants, the Accounts of 56 participants in the Plan, four (4) of which were terminated participants, held approximately 46,039 shares of Common Stock (approximately 0.073% of the outstanding shares) with a value of $111,875, based on the closing price of such Common Stock on NASDAQ of $2.43 per share, as of the commencement date of the Offering. As of the same date, the Plan's assets totaled approximately $11,187,500 of which the value of the Common Stock ($111,875) constituted approximately 1.0%.

2. As stated above, FSG (or the Applicant) sponsors the Plan for the benefit of the current and former employees of FSG and its subsidiaries, and for the beneficiaries of such employees or alternative payees. Incorporated in 1999 as a Tennessee corporation, FSG is a bank holding company headquartered in Chattanooga, Tennessee. FSG is regulated and supervised by the Board of Governors of the Federal Reserve System. As of December 31, 2013, FSG had total assets of approximately $977.6 million, total deposits of approximately $857 million, and stockholders' equity of approximately $83.6 million.

FSG operates thirty (30) full-service banking offices through its wholly-owned bank subsidiary, FSGBank. FSG and FSGBank serve the banking and financial needs of various communities in eastern and middle Tennessee, as well as northern Georgia.

*The Common Stock*

3. As of August 20, 2013, 63,270,867 shares of Common Stock were issued and outstanding, 2,276,890 shares of Common Stock were issuable upon exercise of outstanding stock options, and approximately 3,226,775 shares of Common Stock were reserved for future issuance under FSG's stock option plan. As of June 27, 2014, the authorized capital stock of FSG consisted of 150,000,000 shares of Common Stock,

[42] 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.

and 10,000,000 shares of preferred stock (the Preferred Stock). As of the same date, no shares of Preferred Stock were issued or outstanding. The Common Stock is traded on the NASDAQ Capital Market under the symbol ''FSGI.'' The Common Stock is a ''qualifying employer security,'' as defined under section 407(d)(5) of the Act.

*The Recapitalization*

4. On February 25, 2013, FSG entered into an exchange agreement (the Exchange Agreement) with the United States Department of the Treasury (Treasury). On the same date, FSG entered into a stock purchase agreement (the Stock Purchase Agreement) with certain institutional investors, including affiliates of EJF Capital, GF Financial II, LLC, MFP Partners, L.F., and Ulysses Partners, L.P. (collectively and individually, the Investor(s)). Both the Exchange Agreement and the Stock Purchase Agreement (together, the Agreements) were entered in connection with a $91,100,000 recapitalization of FSG (the Recapitalization). Pursuant to these Agreements, FSG was required to issue and sell in a private placement (the Private Placement), approximately 60,735,000 shares of Common Stock at a price per share of $1.50. The closing of the Private Placement took place over two days. In this regard, on April 11, 2013, pursuant to the Exchange Agreement with Treasury, FSG issued 9,941,908 shares of Common Stock to Treasury in exchange for 33,000 shares of FSG's Fixed Rate Cumulative Perpetual Preferred Stock (the TARP Preferred Stock), and all accrued but unpaid dividends on the TARP Preferred Stock, and a warrant to purchase 82,363 shares of the Common Stock.

Immediately following such exchange, on April 11, 2013, Treasury sold the 9,941,908 shares of Common Stock to the Investors. Pursuant to the Stock Purchase Agreement, FSG could direct each of the Investors to purchase all or a part of each such Investor's committed investment from Treasury. On April 12, 2013, the Investors purchased 50,793,092 shares of Common Stock that remained from their committed investment directly from FSG. In the aggregate, the Investors agreed to purchase approximately $91.1 million of the Common Stock at $1.50 per share.

*The Offering*

5. Under the Stock Purchase Agreement, FSG was required to enter into the offering (the Offering) to provide to shareholders of Common Stock as of the Record Date, the rights (the Rights) to purchase up to $5 million worth of Common Stock at a purchase price per share equal to the Recapitalization purchase price ($1.50 per share.) The Offering permitted FSG to issue up to 3,329,234 shares of Common Stock with a par value of $0.01.

The Plan participants whose Accounts held Common Stock (the Invested Participants) received a special notice that described the Offering in non-technical language, a prospectus, documentation of the number of Rights allocated to their respective Plan Accounts, instructions on how to exercise such Rights, and an ESOP Non-Transferable Subscription Rights Elections Form. The prospectus contained more detailed information regarding the Offering, including the reasons for the Offering, the terms of the Offering, and the investment risks associated with exercise of the Rights and the purchase of Common Stock.

FSG distributed the Rights, at no charge, to the shareholders of Common Stock in FSG, including the Accounts of the Invested Participants, as of 5:00 p.m. EST on the Record Date, April 10, 2013. Each shareholder of record received one Right for each share of Common Stock held by such shareholder. Each Right entitled the recipient to purchase two (2) shares of Common Stock at a subscription price (the Subscription Price) of $1.50 per share (the Basic Subscription Privilege). The Subscription Price was the same price at which Investors purchased Common Stock as part of the Recapitalization.

The Rights could not be sold, transferred, or assigned. The Rights were not listed for trading on the NASDAQ or any other exchange or over-the-counter market. Further, the Rights were non-transferrable in order to permit only those shareholders who owned Stock, as of the Record Date, the opportunity to purchase additional shares of Common Stock to help offset the dilution of such shareholders interest in FSG that occurred as part of the Recapitalization.

6. If a shareholder purchased all of the Common Stock available to the shareholder through the Basic Subscription Privilege, such shareholder could also choose to purchase a portion of Common Stock in the Offering that was not purchased by the other shareholders through the exercise of their Rights (the Over-Subscription Privilege). FSG honored the requests received pursuant to the Over-Subscription Privilege by multiplying the number of shares of Common Stock requested by each shareholder through the exercise of their Over-Subscription Privilege by a fraction that equaled (x) the number of shares of Common Stock available to be issued through the Over-Subscription Privilege divided by (y) the total number of Common Stock requested by all subscribers through the exercise of their Over-Subscription Privilege.

Shareholders sought to exercise their Over-Subscription Privilege for 3,590,434 shares of Stock, which exceeded the number of shares available for the Over-Subscription Privilege. Approximately 1,607,608 shares of Common Stock were issued as part of the exercise of the Basic Subscription Privilege and approximately 1,721,626 shares of Common Stock were issued as part of the exercise of the Over-Subscription Privilege.

*Exercise of the Rights*

7. The Invested Participants chose whether to exercise their Rights in order to purchase shares of Common Stock or to allow the Rights to expire.[43] Any election to exercise the Rights could not be revoked, once made. Any unexercised Rights expired upon the conclusion of the Subscription Period.

In order to exercise their Rights, the Invested Participants were required to submit their election forms to Registrar and Transfer Company (the Tabulator) by September 13, 2013, seven (7) business days earlier than the subscription date (September 20, 2013) set for the elections of other shareholders. It is represented that the earlier deadline for the Plan Accounts was appropriate to help facilitate the tabulation of the elections of all the Invested Participants by the Tabulator and to allow time to provide such information to FSGBank. A total of 41 Invested Participants exercised their Rights to purchase shares of the Common Stock. The Plan was issued 138,260 shares of Common Stock under the Basic Subscription Privilege and 205,008 shares of Common Stock under the Over-Subscription Privilege, for a

[43] It is represented that FSG did not request an administrative exemption from the prohibited transaction provisions of the Act or Code for the exercise of the Rights by the Accounts of the Invested Participants. Instead, FSG relied on the relief provided by the statutory exemption, pursuant to section 408(e) of the Act for the exercise of the Rights. Accordingly, the Department is not providing any relief herein from such prohibited transaction provisions with respect to such exercise of the Rights. In addition, the Department is offering no view on whether the statutory exemption provided in section 408(e) of the Act and the Department's regulations, pursuant to 29 CFR § 2550.408(e), are applicable to the exercise of the Rights. Further, the Department is not offering a view on whether FSG satisfied the conditions of such statutory exemption.

total of 343,268 shares of Common Stock.

To facilitate the exercise of the Rights, Invested Participants transferred money into their Plan money market accounts from other investment funds in the Plan. The applicable money market funds were frozen effective as of the close of the NASDAQ Capital Market one (1) business day prior to the Subscription Date (*i.e.,* September 19, 2013) through September 26, 2013, and no additional transfers were permitted into or out of such money market funds during that time. If two (2) business days prior to the Subscription Date, an Invested Participant had insufficient funds in his money market account to cover the aggregate cost of acquiring Common Stock upon the exercise of the Rights, then FSGBank did not process such Invested Participant's election. It is represented that this procedure varied from that employed for other shareholders under similar circumstances, in that other shareholders were issued Common Stock in the amount of the payment made, rather than having the election to exercise their Rights rejected. It is represented that this discrepancy is due to the fact that the record-keeper for the Plan could not implement a partial acceptance procedure for the Invested Participants. It is represented that none of the shareholders, including the Accounts of Invested Participants, were issued shares of Common Stock in an amount less than the amount exercised under the Basic Subscription Privilege, as all Rights exercised by such shareholders were fully paid under that privilege.

The Invested Participants submitted their elections to the Tabulator who then provided such information to FSGBank. FSGBank exercised the Rights based on the information provided by the Tabulator and did not have any discretion as to the number of shares that an Invested Participant elected to be acquired through the exercise of the Rights. However, if the Common Stock traded at a price less than $1.50 per share, FSGBank was not permitted to process the Invested Participants' elections to exercise the Rights. The actual market price per share on the date of placing the offers (*i.e.,* September 20, 2013) was $2.25 per share, and therefore no Invested Participant elections were denied based on the share price.

A portion of the Accounts of Invested Participants which was already invested in Common Stock was frozen from noon EST on the Subscription Date until September 28, 2013 (*i.e.,* the date which was one business day following the date on which FSG Bank received the newly-offered shares of Common Stock on behalf of such Invested Participants). This restriction was applied to ensure that no Invested Participant was able to sell such shares until the Common Stock had been received by FSGBank and allocated to the Accounts of such Invested Participants.

*Request for Exemptive Relief*

8. The transactions for which the FSG has requested retroactive exemptive relief include: (a) The acquisition of the Rights by the Accounts of Invested Participants in connection with the Offering of Rights by FSG; and (b) the holding of the Rights by the Accounts of Invested Participants during the Subscription Period of the Offering.

Section 406(a)(1)(E) of the Act prohibits the acquisition on behalf of the plan of any ''employer security'' in violation of section 407(a). Section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of the plan to permit such plan to hold any ''employer security'' if he knows or should know that the holding of such security violates section 407(a) of the Act. Section 407(a) of the Act prohibits a plan from acquiring or holding employer securities that are not ''qualifying employer securities.''

It is represented that the Rights acquired by the Accounts of Invested Participants satisfy the definition of ''employer securities,'' pursuant to section 407(d)(1) of the Act. However, as the Rights were not stock or marketable obligations, 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, of employer securities which are not qualifying employer securities, in violation of sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act.

FSG has also requested relief from the prohibitions of section 406(b)(1) and 406(b)(2) of the Act for self-dealing and conflicts of interest, respectively, which arose as a result of the acquisition and holding of the Rights by the Accounts of Invested Participants in the Plan.

Section 406(b)(1) of the Act prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Section 406(b)(2) of the Act prohibits a fiduciary from engaging in his individual or any other capacity to act in any transaction involving the plan on behalf of a party (or represent a party) whose interest are adverse to the interest of the plan or the interests of its participants or beneficiaries.

As employers any of whose employees are covered by the Plan, FSG and its subsidiaries are parties in interest with respect to the Plan pursuant to section 3(14)(C) of the Act. As Plan trustee, FSGBank is a party in interest with respect to the Plan, as a fiduciary service provider, pursuant to section 3(14)(A) and (B) of the Act. FSGBank, as a wholly-owned subsidiary of FSG, the Plan sponsor, is also a party in interest with respect to the Plan, pursuant to section 3(14)(G) of the Act. Accordingly, the acquisition and holding by the Accounts of Invested Participants of the Rights issued by FSG, a party in interest with respect to the Plan would involve self-dealing and conflicts of interest for which relief is needed and has been requested by FSG.

9. It is represented that the subject transactions have already been consummated. In this regard, the Subscription Period began on August 21, 2013, and ended on September 20, 2013. The Accounts of Invested Participants in the Plan acquired the Rights pursuant to the Offering on August 21, 2013, and held such Rights pending the closing of the Offering when such Rights either were exercised or expired. The Applicant represents that there was insufficient time to apply for and be granted an exemption between the dates when the Accounts of Invested Participants acquired the Rights and when such Rights were exercised or expired. Therefore, FSG is seeking a retroactive administrative exemption to be granted, effective from August 21, 2013, the date that such Accounts acquired the Rights, and September 20, 2013, the closing date of the Offering.

10. The Applicant represents that the proposed exemption is administratively feasible. In this regard, the acquisition and holding of the Rights by the Accounts of Invested Participants were one-time transactions that involved an automatic distribution of the Rights to all shareholders. All shareholders of the Common Stock, including the Accounts of Invested Participants were treated in the same manner in all material terms with respect to the acquisition and holding of the Rights.

11. The Applicant represents that the transactions which are the subject of this proposed exemption are in the interest of the Accounts of Invested Participants, because such Accounts received, at no cost, Rights with a potential for an immediate financial gain. In this regard, for the Accounts of those Invested Participants who elected to exercise their Rights, such Accounts

acquired a valuable opportunity to purchase the Stock at a price of $1.50 per share which price was at or below the then market price ($2.25 per share) for such Stock. Further, it is represented that the Accounts of Invested Participants who exercised the Rights avoided the dilution of their interests in FSG that resulted from the Offering and the Recapitalization.

*Safeguards of Exemption*

12. The Applicant believes that the proposed exemption provides sufficient safeguards for the protection of the Accounts of Invested Participants and the beneficiaries of such Accounts, in that the acquisition of the Rights by the Accounts of Invested Participants resulted from an independent corporate act of FSG. FSG made the Rights available on the same material terms to all shareholders of the Common Stock, including the Accounts. Each shareholder of the Common 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 Common Stock held by each such shareholder.

The Applicant represents that the Accounts of Invested Participants were adequately protected, in that participation in the Offering by such Accounts was voluntary. The Applicant represents that FSG did not influence any Invested Participant's decision to exercise the Rights or influence an Invested Participant's decision to allow such Rights to expire. In this regard, the Invested Participants were under no obligation to exercise the Rights.

The Applicant represents that Invested Participants received sufficient disclosures with respect to the Offering. It is represented that the terms of the Offering were described to the Invested Participants in clearly written communications, including but not limited to the prospectus for the Rights Offering.

The Applicant represents that the Accounts of Invested Participants were protected against economic loss by exercising the Rights. FSGBank, as trustee, was instructed to not execute an Invested Participant's election to exercise the Rights, if the fair market value of the Common Stock was less than the strike price or if the Account of such Invested Participant did not have sufficient funds to cover the aggregate subscription price. In this regard, it is represented that the price of the Common Stock on September 20, 2013, the date of placing the offers was $2.25 per share, which price was in excess of the strike price of $1.50 per share.

It is represented that neither the Plan nor the Accounts of Invested Participants paid any commissions, fees, or expenses to any related broker in connection with the exercise of any of the Rights or with regard to the acquisition of the Common Stock through the exercise of such Rights. It is further represented that no brokerage fees, no commissions, no subscription fees, and no other charges were paid by the Plan or by the Accounts of Invested Participants with respect to the acquisition and holding of the Rights.

*Summary*

13. In summary, FSG represents that the subject transactions satisfy the statutory criteria of section 408(a) of the Act because:

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

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

(c) Each shareholder of the Common 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 Common 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 Common Stock;

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

(f) No commissions, no fees, and no expenses were paid by the Plan or by the Accounts of Invested Participants to any related broker in connection with the exercise of any of the Rights or with regard to the acquisition of the Common Stock through the exercise of such 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 Rights;

(g) FSG did not influence any Invested Participant's decision to exercise the Rights or influence an Invested Participant's decision to allow such Rights to expire; and

(h) The terms of the Offering were described to the Invested Participants in clearly written communications, including but not limited to the prospectus for the Rights Offering.

**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 Common 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 following the 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 forty-five (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) 693–8540. (This is not a toll-free number.

**BNP Paribas, S.A. (BNP or the Applicant) Located in Paris, France**

[Application No. D–11827]

*Proposed Exemption*

Based on the foregoing facts and representations submitted by the Applicant, the Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR

part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[44]

Section I: Covered Transactions

If the proposed exemption is granted, the BNP Affiliated QPAMs and the BNP Related QPAMs shall not be precluded from relying on the relief provided by Prohibited Transaction Class Exemption (PTE) 84–14 [45] notwithstanding the Convictions (as defined in Section II(c)),[46] provided the following conditions are satisfied:

(a) Any failure of the BNP Affiliated QPAMs or the BNP Related QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Convictions;

(b) The BNP Affiliated QPAMs and the BNP Related QPAMs (including officers, directors, agents other than BNP, and employees of such QPAMs) did not participate in the criminal conduct of BNP that is the subject of the Convictions;

(c) The BNP Affiliated QPAMs and the BNP Related QPAMs did not directly receive compensation in connection with the criminal conduct of BNP that is the subject of the Convictions;

(d) The criminal conduct of BNP that is the subject of the Convictions did not directly or indirectly involve the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA);

(e) A BNP Affiliated QPAM will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA and managed by such BNP Affiliated QPAM to enter into any transaction with BNP or engage BNP to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(f) Each BNP Affiliated QPAM will ensure that none of its employees or agents, if any, that were involved in the criminal conduct that underlies the Convictions will engage in transactions on behalf of any ''investment fund'' (as defined in Section VI(b) of PTE 84–14) subject to ERISA and managed by such BNP Affiliated QPAM;

(g)(1) Each BNP Affiliated QPAM immediately develops, implements, maintains, and follows written policies (the Policies) requiring and reasonably designed to ensure that: (i) The asset management decisions of the BNP Affiliated QPAM are conducted independently of BNP's management and business activities; (ii) the BNP Affiliated QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (iii) the BNP Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (iv) any filings or statements made by the BNP Affiliated QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; (v) the BNP Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; (vi) the BNP Affiliated QPAM complies with the terms of this exemption, if granted; and (vii) any violations of or failure to comply with items (ii) through (vi) are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant BNP Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of BNP; however, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of BNP or beneficially owned by an employee of BNP or its affiliates, such fiduciary does not need to be independent of BNP; BNP Affiliated QPAMs will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that they correct any instances of noncompliance promptly when discovered or when they reasonably should have known of the noncompliance (whichever is earlier), and provided that they adhere to the reporting requirements set forth in this item (vii);

(2) Each Affiliated QPAM immediately develops and implements a program of training (the Training), conducted at least annually for relevant BNP Affiliated QPAM asset management, legal, compliance, and internal audit personnel; the Training shall be set forth in the Policies and, at a minimum, covers the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this proposed exemption, if granted, (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing;

(h)(1) Each BNP Affiliated QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA to evaluate the adequacy of, and compliance with, the Policies and Training described herein; the audit requirement must be incorporated in the Policies and the first of the audits must be completed no later than twelve (12) months after the earlier of the Convictions and must cover the first six-month period that begins on the date of the earlier of the Convictions; all subsequent audits must cover the following corresponding twelve-month periods and be completed no later than six (6) months after the period to which the audit applies;

(2) The auditor's engagement shall specifically require the auditor to determine whether each BNP Affiliated QPAM has developed, implemented, maintained, and followed Policies in accordance with the conditions of this proposed exemption and developed and implemented the Training, as required herein;

(3) The auditor's engagement shall specifically require the auditor to test each BNP Affiliated QPAM's operational compliance with the Policies and Training;

(4) For each audit, the auditor shall issue a written report (the Audit Report) to BNP and the BNP Affiliated QPAM to which the audit applies that describes the steps performed by the auditor during the course of its examination.

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

[45] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[46] Section I(g) generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including income tax evasion and conspiracy or attempt to commit income tax evasion.

The Audit Report shall include the auditor's specific determinations regarding the adequacy of the Policies and Training; the auditor's recommendations (if any) with respect to strengthening such Policies and Training; and any instances of the respective BNP Affiliated QPAM's noncompliance with the written Policies and Training described in paragraph (g) above. Any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective BNP Affiliated QPAM shall be promptly addressed by such BNP Affiliated QPAM, and any actions taken by such BNP Affiliated QPAM to address such recommendations shall be included in an addendum to the Audit Report. Any determinations by the auditor that the respective BNP Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training shall not be based solely or in substantial part on an absence of evidence indicating noncompliance;

(5) The auditor shall notify the respective BNP Affiliated QPAM of any instances of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date. Upon request, the auditor shall provide OED with all of the relevant workpapers reflecting any instances of noncompliance. The workpapers shall include an explanation of any corrective or remedial actions taken by the respective BNP Affiliated QPAM;

(6) With respect to each Audit Report, an executive officer of the BNP Affiliated QPAM to which the Audit Report applies certifies in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption, if granted; addressed, corrected, or remediated any inadequacies identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(7) An executive officer of BNP reviews the Audit Report for each BNP Affiliated QPAM and certifies in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(8) Each BNP Affiliated QPAM provides its certified Audit Report to the Department's Office of Exemption Determinations (OED), Room N–5700, 200 Constitution Avenue NW., Washington, DC 20210, no later than 30 days following its completion, and each BNP Affiliated QPAM makes its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such BNP Affiliated QPAM;

(i) The BNP Affiliated QPAMs comply with each condition of PTE 84–14, as amended, with the only exceptions being the violations of Section I(g) that are attributable to the Convictions;

(j) Effective from the date of publication of any granted exemption in the **Federal Register**, with respect to each ERISA-covered plan or IRA for which a BNP Affiliated QPAM provides asset management or other discretionary fiduciary services, each BNP Affiliated QPAM agrees: (1) To comply with ERISA and the Code, as applicable to the particular ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions; (2) not to waive, limit, or qualify the liability of the BNP Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (3) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the BNP Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of BNP; (4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the BNP Affiliated QPAM; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. Within six (6) months of the date of publication of a granted exemption in the **Federal Register**, each BNP Affiliated QPAM will provide a notice to such effect to each ERISA-covered plan or IRA for which a BNP Affiliated QPAM provides asset management or other discretionary fiduciary services;

(k) If a final exemption is granted in the **Federal Register**, each BNP Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which such BNP Affiliated QPAM relies upon the relief in the exemption;

(l) The BNP Affiliated QPAMs will provide to: (1) Each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a BNP Affiliated QPAM, or the sponsor of an investment fund in any case where a BNP Affiliated QPAM acts only as a sub-advisor to the investment fund; (2) each entity that may be a BNP Related QPAM; and (3) with respect to ERISA-covered plan and IRA investors in the Income Plus Fund, the identity of which is unknown, each distribution agent of the fund with a request that such distribution agent forward to its clients, a notice of the proposed exemption along with a separate summary describing the facts that led to the Convictions, which has been submitted to the Department, and a prominently displayed statement that the Convictions result in a failure to meet a condition in PTE 84–14;

(m) A BNP Affiliated QPAM will not fail to meet the terms of this proposed exemption, if granted, solely because a BNP Related QPAM or a different BNP Affiliated QPAM fails to satisfy a condition for relief under this exemption. A BNP Related QPAM will not fail to meet the terms of this proposed exemption, if granted, solely because BNP, a BNP Affiliated QPAM, or a different BNP Related QPAM fails to satisfy a condition for relief under this exemption.

Section II: Definitions

(a) The term ''BNP Affiliated QPAM'' means a ''qualified professional asset manager'' (as defined in Section VI(a)[47] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which BNP is a current or future ''affiliate'' (as defined in Section VI(d) of PTE 84–14). The term ''BNP Affiliated QPAM'' excludes the parent entity, BNP.

[47] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

(b) The term ''BNP Related QPAM'' means any current or future ''qualified professional asset manager'' (as defined in Section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which BNP owns a direct or indirect five percent or more interest, but with respect to which BNP is not an ''affiliate'' (as defined in Section VI(d) of PTE 84–14).

(c) The term ''Convictions'' means the judgments of conviction against BNP in: (1) Case Number 14-cr-00460 (LGS) in the District Court for the Southern District of New York for conspiracy to commit an offense against the United States in violation of Title 18, United States Code, Section 371, by conspiring to violate the International Emergency Economic Powers Act, codified at Title 50, United States Code, Section 1701 *et seq.*, and regulations issued thereunder, and the Trading with the Enemy Act, codified at Title 50, United States Code Appendix, Section 1 *et seq.*, and regulations issued thereunder; and (2) Case Number 2014 NY 051231 in the Supreme Court of the State of New York, County of New York for falsifying business records in the first degree, in violation of Penal Law § 175.10, and conspiracy in the fifth degree, in violation of Penal Law § 105.05(1).

*Effective Date:* If granted, this proposed exemption will be effective as of the earliest date a judgment of conviction against BNP is entered in either: (1) Case Number 14-cr-00460 (LGS) in the District Court for the Southern District of New York; or (2) Case Number 2014 NY 051231 in the Supreme Court of the State of New York, County of New York.

**Summary of Facts and Representations** [48]

*Background*

1. BNP Paribas, S.A. (BNP) is a publicly-held French bank. BNP maintains its principal offices in Paris, France. BNP operates in major banking and securities markets worldwide. As of December 31, 2013, BNP had consolidated assets of $2.4 trillion, stockholders equity of $120.4 billion, and a market capitalization of over $97 billion.

2. The rules set forth in section 406 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and section 4975(c) of the Internal Revenue Code of 1986, as amended (the Code) proscribe certain ''prohibited transactions'' between plans and related parties with respect to those plans, known as ''parties in interest.'' [49] Under section 3(14) of ERISA, parties in interest with respect to a plan include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates. The prohibited transaction provisions under section 406(a) of ERISA prohibit, in relevant part, sales, leases, loans or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), as well as the use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest.[50]

3. The broad reach of the prohibited transaction rules was intended to capture all transactions falling under the definition of a ''prohibited transaction,'' regardless of whether such transaction was actually necessary for the operation of a plan or beneficial to a plan. Thus, certain transactions that are actually in the interest of a plan and its participants and beneficiaries may be unavailable to plans. In recognition of this problem, ERISA authorizes certain statutory and administrative exemptions that may allow certain transactions to take place if there is an applicable exemption and the conditions for such exemption are met.

4. One of these exemptions, Class Prohibited Transaction Exemption 84–14 (PTE 84–14) [51] exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in Section VI(b)) [52] in which a plan has an interest, if the investment manager satisfies the definition of ''qualified professional asset manager'' (QPAM) and satisfies additional conditions for the exemption. In this regard, PTE 84–14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary, manager.[53] Section I(a) of PTE 84–14 provides that, in order for a transaction to be exempt under PTE 84–14, at the time of the transaction (as defined in Section VI(i)) the party in interest, or its ''affiliate'' (as defined in Section VI(c)), cannot have the authority to appoint or terminate the QPAM as a manager of the plan assets involved in the transaction or negotiate, on behalf of the plan, the terms of the management agreement with the QPAM (including renewals or modifications thereof) with respect to the plan assets involved in the transaction. Based on its experience in considering applications for individual and class exemptions, and in dealing with instances of abusive violations of the fiduciary responsibility rules of ERISA, the Department believes that, as a general matter, transactions entered into on behalf of plans with parties in interest are most likely to conform to ERISA's general fiduciary standards where the decision to enter into the transaction is made by an independent fiduciary.[54]

5. PTE 84–14 contains an anti-criminal provision. In this regard, Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided by PTE 84–14, for itself and its client plans, if that entity or an affiliate thereof or any owner, direct or indirect, of a 5 percent or more interest in the QPAM has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described in that section. Section I(g) was included in PTE 84–14, in part, based on the expectation that a QPAM, and those who may be in a position to influence its policies, maintain a high standard of integrity.[55]

6. The Applicant represents that BNP has corporate relationships with a wide range of entities that utilize the exemptive relief provided in PTE 84–14. In this regard, the Applicant represents that BNP is an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of 20 specialist investment managers and other asset management subsidiaries which are under the ''control'' of BNP (as that term is defined in Section VI(e)

[48] The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless indicated otherwise.

[49] For purposes of the Summary of Facts and Representations, references to specific provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

[50] The prohibited transaction provisions also include certain fiduciary prohibited transactions under section 406(b) of ERISA, which do not necessitate a transaction between a plan and a party in interest. These include transactions involving fiduciary self-dealing; fiduciary conflicts of interest, and kickbacks to fiduciaries.

[51] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[52] An ''investment fund'' includes single customer and pooled separate accounts maintained by an insurance company, individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of the QPAM) is subject to the discretionary authority of the QPAM.

[53] See 75 FR 38837, 38839 (July 6, 2010).

[54] See 47 FR 56945, 56946 (December 21, 1982).

[55] See 47 FR 56945, 56947 (December 21, 1982).

of PTE 84–14) and that may act as QPAMs (collectively, the BNP Affiliated QPAMs).[56] According to the Applicant, the BNP Affiliated QPAMs include Fisher Francis Trees and Watt, Inc., BNP Paribas Investment Partners Trust Company, BNP Paribas Asset Management, Inc., BancWest Investment Services, and Bishop Street Capital Management which are subsidiaries of Bank of the West and First Hawaiian Bank, respectively, which themselves provide fiduciary services to ERISA-covered plans and IRAs. The Applicant represents that each of the above-named entities are third tier affiliates of BNP, and BNP owns all or substantially all interests, directly or indirectly, in such entities. In total, the BNP Affiliated QPAMs manage about $3 billion of assets owned by ERISA-covered plans and IRAs. According to the Applicant, BNP Affiliated QPAMs do not provide non-fiduciary services to ERISA-covered plans and IRAs, except in the case of First Hawaiian Bank (which provides custody services to ERISA-covered plans and IRAs) and Banc West Investment Services (which is a U.S. registered broker-dealer).

7. The Applicant represents that BNP also owns a five percent or more interest in over 20 other entities (the BNP Related QPAMs) that may act as QPAMS but that are not ''affiliates'' (as defined in Section VI(d) of PTE 84–14) of BNP because BNP does not have ''control'' (as defined in Section VI(e) of PTE 84–14) over such entities. The Applicant represents that BNP's relationships to many of the entities that may be considered BNP Related QPAMs is so minimal that BNP does not know, nor is it legally responsible for knowing, if such entities are acting as QPAMs in reliance on the relief in PTE 84–14. Furthermore, the Applicant represents that any such BNP Related QPAMs maintain their own information and technology infrastructure and do not share office space or employees with BNP. According to the Applicant, such BNP Related QPAMs are entirely separate and distinct from BNP. Furthermore, the Applicant states that no employee of BNP sits on the board of directors of any BNP Related QPAM.

8. The Applicant notes that BNP is expected to be convicted of certain crimes in the near future (the Convictions). In this regard, on June 30, 2014, the U.S. Department of Justice and the Office of the U.S. Attorney for the Southern District of New York (collectively, the DOJ) filed a notice of intent to file a one-count criminal information (the DOJ Information) in the District Court for the Southern District of New York (the District Court), and the New York County District Attorney's Office (the DANY) filed a two-count criminal information (the DANY Information) in the Supreme Court of the State of New York, County of New York (the New York Supreme Court), respectively, against BNP. The DOJ Information charged BNP with conspiracy to commit an offense against the United States in violation of Title 18, United States Code, Section 371, by conspiring to violate the International Emergency Economic Powers Act (IEEPA), codified at Title 50, United States Code, Section 1701 *et seq.,* and regulations issued thereunder, and the Trading with the Enemy Act (TWEA), codified at Title 50, United States Code Appendix, Section 1 *et seq.,* and regulations issued thereunder. The DANY Information charged BNP with the crime of falsifying business records in the first degree, in violation of Penal Law § 175.10, and conspiracy in the fifth degree, in violation of Penal Law § 105.05(1). In connection with the DOJ Information and DANY Information, the DOJ filed a Statement of Facts and the DANY filed a Factual Statement (collectively, the Factual Statements)[57] that details the underlying conduct that serves as the basis for the criminal charges and impending Convictions. The Factual Statements explain that from at least 2004 up through 2012, BNP, the defendant, conspired with banks and other entities located in or controlled by countries subject to U.S. sanctions, including Sudan, Iran, and Cuba (Sanctioned Entities), other financial institutions located in countries not subject to U.S. sanctions, and others known and unknown, to knowingly, intentionally and willfully move at least $8,833,600,000 through the U.S. financial system on behalf of Sanctioned Entities in violation of U.S. sanctions laws, including transactions totaling at least $4.3 billion that involved Specially Designated Nationals (SDNs).[58] In carrying out these illicit transactions, BNP's agents and employees were acting, at least in part, to benefit BNP.

9. Pursuant to U.S. law, financial institutions, including BNP, are prohibited from participating in certain financial transactions involving persons, entities, and countries subject to U.S. economic sanctions. The United States Department of the Treasury's Office of Foreign Assets Control (OFAC) promulgates regulations to administer and enforce U.S. laws governing economic sanctions, including regulations for sanctions related to specific countries, as well as sanctions related to SDNs.

10. The Applicant notes that although the applicable prohibitions vary among sanction programs, the prohibitions described above generally apply to ''U.S. persons.''[59] To the extent a payment is not subject to the jurisdiction of the United States, such as a payment in Euro that is settled totally outside of the United States with no involvement of a U.S. person, non-U.S. persons would not be liable under OFAC-administered sanctions if such a payment involved an SDN or Sanctioned Entity. Therefore, non-U.S. persons, including non-U.S. financial institutions, are generally not subject to the prohibitions of the OFAC-administered sanctions when they are doing business outside of the United States, but there are a number of important exceptions. Relevant here, non-U.S. financial institutions may also be required to comply with the OFAC-administered sanctions if a transaction in which they are engaged is subject to the jurisdiction of the United States. For example, if a transaction that takes place

[56] Section VI(d) of PTE 84–14 defines an ''affiliate'' of a person, for purposes of Section I(g), as: (1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.

Section VI(e) of PTE 84–14 defines the term ''control'' as the power to exercise a controlling influence over the management or policies of a person other than an individual.

[57] The Applicant notes that the Statement of Facts is essentially identical to the Factual Statement.

[58] An SDN appears on a list of individuals, groups, and entities subject to economic sanctions by OFAC. SDNs are individuals and companies specifically designated as having their assets blocked from the U.S. financial system by virtue of being owned or controlled by, or acting for or on behalf of, targeted countries, as well as individuals, groups, and entities, such as terrorists and narcotics traffickers, designated under sanctions programs that are not country-specific.

[59] U.S. persons include U.S. citizens, permanent resident aliens (*i.e.,* ''green card'' holders), entities organized under the laws of the United States and persons and entities physically present in the United States (regardless of nationality or jurisdiction under which the entity was organized). Financial institutions that are U.S. persons, including any financial institution organized under the laws of the United States or any branch of a foreign financial institution located in the United States, are generally prohibited from engaging in transactions with Sanctioned Entities and SDNs, regardless of the currency in which such a transaction is denominated. For example, a London branch of a U.S. financial institution is prohibited from transacting with an SDN in any currency.

outside the United States between non-U.S. persons calls for payment in U.S. dollars, those payments typically will be cleared through the U.S. dollar settlement system in the United States, which in turn typically would involve a U.S. financial institution inside the United States debiting and crediting accounts held on the books of a U.S. bank or a branch of a non-U.S. bank located in the United States. In this way, the transaction and the participants involved can become subject to the jurisdiction of the United States and subject to compliance with the OFAC-administered sanctions with respect to that transaction. Accordingly, if a payment that has a link to a sanctioned jurisdiction or other target is made in U.S. dollars and cleared through the United States as described above, then the non-U.S. bank presenting the payment for clearing through its correspondent account could be at risk of violating the OFAC-administered sanctions, as well as causing a violation by the U.S. clearing bank.

11. According to the Factual Statements, BNP and its co-conspirators carried out the misconduct in the following ways: (a) BNP intentionally used a non-transparent method of payment messages, known as cover payments, to conceal the involvement of Sanctioned Entities in U.S. dollar transactions processed through BNP New York and other financial institutions in the United States; (b) BNP worked with other financial institutions to structure payments in highly complicated ways, with no legitimate business purpose, to conceal the involvement of Sanctioned Entities in order to prevent the illicit transactions from being blocked when transmitted through the United States; (c) BNP instructed other co-conspirator financial institutions not to mention the names of Sanctioned Entities in U.S. dollar payment messages sent to BNP New York and other financial institutions in the United States; (d) BNP followed instructions from co-conspirator Sanctioned Entities not to mention their names in U.S. dollar payment messages sent to BNP New York and other financial institutions in the United States; and (e) BNP removed information identifying Sanctioned Entities from U.S. dollar payment messages in order to conceal the involvement of Sanctioned Entities from BNP New York and other financial institutions in the United States.

12. The Factual Statements further explain that BNP was on notice of law enforcement concerns regarding its conduct as early as December 2009,[60] when it was contacted by the DANY. In a subsequent meeting, in early 2010 between BNP, the DOJ, and the DANY, BNP agreed to conduct an internal investigation into business conducted at a number of its subsidiaries and branches (including in Paris, London, Milan, Rome and Geneva), from January 1, 2002, through December 31, 2009, with countries subject to U.S. sanctions and covering the time period. The review was expanded after BNP discovered instances in which its illicit conduct continued past the original agreed-upon review period. Despite receiving legal opinions in 2006 that identified potential sanctions-violative conduct, receiving notice of the same from law enforcement in late 2009, and beginning its internal investigation in early 2010, BNP failed to provide the DOJ and DANY with meaningful materials from BNP Geneva until May 2013, and the materials were heavily redacted due to bank secrecy laws in Switzerland. BNP's delay in producing these materials significantly impacted the DOJ's and the DANY's ability to bring charges against responsible individuals, Sudanese Sanctioned Entities, and the satellite banks.

13. Nevertheless, the Statement of Facts indicates that in other respects, BNP has provided substantial cooperation to the DOJ and the DANY by conducting an extensive transaction review; identifying potentially violative transactions; responding to numerous inquiries and multiple requests for information; providing voluminous relevant records from foreign jurisdictions; signing tolling agreements with the DOJ and/or DANY and agreeing to extend such tolling agreements on multiple occasions; conducting interviews with dozens of current and former employees in Paris, London, New York, Geneva, Rome and Milan; and working with the DOJ and the DANY to obtain assistance via a mutual legal assistance treaty with France, among other things. BNP also has taken several corrective measures to enhance its sanctions compliance.

14. As noted above, BNP has agreed to resolve the actions brought by the DANY and the DOJ through the Plea Agreements, under which BNP will plead guilty to the charges set out in the DOJ Information and the DANY Information. The Applicants expect that the District Court and the New York State Supreme Court will enter the Convictions against BNP that will require remedies that are materially the same as set forth in the Plea Agreements. In particular, the Applicant notes that BNP has agreed to lawfully undertake the following pursuant to the Plea Agreements: (a) Pay a monetary penalty in the amount of $8,833,600,000; (b) submit every report produced by any compliance consultant or monitor imposed by the Federal Reserve or the New York State Department of Financial Services (DFS) to each of the Federal Reserve, the DFS, and DANY; (c) enhance its compliance policies and procedures with regard to U.S. sanctions laws and regulations; (d) abide by additional orders with the Federal Reserve, the French Autorité de Contrôle Prudentiel et de Résolution, and the DFS; and (e) truthfully and completely disclose any information requested and completely and fully cooperate with the DANY, the Federal Bureau of Investigation, the Internal Revenue Service Criminal Investigation, and any other governmental agency designated by the DOJ or the DANY.

15. Once either of the Convictions is entered, the BNP Affiliated QPAMs and the BNP Related QPAMs, as well as their client plans that are subject to Part 4 of Title I of ERISA (ERISA-covered plans) or section 4975 of the Code (IRAs), will no longer be able to rely on PTE 84–14, pursuant to the anti-criminal rule set forth in section I(g) of the class exemption, absent an individual exemption. The Applicant is seeking an individual exemption that would permit the BNP Affiliated QPAMs, the BNP Related QPAMs, and their ERISA-covered plan and IRA clients to continue to utilize the relief in PTE 84–14, notwithstanding the anticipated Convictions, provided that such QPAMs satisfy the additional conditions imposed by the Department in the proposed exemption herein.

*Past Compliance*

16. Before the Department will consider proposing such exemptive relief, the Applicant must demonstrate past legal compliance with respect to those entities that have acted as QPAMs and independence of operations between those entities acting as QPAMs and the convicted entity. The Applicant explains that each of the BNP Affiliated QPAMs have, at the business level, separate systems, separate infrastructure, separate management,

[60] In May 2007, senior officials at OFAC met with executives at BNP New York and expressed concern that BNP Geneva was conducting U.S. dollar business with Sudan in violation of U.S. sanctions. Shortly after this meeting, OFAC requested that BNP conduct an internal investigation into transactions with Sudan initiated by BNP Geneva that may have violated U.S. sanctions, and asked that BNP report its findings to OFAC. It was not until this intervention by OFAC that BNP made the decision, in June 2007, to stop its U.S. dollar business with Sudan.

separate financial statements, separate payrolls, dedicated risk and compliance officers, and separate legal coverage from BNP. These managers maintain policies and procedures and engage in training designed to ensure that the QPAMs and the assets of the ERISA-covered plans and IRAs they manage are not affected by: (a) The business activities of BNP and/or (b) the conduct that is the subject of the Plea Agreements. Generally, such policies and procedures create information barriers between affiliates that prevent employees of the BNP Affiliated QPAMs from gaining access to insider information that an affiliate may have acquired or developed in connection with CIB activities. These policies and procedures, and corresponding information barriers, apply to employees, officers, and directors at the BNP Affiliated QPAMs and were in effect during the time frame covered by the facts that form the basis of the Plea Agreements. Additionally, the Applicant represents that BNP employees are not involved in the trading decisions and investment strategy of BNP Affiliated QPAMs for their ERISA-covered or IRA clients, nor do the BNP Affiliated QPAMs consult with BNP employees prior to making investment decisions on behalf of their ERISA-covered or IRA clients. According to the Applicant, BNP does not control the asset management decisions of the BNP Affiliated QPAMs or the BNP Related QPAMs, as such decisions are independent of BNP. Furthermore, the Applicant stresses that BNP Affiliated QPAMs and BNP Related QPAMs do not need the consent of BNP to make investment decisions for their clients, for making corrections if errors are made, or for adopting policies, procedures, or training for their staffs.

*Statutory Findings—In the Interest of Affected Plans and IRAs*

17. The Applicant submits that the requested exemption would be in the interest of affected ERISA-covered plans and IRAs. In this regard, the Applicant states that the exemption would allow ERISA-covered plans and IRAs managed by the BNP Affiliated QPAMs and BNP Related QPAMs to avoid the costs or losses that would arise if these QPAMs were immediately unable to rely on the relief afforded by PTE 84–14 as of the date of the earliest of the Convictions. Moreover, the Applicant notes that the transaction costs of changing managers would be significant, especially in some of the strategies employed by the BNP investment managers. In support of this, the Applicant points out that the cost of liquidation, identifying and selecting new managers, and reinvesting the assets would be borne by the ERISA-covered plans and IRAs, with a cost that could exceed several basis points, depending on the strategy.[61]

18. BNP additionally suggests that any ERISA-covered plans or IRAs that remain with BNP's asset management affiliates might be prohibited from engaging in certain transactions that are beneficial to such plans, such as the purchase and sale from a party in interest of a derivative without a readily ascertainable fair market value, because counterparties are far more comfortable with PTE 84–14 than any other exemption, and if other exemptions were required to be utilized, the cost of the transaction might increase to reflect that lack of comfort. Finally, according to the Applicant, BNP has entered into contracts on behalf of ERISA-covered plans for certain outstanding transactions, including swaps, which require BNP to maintain its eligibility for the relief in PTE 84–14. The Applicant asserts that counterparties to those transactions could seek to terminate their contracts, resulting in significant losses to their ERISA-covered plan clients. Moreover, certain derivatives transactions will automatically and immediately be terminated without notice or action if BNP no longer qualifies for the relief in PTE 84–14.

19. The Applicant explains, for example, that Fisher Francis Trees and Watt, Inc. (FFTW), a BNP Affiliated QPAM, manages fixed income and currency strategies utilizing the following derivative instruments, among others: Foreign exchange forwards, credit linked notes, structured notes, and swaps. The Applicant adds that many of FFTW's pension plan accounts, especially those that are governed by ERISA, are dependent upon PTE 84–14 for such instruments. Without such instruments, the Applicant represents that FFTW would be unable to fulfill its mandate to such plans, which could affect approximately $1.67 billion in assets ($1.58 billion in ERISA assets plus $90 million in assets subject to ERISA by contract).[62] The Applicant believes that the cost of the related liquidation would be approximately $2.1 million.

20. The Applicant goes on to explain that another BNP Affiliated QPAM, BNP Paribas Investment Partners Trust Company, is the trustee for a $1.3 billion stable value fund that holds the assets of more than 2,000 plans. The Applicant represents that FFTW acts as the asset manager for the fund under an investment management agreement requiring FFTW to qualify for the relief in PTE 84–14. Furthermore, the Applicant explains that as of June 30, 2014, the fund is wrapped in part by one or more contracts requiring the application of PTE 84–14. The Applicant submits that a default would trigger termination of such contracts and cause the plans to forfeit payment by the issuer of any difference between book and market value, which could be substantial. Additionally, the Applicant adds that the cost of replacing an older legacy wrap contract with a new one would be significant (*e.g.,* wrap fees have increased 100–200 percent since the recent global financial crisis) and entirely borne by the plans, assuming replacement could be found at all in the current market.

21. The Applicant explains that additional losses could be experienced in connection with other BNP Affiliated QPAMs, such as BNP Paribas Asset Management, Inc. (BNP AM), the BancWest group's Hawaiian affiliates (principally First Hawaiian Bank (FHB) and Bishop Street Capital Management (Bishop), and Bank of the West and its subsidiary BancWest Investment Services (BWIS). The Applicant represents that BNP AM currently advises two accounts with approximately $7.9 billion, as of June 30, 2014, in both advisory and managed plan assets. The Applicant notes, to the extent that the loss of the relief under PTE 84–14 would cause the managed accounts to lose confidence in BNP AM, there would be additional liquidation costs. The Applicant adds that FHB, Bishop, and other BankWest affiliates manage 205 ERISA-covered plans and IRAs with about $1.1 billion in assets, and the loss of the relief under PTE 84–14 would cause estimated transaction and liquidation costs, assuming a loss of 5.5 basis points from the market value of the affected plans, of approximately $550,000. Finally, the Applicant notes that Bank of the West and BWIS manage approximately 2,117 ERISA-covered plans and IRAs with approximately $800 million in assets. The Applicant explains that if these ERISA-covered plan and IRA clients chose to leave due to the loss of relief under PTE 84–14,

[61] The Applicant represents that the cost of liquidating an investment is generally the difference between the bid price and the ask price for any particular investment. Furthermore, some investments are more liquid than others (*e.g.,* Treasury bonds are more liquid than foreign sovereign bonds and equities are more liquid than swaps). Some of the strategies followed by the Applicant tend to be less liquid than others and thus, the costs of a transition would be higher than liquidating, for example, a large equity portfolio.

[62] The Applicant notes that many public pension plans hold their investment managers to ERISA-like standards by the terms of their contract.

estimated liquidation costs, again assuming a loss of 5.5 basis points from the market value of the affected plans, would be approximately $400,000, not including the additional costs to reinvest such assets.

22. The Applicant further emphasizes that the proposed exemption would enable ERISA-covered plans and IRAs managed by the BNP Affiliated QPAMs and BNP Related QPAMs to continue with the current investment strategies of their chosen QPAM. The Applicant suggests that any ERISA-covered plan or IRA that is forced to move to a new investment manager could incur transition costs, in addition to the direct costs, as described above, such as the cost of issuing RFPs, finding other managers, and other costs associated with reinvesting the assets.

*Statutory Findings—Protective of Affected Plans and IRAs*

23. The Applicant submits that the proposed exemption, if granted, would be protective of affected ERISA-covered plans and IRAs. The Applicant represents that if this proposed exemption is granted, BNP Affiliated QPAMs will not use their authority or influence to direct an investment fund that is subject to ERISA and managed by a BNP Affiliated QPAM to enter into any transaction with BNP or engage BNP to provide additional services, for a fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption. Furthermore, each BNP Affiliated QPAM will ensure that no employee involved in the criminal conduct that underlies the Convictions will engage in transactions on behalf of any ''investment fund'' (as defined in Section VI(b) of PTE 84–14) subject to ERISA and managed by such BNP Affiliated QPAM.

24. The Department notes that the proposed exemption, if granted, provides additional protection to affected ERISA-covered plans and IRAs because it requires a prudently selected, independent auditor, who has appropriate technical training and proficiency with Title I of ERISA, to evaluate the adequacy of and compliance with the Policies and Training by conducting an annual audit. The first of the audits must be completed no later than twelve (12) months after a final exemption for the covered transactions is granted in the **Federal Register** and must cover the first six-month period that begins on the date a final exemption is granted in the **Federal Register**; all subsequent audits must cover the following corresponding twelve-month periods and be completed no later than six (6) months after the period to which it applies. Specifically, the auditor shall determine whether each BNP Affiliated QPAM has developed, implemented, and maintained written policies (the Policies) requiring and designed to ensure that: (a) The asset management decisions of the BNP Affiliated QPAM is conducted independently of BNP's management and business activities; (b) the BNP Affiliated QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions (including any appropriate corrective or remedial measures) and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (c) the BNP Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (d) any filings or statements made by the BNP Affiliated QPAM to relevant regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; (e) the BNP Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with its ERISA-covered plan and IRA clients; (f) the BNP Affiliated QPAM complies with the terms of this exemption, if granted; and (g) any violations of, or failure to comply with, items (b) through (f) are corrected pursuant to appropriate corrective or remedial measures outlined in the Policies and any such violations or compliance failures not corrected in accordance with the Policies are promptly reported, upon discovery, in writing to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant BNP Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of BNP; however, with respect to any ERISA-covered plans or IRAs sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of BNP or beneficially owned by an employee of BNP or its affiliates, such fiduciary does not need to be independent of BNP.

25. The independent auditor shall also determine whether each BNP Affiliated QPAM has developed a training program (the Training) for such BNP Affiliated QPAM's personnel covering, at a minimum, the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this proposed exemption, if granted, (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing. The auditor shall also determine whether each BNP Affiliated QPAM is operationally compliant with the Policies and Training.

26. The auditor shall provide a written report (the Audit Report), upon completion of each audit that it conducts, to BNP and the BNP Affiliated QPAM to which such Audit Report applies that describes the auditor's determinations as required under this proposed exemption, if granted, and the steps performed by the auditor during the course of the auditor's examinations. The Audit Report will also include the auditor's determinations with regards to the adequacy of the Policies and the Training and any recommendations with respect to strengthening the Policies and Training, and any instances of a BNP Affiliated QPAM's noncompliance with developing, implementing, and maintaining the Policies and Training. Any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training shall be promptly addressed by the respective BNP Affiliated QPAM to which the Audit Report applies, and any actions taken by such BNP Affiliated QPAM to address such recommendations shall be included in an addendum to the Audit Report.

27. The auditor shall notify the respective BNP Affiliated QPAM of any instances of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date. Upon request, the auditor shall provide OED with all of the relevant workpapers reflecting any instances of noncompliance. The workpapers shall include an explanation of any corrective or remedial actions taken by the respective BNP Affiliated QPAM.

28. With respect to each Audit Report, an executive officer of the BNP Affiliated QPAM to which the audit applies will certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report and this exemption, if granted; addressed, corrected, or remediated any inadequacies identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Additionally, an executive officer of BNP will review and certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report. Finally, each BNP Affiliated QPAM will provide its Audit Report to OED no later than 30 days following its completion and each BNP Affiliated QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such BNP Affiliated QPAM.

29. The Department notes that the proposed exemption will be protective of plans because each ERISA-covered plan and IRA will have the discretion to retain a BNP Affiliated QPAM as its asset manager or move to a new asset manager without being exposed to unnecessary fees and charges. In this regard, and in order to further protect ERISA-covered plans and IRAs, the proposed exemption requires that each BNP Affiliated QPAM agrees: (a) To comply with ERISA and the Code, as applicable to the particular ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions; (b) not to waive, limit, or qualify the liability of the BNP Affiliated QPAM for knowingly violating ERISA or the Code or engaging in prohibited transactions; (c) not to require an ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the BNP Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of BNP; (d) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from their arrangement with the BNP Affiliated QPAM; and (e) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. This requirement will become effective immediately upon the granting of an exemption and each BNP Affiliated QPAM must provide notice of this requirement to its ERISA-covered plan and IRA clients within six (6) months of publication of a final granted exemption in the **Federal Register**.

30. The Department notes that a BNP Affiliated QPAM will not fail to meet the terms of this proposed exemption, if granted, solely because a BNP Related QPAM or a different BNP Affiliated QPAM fails to satisfy a condition for relief under this exemption. Additionally, a BNP Related QPAM will not fail to meet the terms of this proposed exemption solely because BNP, a BNP Affiliated QPAM, or a different BNP Related QPAM fails to satisfy a condition for relief under this proposed exemption.

31. The Applicant represents that if a final granted exemption is published in the **Federal Register**, each BNP Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transactions for which such BNP Affiliated QPAM relies upon the relief in the exemption.

32. The Applicant represents further that BNP will provide to: (a) Each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a BNP Affiliated QPAM, or the sponsor of an investment fund in any case where a BNP Affiliated QPAM acts only as a sub-advisor to the investment fund; (b) each entity that may be a BNP Related QPAM; and (c) with respect to ERISA-covered plan and IRA investors in the Income Plus Fund, the identity of which is unknown, each distribution agent of such fund with a request that such distribution agent forward to its clients, a notice of the proposed exemption, along with a separate summary of the facts that led to the Convictions, which has been submitted to the Department, and a prominently displayed statement that the Convictions result in a failure to meet a condition in PTE 84–14. For avoidance of doubt, in the event that BNP has knowledge of the identity of an ERISA-covered plan or IRA investor in the Income Plus Fund, BNP will ensure that such investor receives the notice(s) contemplated under this paragraph.

33. Finally, the Applicant represents that the proposed exemption will protect the interests of affected ERISA-covered Plans and IRAs because it would allow the BNP Affiliated QPAMs to engage in transactions described in PTE 84–14 only to the extent that all of the longstanding conditions set forth in PTE 84–14 (except for Section I(g), as a result of the Convictions) are fully met for the particular transaction at issue. Furthermore, the exemptive relief available under this proposed exemption, if granted, will not be available to the parent entity that is the subject of the Convictions, BNP.

*Statutory Findings—Administratively Feasible*

34. The Applicant represents that the requested exemption is administratively feasible because it does not require any monitoring by the Department but relies on an independent auditor to determine that the BNP Affiliated QPAMs' compliance policies, and the conditions for the exemption, are being followed. Furthermore, compliance with other sections of PTE 84–14 has been determined to be administratively feasible by the Department in many other similar cases.

*Summary*

35. In summary, the covered transactions satisfy the statutory requirements for an exemption under section 408(a) of ERISA because:

(a) Any failure of the BNP Affiliated QPAMs or the BNP Related QPAMs to satisfy Section I(g) of PTE 84–14 arose solely from the Convictions;

(b) The BNP Affiliated QPAMs and the BNP Related QPAMs (including officers, directors, agents other than BNP, and employees of such QPAMs) did not participate in the criminal conduct of BNP that is the subject of the Convictions;

(c) The BNP Affiliated QPAMs and the BNP Related QPAMs did not directly receive compensation in connection with the criminal conduct of BNP that is the subject of the Convictions;

(d) The criminal conduct of BNP that is the subject of the Convictions did not directly or indirectly involve the assets of any ERISA-covered plan or IRA;

(e) A BNP Affiliated QPAM may not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is

subject to ERISA and managed by such BNP Affiliated QPAM to enter into any transaction with BNP or engage BNP to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(f) Each BNP Affiliated QPAM will ensure that none of its employees or agents, if any, that were involved in the criminal conduct that underlies the Convictions will engage in transactions on behalf of any ''investment fund'' (as defined in Section VI(b) of PTE 84–14) subject to ERISA and managed by such BNP Affiliated QPAM;

(g)(1) Each BNP Affiliated QPAM immediately develops, implements, maintains, and follows written Policies requiring and reasonably designed to ensure that: (i) The asset management decisions of the BNP Affiliated QPAM are conducted independently of BNP's management and business activities; (ii) the BNP Affiliated QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (iii) the BNP Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (iv) any filings or statements made by the BNP Affiliated QPAM to relevant regulators, on behalf of ERISA-covered plans or IRAs, are materially accurate and complete, to the best of such QPAM's knowledge at that time; (v) the BNP Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients; (vi) the BNP Affiliated QPAM complies with the terms of this exemption, if granted; and (vii) any violations of or failure to comply with items (ii) through (vi) are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to appropriate corporate officers, the head of Compliance and the General Counsel of the relevant BNP Affiliated QPAM, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of BNP; although, with respect to any ERISA-covered plan or IRA sponsored by an ''affiliate'' (as defined in Section VI(d) of PTE 84–14) of BNP or beneficially owned by an employee of BNP or its affiliates, such fiduciary does not need to be independent of BNP;

(2) Each Affiliated QPAM immediately develops and implements Training, conducted at least annually for relevant BNP Affiliated QPAM asset management, legal, compliance, and internal audit personnel; the Training shall be set forth in the Policies and, at a minimum, covers the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this proposed exemption, if granted, (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing;

(h)(1) Each BNP Affiliated QPAM submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA to evaluate the adequacy of, and compliance with, the Policies and Training;

(2) For each audit, the auditor shall issue an Audit Report to BNP and the BNP Affiliated QPAM to which the audit applies that describes the steps performed by the auditor during the course of its examination;

(3) An executive officer of the BNP Affiliated QPAM to which the Audit Report applies must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption, if granted; addressed, corrected, or remediated any inadequacies identified in the Audit Report; and determined that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(7) An executive officer of BNP must review the Audit Report for each BNP Affiliated QPAM and certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(8) Each BNP Affiliated QPAM must provide its certified Audit Report to the Department's Office of Exemption Determinations no later than 30 days following its completion, and each BNP Affiliated QPAM must make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such BNP Affiliated QPAM;

(i) The BNP Affiliated QPAMs must comply with each condition of PTE 84–14, as amended, with the only exceptions being the violations of Section I(g) that are attributable to the Convictions;

(j) Effective from the date of publication of any granted exemption in the **Federal Register**, with respect to each ERISA-covered plan or IRA for which a BNP Affiliated QPAM provides asset management or other discretionary fiduciary services, each BNP Affiliated QPAM agrees: (1) To comply with ERISA and the Code, as applicable to the particular ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions; (2) not to waive, limit, or qualify the liability of the BNP Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions; (3) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the BNP Affiliated QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of BNP; (4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the BNP Affiliated QPAM; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. Within six (6) months of the date of publication of a granted exemption in the **Federal Register**, each BNP Affiliated QPAM must provide a notice to such effect to each ERISA-covered plan or IRA for which a BNP Affiliated QPAM provides asset management or other discretionary fiduciary services;

(k) If a final exemption is granted in the **Federal Register**, each BNP Affiliated QPAM must maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which such BNP

Affiliated QPAM relies upon the relief in the exemption;

(l) The BNP Affiliated QPAMs must provide to: (1) Each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a BNP Affiliated QPAM, or the sponsor of an investment fund in any case where a BNP Affiliated QPAM acts only as a sub-advisor to the investment fund; (2) each entity that may be a BNP Related QPAM; and (3) with respect to ERISA-covered plan and IRA investors in the Income Plus Fund, the identity of which is unknown, each distribution agent of the fund with a request that such distribution agent forward to its clients, a notice of the proposed exemption along with a separate summary describing the facts that led to the Convictions, which has been submitted to the Department, and a prominently displayed statement that the Convictions result in a failure to meet a condition in PTE 84–14;

(m) A BNP Affiliated QPAM will not fail to meet the terms of this proposed exemption, if granted, solely because a BNP Related QPAM or a different BNP Affiliated QPAM fails to satisfy a condition for relief under this exemption. A BNP Related QPAM will not fail to meet the terms of this proposed exemption, if granted, solely because BNP, a BNP Affiliated QPAM, or a different BNP Related QPAM fails to satisfy a condition for relief under this exemption.

**Notice to Interested Persons**

Notice of the proposed exemption (the Notice) will be provided to all interested persons within fifteen (15) days of publication of the Notice in the **Federal Register**. Notice will be provided to all interested persons in the manner agreed upon by the Applicant and the Department. Such notification will contain a copy of the Notice, as published in the **Federal Register**, and a supplemental statement, as required, pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform all interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty-five (45) days of the publication of the Notice in the **Federal Register**.

All comments will be made available to the public.

*Warning:* If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but do not submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) 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:** Erin S. Hesse, telephone (202) 693–8546, or Scott Ness, telephone (202) 693–8561, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (these are not toll-free numbers).

**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 20th day of November, 2014.

**Lyssa E. Hall,**

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

[FR Doc. 2014–27935 Filed 11–25–14; 8:45 am]

BILLING CODE 4510–29–P