traveled safely to make weekly examinations. The petitioner proposes to establish two monitoring stations to evaluate the affected area; to post a sign in an adjacent travel entry indicating the safe travel route to each monitoring station; to have a certified person conduct weekly examinations at each of the monitoring station to measure the quantity and quality of air entering or exiting the monitoring station; to post at each monitoring station, a diagram showing the normal quantity and quality of methane, oxygen measurements, and the direction of the air flow; to have the examiner record their initials, date and time of examinations on a date board provided at the monitoring stations; and to record the results of the tests in a weekly examination book kept on the surface and made available to all interested parties. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

24. Eagle Coal Company

[Docket No. M–96–123–C]

Eagle Coal Company, P.O. Box 399, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.388(3) to its Mine No. 2 (I.D. No. 15–16724) located in Martin County, Kentucky. The petitioner requests a variance to mine adjacent to old works leaving a 50-foot unmined barrier without boring test holes within 200 feet of old works at all times. The petitioner states that Beech Fork Processing, Inc. is in the process of permitting a boundary of coal adjacent to the Eagle Coal Company's No. 2 Mine; that check survey controls and conventional levels was maintained by Abbott Engineering, Inc., at the Eagle No. 2 Mine and would be maintained at the proposed new mine; and that underground surveys at the Eagle No. 2 Mine are tied into permanent outside control stations and would be ran to the proposed new mine face-up from these common control stations. Because this is the same mining company and the same engineering company, essentially using the same control surveys in the same seam of coal, the petitioner requests that the mandatory standard be waived or modified for the new mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

25. Akzo Salt, Inc.

[Docket No. M–96–02–M]

Azko Salt, Inc., P.O. Box 6920, Cleveland, Ohio 44101 has filed a petition to modify the application of 30 CFR 57.19109 to its Cleveland Mine (I.D. No. 33–01994) located in Cuyahoga County, Ohio. The petitioner requests a modification of the standard to allow regular inspections of the production lined-shaft prior to all maintenance assignments instead of providing additional overhead protection, regarding Citation No. 4546277 of January 29, 1996. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

26. Tintic Utah Metals LLC (formerly Chief Consolidated Mining Company)

[Docket No. M–96–03–M]

Tintic Utah Metals LLC, P.O. Box 51, Eureka, Utah 84628 has filed a petition to modify the application of 30 CFR 57.19054 to its Burgin Mine (I.D. No. 42–00148) located in Utah County, Utah. The petitioner requests a variance from the standard. The petitioner was issued Citation No. 3908636 on June 17, 1996, which stated that the guide ropes used on the Apex No. 2 Auxiliary Emergency hoist conveyance was not of a lock coil construction. The petitioner requests modification of the standard to allow the use of non-lock coil ropes on their emergency hoist. The primary and sole purpose of the hoist is an emergency hoist; it is used infrequently, and inspected and maintained regularly. The petitioner states that the safety of the miners would not be enhanced by installing lock coil construction rope guides. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 6, 1996. Copies of these petitions are available for inspection at that address.

Dated: October 29, 1996.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 96–28463 Filed 11–5–96; 8:45 am]

BILLING CODE 4510–43–P

Pension and Welfare Benefits Administration

[Application No. D–10079, et al.]

Proposed Exemptions; Pikeville National Bank

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

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and 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.Pikeville National Bank & Trust Company; Trust Company of Kentucky; and First American Bank (collectively, the Banks) Located in Pikeville and Ashland, Kentucky [Application Numbers D–10079 through D–10082]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(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: (1) the cash sales on December 28, 1994 and January 13, 1995, of certain collateralized mortgage obligations (CMOs) and other mortgage-backed securities (collectively, the Securities) held by eighty-nine (89) employee benefit plans, Keogh plans and individual retirement accounts (IRAs) for which the Banks act as trustee (the Plans) to Pikeville National Corporation (PNC), a party in interest with respect to the Plans; (2) the ''makewhole'' payments made by PNC to the Plans on January 20, 1995, in connection with the sale of certain Securities by the Plans on the open market on November 2, 1994; and (3) the proposed additional ''makewhole'' and interest payments to be made by PNC to the Plans, as of the date the exemption is granted, as a result of: (i) the additional amounts owed to such Plans based on the amortized cost of the Securities at the time of the transactions in situations where the amortized cost exceeded the outstanding principal balance of the Securities (plus a reasonable rate of interest on such amounts), and (ii) the additional accrued but unpaid interest on the Securities which was owed to the Plans at the time of the sale to PNC on December 28, 1994 (plus a reasonable rate of interest on such amounts); provided that the following conditions are met:

(a) Each sale was a one-time transaction for cash;

(b) Each Plan has received or will receive a total amount for the Securities owned by the Plan, including the sale proceeds and ''makewhole'' payments for transactions that occurred either on the open market or with PNC, which is equal to the greater of: (i) the outstanding principal balance for each Security owned by the Plan, plus accrued but unpaid interest, at the time of the sale; (ii) the amortized cost for each Security owned by the Plan on the date of the sale, plus accrued but unpaid interest, as determined by the Banks; or (iii) the fair market value of each Security owned by the Plan as determined by the Banks from broker-dealers or pricing services independent of the Banks at the time of the sale;

(c) With respect to the ''makewhole'' payments made by PNC to the Plans on January 20, 1995, the Plans receive a reasonable rate of interest for the period from November 2, 1994 (the date of the sale of certain Securities on the open market) until January 20, 1995 (the date such payments were made), to the extent this amount is not already accounted for under the additional ''makewhole'' payments which are due for the Securities based on the amounts referred to above in Item (3)(i);

(d) The Plans did not pay any commissions or other expenses with respect to the transactions;

(e) The Banks, as trustee of the Plans, determined that the sale of the Securities was in the best interests of each of the Plans and their participants and beneficiaries at the time of the transaction;

(f) The Banks took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the transactions; and

(g) Each Plan received a reasonable rate of return on the Securities during the period of time that it held the Securities.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of December 28, 1994, and January 13, 1995, for the sales of the Securities made to PNC, and as of January 20, 1995, for the ''makewhole'' payments made by PNC in connection with the sale of the Securities to an unrelated party on November 2, 1994. In addition, this proposed exemption will be effective for the additional ''makewhole'' and interest payments due to the Plans as of the date such payments are made to the affected Plans.

Summary of Facts and Representations

1. The Banks are wholly-owned subsidiaries of PNC, a bank holding company organized under federal and Kentucky laws which is located at 208 North Mayo Trail in Pikeville, Kentucky. The Banks are: (a) the Pikeville National Bank and Trust Company, located at 208 North Mayo Trail in Pikeville, Kentucky; (b) the Trust Company of Kentucky, located at 1544 Winchester Avenue in Ashland, Kentucky; and (c) the First American Bank, located at 1544 Winchester Avenue in Ashland, Kentucky. The Banks offer traditional banking services (e.g. checking, savings, loans and trusts) to both individuals and entities in their localities.

2. The Banks serve as trustees for the Plans and have investment discretion for either some or all of the assets of such Plans. The Plans consist of a total of eighty-nine (89) plans, including various profit sharing plans, money purchase pension plans, 401(k) plans, simplified employee benefit plans (SEPs), Keogh plans and IRAs. The Plans that are employee benefit plans covered under Title I of the Act, such as the profit sharing and money purchase pension plans, are maintained by small businesses in the Pikeville and Ashland, Kentucky areas. All of these Plans have fewer than 100 participants.[1]

[1] Examples of some of these Plans are: (i) the Sandy Valley Explosive Co., 401(k) Plan, which had 28 participants and total assets of $90,398 as of September 30, 1994; (ii) the Corbin Coal Co., Inc. Profit Sharing Plan, which had 9 participants and

Some of the Plans are Keogh plans (a/k/s HR 10 plans) and IRAs which are not employee benefit plans covered under the Act.[2] Of the eighty-nine (89) Plans involved in the subject transactions by the Banks, twenty-nine (29) are IRAs and ten (10) are Keogh plans.

3. The Banks represent that at various times during the period from July 1992 until January 1994, assets of the Plans were invested in the Securities. The Securities were purchased from broker-dealers that were independent of the Plans and their sponsoring employers as well as the Banks and their affiliates.

The Securities are collateralized mortgage obligations (i.e. CMOs) and other mortgage-backed securities. The Securities are investment products through which investors purchase interests in pools of residential mortgage loans. In general, investors in these securities receive payments of principal and interest or, in some cases, either principal or interest only, depending upon the type of security purchased. Interest payments change monthly in relation to a specific index, such as the London Interbank Offered Rate (LIBOR) or the U.S. Federal Reserve's Cost of Funds Index (COFI), contained in a formula used to calculate the interest rate for such securities. Principal payments on the Securities vary in amount and timing depending upon how quickly the outstanding principal amounts on the underlying mortgages held in the mortgage pools are prepaid by the obligors. The repayment of principal and interest on the underlying mortgages in the various pools is usually guaranteed by U.S. Government Agencies, such as the Federal Home Loan Mortgage Corporation (FHLMC or ''Freddie Mac'') or the Federal National Mortgage Association (FNMA or ''Fannie Mae'').

4. The Securities consisted of twenty-six (26) separate securities. All of the Securities were CMOs or Real Estate Mortgage Investment Conduits (REMICs), except for one ''structured'' note issued by the Federal Home Loan Bank (FHLB) and three fixed coupon notes issued by FNMA, which were backed by pools of residential mortgages.

The CMOs are described as follows: (a) FHLMC REMIC—Planned Amortization Class (PAC) Series 1059, Class F, CUSIP #312905MB5; (b) FHLMC REMIC—PAC Series 1459, Class P, CUSIP #312914DV3; (c) FHLMC REMIC—PAC Series 1551, Class E, CUSIP #312916XX2; (d) FHLMC REMIC—Targeted Amortization Class (TAC) Series 1580, Class H, CUSIP #3133TOA7; (e) FNMA REMIC—Scheduled Amortization Class Series 1993–168, Class N, CUSIP #31359DQH9; (f) General Electric (GE) Capital Mortgage Services REMIC—PAC Series 1993–13, Class A6, CUSIP #36157LSB5; (g) FHLMC REMIC—Z Tranche Series 1393, Class J, CUSIP #312912SQ2; (h) FHLMC REMIC—Z Tranche Series 1411, Class ZA, CUSIP #312912X45; (i) FHLMC REMIC—Inverse Floater Series 1438, Class F, CUSIP #312913TJ5; (j) FHLMC REMIC—Inverse Floater Series 1625, Class SB, CUSIP #3133T22Q2; (k) FHLMC REMIC—Inverse Floater Series 1660, Class S, CUSIP #3133T3QK7; (l) FHLMC REMIC—Inverse Floater Series 1665, Class S, CUSIP #3133T3RD2; (m) FNMA REMIC—Inverse Floater Series 1993–102, Class S, CUSIP #31359AR43; (n) FNMA REMIC—Inverse Floater Series 1993–115, Class SE, CUSIP #31359BDT1; (o) FNMA REMIC—Inverse Floater Series 1993–185, Class SH, CUSIP #31359DU50; (p) FNMA REMIC—Inverse Floater Series G93–31, Class SD, CUSIP #31359DZW6; (q) FHLMC REMIC—Inverse Floater Series 1385, Class S, CUSIP #312912KK3; (r) FNMA REMIC—Z Tranche Series 1992–123, Class Z, CUSIP #31358N4F6; (s) FNMA REMIC—Inverse Floater Series 1992–129, Class S, CUSIP #31358N7D8; (t) FNMA REMIC—Inverse Floater Series G93–14, Class S, CUSIP #31358TX87; (u) FNMA REMIC—Principal Only (PO) Series 1993–161, Class GC, CUSIP #31359BXX0; and (v) GE Capital Mortgage Services REMIC—Inverse Floater Series 1993–17, Class A20, CUSIP #36157LUY2.

The other Securities that were not CMOs are described as follows: (a) FHLB Structured Note, CUSIP #313389FC7, an inverse floater indexed bond with a coupon formula based on six-month LIBOR; (b) FNMA Note, CUSIP #31359CAL9, a fixed coupon note paying 6.43 percent annually, due to mature on January 13, 2004, but callable on or after January 13, 1997; (c) FNMA Medium Term Note, CUSIP #31364AJ37, a fixed coupon note paying 6.17 percent annually, due to mature on December 2, 2003, but callable on or after December 2, 1996; and (d) FNMA Medium Term Note, CUSIP #31364AVX7, a fixed coupon note paying 6.80 percent annually, due to mature on October 23, 2002, but callable on or after October 23, 1995.

Of the twenty-six (26) Securities, twenty-four (24) had their underlying mortgages guaranteed by either the FNMA, FHLMC, or FHLB. The Banks represent that most of the CMOs would be considered ''guaranteed governmental mortgage pool certificates'' (see 29 CFR 2510.3–101).[3] The Banks state that it is unclear whether the Securities that are not CMOs would be so considered because they are debt, rather than equity, instruments issued by a U.S. Government agency. However, the Banks state that all of the Securities are ''publicly-offered securities'' (see 29 CFR 2510.3–101(a)(2) and (b)).[4]

5. All of the CMOs mentioned above were structured as REMICs pursuant to section 860D of the Code. The various classes of these Securities receive principal and, possibly, interest payments in differing portions and at differing times from the cash flows provided from the monthly payments received on the underlying mortgages.

The repayment of principal from the underlying mortgages fluctuates significantly. To facilitate the structuring of such REMICs, the prepayments on the pools of mortgages are commonly measured relative to a variety of prepayment models. The model used for these REMICs is the Public Securities Association's standard prepayment model or ''PSA''. For example, this model may assume that mortgages will prepay at an annual rate of .2 percent in the first month after origination, then the prepayment rate would increase at an annual rate of .2

total assets of $440,772 as of September 30, 1994; and (iii) the Baird, Baird, Baird & Jones P.S.C. Retirement Plan, which had 49 participants and total assets of $2,539,844 as of September 30, 1994.

[2] Pursuant to 29 CFR 2510.3–2(d) and 2510.3–3(b), the IRAs and Keogh plans would not be employee benefit plans under of Title I of the Act. However, such plans are subject to the provisions of Title II of the Act and, specifically, the prohibited transaction provisions of section 4975 of the Code.

[3] In this regard, under 29 CFR 2510.3–101(i), if a plan acquires a ''guaranteed governmental mortgage pool certificate'', the plan's assets would include the certificate but not any of the mortgages underlying such certificate. A ''guaranteed governmental mortgage pool certificate'' is a certificate (i) that is backed by, or evidences an interest in, specified mortgages or participation interests, and (ii) whose interest and principal payments are guaranteed by the Government National Mortgage Association (GNMA), FHLMC (i.e. ''Freddie Mac'') or FNMA (i.e. ''Fannie Mae''). Thus, the Banks represent that since most of the CMOs that were owned by the Plans had interest and principal payments payable under the CMOs guaranteed by FHLMC or FNMA, the assets of the Plans did not include any of the mortgages underlying such CMOs.

[4] In addition, under 29 CFR 2510.3–101(a)(2) and (b), if a plan acquires a ''publicly-offered security'' that grants the plan an equity interest in an entity, the plan's assets would include the security but not any of the underlying assets of the entity. Therefore, the Banks represent that the assets of the Plans that owned the CMOs issued by GE Capital Mortgage Services did not include any of the mortgages underlying such CMOs even though such CMOs would not be considered a ''guaranteed governmental mortgage pool certificate'' under the Department's ''plan assets'' regulation.

percent per month up to the 30th month after origination and then the prepayment rate would remain constant at 6 percent per annum in the 30th and later months. Such an assumption is called 100 PSA.

The REMIC structure allocates principal payments to the various classes or ''tranches'' in varying amounts as principal payments are made according to the allocations specified in the prospectuses. The exact date of repayment of all principal to any REMIC class is not known until the mortgage-backed securities are paid in full. The maturity for the various classes is referred to as the ''weighted average life'' (WAL). The WAL for a particular class of securities refers to the average amount of time, expressed in years, which will elapse from the date of the issuance of such securities until each dollar of principal has been repaid to the investor based on the PSA assumption. The holders of all classes will receive all of their principal back. The timing of when that principal is returned is dependent on how quickly the underlying mortgages are repaid or refinanced. However, in no event will the time for the recovery of principal exceed the final maturity date of the underlying mortgages.

Each month the monthly payments on the underlying mortgages are collected and distributed to the holders of the various REMIC classes. Depending upon the structure of the REMIC, interest may be paid monthly according to a specific formula. The CMOs owned by the Plans, referred to above, included ''principal only'' (POs) tranches, ''Z class'' tranches, and inverse floating rate classes (i.e. so-called ''inverse floaters'') with coupon rate formulas based on either LIBOR or COFI.

The ''principal only'' CMOs are similar to other bonds where an investor purchases the security at a discount and receives the principal cash flow off the collateral. The difference in the principal amount invested and the face value equates to the investment's yield. The timing of the cash flows received determines the ultimate yield on the investment. With a ''principal only'' CMO, the faster the collateral pays down, the higher the yield the investor receives. Income is recognized by accreting the discount over the expected life of the security. There are no regular interest payments received on ''principal only'' CMOs.

There is no loss of principal because the investor will ultimately receive the face value of the CMO, assuming that the underlying mortgages are guaranteed by a U.S. Government agency (e.g. FNMA or FHLMC). However, there is no guarantee as to the timing of the cash flows for such CMO's and the ultimate yields to the investors can be difficult to predict.

The CMOs that are ''Z tranche'' classes of such Securities are the last tranches entitled to repayment of principal from the underlying mortgages. Therefore, such CMOs are the most susceptible to principal payment extensions which lengthen the duration of the security beyond the initially determined WAL, based on the PSA assumptions for prepayments on the underlying mortgages. As noted above, the timing for when all principal payments will be made is dependent on how quickly the underlying mortgages are repaid or refinanced. If interest rates increase significantly for a period of time, then there will be significantly fewer mortgages that are repaid or refinanced. Such interest rate increases can dramatically change the WAL for a ''Z tranche'' CMO, as well as other lower ranked CMO tranches. In addition, the amount of principal payments that a ''Z tranche'' CMO investor will receive during such periods will be much less.

The CMOs that are ''inverse floaters'' are so described because the formulas used to calculate the interest payments, which adjust monthly for each class of the Security, usually raise the interest rate when the index falls and lower the interest rate when the index rises.

Most of the coupon rate formulas are based on an interest rate index known as ''LIBOR''. LIBOR refers to the arithmetic mean of the London Interbank offered quotations for one-month Eurodollar deposits. LIBOR moves up or down as interest rates move up or down. The movement of LIBOR has an inverse relationship with respect to the interest paid on the inverse floating rate classes. The CMOs with interest rate formulas based on the COFI rate operate in the same manner. Therefore, significant interest rate increases can have a dramatically adverse affect on the investor's coupon rate and can lower the market value of the security vis a vis other fixed income securities of comparable duration (see Paragraph 7 below).

6. The Securities were purchased by the Banks, as trustee of the Plans, from the following entities: (a) Kemper Securities; (b) Crews & Associates; (c) Marcus, Stowell & Beye; (d) Bear Stearns; (e) Morgan Keegan; (f) Merrill Lynch; and (g) First Institutional Securities. As noted earlier, these entities were all independent of the Plans as well as the Banks and their affiliates. In addition, the applicant notes that the Banks acted as a trustee with investment discretion for the assets of the Plans that were invested in the Securities and the entities that sold the Securities to the Plans were not acting as fiduciaries for such Plans.[5]

7. With respect to the CMOs, at the time of the purchase of these Securities by the Plans, the Banks anticipated that most of the CMOs would be retired within two to five years of the date of purchase due to prepayments of the underlying mortgages in each pool as obligors refinanced their mortgages at lower interest rates. The Banks thought that the CMOs would yield the Plans a high rate of return which would be superior to the yields available on other fixed income securities of comparable duration at the time of the transactions.[6] The Banks note that the ideal time to buy CMOs that are ''inverse floaters'' would be when interest rates, as measured by indices such as LIBOR or COFI, are high and are expected to go down during the time the investor is holding the CMOs. However, when interest rates rise, the rate of return on these CMOs goes down and the securities become less valuable.

The Banks note that initially the Plans were receiving monthly interest payments on the CMOs at rates that were significantly above the market rate for comparable securities, as measured by interest rate indexes at the time. However, increases in such interest rates during 1994 changed the investment outlook for the Securities. As a result, the Banks anticipated that the CMOs would not be retired for many years because of the projected decrease in the prepayments of mortgages held in each pool. Furthermore, the increases in interest rates caused both the rate of return on the CMOs (as measured by the monthly interest payments) and the market value of the CMOs to decrease significantly.

In addition, the Banks state that similar decreases in market value were occurring with respect to the other Securities that were not CMOs. This was particularly true for the FHLB Structured Note because it had a coupon rate formula, based on LIBOR, that was similar to the CMOs that were ''inverse

[5] The Department is not providing any views in this proposed exemption as to fiduciary status and related decisions involved in the investment of the Plans in the subject transactions.

[6] For example, the Banks state that a five-year U.S. Treasury Note yielded 8.7 percent on March 31, 1990, but yielded only 4.7 percent on September 28, 1993. The Banks note that this interest rate ''environment'' led to the development of new structured products, such as ''inverse floaters'', which many investors believed would produce superior returns based on interest rate projections at the time.

floaters''.[7] The FNMA Medium Term Notes, which paid fixed coupon rates, were also declining in market value vis a vis other fixed income securities of comparable duration (e.g. US Treasury Notes) although to a lesser extent than the ''inverse floaters''.

Therefore, by the end of 1994, the Banks state that the Plans were faced with the prospect of incurring significant losses on their investments in the Securities, particularly the ''inverse floaters'' and ''Z tranche'' CMOs.[8]

8. In November and December 1994, the Banks obtained bids from various broker-dealers and pricing services in order to establish the fair market value of the CMOs and other Securities. The Banks received market price information on the Securities from Bloomberg Financial Markets (i.e. a well-known pricing service for CMOs), as well as bid quotations from Bear Stearns, Smith Barney, Alex Brown & Sons, Morgan Keegan, DLJ (i.e. Donaldson, Lufkin & Jenrette), and Prudential Securities (the Broker-Dealers). All of the information received confirmed that the fair market value of the Securities was below their book value (i.e. either the outstanding principal balance or the amortized cost).

The Banks represent that ten (10) of the twenty-six (26) total Securities held by the Plans were sold on the open market on November 2, 1994, for $1,156,028.46.[9] This transaction included six (6) of the CMOs and all four (4) of the Securities that were not CMOs. The Securities were sold after the Banks obtained bids for the Securities, on an all or nothing basis, from all of the Broker-Dealers. After obtaining bids from the Broker-Dealers, the Banks sold these Securities to Prudential Securities (Prudential) because it was the broker with the highest average total bid for all of the Securities that were involved. The bids obtained by the Banks for all of these Securities were as follows:

(a) Alex Brown—77.944; (b) Bear Stearns—76.996; (c) Morgan Keegan—76.996; (d) Smith Barney—77.913; (e) DLJ—77.364; and (f) Prudential—78.068.[10]

After the sale of these Securities to Prudential, the Banks made the Plans ''whole'' for their losses on the investments. In this regard, the Plans received separate ''makewhole'' payments from PNC, the Banks' holding company, on January 20, 1995, of $210,725. These ''makewhole'' payments equalled the difference between the book value (as discussed in Paragraph 12 below) of the Securities at the time of sale and the market price received from the sale of the Securities to Prudential. The Banks represent that the Plans involved will also receive additional payments, as of the date the proposed exemption is granted, reflecting a reasonable rate of interest for the period from November 2, 1994 (the date of the sale of these Securities on the open market) until January 20, 1995 (the date such payments were made to the Plans).[11]

Since the ''makewhole'' payments made on January 20, 1995 were a transaction between the Plans and PNC, a party in interest with respect to the Plans, the Banks request that the proposed exemption cover such ''makewhole'' payments. There will also be additional ''makewhole'' payments made to the Plans, as of the date the proposed exemption is granted, to reflect the additional amounts owned to the Plans based on the difference between the book value (i.e. outstanding principal balance) and the amortized cost of some of the Securities, where the latter amount would have been greater at the time of the transaction (as discussed further below).

9. On December 28, 1994, the Banks sold fifteen (15) of the remaining sixteen (16) Securities from the Plans to PNC for $3,069,187.54.[12]

The Securities were sold for cash at an amount equal to the book value of the Securities, as calculated by the Banks, at the time of the transaction (as discussed further in Paragraph 12 below).

10. Prior to the transaction on December 28, 1994, the Banks obtained bid quotations for each of the Securities from Bear Stearns, Smith Barney, and Alex Brown & Sons, as well as market price information from Bloomberg Financial Markets (Bloomberg). All of the quotations received from these Broker-Dealers and the information

[7] The coupon formula for the FHLB Structured Note was 14.375 percent—(2 × six-month LIBOR). This Security's coupon had a cap of 14.375 percent and a floor of 0 percent. The coupon rate was reset annually on April 6 and October 6. The coupons ranged from 8 percent as of April 6, 1993 to 2.6875 percent as of October 6, 1994.

[8] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the CMOs by the Plans violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

The Department notes that section 404(a) of the Act requires, among other things, that 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. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In this regard, the Department is not providing any opinion as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a–1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than comparable investments offering a similar return or result.

[9] These Securities were the following: (1) FHLMC REMIC—PAC Series 1059, Class F, CUSIP #312905MB5; (2) FHLMC REMIC—PAC Series 1459, Class P, CUSIP #312914DV3; (3) FHLMC REMIC—PAC Series 1551, Class E, CUSIP #312916XX2; (4) FHLB Structured Note, CUSIP #313389FC7; (5) FHLMC REMIC—TAC Series 1580, Class H, CUSIP #3133TOA7; (6) FNMA Note, CUSIP #31359CAL9; (7) FNMA REMIC—Scheduled Amortization Class Series 1993–168, Class N, CUSIP #31359DQH9; (8) FNMA Medium Term Note, CUSIP #31364AJ37; (9) FNMA Medium Term Note, CUSIP #31364AVX7; and (10) GE Capital Mortgage Services REMIC—PAC Series 1993–13, Class A6, CUSIP #36157LSB5.

[10] The Broker-Dealers' bids represent a price quoted per $100 of principal. To determine the price for the Securities received by the Banks based on the average bid quoted, the par value of the Securities would be multiplied by the particular quote, expressed as a percentage of 100. For example, if the par value of the Securities was $100,000 and the average bid for the Securities was $78.50 per $100 of principal, the quoted price would have been $78,500 since $100,000 × .7850 = $78,500.

[11] The Banks state that the interest on this ''makewhole'' payment for the 2.5 month period would be approximately $1,720.43.

[12] These Securities were the following: (1) FHLMC REMIC—Z Tranche Series 1393, Class J, CUSIP #312912SQ2; (2) FHLMC REMIC—Z Tranche Series 1411, Class ZA, CUSIP #312912X45; (3) FHLMC REMIC—Inverse Floater Series 1438, Class F, CUSIP #312913TJ5; (4) FHLMC REMIC—Inverse Floater Series 1625, Class SB, CUSIP #3133T22Q2; (5) FHLMC REMIC—Inverse Floater Series 1660, Class S, CUSIP #3133T3QK7; (6) FHLMC REMIC—Inverse Floater Series 1665, Class S, CUSIP #3133T3RD2; (7) FNMA REMIC—Inverse Floater Series 1993–102, Class S, CUSIP #31359AR43; (8) FNMA REMIC—Inverse Floater Series 1993–115, Class SE, CUSIP #31359BDT1; (9) FNMA REMIC—Inverse Floater Series 1993–185, Class SH, CUSIP #31359DU50; (10) FNMA REMIC—Inverse Floater Series G93–31, Class SD, CUSIP #31359DZW6; (11) FHLMC REMIC—Inverse Floater Series 1385, Class S, CUSIP #312912KK3; (12) FNMA REMIC—Z Tranche Series 1992–123, Class Z, CUSIP #31358N4F6; (13) FNMA REMIC—Inverse Floater Series 1992–129, Class S, CUSIP #31358N7D8; (14) FNMA REMIC—Inverse Floater Series G93–14, Class S, CUSIP #31358TX87; and (15) FNMA REMIC—Principal Only (PO) Series 1993–161, Class GC, CUSIP #31359BXX0.

obtained from Bloomberg showed that the fair market value of the Securities was below their book value as of December 15, 1994. The following chart shows the market price information from Bloomberg for each of the Securities involved in the sale to PNC on December 28, 1994.

Securities (CMOs)	Bloomberg market price
FHLMC REMIC—Z Tran. 1393, Class J	89.688
FHLMC REMIC—Z Tran. 1411, Class ZA	57.500
FHLMC REMIC—Inv. Fl. 1438, Class F	82.000
FHLMC REMIC—Inv. Fl. 1625, Class SB	77.313
FHLMC REMIC—Inv. Fl. 1660, Class S	60.094
FHLMC REMIC—Inv. Fl. 1665, Class S	66.469
FNMA REMIC—Inv. Fl. 1993–102, Class S	39.281
FNMA REMIC—Inv. Fl. 1993–115, Class SE	33.219
FNMA REMIC—Inv. Fl. 1993–185, Class SH	78.063
FNMA REMIC—Inv. Fl. G93–31, Class SD	71.188
FHLMC REMIC—Inv. Fl. 1385, Class S	63.656
FNMA REMIC—Z Tran. 1992–123, Class Z	79.719
FNMA REMIC—Inv. Fl. 1992–129, Class S	98.813
FNMA REMIC—Inv. Fl. G93–14, Class S	20.500
FNMA REMIC—PO 1993–161, Class GC	19.375

11. On January 13, 1995, the Banks sold the last remaining Security (i.e. the GE Capital Mortgage Services REMIC—Inverse Floater Series 1993–17, Class A20) from the Plans to PNC for $187,055.19, an amount which represented the book value of the Securities at the time of the transaction. The Banks represent that no bids were obtained from any of the Broker-Dealers for this transaction because information from Bloomberg indicated that the market price for the Security would be approximately 21.65, an amount far below its book value at the time of the transaction.

12. The total sales proceeds received by the Plans for the Securities (including the ''makewhole'' payments of $210,725 paid in connection with certain Securities sold on the open market) was $4,622,996.19. The Banks state that this amount, which was based on the book value of the Securities at the time of the transactions, far exceeded the fair market value of the Securities at the time of the transactions.[13]

In this regard, the ''book value'' of the Securities was determined by the Banks to be equal to the outstanding principal balance of the Securities at the time of the transaction, plus accrued but unpaid interest. However, the Banks subsequently determined that in some cases the amortized cost of the Securities,[14] as calculated by the Banks, was greater than the outstanding principal balance of the Securities. The amortized cost of certain Securities slightly exceeded their outstanding principal balance in situations where the Securities were initially purchased by the Plans at a discount to their face value. The Banks state that a total of eleven (11) of the Securities were bought by the Plans at a discount. The difference between the amount paid by PNC to the Plans, based on the outstanding principal balance of the Securities, and the amount that would have been paid if the amortized cost method had been used for the Securities bought at a discount, resulted in an ''underpayment'' of $21,876.89.

The Banks represent that PNC is prepared to pay this additional amount (plus a reasonable rate of interest on such amount)[15] to the affected Plans as of the date this proposed exemption is granted.

In addition, the Banks state that there is accrued but unpaid interest of approximately $12,194.62, which is still owed to the Plans on the Securities involved in the transaction with PNC that occurred on December 28, 1994. The Banks represent that PNC will pay this remaining accrued interest due on the Securities (plus a reasonable rate of interest on such amount)[16] to the affected Plans as of the date this proposed exemption is granted.

Therefore, the Plans will receive a total amount that is equal to the greater of: (i) the outstanding principal balance for each Security owned by the Plan, plus accrued but unpaid interest, at the time of the sale; (ii) the amortized cost for each Security owned by the Plan on the date of the sale, plus accrued but unpaid interest, as determined by the Banks; or (iii) the fair market value of each Security owned by the Plan as determined by the Banks from broker-dealers or pricing services independent of the Banks at the time of the sale. In addition, the Plans will receive a reasonable rate of interest on any additional amounts owed to the Plans.

13. The Banks represent that the Plans received a reasonable rate of return on the Securities during the period of time that such Securities were held by the Plans. The annualized rate of return for each Security during this time varied from between 24.63 percent to 0.53 percent. The weighted average annual rate of return on the Securities was approximately 8.32 percent. The Banks state that the expected yield on the Securities at the time of purchase exceeded the yield for other similar fixed income securities of comparable duration. With respect to the actual yields to the Plans on the Securities, the Banks state that an analysis of each of the Securities held by the Plans reveals that the Securities outperformed the rate of return of leading investment indices for similar fixed-income securities during the period of time that they were held by the Plans. Therefore, the Banks represent that each of the Plans that held these Securities outperformed the rate of return of an appropriate index of fixed-income securities during this period.

14. The Banks, as trustee of the Plans, represent that the sale of the Securities was in the best interests of the Plans and their participants and beneficiaries at the time of the transactions. The Banks state that the sale transactions insulated the Plans from further decreases in the fair market value of the Securities. Specifically, the Banks state that the sale of the Securities by the Plans to Prudential on November 2, 1994, at their fair market value, plus the ''makewhole'' payments made to the Plans by PNC on January 20, 1995, made the Plans involved ''whole'' for the

[13] The Banks note that the original cost of the Securities for the Plans totalled $5,681,892.89. The Plans had been paid $427,284.38 in interest and $1,156,914.74 in principal prior to the transactions.

[14] The Banks state that the formula used to determine the amortized cost of these Securities was as follows: [[Purchase Price—100/WAL×12]×[WAL×12—months held]]+100. For example, assume that a particular CMO investment has been held by a Plan for 6 months. If the WAL was 2.02 years and the purchase price was 90 based on the par value being 100, the formula would be:

$$[[(90-100)/(2.02\times12)]\times[(2.02\times12)-6)]]+100$$
$$=[(-10/24.24)\times(24.24-6)]+100$$
$$=(-.4125413\times18.24)+100$$
$$+-7.5247533+100$$
$$=92.475247$$

As the formula indicates, the amortized cost using the average life at purchase would be $92.475247 as compared to the purchase price of $90.00. This amortized cost formula allows the ''book value'' to reflect the yield to the Plan based on the purchase of the security at a discount from the face value and accretes this discount over the WAL for the security.

[15] The Banks state that as of September 1996, the interest on the additional amount owed would be equal to approximately $2,297.07, using an annual rate of 6 percent for the 21-month period since the transaction.

[16] The Banks state that as of September 1996, the interest on this remaining interest amount would be equal to approximately $1,280.44, using an annual rate of 6 percent for the 21-month period since the transaction.

actual losses they would have otherwise incurred. In addition, the Bank states that the sale of the other Securities (CMOs) by the Plans to PNC on December 28, 1994 and January 13, 1995 provided the Plans with an amount which exceeded the fair market value of the Securities at the time of the transactions. Finally, the Banks state that the additional ''makewhole'' payments for the book value adjustments based on the amortized cost of some of the Securities, and the additional payments for accrued but unpaid interest on some of the Securities (plus a reasonable rate of interest on such amounts), will be paid to the Plans as of the date that the exemption is granted.

15. The Banks represent that they took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the sale transactions. The Banks ensured that each Plan received the appropriate amount of cash from PNC in exchange for such Plan's Securities. The Banks also ensured that the Plans did not pay any commissions or other expenses in connection with the sale of the Securities.

16. In summary, the Bank represents that the sale satisfied the statutory criteria of section 408(a) of the Act and section 4975 of the Code because: (a) each sale was a one-time transaction for cash; (b) each Plan has received or will receive a total amount for its Securities, including the sale proceeds and ''makewhole'' payments for transactions that occurred either on the open market or with PNC, which is equal to the greater of: (i) the outstanding principal balance for each Security owned by the Plan, plus accrued but unpaid interest, at the time of the sale, (ii) the amortized cost for each Security owned by the Plan on the date of the sale, plus accrued but unpaid interest, as determined by the Banks; or (iii) the fair market value of each Security owned by the Plan as determined by the Banks based on information obtained from independent third party sources at the time of the transactions; (c) the Plans will receive a reasonable rate of interest on any additional amounts owed to the Plans as of the date this proposed exemption is granted; (d) the Plans did not pay any commissions or other expenses with respect to the sales; (e) the Banks, as trustee of the Plans, determined that the sale of the Securities would be in the best interests of the Plans; (f) the Banks took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the transactions; and (g) the Plans received a reasonable rate of return on the Securities during the period of time that they were held by the Plans.

Notice to Interested Persons

The applicant states that notice of the proposed exemption shall be made by first class mail to the appropriate Plan fiduciaries within fifteen days following the publication of the proposed exemption in the Federal Register. This 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 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 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.)

Univar Corporation Uni$aver Tax Savings Investment Plan (the Plan), Located in Kirkland, Washington

[Application No. D–10143]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed extension of credit in the form of guarantees and loans of funds (the Loans), not to exceed $1,466,785.38, to the Plan by Univar Corporation (the Employer), the sponsor of the Plan, or its successors, with respect to Guaranteed Investment Contract No. 62127 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation), and the repayment of the Loans by the Plan to the Employer, or its successors, provided the following conditions are satisfied: (a) All terms and conditions of the transactions are no less favorable to the Plan than those the Plan could receive in arm's-length transactions with unrelated parties; (b) No interest payments or other expenses will be incurred by the Plan with respect to the transactions; (c) Repayment of the loans will be made from proceeds realized from the GIC (the GIC Proceeds) as paid to the Plan by Confederation, its successors, or any other third-party, and made only if the repayments do not interfere with the liquidity needs of the Plan for payment of benefits, transfer of investments, hardship withdrawals or loans as determined by BZW Barclays Global Investors, N.A., the Plan trustee; (d) Repayment of the Loans will be waived by the Employer and its successors to the extent the Loans exceed the GIC Proceeds, and (e) All unpaid principal and interest that was due under the GIC on August 12, 1994, minus any Loans from the Employer and/or payments received under the GIC after August 12, 1994, will be completely paid by January 1, 2000, by a Loan to the Plan from the Employer or its successors.

Summary of Facts and Representations

1. The Employer, a Washington corporation, is an international distributor of industrial, agricultural, and pest control chemicals and related products and services. The Employer purchases chemicals from manufacturers in truck, railcar, or tank car quantities and sells the chemicals in smaller quantities to its customers. The Employer operates through three wholly-owned subsidiaries: Van Waters & Rogers, Inc.; Van Waters & Rogers, Ltd.; and Univar Europe, N.V.

On September 30, 1996, all of the Employer's outstanding shares of common stock were acquired by Royal Pakhoed, N.V. (Pakhoed), a Netherlands company, through a friendly tender offer and merged with Pakhoed USA, Inc. a United States subsidiary of Pakhoed. The applicant represents that the surviving corporation is subject to all the obligations and liabilities of the Employer and is expected to continue the business and operations of the Employer substantially as they have been conducted.

2. The Plan is a defined contribution plan that is intended to satisfy the provisions of sections 401(a) and 401(k) of the Code, with employer matching contributions. As of June 30, 1996, the Plan had 2,218 participants and beneficiaries and total assets of $60,687,828.85.

The fiduciaries of the Plan are the Finance Committee of the Board of Directors of the Employer (the Finance Committee), the Pension Management Committee (Pension Committee), and the trustee, BZW Barclays Global Investors, N.A. (Barclays). The Finance Committee establishes the funding policy for the Plan and appoints and monitors the Pension Committee. The

Pension Committee consists of executives of the Employer, who *inter alia,* supervise the daily administration of the Plan. Barclays, a national bank of the United States, represents that it is a fiduciary with respect to the Plan and performs as trustee, investment manager, and outside recordkeeper for the Plan.

The Pension Committee selects various funds that are offered by the Plan to its participants as investment vehicles for their individual accounts. Participants of the Plan can daily direct investments of the assets in their individual accounts among the various funds offered by the Plan.

One of the funds offered by the Plan to participants is the Fixed Income Fund (the Fixed Fund), which invests in various guaranteed investment contracts issued by insurance companies. There are currently 969 individual participant accounts of the Plan invested in the Fixed Fund.

3. Among the assets of the Fixed Fund is the GIC, which represents approximately 2.4 percent of the total assets of the Plan. The GIC has an effective date of April 2, 1990, and an expiration date of April 5, 1995, and was issued for the principal amount of $1,000,000 with a guaranteed interest rate of 9.18 percent compounded annually. The applicant represents that the GIC had a Book Value of $1,466,758.38 (the Book Value), as of August 12, 1994, which represents the principal deposit plus accrued interest, and minus any withdrawals to that date.

The applicant represents that the insurance regulators of Canada seized the assets of Confederation on August 11, 1994. The following day the Ingham County Circuit Court, Mason, Michigan placed the assets of Confederation located in the United States in conservatorship and rehabilitation proceedings under the administration of state insurance regulators, and all withdrawals and interest payments with respect to the GIC were suspended.[17]

After August 12, 1994. The trustee of the Plan has continued to value the GIC at its Book Value of $1,466,758.38, and has not placed restrictions with respect to contributions, loan withdrawals, transfers, and distributions into or out of the Fixed Fund.

4. In order to maintain the Book Value of the GIC and the liquidity of the Fixed Fund and to avoid having to segregate the GIC from the Fixed Fund or suspend transfers from the Fixed Fund because of the GIC, the Employer proposes to guarantee and loan funds (the Loans) for a total amount not to exceed the Book Value of the GIC, as determined on August 12, 1994.[18]

The Loans will be unsecured and interest-free and made, as needed, to provide for withdrawals from the Fixed Fund of the Plan for benefit distributions, investment transfers, or hardship withdrawals and loans.

The Employer also represents that it will make a final Loan to the Plan by January 1, 2000, that totals $1,466,785.38, minus any other Loans made to the Plan after August 12, 1994, and/or minus any payments received by the Plan from the GIC Proceeds after August 12, 1994.

In addition, the applicant represents that the Plan will not incur any interest payments or other expenses from the Loans, and repayment of the Loans will be restricted to proceeds from the GIC as paid to the Plan by Confederation, its successors, or any other third-party. Also, the applicant represents that repayment of the Loans will be waived by the Employer, or its successors, to the extent the loans exceed the proceeds realized from the GIC by the Plan.

Barclays in an agreement dated July 10, 1996, agrees to monitor and enforce the Employer's fulfillment of its obligations to the Plan to make the Loans to the Plan. In addition, if the Employer fails in its obligation of the Loans, Barclays will take prudent and appropriate action required to protect the interests of the Plan and its participants and beneficiaries. Barclays pledges to perform its duties in accordance with the fiduciary requirements of the Act.

Barclays further represents that the undertakings by the Employer with respect to its promise to make the Loans as described in the exemption application, and the acceptance by the Plan of such undertakings are in the best interests of the Plan and its participants and beneficiaries.

5. In summary, the applicant represents that the proposed transactions will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the Loans will enable the Plan to fund benefit payments and make loans, withdrawals, transfers, and distributions from the Fixed Fund of the Plan; (b) repayments of the Loans will be restricted to the proceeds realized from the GIC; (c) repayments will be restricted by liquidity needs of the Plan and waived by the Employer, or its successors, to the extent the Loans exceed the proceeds realized from the GIC by the Plan; and (d) no interest payments or other expenses will be incurred by the Plan with respect to the transactions.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

BA Securities, Inc. (BA) Located in San Francisco, California

[Application No. D–10335]

Proposed Exemption

I. Transactions

A. Effective August 29, 1996, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[19]

B. Effective August 29, 1996, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section

[17] The Department notes that the decision to acquire and hold the GIC is governed by the fiduciary responsibility provisions of Part 4, Subtitle B of Title I of the Act. In this regard, the Department is not herein proposing relief for any violation of Part 4 which may have arisen as a result of the acquisition and holding of the GIC by the Plan.

[18] The Department notes that the exemption, if granted will not affect the ability of a participant or beneficiary to bring a civil action against plan fiduciaries for any breaches of section 404 of the Act which may have occurred in connection with any aspect of the GIC transaction.

[19] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[20] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective August 29, 1996, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[21]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in section III.S.

D. Effective August 29, 1996, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance

[20] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[21] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which BA or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) either

(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) ''guaranteed governmental mortgage pool certificates,'' as defined in 29 CFR 2510.3–101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);[22]

(2) property which had secured any of the obligations described in subsection B.(1);

(3) undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) BA;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with BA; or

(3) any member of an underwriting syndicate or selling group of which BA or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

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

(2) Any officer, director, partner, employee, relative (as defined in section

[22] It is the Department's view that the definition of ''trust'' contained in III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

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

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(1) The trust holds a security interest in the lease;

(2) The trust holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. *BA* means BA Securities, Inc. and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term ''Underwriter Exemption'' as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at 35932.

Summary of Facts and Representations

1. BA is the wholly-owned, separately capitalized investment banking subsidiary of BankAmerica Corporation (the Bank), a multi-bank holding company which was incorporated in Delaware in 1968. On March 31, 1996 the Bank's consolidated assets were approximately $234.2 billion. The Bank is headquartered in San Francisco and, through its various subsidiaries, provides a diversified range of financial services to its customers. The Bank's depository subsidiaries provide consumer banking and other retail banking services. The Bank, through its banking and other subsidiaries, also provides wholesale banking and financial products and services throughout the United States and in overseas markets to business customers. These products and services encompass corporate lending, business finance, leasing, cash management, trade finance and investment banking services.

BA was incorporated in 1986. It maintains its principal place of business in San Francisco, California, and has branch operations in Chicago, Los Angeles, New York, Atlanta and Portland.

BA is a member of the National Association of Securities Dealers and a primary dealer in U.S. Treasury securities. BA also underwrites and deals in corporate debt securities, commercial paper, municipal securities, high-yield securities and asset-backed securities, provides private placement and corporate finance advisory services, including merger and acquisition advisory services, publishes research on a wide range of securities and issuers, and engages in syndication, arranging and trading of bank loans.

BA and its predecessors, including Security Pacific Corporation and Continental Bank Corporation, have extensive experience in asset securitizations. BA has participated in securitization transactions as lead or co-manager of underwritten public offerings, and as private placement agent or commercial paper conduit agent/dealer for transactions backed by retail auto receivables, bank and retail credit cards, equipment loans and leases, manufactured housing loans, auto leases, unsecured consumer loans, dealer floor plan accounts, trade receivables and student loans.

BA represents that it received Federal Reserve Board authorization to underwrite and deal in commercial paper, municipal revenue bonds, residential mortgage-related securities and consumer receivable-related securities. In October 1994, BA received Federal Reserve Board approval to underwrite and deal in corporate debt and equity securities. These orders are subject to the condition that BA does not derive more than 10% of its total gross revenues from such activities. In addition, BA's affiliates have the power to sell interests in their own assets in the form of asset-backed securities.

Trust Assets

2. BA seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) single and multi-family residential or commercial mortgage investment trusts;[23] (2) motor vehicle

[23] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally

Continued

receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[24]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[25]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.[26]

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. BA, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated are to be underwritten by BA on a firm commitment basis.

In addition, BA anticipates that it may privately place certificates on both a firm commitment and an agency basis. BA may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. BA requests exemptive relief for two types of multi-class certificates: ''strip'' certificates and ''fast-pay/slow-pay'' certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[27]

''Fast-pay/slow-pay'' certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[28]

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apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. BA requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, BA has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[24] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[25] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

[26] It is the view of the Department that section III.B.(4) includes within the definition of the term ''trust'' rights under any yield supplement or similar arrangement which obligates the sponsor or master servicer, or another party specified in the relevant pooling and servicing agreement, to supplement the interest rates otherwise payable on the obligations described in section III.B.(1), in accordance with the terms of a yield supplement arrangement described in the pooling and servicing agreement, provided that such arrangements do not involve swap agreement or other notional principal contracts.

[27] It is the Department's understanding that where a plan invests in REMIC ''residual'' interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[28] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities: (i) a special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to BA, the trust sponsor or the servicer. BA represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, the receivables may be ''subserviced'' by their respective originators and a single entity may ''master service'' the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investor's interest, the servicer ordinarily covenants that this ''sold flag'' will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing, posting and collection procedures related to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placement of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to BA. In other cases, however, affiliates of BA may originate or service receivables included in a trust or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

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notes that the exemption does not provide relief for plan investment in such subordinated certificates.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[29] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due.

In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor.

In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of a trust that is not a REMIC.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or

[29] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into ''principal'' and ''interest'' components based on an implicit interest rate.

on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and

Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer, paying agent or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

24. To date, no forward delivery commitments have been entered into by BA in connection with the offering of any certificates, but BA may contemplate entering into such commitments. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and BA may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

25. It is BA's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter. BA anticipates that it will make a market in certificates.

Retroactive Relief

26. BA represents that it has not engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would be granted prior to the date of their application. However, BA requests the exemptive relief granted to be retroactive to August 29, 1996, the date of their application, and would like to rely on such retroactive relief for transactions entered into prior to the date exemptive relief may be granted.

Summary

27. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain ''fixed pools'' of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which BA seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) BA anticipates that it will make a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 [46 FR 7520, January 23, 1981], Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 [48 FR 895, January 7, 1983].

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406(b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406(a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more

limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[30]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

BA represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[31] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[32] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, BA represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. BA represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, BA represents that to the extent there is a plan asset ''look through'' to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

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

For Further Information Contact: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Zions Bancorporation and Affiliated Companies (Zions) Located in Salt Lake City, Utah

[Application No. L–10338]

Proposed Exemption

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 sections 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Zions Life Insurance Company (ZLIC) in connection with an insurance contract sold by American Bankers Life Insurance Company (AB) to provide group life and accidental death and dismemberment insurance to employees of Zions (the Plan), provided the following conditions are met:

(a) ZLIC—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with Zions that is described in section 3(14) (E) or (G) of the Act,

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act,

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state which has neither been revoked nor suspended, and

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Arizona) by the Insurance Commissioner of the State of Arizona within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid with respect to the direct sale of such contracts or the reinsurance thereof; and

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

(1) the term ''gross premiums and annuity considerations received'' means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or

[30] In referring to different ''types'' of asset-backed securities, the Department means certificates representing interests in trusts containing different ''types'' of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been ''seasoned'' (e.g., originated at least one year prior to the plan's investment in the trust).

[31] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which BA or any of its affiliates is either (a) the sole underwriter or manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent.

[32] The applicant represents that where a trust sponsor is an affiliate of BA, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if BA is not a fiduciary with respect to plan assets to be invested in certificates.

annuity contracts to such plans (and their employers) by ZLIC. This total is to be reduced (in both the numerator and the denominator of the fraction) by experience refunds paid or credited in that taxable year by ZLIC.

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

Preamble

On August 7, 1979, the Department published a class exemption [Prohibited Transaction Exemption 79–41 (PTE 79–41), 44FR 46365] which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans if certain conditions are satisfied.

In PTE 79–41, the Department stated its views that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction.

The Department further stated that as of the date of publication of PTE 79–41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and the unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

1. Zions is a publicly traded bank holding company organized under the laws of the State of Utah in 1955. Zions provides a full range of banking and related services through its subsidiaries located in Utah, Nevada and Arizona. Zions has several subsidiaries, including a mortgage company, a life insurance company (ZLIC), an insurance agency company, and a securities brokerage company.

2. ZLIC is a corporation organized under the laws of Arizona, its domiciliary state. ZLIC is a wholly owned subsidiary of Zions. ZLIC is principally in the business of reinsurance, primarily with respect to mortgage life and other credit life products. The applicant represents that $765,000 in premiums was written by ZLIC in 1995.

3. Zions provides to its employees certain welfare benefits through the Plan. The Plan includes group life, dependent life, supplemental life and accidental death and dismemberment insurance issued by AB with respect to the employees of Zions. The Plan is a fully insured welfare plan within the meaning of section 3(1) of the Act. The Plan currently has approximately 2,400 participants and beneficiaries.

4. The insurance is currently underwritten by AB, an unaffiliated insurance carrier. Zions has entered into a policy with AB for 100% of this coverage. Zions proposes to use its subsidiary, ZLIC, to reinsure 50% of the risk through a reinsurance contract between ZLIC and AB in which AB would pay 50% of the premiums to ZLIC. From the participants' perspective, the participants have a binding contract with AB, which is legally responsible for the risk associated under the Plan. AB is liable to provide the promised coverage regardless of the proposed reinsurance arrangement.

5. The applicant represents that the proposed transaction will not in any way affect the cost to the insureds of the group life insurance contracts, and the Plan will pay no more than adequate consideration for the insurance. Also, Plan participants are afforded insurance protection from AB at competitive rates arrived at through arm's-length negotiations. AB is rated ''A'' by the A. W. Best Company, whose insurance ratings are widely used in financial and regulatory circles. AB has assets in excess of $600 million. AB will continue to have the ultimate responsibility in the event of loss to pay insurance benefits to the employee's beneficiary. The applicant represents that ZLIC is a sound, viable company which is dependent upon insurance customers that are unrelated to itself and its affiliates for premium revenue.

6. The applicant represents that the proposed reinsurance transaction will meet all of the conditions of PTE 79–41 covering direct insurance transactions:

(a) ZLIC is a party in interest with respect to the Plan (within the meaning of section 3(14)(G) of the Act) by reason of stock affiliation with Zions, which maintains the Plan.

(b) ZLIC is licensed to do business in Arizona.

(c) ZLIC has undergone an examination by an independent certified public accountant for 1995.

(d) ZLIC has received a Certificate of Authority from its domiciliary state, Arizona, which has neither been revoked nor suspended.

(e) The Plan will pay no more than adequate consideration for the insurance. The proposed transaction will not in any way affect the cost to the insureds of the group life insurance transaction.

(f) No commissions will be paid with respect to the acquisition of insurance by Zions from AB or the acquisition of reinsurance by AB from ZLIC.

(g) For each taxable year of ZLIC, the ''gross premiums and annuity considerations received'' in that taxable year for group life and health insurance (both direct insurance and reinsurance) for all employee benefit plans (and their employers) with respect to which ZLIC is a party in interest by reason of a relationship to such employer described in section 3(14)(E) or (G) of the Act will not exceed 50% of the ''gross premiums and annuity considerations received'' by ZLIC from all lines of insurance in that taxable year. All of the premium income of ZLIC comes from reinsurance. ZLIC has received no premiums for the Plan insurance in the past. ZLIC wrote $765,000 in premiums in 1995, and the applicant estimates that the 1996 premiums should be 15–25% higher. In 1995, the premium income for ZLIC all came from AB, and represented reinsurance premiums relating to policies sold by AB to entities unrelated to Zions and its affiliates. Thus, 100% of ZLIC's premiums for 1995 were derived from insurance (or reinsurance thereon) sold to entities other than Zions and its affiliated group.

7. In summary, the applicant represents that the proposed transaction will meet the criteria of section 408(a) of the Act because: a) Plan participants and beneficiaries are afforded insurance protection by AB, an ''A'' rated group insurer, at competitive market rates arrived at through arm's-length negotiations; b) ZLIC is a sound, viable insurance company which does a substantial amount of public business outside its affiliated group of companies; and c) each of the protections provided to the Plan and its participants and beneficiaries by PTE 79–41 will be met under the proposed reinsurance transaction.

For Further Information Contact: Gary H. Lefkowitz 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 that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 1st day of November, 1996.

Ivan Strasfeld,

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

[FR Doc. 96–28504 Filed 11–5–96; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel.

DATE AND TIME: Tuesday, November 19, 1996 from 9:00 a.m. to 11:30 a.m.

ADDRESS: Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW, Columbia Ballroom B, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ken Nelson, Executive Director, 1255 22nd Street, NW, Suite 502, Washington, DC 20037. Telephone: (202) 632–0952.

SUMMARY: The National Education Goals Panel was established to monitor, measure and report state and national progress toward achieving the eight National Education Goals, and report to the states and the Nation on that progress.

AGENDA ITEMS: The meeting of the Panel is open to the public. Agenda items include: 1) The release of the sixth annual report on state and national progress toward achievement of the National Education Goals; 2) Representatives from California and Ohio will discuss the controversies they have encountered as they developed high academic standards and assessments systems; 3) An overview of the different findings that will be released during the next few months by the Third Mathematical and Science Study (TIMSS); 4) A presentation of the TIMSS' findings on curriculum frameworks and textbooks; and 5) passing the gavel to the next chair of the Panel.

Dated: October 31, 1996.

Ken Nelson,

Executive Director, National Education Goals Panel.

[FR Doc. 96–28451 Filed 11–5–96; 8:45 am]

BILLING CODE 4010–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences (1186); Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Astronomical Sciences (1186) will be holding panel meetings for the purpose of reviewing proposals submitted to the Advanced Technologies and Instrumentation Program in the area of Astronomical Sciences. In order to review the large volume of proposals, panel meetings will be held on November 26 (2). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 8:30 AM to 5:00 PM each day.

Contact Person: Dr. Benjamin B. Snavely, Program Director, Advanced Technologies and Instrumentation, Division of Astronomical Sciences, National Science Foundation, Room 1045, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1828.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–28525 Filed 11–5–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation —(1194).

Date and Time: November 25, 1996, 8:00 a.m.–5:00 p.m.

Place: Rooms 310, 320, 330, 340, 360, 365, 370, 380, 390, and 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. George A. Hazelrigg, Program Director, Design and Integration Program (703) 306–1330, Dr. Georgia-Ann Klutke, Program Director, (703) 306–1330, Operations Research and Production Systems Program, (703) 306–1330, Dr. Jay Lee, Program Director, Materials Processing and Manufacturing Program, (703) 306–1330, Dr. Ming Leu, Program Director, Manufacturing Machines and Equipment Program, (703) 306–1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.