OSHA has also determined that the differences between the State and Federal amendments for all the remaining standards in this notice are minimal and that these State standards amendments are thus substantially identical. OSHA therefore approves these standards; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; State of Washington Department of Labor and Industries, 7273 Linderson Way, S.W., Tumwater, Washington 98501; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3700, 200 Constitution Avenue, NW, Washington, D.C. 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The standard amendments were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective (Sec. 18, Pub. L. 91–596, 84 STAT. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington, this 28th day of April 1995.

Richard S. Terrill,

Acting Regional Administrator.

[FR Doc. 96–5010 Filed 3–4–96; 8:45 am]

BILLING CODE 4510–26–P

Pension and Welfare Benefits Administration

[Application No. D–09986, et al.]

Proposed Exemptions NBD Bancorp

AGENCY: Pension and Welfare Benefits 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 restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this Federal Register Notice. Comments and request 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. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice To Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) 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.

NBD Bancorp; Located in Detroit, Michigan; Proposed Exemption

[Application No. D–09986]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the merger of the INB Principal Stability Fund (the PS Fund) into the NBD Stable Asset Income Fund (the SAI Fund).[1]

The proposed exemption is conditioned upon satisfaction of the following requirements:

(1) On the date the merger is executed, the assets in the PS Fund and the assets in the SAI Fund will be valued in the same manner, under identical guidelines, by the same individuals;

(2) Upon completion of the merger of the PS Fund into the SAI Fund, the aggregate fair market value of the interests of the employee benefit plans (the Plans) participating in the SAI Fund immediately following the merger, together with any cash received in lieu of fractional units, equals the aggregate fair market value of each participating Plans' interest in such Funds immediately before the merger;

(3) The assets of each of the participating Plans are invested in the same type of investments both before and after the proposed merger;

(4) Neither NBD Bancorp nor any of its affiliates receives fees or commissions in connection with the merger;

[1] For purposes of this proposed exemption, the PS Fund and the SAI Fund described herein are collectively referred to as the Funds.

(5) The Plans will pay no sales commissions or fees, as a result of the transaction; and

(6) A fiduciary who is acting on behalf of each affected Plan and who is independent of and unrelated to NBD Bancorp and any of its affiliates receives advance written notice of the merger of the PS Fund into the SAI Fund.

Summary of Facts and Representations

1. The Plans involved in this proposed exemption are certain pension, profit sharing, or stock bonus plans which are exempt from Federal income taxation under section 501(a) of the Code by reason of qualifying under section 401(a) of the Code.

2. The proposed exemption is requested on behalf of National Bank of Detroit (herein referred to as NBD Michigan) and on behalf of NBD Bank, N.A. (herein referred to as NBD Indiana). NBD Michigan and NBD Indiana are national banking associations and members of an ''affiliated group,'' as defined in section 1504 of the Code. NBD Michigan is a wholly-owned subsidiary of NBD Bancorp, a bank holding company with principal offices in Detroit, Michigan. NBD Indiana, with principal offices in Indianapolis, Indiana, is a wholly-owned subsidiary of NBD Indiana, Inc., another bank holding company. It is represented that since 1992, NBD Indiana, Inc. has also been wholly-owned by NBD Bancorp.

3. The SAI Fund and the PS Fund are common funds maintained for the collective investment of monies contributed thereto by the Plans. NBD Michigan and NBD Indiana, respectively, serve as trustees for the SAI Fund and the PS Fund. The SAI Fund is one of twenty-five (25) separate collective investment funds under a group trust now known as the National Bank of Detroit Investment Fund for Employee Benefit Plans (the NBD Pooled Fund) which was established on May 12, 1960, by the National Bank of Detroit, a predecessor of NBD Michigan, and which, as amended, is now maintained by NBD Michigan. The PS Fund is one of the collective investment funds under a group trust known as the INB National Bank Group Trust for Employee Pension and Profit-Sharing Trusts B (the INB Group Trust) which was established on July 18, 1990, by INB National Bank, a predecessor of NBD Indiana, and which, as amended, is now maintained by NBD Indiana.

4. Both the SAI Fund and the PS Fund have substantially identical investment objectives, and the assets of each are invested in similar types of guaranteed insurance contracts. As of September 26, 1994, approximately 405 Plans participated in the SAI Fund, and 83 Plans participated in the PS Fund. As of January 23, 1996, it is represented that there were 44 Plans participating in the PS Fund. The aggregate fair market value of the SAI Fund, as of September 30, 1994, was $189,876,000. As of November 30, 1994, the aggregate fair market value of the PS Fund was approximately $12,829,000.

5. In order to improve the administration of the SAI Fund and the PS Fund, thereby improving service to the Plans participating in those Funds, NBD Michigan and NBD Indiana desire to merge the SAI Fund and the PS Fund, with the SAI Fund being the surviving fund. It is represented that the trustees of the Plans which participate in the PS Fund were notified of the proposed merger of the PS Fund into the SAI Fund on or about July 1994. Such notification advised the Plans participating in the PS Fund of the right to withdraw from such fund and the rules and procedures applicable to such withdrawal. Plans under the terms of the guaranteed investment contracts held by the Funds are permitted to withdraw any or all of their investment upon twelve (12) months prior written notice. It is represented that from the time the notification was sent in July 1994, none of the Plans participating in the PS Fund expressed concern regarding the merger. It is represented that, if it had been inclined to do so, a Plan participating in the PS Fund could have submitted its withdrawal request at the time the notification was given in July 1994, (or even several months later), and could already have received a distribution of its interest in the PS Fund. In this regard, it is represented that none of the Plans participating in the PS Fund subsequently elected to withdraw as a result of the proposed merger.

Because NBD Michigan exercises authority and control over the assets of the SAI Fund, it is deemed to be a fiduciary with respect to each of the Plans participating in the SAI Fund. Similarly, because NBD Indiana exercises authority and control over the assets of the PS Fund, it is deemed to be a fiduciary with respect to each of the Plans participating in the PS Fund.

6. As fiduciaries, NBD Michigan and NBD Indiana believe that because of their affiliation in executing the merger of the PS Fund into the SAI Fund, they each may be acting on behalf of adverse parties to the Plans each represents; and thus, a violation of section 406(b)(2) of the Act may occur. Accordingly, NBD Michigan and NBD Indiana have requested an administrative exemption from the prohibitions as set forth in section 406(b)(2) of the Act for the proposed transaction.

7. It is represented that the proposed merger is administratively feasible in that it constitutes a single transaction, the terms of which can be reviewed and approved in advance by the Department. Further, NBD Michigan and NBD Indiana will bear the cost of filing the application for exemption, the cost of notifying interested persons, and the expenses associated with the proposed transaction.

8. NBD Michigan and NBD Indiana have determined that the merger would be in the best interest of the Plans participating in the SAI Fund and the PS Fund. In this regard, the merger of the PS Fund and the SAI Fund will create a larger pool of assets which will result in better investment diversity and will increase the bargaining power of the SAI Fund when purchasing new contracts. It is anticipated that the increased size of the SAI Fund will create certain administrative efficiencies, and will serve to avoid or postpone any future fee increases. In addition, inasmuch as the SAI Fund has substantially greater liquidity than the PS Fund, Plans wishing to withdraw from the SAI Fund after the merger may be able to do so in as little as ninety (90) days), rather than twelve (12) months.

9. NBD Michigan and NBD Indiana have determined that the rights of the Plans participating in the Funds are protected in that the fair market value of the investment of each of the Plans in the Funds involved in the proposed transaction will not be changed as a result of the merger. In this regard, it is represented that the valuation methodology followed by both the PS Fund and the SAI Fund is identical, in that both of the Funds are valued daily and processed under the same guidelines by precisely the same individuals.

More specifically, it is represented that there are only two classes of assets in each of the Funds. The first class consists of cash held by each of the Funds in short-term money market funds. In this regard, the applicants maintain that although the interest rate earned in these money market fund varies, such money market funds are valued as cash. The second class of assets consists of various fixed rate and variable rate guaranteed investment contracts purchased by the Funds from highly rated insurance companies and held to term. It is represented that both the Funds hold fixed rate guaranteed investment contracts, and that only the SAI Fund holds variable rate guaranteed investment contracts. It is represented

that no default presently exists, nor has there previously been any default, under any guaranteed investment contract held by the Funds.

It is represented that these guaranteed investment contracts held by the Funds have been and will continue to be valued on the basis of the principal value plus accrued interest to the date of valuation calculated at the rate applicable to each contract through the date of valuation. In this regard, with respect to the four (4) variable rate guaranteed investment contracts held by the SAI Fund, it is represented that the rate of interest applicable to such contracts is determined and announced by the issuing insurance company on a monthly basis, and that the rate so determined is fixed for the following thirty (30) day period. For example, if the merger date were specified to be December 31, 1996, the applicable rate under each of these four (4) contracts as of that date would be fixed and certain, such that the contracts could be valued to that date using the established rate. Accordingly, the applicants represent that there is no significant benefit to be derived from an independent valuation of the assets held in the Funds, because the straightforward method by which the value of both the fixed rate and variable rate guaranteed investment contracts is determined can be readily verified by the Department and by the investors in the Funds.

10. It is represented that the merger will not create any additional fees for the Plans participating in the Funds. In this regard, neither NBD Michigan, NBD Indiana, nor any affiliated party will receive any fees or commissions with respect to the proposed merger, nor will the Plans pay any sales commissions or fees, as a result of the proposed transaction. Other than the incidental administrative efficiencies which will result from the merger of the PS Fund and the SAI Fund, it is represented that neither NBD Michigan and NBD Indiana nor any affiliated party will derive any financial benefit from the merger of the Funds.

It is represented that at the present time, NBD Michigan has employee benefit trust customers, including the Plans, which have assets invested in the SAI Fund, but NBD Michigan has no employee benefit trust customers invested in the PS Fund. It is further represented that at the present time, NBD Indiana has employee benefit trust customers, including the Plans, which have assets invested in the PS Fund, and some employee benefit trust customers which have already invested assets in the SAI Fund. The annual investment fee charged by NBD Indiana to participants in either the SAI Fund or the PS Fund consists of an annual base fee of $400, plus a market value based fee determined as follows: .85% on the first $1 million; .50% on the next $2 million; .35% on the next $2 million; .25% on the next $5 million; .15% on the next $10 million; and .10% on the excess over $20 million. The annual investment fee charged by NBD Michigan to participants in the SAI Fund is currently .75% of the market value of the SAI Fund.[2]

Following the merger of the PS Fund into the SAI Fund, both NBD Michigan and NBD Indiana will have employee benefit trust customers, including the Plans, participating in the SAI Fund. In this regard, it is represented that NBD Indiana and NBD Michigan will continue to service their respective employee benefit trust customers, including the Plans, and the investment fees charged to those Plans will be determined by the NBD Bancorp subsidiary (*i.e.* NBD Indiana or NBD Michigan) which originated that customer. Accordingly, it is represented that the investment fees, as described above, charged to the Plans by NBD Michigan and NBD Indiana, to the respective Plans that each services will not change following the merger of the PS Fund and the SAI Fund.

With respect to the amount of the investment fees charged to the Plans by NBD Michigan and NBD Indiana, the applicants point out that, although owned by a common parent corporation, NBD Michigan and NBD Indiana are separate corporations (one state-chartered and one federally-chartered) with separate fee schedules and separate customers served by employees of their separate trust departments. The applicants state that the fees charged by each bank include compensation for services relating to the administration of each of the Funds, such as acquiring the guaranteed investment contracts, performing valuations, and satisfying reporting and recordkeeping requirements, as well as compensation for the sales and consulting services provided by the separate staff of each bank to its respective trust clients. It is represented that the level of services, the personnel providing these services, and the overhead costs (*e.g.* rent, compensation levels, etc.) associated with the provision of such services is entirely different for each bank. Further, it is represented that the separate fee schedules of NBD Michigan and NBD Indiana, as described above, are primarily a function of the different markets served by each bank, and are intended to be responsive to and competitive with the fees charged by other financial institutions in the area in which each bank operates. In this regard, both NBD Michigan and NBD Indiana maintain that their respective fee structures are reasonable and competitive with the other institutions in the markets they each serve.[3]

11. To accomplish the merger of the SAI Fund and the PS Fund, the assets of the Funds (including all accrued income) will be valued as of the date the merger is executed (the Merger Date). The Merger Date will be declared by NBD Michigan and NBD Indiana following the grant of this proposed exemption. As of the Merger Date, NBD Indiana will transfer all of the assets of the PS Fund to NBD Michigan, as trustee of the SAI Fund. It is represented that all of the assets of the PS Fund meet the investment criteria of the SAI Fund, and accordingly, the SAI Fund will accept the transfer of all of the assets of the PS Fund, without exception. As all of the assets of the PS Fund will be transferred to the SAI Fund, the PS Fund will cease to exist immediately following the merger.

The transferred assets will be commingled for investment following the Merger Date, and all income will be deemed to have been earned in the SAI Fund. The Plans which participated in the PS Fund immediately preceding the merger will become participants in the SAI Fund, as of the Merger Date. Each of the Plans participating in the PS Fund immediately preceding the merger will have allocated to it, as of the Merger Date, the proportion of the allocated units in the SAI Fund equal to its proportion of units in the PS Fund immediately preceding the merger. No fractional units of participation in the SAI Fund will be issued in the merger. The SAI Fund will pay cash equal to the fair market value of any such fractional unit to which each of the participating Plans in the PS Fund would otherwise be entitled.

[2] It is represented that NBD Michigan and NBD Indiana rely upon the statutory exemption, as set forth in section 408(b)(2) of the Act, for the receipt of fees for investment management services provided with respect to the Funds. The Department, herein, expresses no opinion as to whether the provision of services by NBD Michigan and NBD Indiana to the Funds and the compensation received therefore satisfy the terms and conditions, as set forth in section 408(b)(2) of the Act.

[3] ERISA's general standards of fiduciary conduct would apply to the investment of plan assets in the SAI Fund. Accordingly, the plan fiduciary must act prudently with respect to its decision to enter into a new compensation arrangement, which under the particular facts and circumstances, may result in the plan paying additional amounts for similar investment services.

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

(a) on the date the merger is executed, the assets in the PS Fund and the assets in the SAI Fund will be valued in the same manner, under identical guidelines, by the same individuals;

(b) the fair market value of the interests of the Plans participating in the affected Funds will remain unchanged as a result of the proposed merger;

(c) the assets of each participating Plan will be invested in the same type of investment both before and after the execution of the merger;

(d) the proposed merger will result in greater operational efficiencies and economies of scale, as well as greater opportunities for investment diversification;

(e) neither NBD Bancorp nor any of its affiliates will receive any fees or commissions in connection with the proposed merger;

(f) the Plans will pay no sales commissions or fees, as a result of the transaction; and

(g) A fiduciary who is acting on behalf of each affected Plan and who is independent of and unrelated to NBD Bancorp and any of its affiliates has received advance written notice of the merger of the PS Fund into the SAI Fund.

Notice to Interested Persons

The applicant maintains that persons who may be interested in the pendency of the requested exemption include the independent fiduciaries of all of the Plans participating under the NBD Pooled Fund and the INB Group Trust. It is represented within fifteen (15) days of the date of publication of the Notice of Proposed Exemption (the Notice) in the Federal Register, that notification in writing of the Notice will be provided by mail to the independent fiduciaries of all of the Plans participating under the NBD Pooled Fund and the INB Group Trust. Such notification will include a copy of the Notice, as published in the Federal Register, and a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2). The notification will inform such interested persons of their right to comment or request a hearing within a time period specified in the notification.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department (202) 219–8883. (This is not a toll-free number.)

Biscayne Bay Pilots, Inc. Money Purchase Pension Plan (M/P Plan) and Biscayne Bay Pilots, Inc. 401(k) Profit Sharing Plan (P/S Plan; Collectively, the Plans); Located in Miami, Florida; Proposed Exemption

[Application Nos. D–10036 and D–10037]

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 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain improved real property (the Property) by a trust (the HK Trust) established on behalf of Helge Krarup (Mr. Krarup) within the Plans to Mr. Krarup, a party in interest with respect to the Plans; provided that the following conditions are satisfied:

(a) the proposed sale will be a one-time cash transaction;

(b) the HK Trust will receive the current fair market value for the Property established at the time of the sale by an independent qualified appraiser;

(c) the HK Trust will pay no expenses associated with the sale;

(d) the sale will provide the HK Trust with liquidity; and

(e) only the assets in the HK Trust will be affected by the transaction.

Summary of Facts and Representations

1. The Plans were established January 1, 1989. The M/P Plan and the P/S Plan are defined contribution plans. As of March 31, 1995, the M/P Plan had 25 participants and the P/S Plan had 26 participants. As of March 31, 1995, the Plans had aggregate net assets of $944,804.67. Biscayne Bay Pilots, Inc. (Biscayne Bay) is the sponsor of the Plans.

Biscayne Bay is a Florida corporation in the business of providing support services to Biscayne Bay Pilots Association (the Association), which furnishes harbor pilot support services to ships in the Port of Miami. Once a pilot is licensed by the State of Florida, a pilot sets up a corporation of which he is the sole officer, director, shareholder and employee. Currently, there are fifteen separate pilot corporations (the Pilot Corporations), which make up the partners of the Association. Biscayne Bay and the Pilot Corporations constitute an affiliated service group under section 414(m) of the Internal Revenue Code of 1986.

Biscayne Bay and the Pilot Corporations have all adopted the Plans. The Plans' trustees are Stephen E. Nadeau, William M. Breese and John R. Fernandez, who respectively are the President, the Vice-President, and the Secretary of Biscayne Bay. Each participant in the Plans can elect to, among other things, establish their own trust within the Plans using only their funds to fund the trust. This trust contains the participant's funds within the two Plans, and the participants are required to bear the expenses associated with investing in their own trust. HK Trust is such a trust containing only the assets in Mr. Krarup's accounts in the Plans.

2. Helge Krarup, Inc. (HK Inc.) is a Florida corporation that was formed on August 26, 1981. Mr. Krarup is the sole officer, director and shareholder of HK Inc. On June 9, 1989, HK Inc. established the HK Trust as a trust within the Plans. HK Trust has one participant, Mr. Krarup. Mr. Krarup's account balances in the Plans were deposited in the HK Trust. The trustees of the HK Trust are Mr. Krarup and his wife Bente Krarup. As of December 31, 1994, the HK Trust had net assets of $565,444.

3. In December 1983, the Helge Krarup, Inc. Defined Benefit Pension Plan (the HK Plan) [4] purchased the Property from Kenneth and Eunice Stein (the Steins), who were unrelated third parties, for $245,000 plus appropriate closing costs. The Property contains a residence (the Residence) which is located on two acres of land. The HK Plan made a down payment in the amount of $40,000 and took a mortgage secured by the Property for the remaining $205,000 from the Steins. The mortgage had a duration of fifteen years (15) and an interest rate of 12% per annum. The applicant represents that accelerated payments were made under the mortgage and the mortgage was paid off by August 15, 1987. Mr. Krarup as the trustee and the sole participant of the HK Plan, made the decision to purchase the Property as a long-term investment for the HK Plan. It is represented that the Property is not adjacent to any real property owned by Mr. Krarup or any other party in interest, and that the Property has never been used by a party in interest. As of December 31, 1983, the Property

[4] Mr. Krarup was the only participant in the HK Plan.

represented in excess of 90% of the HK Plan's total assets.[5]

4. When the HK Plan was terminated, the two deeds evidencing the Property were transferred to the HK Trust on February 28, 1990. The applicant represents that there were two deeds because the Property was described on the original deed in two parcels. Accordingly, one deed was done for each parcel. The applicant states that at the time of the transfer, the Property constituted approximately 65% of the HK Trust's total assets. Currently, the Property is not encumbered by debt and is owned outright by the HK Trust.

5. The Property, located at 1510 NE Dixie Highway, Jensen Beach, Florida, was appraised on June 19, 1995 (the Appraisal). The Appraisal was prepared by Mary Ann Haskell and by Daniel K. Deighan, MAI, independent Florida state certified appraisers (the Appraisers), who are with Deighan Appraisal Associates, Inc. The Appraisers indicated that the Residence on the Property has not been adequately maintained, and as of the date of inspection there was evidence of roof leaks in both of the upstairs bedrooms and of extensive wood rot on the enclosed porch. Because of deferred maintenance and other deficiencies, the structure of the Residence is considered to be in ''tear down'' condition and contributes little to the overall value of the Property. The Appraisers relied primarily on the Sales Comparison approach, as supported by the Cost Approach, and determined that as of June 19, 1995, the ''as is'' market value of the Property was $210,000. The Appraisers stated that the Income approach was considered inapplicable due to insufficient rental data in this market.

6. Furthermore, the applicant also contacted Johnson & Johnson, a local real estate firm (the J&J Firm), regarding prospects of increasing rentals on the Property or selling the Property. In this regard, Ms. Kim Johnson of the J&J Firm, made the following observations: among other things, the Residence is very old and rundown, and any prospective purchaser would buy the Property solely for the land value and would not consider the Residence to be of any value. Furthermore, the shape of the Property is very irregular and it might be difficult to fit a large house on the Property, even though the Property is over two acres in size. In the last year in the immediate area of the Property, there has been only one purchase of a large ocean front lot, which was on the market for a significant period of time before it sold. Ms. Johnson believes that the Property could take a year or more to sell for approximately $300,000, and the real estate commission would be approximately 6% and the closing costs would be approximately 1% to be paid by the seller.

6. The applicant represents that the Property has been leased since April 1984 to unrelated third parties. The Property is currently leased under a month-to-month agreement to Kim Johnson and Chris Tyler, who are unrelated third parties, for a rental amount of $650 per month. The applicant maintains that the fair rental value of the Property was determined by establishing the rentals charged for houses of similar size and with similar amenities in the area. Because the Property has been rented, the applicant submitted a ''return on investment'' analysis for the Property, covering the period 1984 through 1994. Return on investment value ratios were derived by the applicant by dividing net income by the original acquisition price of the Property for each year of ownership. An average of the ''return on investment'' figures was determined to be approximately one percent (1%). Also, in this regard, the total expenses during the period 1984–94 sustained by the HK Trust for the Property were approximately $51,303, and the total income received by the HK Trust during this period was approximately $67,116. Therefore, the net income received by the HK Trust for the Property during 1984–94 was $15,813 ($67,116–$51,303).

7. Mr. Krarup now proposes to purchase the Property from the HK Trust in a one-time cash transaction. The applicant represents that the proposed transaction is in the best interest and protective of the HK Trust because the HK Trust will pay no expenses or commissions associated with the sale. Also, the fair market value of the Property has been determined by the independent qualified Appraisers to be $210,000. In this regard, Mr. Krarup will pay the HK Trust the current fair market value for the Property established at the time of the sale by the independent qualified Appraisers. The sale of the Property will increase the liquidity of the HK Trust's portfolio. The sale will also enable the HK Trust to sell an illiquid asset which currently represents approximately 45% of the HK Trust's total assets and which has depreciated in value over time. It is represented that because the HK Trust is a one participant trust within the Plans, no other participant in the Plans will be affected by the proposed transaction.

8. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) the proposed sale will be a one-time cash transaction;

(b) the HK Trust will receive the current fair market value for the Property established at the time of the sale by the independent qualified Appraisers;

(c) the HK Trust will pay no expenses associated with the sale;

(d) the sale will provide the HK Trust with liquidity; and

(e) only the assets in the HK Trust will be affected by the transaction.

Notice To Interested Persons

Because Mr. Krarup is the sole participant of the HK Trust, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

Society National Bank; KeyTrust Company of Ohio; Society Asset Management, Inc; and KeyCorp; Located in Cleveland, Ohio; Proposed Exemption

[Application No. D–10063]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Exemption for In-Kind Transfer of CIF Assets

If the exemption is granted, the restrictions of section 406(a) and 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) through (F) of the Code, shall not apply as of December 1, 1993, to the in-kind transfer of assets of plans for which Society National Bank, KeyTrust Company of Ohio, N.A., Society Asset Management, Inc., and KeyCorp or an affiliate (collectively, the Bank) serves as a fiduciary (the Client Plans), other

[5] The Department notes that the decisions to transfer and hold the Property by the HK Trust, as well as the maintaining and renting of the Property by the HK Trust are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act, and the Department herein is not providing relief for any violations of Part 4 which may have arisen as a result of these fiduciary decisions. Accordingly, this exemption extends relief only for the proposed sale of the Property to Mr. Krarup.

than plans established and maintained by the Bank, that are held in certain collective investment funds maintained by the Bank (the CIFs), in exchange for shares of The Victory Portfolios (collectively, the Funds), an open-end investment company registered under the Investment Company Act of 1940 (the 1940 Act), for which the Bank acts as an investment adviser as well as a custodian, sub-administrator, and/or shareholder servicing agent, or provides some other ''secondary service'' as defined in Section IV(h), in connection with the termination of such CIFs, provided that the following conditions and the general conditions of Section III below are met:

(a) No sales commissions or other fees are paid by the Client Plans in connection with the purchase of Fund shares through the in-kind transfer of CIF assets and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the Funds.

(b) All or a pro rata portion of the assets of a CIF are transferred to a Fund in exchange for shares of such Fund.

(c) Each Client Plan receives shares of a Fund which have a total net asset value that is equal to the value of the Client Plan's pro rata share of the assets of the CIF on the date of the transfer, based on the current market value of the CIF's assets, as determined in a single valuation performed in the same manner at the close of the same business day, using independent sources in accordance with Rule 17a–7(b) of the Securities and Exchange Commission (SEC) under the 1940 Act and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

(d) A second fiduciary who is independent of and unrelated to the Bank (the Second Fiduciary) receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Funds, including:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any secondary services as defined in Section IV(h), and all other fees to be charged to or paid by the Client Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why the Bank considers investing in the Fund is an appropriate investment decision for the Client Plan;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Client Plan may be invested in a Fund, and, if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, if granted, once such documents are published in the Federal Register.

(e) After consideration of the foregoing information, the Second Fiduciary authorizes in writing the in-kind transfer of the Client Plan's CIF assets to a corresponding Fund in exchange for shares of the Fund.

(f) For all in-kind transfers of CIF assets to a Fund following the publication of this proposed exemption in the Federal Register, the Bank sends by regular mail to each affected Client Plan the following information:

(1) Within 30 days after completion of the transaction, a written confirmation containing:

(i) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4);

(ii) The price of each such security involved in the transaction;

(iii) The identity of each pricing service or market-maker consulted in determining the value of such securities; and

(2) Within 90 days after completion of each in-kind transfer, a written confirmation containing:

(i) The number of CIF units held by the Client Plan immediately before the transfer, the related per unit value, and the total dollar amount of such CIF units; and

(ii) The number of shares in the Funds that are held by the Client Plan following the transfer, the related per share net asset value, and the total dollar amount of such shares.

(g) The conditions set forth in paragraphs (e), (f) and (n) of Section II below are satisfied.

Section II—Exemption for Receipt of Fees

If the exemption is granted, the restrictions of sections 406(a) and 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) through (F) of the Code, shall not apply as of October 1, 1995 to: (1) the receipt of fees by the Bank from the Funds for acting as an investment adviser to the Funds in connection with the investment by the Client Plans in shares of the Funds; and (2) the receipt and retention of fees by the Bank from the Funds for acting as custodian, sub-administrator and shareholder servicing agent to the Funds, as well as for providing any other services to the Funds which are not investment advisory services (i.e. ''secondary services''), in connection with the investment by the Client Plans in shares of the Funds, provided that the following conditions and the general conditions of Section III are met:

(a) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds and no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share at the time of the transaction, as defined in Section IV(e), and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) The Bank, including any officer or director of the Bank, does not purchase or sell shares of the Funds to any Client Plan.

(d) Each Client Plan receives a credit, either through cash or the purchase of additional shares of the Funds pursuant to an annual election made by the Client Plan, of such Plan's proportionate share of all fees charged to the Funds by the Bank for investment advisory services, including any investment advisory fees paid by the Bank to third party sub-advisors, within no more than one business day of the receipt of such fees by the Bank.

(e) For each Client Plan, the combined total of all fees received by the Bank for the provision of services to the Client Plan, and in connection with the provision of services to the Funds in which the Client Plan may invest, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.[6]

[6] In addition, the Department notes that Section 404(a) of the Act requires, among other things, that

Continued

(f) The Bank does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(g) The Client Plans are not employee benefit plans sponsored or maintained by the Bank.

(h) The Second Fiduciary receives, in advance of any initial investment by the Client Plan in a Fund, full and detailed written disclosure of information concerning the Funds, including but not limited to:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any secondary services as defined in Section IV(h), and all other fees to be charged to or paid by the Client Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why the Bank may consider such investment to be appropriate for the Client Plan;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Client Plan may be invested in the Funds, and if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, if granted, once such documents are published in the Federal Register.

(i) After consideration of the information described above in paragraph (h), the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in each particular Fund, the fees to be paid by such Funds to the Bank, and the purchase of additional shares of a Fund by the Client Plan with the fees credited to the Client Plan by the Bank.

(j) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to the Bank are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) above (the Termination Form) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually; provided that the Termination Form need not be supplied to the Second Fiduciary pursuant to this paragraph sooner than six months after such Termination Form is supplied pursuant to paragraph (l) below, except to the extent required by such paragraph in order to disclose an additional service or fee increase. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(2) Failure to return the Termination Form will result in continued authorization of the Bank to engage in the transactions described in paragraph (i) on behalf of the Client Plan.

(k) The Second Fiduciary of each Client Plan invested in a particular Fund receives full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by the Bank to the Funds for secondary services (as defined in Section IV(h) below) at least 30 days prior to the effective date of such increase, accompanied by a copy of the Termination Form, and receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by the Bank to the Funds for investment advisory services even though such fees will be credited as required by paragraph (d) above.

(l) In the event that the Bank provides an additional secondary service to a Fund for which a fee is charged or there is an increase in the amount of fees paid by the Funds to the Bank for any secondary services resulting from a decrease in the number or kind of services performed by the Bank for such fees in connection with a previously authorized secondary service, the Bank will, at least thirty days in advance of the implementation of such additional service or fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund. Such notice shall be accompanied by the Termination Form, as defined in Section IV(i) below.

(m) On an annual basis, the Bank provides the Second Fiduciary of a Client Plan investing in the Funds with:

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

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

(3) Oral or written responses to inquiries of the Second Fiduciary as they arise.

(n) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings with other shareholders of the Funds.

Section III—General Conditions

(a) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

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

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

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

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a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Thus, the Department believes that the Bank should ensure, prior to any investments made by a Client Plan for which it acts as a trustee or investment manager, that all fees paid by the Funds, including fees paid to parties unrelated to the Bank and its affiliates, are reasonable. In this regard, the Department is providing no opinion as to whether the total fees to be paid by a Client Plan to the Bank, its affiliates, and third parties under the arrangements described herein would be either reasonable or in the best interests of the participants and beneficiaries of the Client Plans.

(2) None of the persons described in paragraph (b)(1) (ii) and (iii) shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this proposed exemption:

(a) The term ''Bank'' includes Society National Bank, KeyTrust Company of Ohio, Society Asset Management, Inc., KeyCorp and any affiliate thereof as defined below in paragraph (b)(1) of this section.

(b) An ''affiliate'' of a person includes:

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

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

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

(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'' or ''Funds'' shall include the Victory Portfolios, or any other diversified open-end investment company or companies registered under the 1940 Act for which the Bank serves as an investment adviser and may also serve as a custodian, shareholder servicing agent, transfer agent or provide some other ''secondary service'' (as defined below in paragraph (h) of this Section) which has been approved by such Funds.

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

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

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

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

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner or employee of the Bank (or is a relative of such persons) or any affiliate thereof;

(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, employee of the Bank (or relative of such persons), or affiliate thereof, is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of this section shall not apply.

(h) The term ''secondary service'' means a service other than an investment management, investment advisory, or similar service, which is provided by the Bank to the Funds. For purposes of this proposed exemption, the term ''secondary service'' will include securities lending services provided by the Bank to the Funds, but will not include any brokerage services provided to the Funds by the Bank for the execution of securities transactions engaged in by the Funds.

(i) The term ''Termination Form'' means the form supplied to the Second Fiduciary which expressly provides an election to the Second Fiduciary to terminate on behalf of a Client Plan the authorization described in paragraph (j) of Section II. Such Termination Form may be used at will by the Second Fiduciary to terminate an authorization without penalty to the Client Plan and to notify the Bank in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such sale.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of December 1, 1993, for the transactions described in Section I above, and October 1, 1995, for the transactions described in Section II above.

Summary of Facts and Representations

1. The applicants described herein are Society National Bank (SNB), a national banking association, KeyTrust Company of Ohio, N.A. (KeyTrust), Society Asset Management, Inc. (SAM), and KeyCorp and its subsidiaries, including affiliates of SNB, KeyTrust, and SAM. Specifically, the exemption request is being made on behalf of: (i) SNB as former trustee of certain collective investment funds under the 1993 Amendment and Restatement of the Plan of the Retirement Trust of the Ameritrust Company National Association (the SNB-Ameritrust Collective Trust) and the 1993 Amendment and Restatement of Declaration of Trust Establishing Society National Bank Multiple Investment Trust for Employee Benefit Trusts (the SNB Collective Trust); (ii) KeyTrust, a wholly-owned subsidiary of SNB and, effective January 1, 1995, successor to SNB's trust operations and successor trustee of SNB-Ameritrust Collective Trust and SNB Collective Trust (SNB, prior to January 1, 1995 and KeyTrust, after January 1, 1995, are hereafter referred to as either ''the Bank'' or ''the Trustee''); (iii) SAM, an Ohio Corporation, a wholly-owned subsidiary of KeyCorp Asset Management Holdings, Inc., which is a wholly-owned subsidiary of the Bank; and (iv) KeyCorp, an Ohio Corporation of which the Bank is a wholly-owned subsidiary. KeyCorp is a bank holding company that owns directly or indirectly a number of subsidiaries, which together constitute a controlled group of corporations within the meaning of section 414(b) of the Code. Thus, KeyCorp and its various subsidiaries are included herein within the definition of the term ''Bank'' (see Section IV(a) above).

2. The Bank is a trustee and, primarily through SAM, is an investment manager for a number of employee benefit plans subject to Title I of the Act as well as Keogh plans and individual retirement accounts (i.e. the Client Plans). The Bank is also trustee of two employee benefit plans sponsored by the Bank (the Bank Plans). The Bank has caused these plans to invest in certain collective investment funds (i.e. the CIFs) which are maintained by the Bank as trustee of the SNB-Ameritrust Collective Trust and the SNB Collective Trust. In December, 1993, the Bank liquidated certain of the CIFs and, to the extent practicable, distributed the assets held in such CIFs to the Plans.

In the case of assets distributed by the CIFs to each Client Plan with respect to which an independent fiduciary had consented to the transaction, the Bank immediately used the distributed assets to purchase shares of the Funds. Before the distribution of assets from the CIFs and the closing of the purchase transactions (the Fund Transactions), the applicant states that the Bank complied with the requirements of Prohibited Transaction Exemption (PTE) 77–3, 42 FR 18734 (April 8, 1977), with respect to the Bank Plans, and PTE 77–4, 42 FR 18732 (April 8, 1977), with respect to the Client Plans.[7]

Before the Fund Transactions, the CIFs consisted of six separate collective investment funds maintained by the Bank under the SNB Collective Trust, and eleven separate collective investment funds maintained by the Bank under the SNB-Ameritrust Collective Trust. The assets used to purchase shares of the Funds in the Fund Transactions consisted of assets distributed by four of the CIFs under the SNB Collective Trust and eight of the CIFs under the SNB-Ameritrust Collective Trust.

The Bank contemplates that in the future similar transactions structured either identically to the Fund Transactions or in the form of an in-kind transfer of assets from CIFs to the Funds, with no intermediate distribution to the Client Plans, may be in the best interests of the Client Plans. In this regard, the Bank proposes to modify the manner in which it receives approval from independent fiduciaries of the Client Plans for changes in its fees and any fees received by other affiliates of the Bank from the Funds (as discussed below).

3. The Funds are a Massachusetts business trust operating as an open-end investment management company registered under the 1940 Act. The Bank, through SAM, serves as the investment adviser to each of the Funds that received assets from Plans in the Fund Transactions. The Bank receives investment advisory fees from the Funds for its investment advisory services under the terms of an investment advisory agreement adopted in accordance Section 15 of the 1940 Act. The Bank performs services for the Funds as shareholder servicing agent, sub-administrator and custodian. Both the Funds and the service agreements between the Fund and the Bank, including any fee arrangements, are described in prospectuses for the Funds.

4. The Winsbury Company is the distributor, administrator and principal underwriter of the Funds. The Winsbury Service Corporation, an affiliate of The Winsbury Company, serves as transfer agent and provides accounting services to the Funds. Neither The Winsbury Company nor The Winsbury Service Corporation are affiliates of the Bank.

The Fund Transactions

5. In December 1993, the Bank, acting as trustee or investment manager of the Plans, withdrew the assets held in the CIFs for the benefit of the Plans. For each Client Plan for which the consent of an independent fiduciary was given, the assets were then used to purchase shares of a Fund with investment objectives similar to the CIF that had distributed the assets. Each Client Plan received shares of each Fund in consideration for, and in proportion to, its share of the assets used to purchase shares of the Fund and with a value equal to the value of those assets at the time of the Fund Transactions. The CIFs from which assets were distributed, and the corresponding Fund, which has similar investment objectives, are as follows:

CIF	Fund
EB Balanced	Fund Balanced Fund.
EB Capital Appreciation Fund	Special Growth Stock Fund.
EB Equity Index Fund	Stock Index Fund.
EB Fixed Income Fund	Investment Quality Bond Fund.
EB Government Mortgage Fund	U.S. Government Income Fund.
EB Growth Equity Fund	Growth Stock Fund.
EB Intermediate Bond Fund	Intermediate Income Fund.
EB Intermediate Fixed Bond Fund	Intermediate Income Fund.
EB Small Capitalization Growth	Special Growth Stock Fund.
EB Small Capitalization Value Fund	Special Value Stock Fund.
EB Technology Fund	Special Value Stock Fund.
EB Value Fund	Value Stock Fund.

All of the Funds, other than the U.S. Government Income Fund, were established in connection with the Fund Transactions and held no assets before the Fund Transactions.

6. The valuation of securities used to purchase shares of the Funds was implemented pursuant to purchase agreements between the Funds and the Bank (the Purchase Agreements). In accordance with the Purchase Agreements, the securities used to purchase shares of the Funds included only cash and securities that had a readily ascertainable market value. The securities were valued at their current market value in accordance with SEC Rule 17a–7(b). Under Rule 17a–7, the ''current market price'' for specific types of CIF securities involved in the transactions is determined as follows:

a. If the security is a ''reported security'' as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (the '34 Act), the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System); or, if there are no reported transactions in the Consolidated System that day, the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1–1 under the '34 Act), as of the close of business on the CIF valuation date.

[7] PTE 77–3 permits the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met.

PTE 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that, among other things, the plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment.

The Department is expressing no opinion in this proposed exemption regarding whether any of the transactions with the Funds by the Bank Plans or the Client Plans were covered by either PTE 77–3 or PTE 77–4, respectively.

b. If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange or, if there are no reported transactions on such exchange that day, the average of the highest current independent bid and lowest current independent offer on the exchange as of the close of business on the CIF valuation date.

c. If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ as of the close of business on the CIF valuation date.

d. For all other securities, the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry from at least three independent sources as of the close of business on the CIF valuation date.

The pricing information required for securities that were either a ''reported security'' (as defined in SEC Rule 11Aa3–1 under the Securities Exchange Act of 1934) or traded on an exchange or quoted by the NASDAQ system, was obtained from Interactive Data Corporation, a recognized independent pricing service.[8] Securities which were not a ''reported security'', and were not traded on an exchange or quoted by the NASDAQ system, were priced on the date of the transaction by having the Bank's portfolio managers under the CIFs obtain bid and offer prices from three independent brokers and using the average of the highest independent bid and lowest independent offer price.[9]

The Bank represents that these valuation procedures were applied uniformly for all assets held by the CIFs. A single market value was used for each unit of the same security distributed from the CIFs. For the newly established Funds, the value determined for the assets used to purchase shares of the Funds was also used to determine the net asset value of the Funds and the pro-rated value of the shares issued to the Client Plans purchased with the assets distributed from the CIFs. Immediately following the consummation of the Fund Transactions, the value of the shares of the Funds, as so determined, held by each Client Plan was equal to the value of the assets received by the Client Plans from the CIFs immediately prior to the consummation of the Fund Transactions.

In connection with the Bank's proposal that assets be used to purchase shares of the Funds, the Bank delivered to an independent fiduciary for each Client Plan with assets invested in a CIF (i.e., a Second Fiduciary) copies of the prospectuses and summaries of supplemental information relating to the Funds. The Second Fiduciary for each Client Plan received a schedule of the rates of all trustee, investment management and other fees charged to the Client Plan by the Bank. Participation in the Fund Transactions by a Plan was conditioned upon receipt of a letter (the Consent Letter) executed by the Second Fiduciary, acknowledging receipt and review of the informational materials and approving the fees to be paid to the Bank by the Funds and the Client Plan.

In the case of Client Plans from which the Bank did not receive Consent Letters, any assets that would otherwise have been distributed by a CIF to such Plans either were retained in the CIF, if the CIF was continuing, or were liquidated and the proceeds invested in other CIFs or in other investments permitted under the terms of the related trust or investment management agreement with the Bank.

No sales commissions, loads or other fees were charged to, or paid by, any Client Plan in connection with the Fund Transactions. In addition, no redemption fees were charged to or paid by any Client Plan for the redemption of any of its shares in the Funds.

7. In consideration of its management of the Funds, SAM received investment advisory fees from the Funds that were computed daily and paid monthly based on the average daily net assets of the Funds. The portion of those fees attributable to a Client Plan were credited to the Client Plan each month as an income item and shown separately on the monthly financial statements prepared for the Client Plan by the Bank. The fees were allocated among the Client Plans invested in the Funds based on the value of the Plan's investment in each Fund, determined daily. Fees for services by the Bank were billed to each Client Plan monthly or quarterly, after the portion of SAM's investment advisory fees allocable to the Client Plan for the month or quarter were credited to the Client Plan. The Bank believes that this fee structure was consistent with the conditions required by PTE 77–4.[10]

The Bank represents that no fees or other compensation, directly or indirectly, have been received from the Funds, or from The Winsbury Company or its affiliates (Winsbury), other than: (i) The investment advisory fees paid to SAM by the Funds that were credited to the Client Plans as described above, (ii) fees for investment advisory services paid to SAM by the Funds that were based on assets of the Funds that were not attributable to the investment in the Funds by Client Plans, and (iii) fees paid to the Bank for providing administrative services as a shareholder servicing agent, custodian and sub-administrator. In this regard, the Bank has not received any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with transactions involving any shares of the Funds.

Prior to the subject exemption request, the Bank states that the rates of fees charged to or paid by a Client Plan or the Funds to the Bank in connection with the Client Plan's investment in the Funds were not changed unless an independent fiduciary of the Plan was notified of the change in advance and approved, in writing, the continuation of the Client Plan's investment in the Funds or additional purchases and sales of shares of the Funds.

Future Conversion Transactions

8. The Bank anticipates that in the future it may engage in transactions like the Fund Transactions. The Bank represents that such transactions will be structured either (i) exactly as the Fund Transactions, with assets being distributed from CIFs to Plans and then used by the Client Plans to purchase shares of the Funds, or (ii) without intermediate distribution to the Client Plans, with assets being transferred in-kind from CIFs to the Funds in exchange for shares of the Funds. In each instance, all or a pro rata portion of the assets of a CIF will be transferred to a Fund in exchange for shares of such Fund.

Prior to any conversion transaction involving a CIF, the Bank will obtain the approval of an independent fiduciary of the Plan (i.e., a Second Fiduciary), who will generally be the Client Plan's named fiduciary, trustee, or sponsoring employer. The Bank will provide the Second Fiduciary with a current

[8] The applicant states that securities held by the CIFs which were priced by Interactive Data Corporation were the type of securities described under SEC Rule 17a–7(b) (1)–(3).

[9] The applicant states that securities held by the CIFs which were priced by the average between the highest bid and lowest offer prices quoted by three independent brokers were securities described under SEC Rule 17a–7(b)(4).

[10] Section II(c) of PTE 77–4, in pertinent part, permits the payment of investment advisory fees by the investment company to a plan fiduciary under the terms of an investment advisory agreement adopted in accordance with section 15 of the 1940 Act. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan to the plan fiduciary based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company to such plan fiduciary.

prospectus for each Fund and a written statement giving full disclosure of the fee structure under which investment advisory fees received by the Bank (i.e., SAM) will be credited back to the Plan. The disclosure statement will explain why the Bank believes the investment of assets of the Plan in the Funds is appropriate. The disclosure statement will also describe, as applicable, any limitations on the Bank regarding which plan assets may be invested in shares of the Funds and, if so, the nature of such limitations.

After consideration of such information, the Second Fiduciary may authorize the Bank to invest plan assets in the Funds, to receive fees from the Funds, and to purchase additional shares of the Funds with the fees credited back to the Client Plan by the Bank. The authorization will be terminable at will by the Second Fiduciary, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination.

A form expressly providing an election to terminate the authorization (a ''Termination Form''), with instructions on the use of the form, will be supplied to the Second Fiduciary no less than annually. The Termination Form will instruct the Second Fiduciary that the authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary, and that failure to return the form will result in the continued authorization of the Bank to engage in the subject transactions on behalf of the Client Plan and to receive fees therefor.

The Termination Form may be used to notify the Bank in writing to effect a termination by selling the shares held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form. If, due to circumstances beyond the Bank's control, the sale cannot be executed within one business day, the Bank will complete the sale within the next business day.

For all in-kind transfers of CIF assets to a Fund following the publication of this proposed exemption in the Federal Register, the Bank will send by regular mail to each affected Client Plan, within 30 days after completion of the transaction, a written confirmation containing:

(i) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4);

(ii) The price of each such security involved in the transaction;

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

In addition to the information described above, the Bank will send, within 90 days after completion of each in-kind transfer, a written confirmation containing:

(i) The number of CIF units held by the Client Plan immediately before the transfer, the related per unit value, and the total dollar amount of such CIF units; and

(ii) The number of shares in the Funds that are held by the Client Plan following the transfer, the related per share net asset value, and the total dollar amount of such shares.

The price paid or received by a Client Plan for shares in a Fund will be the net asset value per share at the time of the transaction, as defined in Section IV(e), and will be the same price which would have been paid or received for the shares by any other investor at that time.

Current Fee Arrangement

9. Effective as of October 1, 1995, the applicant represents that the Bank has implemented a new fee structure (the Fee Structure) for the Client Plans allowing for direct credits to each Client Plan, in the form of cash or additional Fund shares, of such Plan's proportionate share of all investment advisory fees received by the Bank from the Funds. The Bank states that the Fee Structure is at least as advantageous to the Client Plans as an arrangement, as described in PTE 77–4, whereby investment advisory fees paid by the Funds to the Bank are offset against fees paid directly to the Bank by the Client Plans.

Under the Fee Structure, the Bank charges its standard fees to the Client Plans for serving as either a trustee, directed trustee, investment manager, or custodian.[11] These fees are usually billed on a quarterly basis. The annual charges for a Client Plan account are individually negotiated with the Bank based on the Bank's standard fee schedules. The Bank provides investment services to the Client Plans for which it acts as a trustee with investment discretion, including sweep services for uninvested cash balances in such Plans, under a bundled or single fee arrangement which is calculated as a percentage of the market value of the Plan assets under management. Thus, in such instances, there are no separate charges for the provision of particular services to the Client Plans. However, for Client Plans where investment decisions are directed by a Second Fiduciary, a separate charge is assessed for particular services where the Second Fiduciary specifically agrees to have the Bank provide such services to the Client Plan. With respect to sweep services, the Bank represents that such services are provided at no additional charge where the Bank exercises investment discretion for the Client Plan's assets and, in any event, are provided only if approved by a Second Fiduciary for the Client Plan after disclosure of the services to be provided.[12]

In addition, the Bank (i.e., SAM or some other affiliate as described herein) charges the Funds investment advisory fees in accordance with investment advisory agreements between SAM and the Funds. These agreements have been approved by the independent members of the Board of Directors of the Funds (the Directors) in accordance with the applicable provisions of the 1940 Act, and any changes in the fees will also be approved by the Directors. These fees are paid on a monthly basis by the Funds.

At the beginning of each month, and essentially simultaneously with the payment of the investment advisory fees by the Funds to the Bank (in no event later than the same business day), the Bank credits to each Client Plan its proportionate share of all investment advisory fees charged by the Bank (i.e., SAM or an affiliate) to the Funds, including any investment advisory fees paid by the Bank to third party sub-advisors (referred to hereafter as ''the Alternative Credit Program''). The credited fees are used to acquire additional shares of the Funds on behalf of the Client Plan or are returned to the Client Plan's trust account in the form of cash, as directed by the Second Fiduciary.

The Bank retains fees received from the Funds for custody and shareholder services and will retain additional fees received in the future for other secondary services. The Bank states that

[11] The applicant represents that all fees paid by Client Plans directly to the Bank for services performed by the Bank are exempt from the prohibited transaction provisions of the Act by reason of section 408(b)(2) of the Act and the regulations thereunder (see 29 CFR 2550.408b–2). The Department notes that to the extent there are prohibited transactions under the Act as a result of services provided by the Bank directly to the Client Plans which are not covered by section 408(b)(2), no relief is being proposed herein for such transactions.

[12] See DOL Letter dated August 1, 1986 to Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, stating the Department's views regarding the application of the prohibited transaction provisions of the Act to sweep services provided to plans by fiduciary banks and the potential applicability of certain statutory exemptions as described therein.

such secondary services are distinct from the services provided by the Bank as trustee to a Client Plan. Trustee services rendered at the Plan-level include maintaining custody of the assets of the Client Plan (including the Fund shares, but not the assets underlying the Fund shares), processing benefit payments, maintaining participant accounts, valuing plan assets, conducting non-discrimination testing, preparing Forms 5500 and other required filings, and producing statements and reports regarding overall plan and individual participant holdings. These trustee services are necessary regardless of whether the Client Plan's assets are invested in the Funds. Thus, the Bank represents that its proposed receipt of fees for both secondary services at the Fund-level and trustee services at the Plan-level would not involve the receipt of ''double fees'' for duplicative services to the Client Plans because a Fund is charged for custody and other services relative to the individual securities owned by the Fund, while a Client Plan is charged for the maintenance of Plan accounts reflecting ownership of the Fund shares and other assets.[13]

The Bank represents that for each Client Plan, the combined total of all fees received by the Bank for the provision of services to the Client Plan, and in connection with the provision of services to the Funds in which the Client Plan may invest, will not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.[14]

The Bank states that the Alternative Credit Program ensures that the Bank does not receive any investment advisory fees from the Funds as a result of the investment in the Funds by the Client Plans. Thus, the Fee Structure with the Alternative Credit Program essentially has the same effect in crediting the Bank's investment advisory fees received from the Funds as an arrangement allowing for an offset of such fees against investment management fees charged directly to the Client Plans. The Bank prefers the Fee Structure with the Alternative Credit Program because it allows fees for fiduciary services charged at the Plan-level to remain fixed without any adjustments to such fees based on the investment advisory fees paid by the Funds to the Bank.

10. The Bank is responsible for establishing and maintaining a system of internal accounting controls for the crediting of fees under the Alternative Credit Program. In addition, the Bank has retained the services of Ernst & Young LLP (E&Y) in Cleveland, Ohio, an independent accounting firm, to audit annually the crediting of fees to the Client Plans under this program. In this regard, the Bank states that in the future either E&Y or some other qualified independent auditor will be retained by the Bank to perform annual audits of the Alternative Credit Program (the Auditor). Such audits provide independent verification of the proper crediting of such fees to the Client Plans. Information obtained from the audits is used in the preparation of required financial disclosure reports for the Client Plans. In its annual audit of the Alternative Credit Program, the Auditor is required to: (i) review and test compliance with the specific operational controls and procedures established by the Bank for making the credits; (ii) verify on a test basis the daily credit factors transmitted to the Bank by the Funds; (iii) verify on a test basis the proper assignment of credit identification fields to the Client Plans; (iv) verify on a test basis the credits paid in total to the sum of all credits paid to each Client Plan; and (v) recompute the amount of the credits determined for selected Client Plans and certify that the credits were made to the proper Client Plan.

The Bank will correct any error identified either by the internal audit by the Bank or by the independent auditor. With respect to any shortfall in credited fees to a Client Plan involving cash credits, the Bank will make a cash payment to the Client Plan equal to the amount of the error plus interest paid at money market rates offered by the Bank for the period involved. With respect to any shortfall in credited fees involving a Client Plan where the Second Fiduciary's election was to have credited fees invested in shares of the Funds, the Bank will make a cash payment equal to the amount of the error plus interest based on the rate of return for shares of the Fund that would have been acquired. Any excess credits made to a Client Plan will be corrected by an appropriate deduction and reallocation of cash during the next payment period to reflect accurately the amount of total credits due to the Client Plan for the period involved.

11. As discussed above, the Bank currently acts as a custodian, sub-administrator, and/or shareholder servicing agent for the Funds, and anticipates providing additional ''secondary services'' to the Funds in the future. In this regard, the Bank represents that certain of the Funds may institute a securities lending program (the Program) which will be administered by SAM or another affiliate of the Bank. SAM, as the investment adviser for the Fund, would be responsible for negotiating the terms of the loans, selecting borrowers, and investing cash collateral. SAM would receive an additional fee for its services to the Fund in connection with the Program, subject to the supervision and approval of the Directors. The Bank, under a separate agreement or an amendment to the current custody agreement with the Fund, would agree to provide additional custodial and administrative tasks associated with the Program. The Fund would pay the Bank a fee based on the number and complexity of the tasks the Bank is required to perform in connection with the Program, that would take into account the responsibilities and expenses incurred by the Bank. As custodian for the Fund under the Program, the Bank would perform the following tasks: (i) deliver loaned securities from the Fund to borrowers; (ii) arrange for the return of loaned securities to the Fund at the termination of the loans; (iii) monitor daily the value of the loaned securities and collateral; (iv) request that borrowers add to the collateral when required by the loan agreement; and (v) provide recordkeeping and accounting services necessary for the operation of the Program. The Bank proposes to charge fees for its services to the Funds under the Program no sooner than 30 days following the issuance of a notice and Termination Form to the Second Fiduciary of each of the Client Plans invested in the participating Funds.

[13] The Department notes that although certain transactions and fee arrangements are the subject of an administrative exemption, a Client Plan fiduciary must still adhere to the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions the fiduciaries of the Client Plans investing in the Funds that they have an ongoing duty under section 404 of the Act to monitor the services provided to the Client Plans to assure that the fees paid by the Client Plans for such services are reasonable in relation to the value of the services provided. Such responsibilities would include determinations that the services provided are not duplicative and that the fees are reasonable in light of the level of services provided.

The Department also notes that the Bank, as a trustee and investment manager for a Client Plan in connection with the decision to invest Client Plan assets in the Funds, has a fiduciary duty to monitor all fees paid by a Fund to the Bank, its affiliates, and third parties for services provided to the Fund to ensure that the totality of such fees is reasonable and would not involve the payment of any ''double'' fees for duplicative services to the Fund by such parties.

[14] The Department is providing no opinion in this proposed exemption as to whether the conditions required for exemptive relief under section 408(b)(2) of the Act, and the regulations thereunder (see 29 CFR 2550.408b(2), would be met for all fees received by the Bank for the provision of services to the Client Plans.

The Bank represents that the terms of any securities loan under the Program would comply with the conditions required for an exemption under PTE 81–6, 46 FR 7527 (January 23, 1981) as amended (see 52 FR 18754, May 19, 1987), as though the participating Fund were an employee benefit plan subject to such conditions.[15]

Therefore, the Bank believes that the interests of the Client Plans, as Fund investors, will be protected under the Program. The Bank notes that the SEC issued on May 25, 1995, a ''no-action'' letter in connection with the Program.

12. With respect to the receipt of fees by the Bank from a Fund in connection with any Client Plan's investment in the Fund, the Bank states that a Second Fiduciary receives full and detailed written disclosure of information concerning the Fund in advance of any investment by the Client Plan in the Fund. On the basis of such information, the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in the Fund and the fees to be paid by the Fund to the Bank. In addition, the Bank represents that the Second Fiduciary of each Client Plan invested in a particular Fund will receive full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by the Bank to the Funds for secondary services, which are above the rate reflected in the prospectus for the Fund, at least 30 days prior to the effective date of such increase. In the event that the Bank provides an additional secondary service to a Fund for which a fee is charged or there is an increase in the amount of fees paid by the Funds to the Bank for any secondary services, resulting from a decrease in the number or kind of services performed by the Bank for such fees in connection with a previously authorized secondary service, the Bank will, at least thirty days in advance of the implementation of such additional service or fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund.[16] Such notice will be made separate from the Fund prospectus and will be accompanied by a Termination Form. The Second Fiduciary will also receive full written disclosure in a Fund prospectus or otherwise of any increases in the rate of fees charged by the Bank to the Funds for investment advisory services even though such fees will be credited, as required by Section II(d) above.

Any authorizations by a Second Fiduciary regarding the investment of a Client Plan's assets in a Fund and the fees to be paid to the Bank, including any future increases in rates of fees for secondary services, are or will be terminable at will by the Second Fiduciary, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. The Bank states that a Termination Form expressly providing an election to terminate the authorization with instructions on the use of the form is supplied to the Second Fiduciary no less than annually. The instructions for the Termination Form include the following information:

(a) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(b) Failure to return the form will result in continued authorization of the Bank to engage in the subject transactions on behalf of the Client Plan.

The Termination Form may be used to notify the Bank in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form. The Bank states that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank will complete the sale within the next business day.

Any disclosure of information regarding a proposed increase in the rate of any fees for secondary services will be accompanied by an additional Termination Form with instructions on the use of the form as described above. Therefore, the Second Fiduciary will have prior notice of the proposed increase and an opportunity to withdraw from the Funds in advance of the date the increase becomes effective. Although the Second Fiduciary will also have notice of any increase in the rates of fees charged by the Bank to the Funds for investment advisory services, through an updated prospectus or otherwise, such notice will not be accompanied by a Termination Form since all increases in investment advisory fees will be credited by the Bank to the Client Plans and will be subject to an annual reauthorization as described above. However, if the Termination Form has been provided to the Second Fiduciary for the authorization of a fee increase, then a Termination Form for an annual reauthorization will not be provided by the Bank for that year unless at least six months has elapsed since the Termination Form was provided for the fee increase.

The Bank states that the Second Fiduciary always receives a current prospectus for each Fund and a written statement giving full disclosure of the Fee Structure prior to any investment in the Funds. The disclosure statement explains why the Bank believes that the investment of assets of the Client Plan in the Funds is appropriate. The disclosure statement also describes whether there are any limitations on the Bank with respect to which Client Plan assets may be invested in shares of the Funds and, if so, the nature of such limitations.[17]

The Bank states further that the Second Fiduciary receives an updated prospectus for each Fund at least annually and either annual or semi-annual financial reports for each Fund, which include information on the

[15] PTE 81–6, as amended, permits the lending of securities that are assets of an employee benefit plan to a broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted Government securities (as defined in section 3(a)(12) of the 1934 Act) or to a bank. The conditions of PTE 81–6 require, among other things, that the plan receive from the borrower (either by physical delivery or by book entry in a securities depository) by the close of the lending fiduciary's business on the day in which the securities lent are delivered to the borrower, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than the borrower or an affiliate thereof, or any combination thereof, having, as of the close of business on the preceding business day, a market value or in the case of letters of credit a stated amount, equal to not less than 100 percent of the then market value of the securities lent.

[16] With respect to increases in fees, the Department notes that an increase in the amount of a fee for an existing secondary service (other than through an increase in the value of the underlying assets in the Funds) or the imposition of a fee for a newly-established secondary service shall be considered an increase in the rate of such fees. However, in the event a secondary service fee has already been described in writing to the Second Fiduciary and the Second Fiduciary has provided authorization for the fee, and such fee was temporarily waived, no further action by the Bank would be required in order for the Bank to receive such fee at a later time. Thus, for example, no further disclosure would be necessary if the Bank had received authorization for a fee for custodial services from Plan investors and subsequently determined to waive the fee for a period of time in order to attract new investors but later charged the fee.

[17] See section II(d) of PTE 77–4 which requires, in pertinent part, that an independent plan fiduciary receive a current prospectus issued by the investment company and a full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including a discussion of whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations.

Auditor's findings as to the proper crediting of the investment advisory fees by the Bank to the Client Plan. The Bank also provides monthly reports to the Second Fiduciary of all transactions engaged in by the Client Plan, including purchases and sales of Fund shares.

13. No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds. In addition, no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds. The applicant states that the Bank does not, and will not in the future, receive any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with the transactions. The applicant states further that all other dealings between the Client Plans and the Funds, the Bank or any affiliate, are on a basis no less favorable to the Client Plans than such dealings are with the other shareholders of the Funds.

14. In summary, the applicant represents that the transactions described herein satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) the Funds provide the Client Plans with a more effective investment vehicle than collective investment funds maintained by the Bank without any increase in investment management, advisory or similar fees paid to the Bank; (b) the Bank requires annual audits by an independent accounting firm to verify the proper crediting to the Client Plans of investment advisory fees charged by the Bank to the Funds; (c) with respect to any investments in a Fund by the Client Plans and the payment of any fees by the Fund to the Bank, a Second Fiduciary receives full written disclosure of information concerning the Fund, including a current prospectus and a statement describing the Fee Structure, and authorizes in writing the investment of the Client Plan's assets in the Fund and the fees paid by the Fund to the Bank; (d) any authorizations made by a Client Plan regarding investments in a Fund and fees paid to the Bank, or any increases in the rates of fees for secondary services which are retained by the Bank, are or will be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination from the Second Fiduciary; (e) no commissions or redemption fees are paid by the Client Plan in connection with either the acquisition of Fund shares or the sale of Fund shares; (f) the Bank does not receive any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with the transactions; (g) the in-kind transfers of CIF assets into the Funds are done with the prior written approval of independent fiduciaries (i.e. the Second Fiduciary) following full and detailed written disclosure concerning the Funds; (h) each Client Plan receives shares of a Fund which have a total net asset value that is equal to the value of the Client Plan's pro rata share of the assets of the CIF on the date of the in-kind transfer, based on the current market value of the CIF's assets as determined in a single valuation performed in the same manner at the close of the same business day in accordance with independent sources and the procedures established by the Funds for the valuation of such assets; and (i) all dealings between the Client Plans, the Funds and the Bank, are on a basis which is at least as favorable to the Client Plans as such dealings are with other shareholders of the Funds.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all Second Fiduciaries of Client Plans described herein that had investments in a terminating CIF and from whom approval was sought, or will be sought prior to the granting of this proposed exemption, for a transfer of a Client Plan's CIF assets to a Fund. In addition, interested persons shall include the Second Fiduciaries of all Client Plans which are currently invested in the Funds, as of the date the notice of the proposed exemption is published in the Federal Register, where the Bank provides services to the Funds and received fees which would be covered by the exemption, if granted.

Notice to interested persons shall be provided by first class mail within fifteen (15) days following the publication of the proposed exemption in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs all interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Zausner Foods Corp. Savings Plus Plan (the Plan); Located in New Holland, Pennsylvania; Proposed Exemption

[Application No. D–10064]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale by the Plan of certain units of limited partnership interests (the Units) to Zausner Foods Corp. (Zausner Foods), a party in interest with respect to the Plan, provided that the following conditions were satisfied: (1) the sale was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sale; and (3) the purchase price was the greater of: (a) the fair market value of the Units as determined by a qualified, independent appraiser, or (b) the original acquisition cost of the Units plus attributable opportunity costs.

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of December 29, 1995.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by Zausner Foods. Zausner Foods is a member of a controlled group of corporations that manufactures and sells various food products, including milk-related products. As of December 31, 1994, the Plan had 1,021 participants and total assets of approximately $12,256,538. Prior to January 1, 1996, Charles Schwab Trust Co. served as the Plan trustee. Effective January 1, 1996, Dreyfus Trust Co. became the Plan trustee.

2. Among the assets of the Plan were the Units, which were 64 shares of the MLH Income Realty Partnership V (the Partnership). The Partnership was formed as of December 31, 1983 for purposes of investing in commercial, industrial, and residential real estate. The Plan acquired the Units in 1991 when the AltaDena Certified Dairy (AltaDena) Savings & Investment Plan (the AltaDena Plan) was merged into, and survived by, the Plan. The AltaDena Plan, on the recommendation of an investment counselor at Merrill Lynch, acquired at various public offerings in 1985 a total of 70 Units at a cost of $1,000 per Unit. When the Plan and the

AltaDena Plan were merged in 1991, the two owners of AltaDena, who were also AltaDena Plan participants, received a total of six of the Units as an in-kind distribution upon the termination of their employment. At the time of the merger, the Plan's trustees froze the investment in the Partnership by not permitting participants to invest in it. The applicant represents that neither Zausner Foods, AltaDena, nor any of their respective officers or directors separately invested in the Partnership and that the other investors in the Units are unrelated third parties. The Partnership had made cash distributions with respect to the 64 Units in the cumulative amount of $43,042.56 ($672.54 per Unit), through November 13, 1995.

The Partnership originally intended to lease the properties for a period of six to ten years from the date of the Partnership's formation, then sell off the appreciated properties at a gain. Investors were to receive yearly cash distributions derived from the rental properties and from the sale proceeds of the properties as they were liquidated. However, due to subsequent adverse conditions in the real estate market and the economy in general, the Partnership has been unable to sell a number of the properties for a profit. The Partnership has therefore altered its plans and continues to hold these properties.

3. The applicant represents that the Units are a highly illiquid investment for which there is a very limited secondary market.[18] Merrill Lynch provides a service to assist clients wishing to buy and sell Partnership Units. The applicant represents that at the time the Plan and the AltaDena Plan were merged in 1991, the Plan's trustees contacted Merrill Lynch in order to discuss a possible sale of the remaining 64 Units but were told that there was no interest in the investments. Recently, Joseph E. Lundy, Vice President at Merrill Lynch's Lancaster, Pennsylvania office, advised the applicant that there was no market for the Units, that no market was likely to develop in the foreseeable future, and that if a purchaser for the Units were to be found, the price obtained would be approximately $350–$390 per Unit, less than one-half the original cost of the investment.

The applicant also obtained an independent appraisal of the Units from Jack L. Hess, CPA, of Hess & Hess, Certified Public Accountants, located in Lancaster, Pennsylvania. After reviewing the pertinent data, Mr. Hess estimated that the Units' fair market value as of May 9, 1995 was $450 per Unit. Mr. Hess also noted that, as of December 31, 1994, the Units had a net asset value of $535 per Unit, a figure which is provided to Merrill Lynch by an independent valuation service on an annual basis. The appraisal states that the Partnership, which has been liquidating its holdings, expects to sell its remaining properties over the next two years. Provided that the Partnership sells its remaining properties during that period, investors may expect to receive approximately $500 per Unit in final cash distributions over the next two years. The value of the Units on the secondary market, estimated at $450 per Unit, reflects the present value of this expected benefit, as well as a trading discount.

4. On December 29, 1995, Zausner Foods purchased the Units from the Plan for $55,118.72, which was allocated on a pro rata basis among the participants' accounts that had invested in the Units. This amount represents the greater of: (a) the fair market value of the Units as determined by a qualified, independent appraiser, or (b) the Units' original acquisition cost to the AltaDena Plan plus opportunity costs attributable to the Units. Because the fair market value of the Units was less than their acquisition cost, Zausner Foods purchased the Units from the Plan for the latter amount. Taking into account the purchase price ($55,118.72) and all cash distributions ($43,042.56), the Plan received a rate of return on the Units' acquisition cost ($64,000) slightly in excess of five percent for each of the ten years that the Plan (and its predecessor) had held the Units. The sale was a one-time transaction for cash, and the Plan paid no commissions nor other expenses relating to the sale.

The applicant represents that the subject transaction was in the interests of the Plan because if the Plan had attempted a sale of the Units on the open market, the Plan would have received substantially less than the amount the applicant was willing to pay. In addition, the sale converted the Units into liquid assets that are now available for any required distributions, as well as being subject to professional management.

5. In summary, the applicant represents that the subject transaction satisfied the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (1) the sale was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sale; (3) the sale enhanced the liquidity of the assets of the Plan; and (4) the purchase price was the greater of: (a) the fair market value of the Units as determined by a qualified, independent appraiser, or (b) the original acquisition cost of the Units plus attributable opportunity costs.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons by personal delivery and by first-class mail within 10 days of the date of publication of the notice of pendency 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/or to request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 40 days of the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

IRA Rollover FBO John W. Meisenbach (the IRA); Located in Seattle, Washington; Proposed Exemption

[Application No. D–10114]

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the IRA of certain stock (the Stock) to John W. Meisenbach, a disqualified person with respect to the IRA, provided that the following conditions are satisfied: (a) the sale is a one-time transaction for cash; (b) the IRA pays no commissions nor other expenses relating to the sale; and (c) the purchase price is the fair

[18] The Department expresses no opinion herein on whether the acquisition and holding of the Units by the Plan violated any of the provisions of Part 4 of Title I in the Act.

market value of the Stock as determined by a qualified, independent appraiser as as of the date of the sale.[19]

Summary of Facts and Representations

1. The IRA is an individual retirement account, as described under section 408(a) of the Code. The IRA was established by John W. Meisenbach, who is the sole participant. As of July 28, 1995, the IRA had total assets of approximately $7,691,680.45. The trustee of the IRA is the Delaware Charter Guarantee & Trust Company.

2. Among the assets of the IRA are 422,265 shares of closely-held Stock in Garden Botanika, Inc. (Garden Botanika), which markets cosmetic and personal care products featuring natural and herbal ingredients via a chain of company-owned specialty retail stores. The applicant represents that the IRA acquired most of the Stock from the issuer, as well as 40,000 shares from a private individual, at various times and at various prices during the period from September 9, 1993 to January 1, 1995. An IRA account statement dated July 28, 1995 lists the Stock as having an aggregate fair market value of $677,262.50.[20] The applicant represents that the total acquisition cost of the Stock was less than or equal to that amount.

3. The applicant has obtained an independent appraisal of the Stock from Dennis H. Locke, CFA, ASA, of Management Advisory Service, located in Seattle, Washington. Relying on the discounted cash flow method of valuing a business enterprise, Mr. Locke estimated that the Stock's fair market value as of August 31, 1995 was $2.10 per share (or a total of $886,756.50), based on 33,822,315 diluted shares outstanding. Mr. Locke stated that his appraisal takes into account future expectations for the performance of Garden Botanika and for business and market conditions in general, as well as a 10% discount to reflect the Stock's limited marketability.

4. Mr. Meisenbach proposes to purchase the Stock from his own IRA for the fair market value of the Stock as of the date of the sale, based on an updated independent appraisal. In light of the extreme volatility of non-publicly traded stocks, Mr. Meisenbach desires to divest the IRA of the Stock so as to protect the IRA's current asset value, create liquidity, and provide for his long-term security. The applicant, who is now 59 years of age, intends to receive distributions from the IRA soon after attaining age 59½. The sale will be a one-time transaction for cash, and the IRA will pay no commissions nor other expenses relating to the sale.

The applicant represents that the likelihood of selling such a large block of the Stock at its appraised value to an unrelated third party is questionable, due to the limited marketability of the Stock. In addition, the applicant represents that the proposed transaction is in the interests of the IRA because the sale will reduce the risk of large losses in the IRA, as well as the administrative burdens involved in valuing the IRA assets.

5. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 4975(c)(2) of the Code for the following reasons: (a) the sale will be a one-time transaction for cash; (b) the IRA will pay no commissions nor other expenses relating to the sale; (c) the sale will enhance the liquidity and protect the current value of the IRA assets; (d) the purchase price will be the fair market value of the Stock as determined by a qualified, independent appraiser as as of the date of the sale; and (e) Mr. Meisenbach is the only participant who will be affected by the proposed transaction.

Notice to Interested Persons

Because Mr. Meisenbach is the sole participant in his IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing with respect to the proposed exemption are due within 30 days of the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Floral Glass and Mirror, Inc. Profit Sharing Plan and Trust (the Plan); Located in Hauppage, New York; Proposed Exemption

[Application No. D–10144]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of 20 shares of stock of Floral Glass Industries, Inc. (FGI) by the Plan to Mr. Charles Kaplanek, Jr. (Kaplanek), a party in interest with respect to the Plan, provided the following conditions are satisfied: (a) the sale is a one-time transaction for cash; (b) the Plan pays no commissions or other expenses in connection with the transaction; (c) the Plan will receive the fair market value of the shares as determined by a qualified, independent appraiser; and (d) all 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 at the time of the sale.

Summary of Facts and Representations

1. The Plan is sponsored by Floral Glass and Mirror, Inc. (the Employer), a New York corporation. The Plan is a profit sharing plan that permits participants to direct the investment of the assets in their accounts. Participants who do not wish to direct the investments of their own accounts may, instead, have their accounts invested by the Plan trustees. The Plan has 29 participants and beneficiaries, and had assets of $3,203,599 as of March 31, 1995.

2. Kaplanek is an 80% shareholder of the Employer and is also a trustee of the Plan and a participant in the Plan. On January 1, 1981, Kaplanek's individual account (the Account) in the Plan purchased, at Kaplanek's direction, 20 shares of stock in FGI, a Connecticut corporation with its principal place of business in Cheshire, Connecticut. The 20 shares represented 100% of the outstanding shares of FGI. The purchase price of the Stock was $20,000, and the Stock was acquired from FGI.

3. The Account still owns the 20 shares, or 100% of the shares of FGI.[21] In addition, Kaplanek is 100% owner of two related corporations, Shapes and Services Limited of Bohemia, New York, and Floral Glass Industries, Inc. of East Rutherford, New Jersey, as well as 80%

[19] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[20] The Department notes the applicant's representation that due to the limited marketability of non-publicly traded stocks, the value of the Stock is difficult to establish, and, therefore, the Stock's value appearing on the IRA account statement dated July 28, 1995 represents an approximation of its fair market value.

[21] The Department notes that under section 2510.3–101(h)(3) of the plan asset regulations, it appears that the Plan's assets include the stock of FGI and all of the underlying assets of FGI. In this regard, the applicant has not asked for relief concerning the operation of FGI, nor is the Department proposing any such relief herein.

owner of the Employer (collectively, the Corporations).

4. The Corporations intend to undergo a reorganization pursuant to which they will be consolidated and/or reorganized into a single corporation. As part of this reorganization, the 20 shares of FGI would be exchanged for shares in the surviving or reorganized corporation. Rather than leaving the 20 shares of FGI in the Plan, Kaplanek instead proposes to purchase the shares from the Account prior to the reorganization.[22]

5. FGI is a manufacturer of insulated glass. In addition, it cuts to size other glass and mirror products and distributes them to the New England region. FGI's products include several items which are registered or bear trademarks. Mr. Martin P. Randisi, President of Rand Consulting Group, Inc., an independent business evaluation and appraisal firm located in Smithtown, New York, has appraised the shares of FGI. Mr. Randisi is a member of the American Society of Appraisers and the American Institute of Certified Public Accountants. Mr. Randisi has represented that he has performed over 1,000 valuations of closely held companies since 1982. Mr. Randisi represents that both he and his firm are independent of, and unrelated to, the Employer and FGI. Mr. Randisi has concluded that as of March 31, 1995, the 20 shares of FGI stock had a value of $953,000.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 408(a) of the Act because: (a) the sale will be a one-time transaction for cash; (b) the Plan will not be required to pay any commissions, fees or other expenses in connection with the sale; (c) the Plan will receive as sales price for the shares the fair market value of the shares as determined by a qualified, independent appraiser; (d) all 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) Kaplanek's Account in the Plan is the only account to be affected by the transaction, and Kaplanek has determined that the transaction is appropriate for his Account and has determined that the transaction should be consummated.

NOTICE TO INTERESTED PERSONS: Since Kaplanek is the only Plan participant to be affected by the proposed transaction, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due within 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Coin Acceptors, Inc. Savings and Protection Plan (the Plan); Located in St. Louis, Missouri; Proposed Exemption

[Application No. D–10183]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale by the Plan of certain publicly traded securities (the Securities) to Coin Acceptors, Inc. (Coin Acceptors), a party in interest with respect to the Plan, provided that the following conditions were satisfied: (1) the sale was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sale; (3) the purchase price was the aggregate fair market value of the Securities as of the date of the sale, as determined by the Plan's independent investment manager by reference to the closing prices for the Securities on the New York Stock Exchange (NYSE); and (4) the terms of the sale were at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of September 29, 1995.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with a 401(k) feature sponsored by Coin Acceptors. Coin Acceptors is engaged in the business of manufacturing coin and currency handling devices for use in vending machines. As of September 29, 1995 the Plan had approximately 1,000 participants and total assets of approximately $10,000,000. Effective September 29, 1995, the Mercantile Bank of St. Louis, N.A. became the Plan trustee.

2. Among the assets of the Plan were the Securities, which were 14 publicly traded securities originally purchased by the Plan on the open market. These 14 Securities were: Actava Group, Bristol Myers Squibb Co., Citicorp, Exide Corp., Grace WR & Co., MBIA, Inc., MGIC Investment Corp., Mercantile Bancorp, Inc., Merry Land & Investment Co., Pep Boys Manny Moe & Jack, Sun Microsystems, Inc., Sysco Corp., United HealthCare Corp., and Verifone, Inc. On September 29, 1995, Coin Acceptors purchased the Securities from the Plan for a total of $998,519. The Plan realized, in the aggregate, a gain of approximately $243,737 as a result of the sale.

The applicant represents that all the Plan's assets were being liquidated at that time in connection with a modification to the Plan. Effective October 1, 1995, the Plan permitted participants to direct the investment of their respective individual accounts among six mutual funds. Coin Acceptors, which maintains its own investment portfolio, was interested in purchasing 14 of the Plan's securities which were to be liquidated. The applicant represents that the purchase price of $998,519 was the aggregate fair market value of the Securities as of the date of the sale. The fair market value of the Securities was determined by Pin Oak Capital, Ltd., one of the Plan's independent investment managers, by reference to the closing prices of the Securities on the NYSE on September 28, 1995 quoted in the *Wall Street Journal* on September 29, 1995, the date of the sale. The applicant maintains, therefore, that the terms of the sale were at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party. The sale was a one-time transaction for cash, and the Plan paid no commissions nor other expenses relating to the sale. Further, the costs of this exemption application will be borne by the applicant.

The applicant represents that selling the Securities to Coin Acceptors, in lieu of selling them on the open market, was in the interests of the Plan because it saved the Plan brokerage commissions totalling at least $1,458 (based on a commission of $0.06 per share). In addition, the Plan had the use of the sale proceeds two business days earlier than if the Plan had sold the Securities on the open market through a broker.

The applicant represents they were not aware that the sale would constitute a violation of the prohibited transaction provisions of the Act until October 24, 1995, when the applicant's accountants conducted the annual audit of the Plan.

[22] The applicant represents that FGI is not a Plan sponsor or a contributing employer to the Plan, and that the stock of FGI does not constitute ''qualifying employer securities'' within the meaning of section 407(d)(5) of the Act.

Outside legal counsel was then consulted, and it was recommended that Coin Acceptors file an application for a retroactive exemption.

5. In summary, the applicant represents that the subject transaction satisfied the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (1) the sale was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sale; (3) the purchase price was the aggregate fair market value of the Securities as of the date of the sale, as determined by the Plan's independent investment manager by reference to the closing prices for the Securities on the NYSE; and (4) the terms of the sale were at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons by personal delivery and by first-class mail within 15 days of the date of publication of the notice of pendency 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/or to request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 45 days of the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of 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 accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 28th day of February, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–5022 Filed 3–4–96; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–019]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

SUMMARY: NASA hereby gives notice that 3M Company of St. Paul, Minnesota 55144–1000, has requested an exclusive license to practice the invention protected by a U.S. Patent Application entitled ''Anti–Icing or De–Icing Fluid,'' NASA Cast No. ARC–12,069–2, which was filed in the U.S. Patent and Trademark Office on January 24, 1996, and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. Ken Warsh, Patent Counsel, Ames Research Center.

DATES: Responses to this Notice must be received by (insert 60 days from the date of publication in the in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Mr. Ken Warsh, Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035; telephone (415) 604–1592.

Dated: February 26, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–4990 Filed 3–4–96; 8:45 am]

BILLING CODE 7510–10–M

[Notice 96–023]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Air Products and Chemicals, Inc. of Allentown, Pennsylvania has requested an exclusive license to practice the invention described and claimed in a pending U.S. Patent application, entitled ''Two-Phase Quality/Flow Meter,'' NASA Case Number KSC–11725, which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license to Air Products and Chemicals, Inc. should be sent to Ms. Beth Vrioni, Patent Attorney, John F. Kennedy Space Center.

DATES: Responses to this Notice must be received on or before May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Beth A. Vrioni, John F. Kennedy Space Center, Mail Code: DE–TPO, Kennedy Space Center, FL 32899; telephone (407) 867–2544.

Dated: February 26, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–4986 Filed 3–4–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–021]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.