Persons wishing to make statements or presentations at the Town Hall Meetings should limit oral statements to 5 minutes, but extended written statements may be submitted for the record. Written statements may also be submitted without presenting oral statements. Individuals may submit written comments to the Employment and Training Administration, Division of Older Worker Programs, 200 Constitution Avenue, NW., Room N4644, Washington. DC 20210, Attention: Mr. Erich W. (''Ric'') Larisch.

Minutes of all Town Hall Meetings and summaries of other documents will be available to the public on the SCSEP website http://www.wdsc.org/owprog. Any written comments on the minutes should be directed to Mr. Erich W. (''Ric'') Larisch, as shown above.

Individuals with disabilities who are planning to attend the Atlanta Town Hall Meeting should contact Ms. Theresa Lambert of the National Association of State Units on Aging at (202) 898–2578, (this is not a toll-free number) if special accommodations are needed.

Signed at Washington DC, this 17 day of January, 2001.

Raymond L. Bramucci,

Assistant Secretary of Labor.

[FR Doc. 01–1801 Filed 1–19–01; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10571, et al.]

Proposed Exemptions; Keystone Brokerage, Inc. (Keystone)

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 restrictions 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 requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

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, NW., Washington, DC 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 the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 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, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Keystone Brokerage, Inc. (Keystone), et al. Located in Williamsport, PA

[Application No. D–10571]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).[1]

Section I. Covered Transactions

If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of 4975(c)(1)(A) through (D) of the Code shall not apply, effective October 3, 1997 through June 30, 2000, to the purchase or redemption of shares, by a self-directed individual retirement account (the IRA), of investment portfolios (the Portfolios) of certain mutual funds that were affiliated with Keystone (the Affiliated Funds) or in other mutual funds that were unaffiliated with Keystone (the Third Party Funds),[2] in connection with the IRA's participation in the KeyPremier Nautilus Series Program, or its successor, the Nautilus Series Program, (together, the Investment Advisory Program).

In addition, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply, effective October 3, 1997 through June 30, 2000, to (1) the provision, by Keystone, of asset allocation and related services to an independent fiduciary of an IRA (the Independent Fiduciary), which resulted in the selection of Portfolios in the Investment Advisory Program by the Independent Fiduciary for the investment of IRA assets; and (2) the receipt of fees by Martindale Andres & Co., Inc. (Martindale) and Governor Group Advisors, Inc. (GGA), affiliates of Keystone, in connection with provision of investment advisory or sub-advisory services to the Fund Portfolios.

This proposed exemption is subject to the conditions set forth below in Section II.

[1] This proposed exemption applies to IRAs described in section 408(a) of the Code. Pursuant to 29 CFR 2510.3–2(d), the IRAs are not ''employee benefit plans'' covered under Title I of the Act. However, the IRAs are subject to jurisdiction pursuant to section 4975 of the Code.

[2] The Affiliated Funds and the Third Party Funds are collectively referred to herein as the Funds.

Section II. General Conditions

(a) The participation by an IRA in the Investment Advisory Program was approved by an Independent Fiduciary.

(b) As to each IRA, the total fees that were paid to Keystone and its affiliates constituted no more than reasonable compensation for the services provided.

(c) With the exception of distribution-related fees paid to Keystone pursuant to Rule 12b–1 (the Rule 12b–1 fees) of the Investment Company Act of 1940 (the Investment Company Act) which were offset, no IRA paid a fee or commission by reason of the acquisition or redemption of the shares of the Funds.

(d) The terms of each purchase or redemption of shares in the Funds remained at least as favorable to an investing IRA as those obtainable in an arm's length transaction with an unrelated party.

(e) Keystone provided written documentation to each IRA's Independent Fiduciary of its recommendations or evaluations regarding the Fund Portfolios as well as the design and parameters with respect to an asset allocation model (the Asset Allocation Model), based upon objective criteria that were uniformly applied.

(f) Any recommendation or evaluation made by Keystone to an Independent Fiduciary was implemented only at the express direction of such Independent Fiduciary.

(g) The quarterly fee paid by an IRA to Keystone and its affiliates for asset allocation and related services rendered to such IRA under the Investment Advisory Program (the Outside Fee) was offset by—

(1) All gross investment management fees (the Advisory Fees) that were paid by the Affiliated Funds to Keystone, including any sub-advisory fees that were paid by the Affiliated Funds to third party sub-advisers;

(2) All administrative fees (the Administrative Fees) that were paid to GGA and BISYS Fund Services Limited Partnership (BISYS), an unrelated party; and

(3) All Rule 12b–1 Fees that were paid by the Third Party Funds to Keystone or its current and former affiliates with respect to an Investment Advisory Account (the Account), such that the sum of the offset and the net Outside Fee always equaled the aggregate Outside Fee, thereby making the selection of Affiliated Funds or Third Party Funds revenue-neutral.

(h) With respect to its participation in the Investment Advisory Program, prior to purchasing shares in the Portfolios of the Affiliated Funds and the Third Party Funds—

(1) Each Independent Fiduciary received the following written or oral disclosures from Keystone:

(A) A brochure describing the Investment Advisory Program; an Investment Advisory Program Account Agreement (the Account Agreement); a description of the Asset Allocation Models; and a reference guide/disclosure statement providing details about the Investment Advisory Program, the fees charged thereunder, the procedures for establishing, making additions to and withdrawing from the Accounts, and other related information;

(B) A risk tolerance and goal analysis questionnaire (the Questionnaire) or a written report of responses given by the Independent Fiduciary in a personal interview (the Interview) with a Keystone representative (the Interview Report);

(C) Copies of applicable prospectuses (the Prospectuses) for the Fund Portfolios discussing the investment objectives of the Portfolios; the policies employed to achieve the objectives of the Portfolios; the corporate affiliation existing between Keystone and its affiliates; the compensation paid to such entities; disclosures relating to rebalancing and reallocating Asset Allocation Models; and information explaining the risks attendant to investing in Portfolios for the Affiliated Funds and the Third Party Funds;

(D) Upon written or oral request to Keystone, a Statement of Additional Information supplementing the applicable Prospectus, which described the types of securities and other instruments in which the Portfolios could invest and the investment policies and strategies that the Portfolios could utilize, including a description of the risks;

(E) A copy of the Account Agreement between the IRA and Keystone relating to the IRA's participation in the Investment Advisory Program;

(F) A written recommendation of a specific Asset Allocation Model, together with a copy of the Questionnaire and response or the Interview Report;

(G) Upon written request to Keystone, a copy of any investment advisory agreement or sub-advisory agreement between Keystone and the Affiliated Funds; and

(H) Written disclosures of Keystone's affiliation or non-affiliation with the parties who act as sponsors, distributors, administrators, investment advisers and sub-advisers, custodians and transfer agents of the Portfolios.

(2) If accepted as an investor in the Investment Advisory Program, the Independent Fiduciary was required to acknowledge in writing to Keystone prior to purchasing shares of the Fund, that such Independent Fiduciary had received copies of the documents described in paragraph (h)(1) of this Section II and represent to Keystone that such individual was—

(A) Independent of Keystone and its affiliates;

(B) Knowledgeable with respect to the IRA in administrative matters and funding matters related thereto; and

(C) Able to make an informed decision concerning participation in the Investment Advisory Program.

(i) Subsequent to its participation in the Investment Advisory Program, each Independent Fiduciary received the following written or oral disclosures from Keystone with respect to ongoing participation:

(1) Written confirmations of each purchase or redemption transaction involving shares of an Affiliated Fund or a Third Party Fund Portfolio (including transactions resulting from the realignment of assets caused by a change in the Asset Allocation Model's investment mix and from periodic rebalancing of Account assets);

(2) Telephone quotations of such Independent Fiduciary's IRA Account balance;

(3) A periodic, but not less frequently than quarterly, Statement of Account specifying the net asset value of the IRA's assets in such Account, a summary of purchase, sale and exchange activity and dividends received or reinvested, a summary of cumulative realized gains and/or losses, and a statement of fees paid to Keystone and its affiliates;

(4) Semiannual and annual reports that included financial statements for the Portfolios;

(5) A quarterly report pertaining to the applicable Asset Allocation Model describing the Asset Allocation Model's performance during the preceding quarter; market conditions and economic outlook; and, if applicable, prospective changes in Portfolio allocations for the Asset Allocation Model and the reasons therefor;

(6) At least annually, a written or oral inquiry from Keystone to ascertain whether the information provided on the Questionnaire or in the Interview Report was still accurate or required updating; and

(7) At least annually during the first calendar quarter of each year after March 24, 1999, or at other times specified in Section II(l), a termination form (the Termination Form), meeting the requirements of Section II(k) and (l) below.

(j) If authorized in writing by the Independent Fiduciary, the IRA was automatically rebalanced on a quarterly basis by Keystone (using the net asset values of the affected Funds as of the close of business on a pre-established date) to the Asset Allocation Model previously prescribed by the Independent Fiduciary, if one or more Fund allocations deviated from the Asset Allocation Model prescribed by the Independent Fiduciary because—

(1) At least one transaction required to rebalance the IRA among the Funds involved a purchase or redemption of securities valued at $250 or more; and

(2) The net asset value of the Fund affected was more than 5 percent of the IRA's investment in such Fund.

(k) Keystone was authorized to provide written notice to the Independent Fiduciary, at least 30 days prior to the implementation of any of the following changes:

(1) A change in the asset mix outside the current Asset Allocation Model;

(2) The division of a class of assets (the Asset Class);

(3) The replacement of a Third Party Fund with an Affiliated Fund, or an Affiliated Fund with a Third Party Fund; and

(4) An increase in the Outside Fee.

(l) The written notice described above in Section II(k) was required to—

(1) State that the Independent Fiduciary could terminate the IRA's participation in the Investment Advisory Program at will and without penalty, upon receipt by Keystone of written notice from the Independent Fiduciary; and

(2) Explain that any of the proposed changes noted in paragraphs (k)(1)–(4) of Section II would go into effect if the Independent Fiduciary did not elect to withdraw by the effective date.

(3) For changes occurring after March 24, 1999, the notice was to be accompanied by a Termination Form containing instructions identical to those set forth above in paragraphs (l)(1)–(2) of this Section II.

(m) Keystone was not authorized to replace an Affiliated Fund with a Third Party Fund Portfolio or vice versa, nor was Keystone authorized to make an additional Third Party Fund Portfolio available for investment under the Investment Advisory Program.

(n) Keystone will maintain, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this Section II to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Keystone and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than Keystone, shall be subject to the taxes imposed by section 4975(a) and 4975(b) of the Code if the records are not maintained or are not available for examination as required by paragraph (o) of this Section II below.

(o)(1) Except as provided in section (o)(2) of this paragraph, the records referred to in paragraph (o) of this Section II are unconditionally available at their customary location during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any Independent Fiduciary of a participating IRA or any duly authorized representative of such Independent Fiduciary; and

(C) Any participant or beneficiary of any participating IRA or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in paragraphs (o)(1)(B) and (o)(1)(C) of this paragraph (o) are authorized to examine the trade secrets of Keystone or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term ''Keystone'' means Keystone Brokerage, Inc. and any affiliate of Keystone, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Keystone includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Keystone; (For purposes of this subparagraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any individual who is an officer, director or partner in Keystone or a person described in subparagraph (b)(1); and

(3) Any corporation or partnership of which Keystone or an affiliate or a person described in subparagraphs (b)(1) or (b)(2) of this Section III, is a 10 percent or more partner or owner.

(c) The term ''officer'' means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer performing a policy-making function for the entity.

(d) The term ''IRA'' includes a self-directed individual retirement account which is described in section 408(a) of the Code and which is not an ''employee benefit plan'' covered under Title I of the Act. The term ''IRA'' does not include any IRAs that were sponsored or maintained by Keystone or its affiliates for their own employees nor does it include any IRAs that were held by employees of Keystone or its affiliates in their individual capacities.

(e) The term ''Independent Fiduciary'' means an individual who was covered under a self-directed IRA which invested in shares of the Funds.

(f) The term ''Asset Class'' means an asset class under a classification system used by Morningstar, Inc. (Morningstar) or Lipper, Inc. (Lipper). For purposes of this exemption, two Funds were not in the same Asset Class if they were classified differently under either the Morningstar or Lipper classification systems. Thus, for example, if two Funds were treated in separate Asset Classes under the Morningstar system, they would be treated as being in separate Asset Classes even if the Funds were in the same Asset Class (or were not classified at all) under the Lipper system.

(g) The term ''Affiliated Fund'' means a portfolio of an investment company registered under the Investment Company Act for which Keystone or an affiliate acted as the investment adviser and may have also acted as the sub-adviser, co-administrator or custodian.

(h) The term ''Third Party Fund'' means a portfolio of an investment company that is registered under the Investment Company Act for which neither Keystone nor any affiliate acted as an investment adviser, sub-adviser, co-administrator or custodian.

(i) The ''Advisory Fees'' refer to the investment advisory fees that were paid by the Affiliated Funds to Keystone and its affiliates.

(j) The ''Administrative Fees'' refer to the co-administration fees that were paid by the Affiliated Funds to GGA and BISYS.

(k) The ''Rule 12b–1 Fees'' were paid to Keystone and its affiliates by the Third Party Funds in connection with certain distribution-related services (*e.g.*, advertising) that were made pursuant to a written plan of distribution.

EFFECTIVE DATE:

If granted, this proposed exemption will be effective from October 3, 1997 until June 30, 2000.

Summary of Facts and Representations

Description of the Parties

1. The parties to the transactions are described as follows:

(a) *Keystone Financial, Inc. (KFI)* is a bank and financial services holding company headquartered in Harrisburg, Pennsylvania. KFI provides a full range of banking and non-banking services to persons and entities in Pennsylvania, Maryland, West Virginia, Virginia, New York, Ohio and Delaware.

(b) *Keystone* is a second-tier subsidiary of KFI. Keystone provided services to the IRAs under the Investment Advisory Program described herein and served as a broker-dealer for trades under such Program.

(c) *Key Trust Company (KeyTrust)* of Horsham, Pennsylvania, is a subsidiary of KFI. KeyTrust served as custodian for those IRAs utilizing the Investment Advisory Program.

(d) *Martindale* of West Conshocken, Pennsylvania, is a subsidiary of KFI. Martindale served as the sub-adviser to the Affiliated Funds and prior to February 1, 1999, it served as the investment adviser to such Funds.

(e) *BISYS* of Columbus, Ohio, is a registered broker-dealer. As noted above, BISYS is not affiliated with Keystone, KFI, KeyTrust or Martindale. BISYS, through its affiliated clearing broker, Corelink Financial, Inc. (Corelink), acted as the clearing broker with respect to purchases and sales of Fund shares by the IRAs participating in the Investment Advisory Program. In addition, BISYS performed various administrative, accounting, and recordkeeping functions on behalf of Keystone. In this capacity, BISYS, through Corelink, held Fund shares on behalf of IRAs participating in the Investment Advisory Program and served as sub-custodian for IRAs utilizing the Program under a custodial services agreement with KeyTrust. Further, BISYS served as distributor, Fund accountant, transfer agent, and administrator or co-administrator for the Affiliated Funds.[3]

(f) *GGA,* a wholly-owned subsidiary of KFI, served as the investment adviser to the Affiliated Funds. In addition, GGA and BISYS served as co-administrators for the Affiliated Funds.

(g) *The IRAs* participating in the Investment Advisory Program included self-directed IRAs which are described in section 408(a) of the Code and which are not ''employee benefit plans'' covered under Title I of the Act. All IRA holders were outside clients of Keystone and its affiliates rather than employees of these entities. The IRAs did not include any IRAs sponsored by Keystone and/or its affiliates nor did they include IRAs held by employees of Keystone and/or its affiliates in their individual capacities.

Description of the Funds

2. The Affiliated Funds participating in the Investment Advisory Program consisted of a group of Fund Portfolios referred to as ''Governor Funds.'' Originally, the Affiliated Funds included the following Fund Portfolios of ''The Sessions Group'': the KeyPremier Prime Money Market Fund, the KeyPremier Intermediate Term Income Fund, the KeyPremier Established Growth Fund and the KeyPremier Aggressive Growth Fund.

The Sessions Group was an open-end management investment company registered under the Investment Company Act of 1940 (the Investment Company Act), for which Martindale served as the investment adviser. The Sessions Group was also an Ohio business trust that offered shares in 19 separate series. Each series of shares constituted a different Portfolio, only 4 of which were offered to investors under the Investment Advisory Program. The Sessions Group was designed to provide a convenient means of investing in separate Portfolios that were professionally managed by Martindale. Shares in The Sessions Group were offered to trust customers of KeyTrust, other banking subsidiaries of Keystone, and the general public. Although some Portfolios required investors to pay load charges, all Fund Portfolios were offered to IRA investors at no load.

3. Pursuant to an advisory agreement, Martindale served as the investment adviser to the Affiliated Funds comprising The Sessions Group from October 3, 1997 until February 1, 1999. Martindale's investment advisory agreement had been approved by the Board of Trustees (the Trustees) for an initial period of up to two years and was required to be re-approved thereafter by the Trustees or the Portfolios' shareholders, at least annually.

Subject to the supervision and direction of the Trustees, Martindale managed the investment and reinvestment of the assets of each Portfolio of The Sessions Group and provided investment guidance and policy direction in connection with the objectives and policies of each such Portfolio. Although each Affiliated Fund Portfolio paid Martindale an Advisory Fee for services rendered, Martindale agreed to waive a portion of such fee. The waiver continued throughout Martindale's tenure as investment adviser.

The Advisory Fees were computed daily and paid monthly at an annual rate based on a percentage of the value of the Portfolio's average daily net assets. Depending upon the Affiliated Fund Portfolio managed, the annualized Advisory Fees that were payable to Martindale are shown in the following table. The left-hand column of the table reflects the Advisory Fees that would have been paid to Martindale had the waiver been lifted while the right-hand column of the table shows the Advisory Fees that were actually paid to Martindale during the waiver.

Portfolio	Before waiver (percent)	After waiver (percent)
KeyPremier Prime Money Market Fund	0.40	0.20
KeyPremier Intermediate Term Income Fund	0.60	0.30
KeyPremier Established Growth Fund	0.75	0.40
KeyPremier Aggressive Growth Fund	1.00	0.50

4. Effective February 1, 1999, The Sessions Group was reorganized into ''Governor Funds,'' a Delaware business trust which then comprised the Affiliated Funds. Like The Sessions Group, Governor Funds constituted an open-end management investment company registered under the Investment Company Act where shares were offered to IRA investors, at no load. These Affiliated Funds were advised by GGA and consisted of the following 12 Portfolios: the Prime Money Market Fund, the U.S. Treasury Obligations Money Market Fund, the Established Growth Fund, the Aggressive Growth Fund, the Emerging Growth Fund, the International Equity Fund, the Intermediate Term Income Fund, the Limited Duration Government Securities Fund, the Pennsylvania Municipal Bond Fund, the Lifestyle Conservative Growth Fund, the Lifestyle Moderate Growth Fund, and the Lifestyle Growth Fund.

Under the Investment Company Act, Governor Funds, as the successor Affiliated Funds, continued the business of The Sessions Group. In this regard, amounts formerly invested in

[3] As discussed herein, Funds shares were sold to the IRAs at no load. Thus, the participating IRAs did not compensate Corelink, or for that matter, BISYS. Keystone represents that it does not know whether BISYS compensated Corelink for services rendered nor is it certain why BISYS executed trades through Corelink rather than performing this service directly.

The Sessions Group were reinvested in the corresponding Affiliated Fund Portfolios of Governor Funds.

5. As investment adviser to the Affiliated Funds, GGA also waived a portion of its Advisory Fees. The waiver remained in effect for the duration of the Investment Advisory Program. The following table shows the Advisory Fees that were payable to GGA. Such fees are expressed as a percentage of each Portfolio's net assets. The left-hand column of the table shows the Advisory Fees that would have been paid to GGA had the waiver been lifted while the right-hand column of the table shows the Advisory Fees that were actually paid to GGA during the waiver.

Portfolio	Before waiver (percent)	After waiver (percent)
Prime Money Market Fund	0.40	0.20
U.S. Treasury Obligations Money Market Fund	0.40	0.20
Established Growth Fund	0.75	0.60
Aggressive Growth Fund	1.00	0.70
Emerging Growth Fund	1.25	0.50
International Equity Fund	1.25	0.40
Intermediate Term Income Fund	0.60	0.30
Limited Duration Government Securities Fund	0.60	0.30
Pennsylvania Municipal Bond Fund	0.60	0.30
Lifestyle Conservative Growth Fund	0.25	0.15
Lifestyle Moderate Growth Fund	0.25	0.15
Lifestyle Growth Fund	0.25	0.15

Martindale served as sub-adviser to each of the Affiliated Funds, except the International Equity Fund. For sub-advisory services rendered, Martindale was paid an annualized sub-advisory fee by the Affiliated Funds, as a percentage of each Portfolio's net assets. Martindale's sub-advisory fees, which were paid out of GGA's Advisory Fees, are presented as follows:

Portfolio	Sub-advisory fee (percent)
Prime Money Market Fund	0.10
U.S. Treasury Obligations Money Market Fund	0.20
Established Growth Fund	0.40
Aggressive Growth Fund	0.50
Emerging Growth Fund	0.50
Intermediate Term Income Fund	0.30
Limited Duration Government Securities Fund	0.30
Pennsylvania Municipal Bond Fund	0.30
Lifestyle Conservative Growth Fund	0.05
Lifestyle Moderate Growth Fund	0.05
Lifestyle Growth Fund	0.05

In addition, GGA and BISYS served as co-administrators for the Affiliated Funds. The maximum annualized fee payable to each entity under their Management and Co-Administration Agreement was 0.15 percent of the average daily net assets of the Prime Money Market Fund, the Pennsylvania Municipal Bond Fund, the Established Growth Fund, the Intermediate Term Income Fund, the Aggressive Growth Fund, the U.S. Treasury Obligations Money Market Fund, the Limited Duration Government Securities Fund, the Emerging Growth Fund and the International Equity Fund. Because GGA and BISYS waived a portion of their Administrative Fees, the aggregate annualized fee paid to each co-administrator was reduced to 0.115 percent.

6. Overall responsibility for management and supervision of the Affiliated Funds was vested in five Trustees, three of whom were unrelated to Keystone and its affiliates. The Trustees approved all significant agreements involving the Affiliated Funds and the persons and companies that furnished services to such Funds. A Trustee could be removed by either (a) a two-thirds vote of the Trustees or (b) by a vote of shareholders owning at least two-thirds of the outstanding shares of all series of the Affiliated Funds. If a Trustee was an officer or a director of Keystone, a sub-adviser, Martindale, GGA, or BISYS, it was precluded from receiving compensation from The Affiliated Funds.

Each Affiliated Fund Portfolio was required to bear its own expenses. These expenses included all fees and other costs not specifically waived and/or borne by the Affiliated Funds' service providers.

7. The Third Party Funds were open-end, diversified investment companies registered under the Investment Company Act whose sponsors, administrators, distributors, investment advisers, and sub-advisers were not affiliated with Keystone or its affiliates. The Third Party Funds were made available by Keystone to the IRAs, at no load, in the event the Affiliated Funds failed to offer a Portfolio in a particular Asset Class.

IRA investors participating in the Investment Advisory Program were offered two Third Party Funds. These Funds were The Putnam Fund for Growth and Income and The T. Rowe Price International Stock Fund.

For distribution-related services that were rendered to the Third Party Funds, Keystone and its affiliates received Rule 12b–1 Fees that were paid by the respective Third Party Funds to their distributors. The Rule 12b–1 Fees were in the form of trailing commissions and did not exceed 0.25 percent of the assets invested in each Third Party Fund Portfolio.

Description of the Investment Advisory Program/Request for Exemptive Relief

8. The Investment Advisory Program was an asset allocation program that was offered by Keystone to IRA participants between October 3, 1997 and June 30, 2000. Formerly known as the ''KeyPremier Nautilus Series Program'' but later referred to as the ''Nautilus Program,'' the Investment Advisory Program was designed to provide small- and medium-sized investors with access to the type of investment advice typically available only to larger investors. The Investment Advisory Program offered IRA investors the following features: (a) A unified Account statement covering all investments; (b) automatic allocation of assets and contributions; (c) a single asset allocation fee; and (d) no sales charges on purchases, redemptions, or transfers between investments. The minimum investment required for an Independent Fiduciary to establish an Account under the Investment Advisory Program was $25,000.

Effective June 30, 2000, Keystone discontinued the Investment Advisory Program. Currently, it is providing asset allocation services under a separate program which does not involve investment in any Affiliated Funds or Third Party Funds from which it will receive fees. However, for the interim period between October 3, 1997 and June 30, 2000, Keystone and the other parties to the transactions have requested an administrative exemption from the Department in order to provide retroactive relief for any prohibited transactions that may have arisen during the operation of the Investment Advisory Program.

If granted, the proposed exemption would be effective from October 3, 1997 until June 30, 2000. The proposed exemption would permit the purchase

or redemption, by an IRA, of shares of certain Affiliated Fund and the Third Party Fund Portfolios, in connection with the IRA's participation in the Investment Advisory Program. In addition, the proposed exemption would permit Keystone's provision of asset allocation and related services to an IRA's Independent Fiduciary, which resulted in such Independent Fiduciary's selection of Portfolios in the Investment Advisory Program for the investment of IRA assets, and the receipt of fees by Keystone and/or its affiliates.

Keystone believes that because it and Key Trust would be considered disqualified persons with respect to the IRAs participating in the Investment Advisory Program, the decision by an Independent Fiduciary to participate in such Program would be statutorily exempt under section 4975(d)(2) of the Code. However, Keystone notes that there is uncertainty regarding the availability of section 4975(d)(2) of the Code where the asset allocation recommendations provided to an Independent Fiduciary of an IRA under the Investment Advisory Program may cause such entities to be considered fiduciaries with respect to the IRAs. Therefore, Keystone has requested retroactive exemptive relief from the Department for the transactions described above.

Operation of the Investment Advisory Program

9. Before opening an Account in the Investment Advisory Program, Keystone provided each Independent Fiduciary with the following information: (a) A brochure describing the Investment Advisory Program; (b) an Account Agreement; (c) a description of the available Asset Allocation Models; and (d) a reference guide/disclosure document providing detailed information outlining the mechanics of the Investment Advisory Program, the fees charged under such Program, the procedures for establishing Accounts and making withdrawals and additions, and other related information. If an Independent Fiduciary wished to open an Account with Keystone, such Independent Fiduciary would complete an Account Agreement and answer a series of questions regarding investment objectives and risk tolerance. Answers to these questions were communicated to an investment adviser representative for Keystone (the Keystone Representative) either through a personal Interview, or by obtaining and completing a Questionnaire (which was in paper or electronic form).

Once completed, the Questionnaire was presented to the Keystone Representative. If answers were given through an Interview, the Keystone Representative would prepare a written report of the answers (*i.e.*, the Interview Report). Then, a copy of the Interview Report would be given to the Independent Fiduciary. The responses provided by the Independent Fiduciary during the Interview or on the Questionnaire were scored by the Keystone Representative to determine which of several Asset Allocation Models were the most appropriate, given the financial goals, objectives and risk tolerances previously identified by the Independent Fiduciary in the Interview or Questionnaire.

10. The Asset Allocation Models were designed to satisfy a variety of risk tolerances, investment horizons, and tax planning concerns. There were six Asset Allocation Models available to the IRAs under the Investment Advisory Program. Each Asset Allocation Model consisted of an asset distribution among the Asset Classes.

The Asset Allocation Models were developed and maintained by an investment committee (the Allocation Committee) consisting of investment professionals of the Asset Management Division of KFI.

In constructing the Asset Allocation Models, the Allocation Committee utilized Encorr Software which had been developed by Ibbotson Associates, an unrelated party, to determine the optimal allocations for various risk/return tolerances among five general Asset Classes based on historical risk and return. The Allocation Committee then divided one of these Asset Classes (*e.g.*, Large Cap) into two asset sub-classes (*e.g.*, Large Cap and Large Cap Growth) on the basis of historical risk and return data as shown below in Table I.

TABLE I.—SAMPLE ASSET ALLOCATION MODEL

Asset class	Fund type	Portfolio	Percentage
Money Market	Affiliated	Prime Money Market Fund	6
Fixed Income	Affiliated	Intermediate Term Income Fund	76
Large Cap Growth	Affiliated	Established Growth Fund	8
Large Cap Value	Third Party	Putnam Fund for Growth and Income	10
Total			100

11. The Allocation Committee could make adjustments to the Asset Allocation Models to take into consideration the investment goals and risk tolerances represented by such Models, and to account for changes in the economy and market conditions. These adjustments could include changing the investment mix of the Asset Allocation Models by modifying the proportion of assets invested in each Asset Class. In no event could Keystone change the asset mix of an Asset Allocation Model without first notifying the Independent Fiduciary in writing of the proposed change and giving such Independent Fiduciary at least 30 days within which to elect not to have the change made. However, if the Independent Fiduciary did not elect otherwise, Keystone was authorized to make the change.

12. The Retail Investment Product Committee of KFI (the Review Committee) was responsible for selecting the Portfolios used to satisfy the asset allocations specified by the Allocation Committee for each Asset Allocation Model. The Review Committee was composed of KFI officers with substantial portfolio management, investment and regulatory compliance experience. These officers also served on the Allocation Committee.

The Review Committee selected Portfolios of the Affiliated Funds for investment to the extent that the Affiliated Funds offered a Portfolio in a particular Asset Class. If no Affiliated Fund offered the requisite Portfolio, the Review Committee selected Portfolios of the Third Party Funds for investment. Any changes in the Portfolios on the part of Keystone in order to satisfy investment in a particular Asset Class were only made after Keystone had provided written notice to all affected

Independent Fiduciaries. In addition, these changes would only be implemented if the Independent Fiduciaries did not elect otherwise within 30 days of such notification.

13. Based on the results generated from the Interview or Questionnaire, a Keystone Representative recommended to the Independent Fiduciary an Asset Allocation Model, together with the corresponding initial investment mix of Portfolios that comprise the Asset Allocation Model. The asset allocation services provided by the Keystone Representative were of an advisory nature and were not binding upon the Independent Fiduciary. No action was taken on the initial recommendation unless and until the Independent Fiduciary accepted and approved, in writing, the Asset Allocation Model and corresponding investment mix recommended by the Keystone Representative. The Independent Fiduciary could add or withdraw IRA assets to or from the Account at any time (subject to any applicable minimum redemption and purchase requirement). Further, the Independent Fiduciary could also choose a different Asset Allocation Model by submitting a new Questionnaire or by means of a new Interview if the investment needs and goals of the Independent Fiduciary had changed.

Rebalancing of IRA Accounts

14. Keystone invested the Account in the Affiliated Funds and/or Third Party Funds that the Allocation Committee had previously chosen to satisfy the allocation called for by the Asset Allocation Model.[4] However, it was anticipated that over time, disproportionate earnings as between asset types would cause an Account's investment mix to drift out of balance with the Asset Allocation Model originally chosen by the Independent Fiduciary. For example, if the chosen Asset Allocation Model called for 50 percent of an Account's assets to be invested in the Fixed Income Class through the Intermediate Term Income Fund, and 50 percent in cash through the Prime Money Market Fund, and if the Intermediate Term Income Fund performed better than the Money Market Fund during a particular period of time, more than 50 percent of the Account's assets would be invested in the Fixed Income Class by the end of the period.

To correct this imbalance, Keystone would periodically move assets among the chosen investments by buying and selling shares of selected Portfolios from appropriate distributors on the second to the last business day of each calendar quarter. For purposes of rebalancing, Keystone used the net asset values of the affected Funds as of the close of business for the preceding trading day.[5] Keystone had no discretion as to the timing or amount of the rebalancing.

In the case of the foregoing example, Keystone would sell shares of the Intermediate Term Income Fund and invest the proceeds in the Prime Money Market Fund so that the Account would again be 50 percent invested in Fixed Income Securities and 50 percent in cash. Rebalancing would be conducted on a quarterly basis and confined to bringing the Account into balance with the Asset Allocation Model chosen by the Independent Fiduciary. Moreover, rebalancing would only occur if the percentage of assets invested in a particular Portfolio varied from the Asset Allocation Model by more than a predetermined threshold set forth in the Account Agreement.[6] As stated above, Keystone used the net asset values of the Affiliated Funds as of the close of business on the preceding trading day.

Reallocation of IRA Accounts

15. Keystone represents that from time to time, it was authorized to make changes to the asset mix of the Asset Allocation Models, as well as to the mix and identity of Affiliated Fund and/or Third Party Fund Portfolios that satisfied the Asset Allocation Models. However, Keystone states that it never utilized the reallocation method during the time period the Investment Advisory Program was in effect. Had Keystone decided to implement the reallocation mechanism, it would have been required to inform each affected Independent Fiduciary in advance and in writing of the proposed change. In addition, Keystone would have been required to provide each Independent Fiduciary with the opportunity to elect not to permit such change.[7] If the Independent Fiduciary took no action, Keystone would have been authorized to realign each Account on a quarterly basis to make the Account's investment mix match the new investment mix of the Asset Allocation Model selected by the Independent Fiduciary.

Disclosures

16. Aside from the Questionnaire and Interview Report described above, in order for an IRA to participate in the Investment Advisory Program, Keystone provided an Independent Fiduciary with the following materials and oral disclosures:

- A brochure describing the Investment Advisory Program; an Account Agreement; a description of the Asset Allocation Models; and a reference guide/disclosure statement providing details about the Investment Advisory Program, the fees charged thereunder, the procedures for establishing, making additions to and withdrawing from Accounts, and other related information.
- Copies of applicable Prospectuses for the Portfolios discussing the investment objectives of the Portfolios, the policies employed to achieve these objectives, and the corporate affiliation existing between Keystone and its affiliates, the compensation paid to such entities, disclosures relating to rebalancing and reallocating Asset Allocation Models (even though the reallocation service was never implemented), and information explaining the risks attendant to investing in the Portfolios.
- Upon written or oral request to Keystone, a Statement of Additional Information supplementing the Prospectuses, which described the type of securities and other instruments in which the Portfolios may invest and the investment policies and strategies that the Portfolios may utilize, including a description of the risks.
- A copy of the Account Agreement between the IRA and Keystone relating to the IRA's participation in the Investment Advisory Program.
- A written recommendation of a specific Asset Allocation Model, together with a copy of the Questionnaire and response, or the Interview Report.

If accepted as an investor in the Investment Advisory Program, the Independent Fiduciary was required to

[4] The Independent Fiduciary could specifically instruct Keystone not to invest in a specific Portfolio, in which case any IRA assets invested in that Portfolio would be reinvested within five business days in another Portfolio selected by Keystone and specifically approved by the Independent Fiduciary. A fee was charged for each such special instruction.

[5] Neither Keystone nor any of its affiliates received a commission from such purchases and sales.

[6] In other words, an Account would be rebalanced if the transactions requiring rebalancing had a ''material effect'' on the allocation. To have a material effect on an allocation of an Account, at least one transaction required to rebalance the Account had to be greater than $250 and at least one transaction had to change the value of the Fund Portfolio by more than 5 percent (*i.e.*, the percentage of an IRA's assets invested in a Portfolio compared to the percentage called for in the Asset Allocation Model selected for the IRA). However, Keystone reserved the right to rebalance an Account even if the required minimums were not satisfied.

For example, if under the Asset Allocation Model, 35 percent of an IRA's assets were invested in the Established Growth Fund, then rebalancing would occur if the percentage actually invested in the Established Growth Fund increased above 40 percent or decreased below 30 percent (but only if the dollar amount of the rebalancing transaction would exceed $250).

[7] For reallocations occurring after March 24, 2000, Keystone would have been required to include a Termination Form with the notice. See Representation 21. However, as stated above, Keystone never implemented the reallocation mechanism even though this change was communicated to IRA investors in the Termination Form.

acknowledge in writing to Keystone, prior to investing through such Program, that such Independent Fiduciary had received copies of the aforementioned documents. In addition, the Independent Fiduciary was required to represent to Keystone that such individual was (a) independent of Keystone and its affiliates; (b) knowledgeable with respect to the IRA in administrative matters and funding matters related thereto; and (c) able to make an informed decision concerning participation in the Investment Advisory Program.

17. In addition, on an ongoing basis, Keystone was required to provide each Independent Fiduciary with the following oral or written disclosures:

- Written confirmations of each purchase and redemption of shares of a Portfolio (including transactions resulting from the realignment of assets caused by a change in the Asset Allocation Model's investment mix and from periodic rebalancing of Account assets).
- Telephone quotations of Account balances.
- A periodic, but not less frequently than quarterly, Statement of Account specifying the net asset value of the IRA's assets invested in such Account, a summary of purchase, sale and exchange activity and dividends received or reinvested, a summary of cumulative realized gains or losses, and a statement of the fees paid to Keystone and its affiliates.
- Semiannual and annual reports that included financial statements for the Portfolios.
- A quarterly report pertaining to the applicable Asset Allocation Model describing such Asset Allocation Model's performance during the preceding quarter, market conditions and economic outlook and, if applicable, prospective changes in Portfolio allocations for the Asset Allocation Model, and the reasons therefor.
- At least annually, a written or oral inquiry from Keystone to ascertain whether the information provided in the Questionnaire or Interview Report was still accurate, and to determine whether such information should be updated.
- At least annually, a Termination Form.

Fee Structure

18. As to each investing IRA, the total fees paid to Keystone and its affiliates constituted not more than reasonable compensation for the services provided within the meaning of section 4975(d)(2) of the Code. Keystone charged each participating IRA an annual investment fee (the Outside Fee) at rates set forth in the Account Agreement. For example, if the average daily value of the Account—

- Exceeded $149,999, the Outside Fee charged was 1.30 percent; or
- Was less than $150,000, the Outside Fee charged was 1.55 percent.

The Outside Fee was computed quarterly on the average daily value of the assets in an IRA's Account during the quarter and was deducted directly from the Account (or paid directly by the Independent Fiduciary), also on a quarterly basis.

Although Keystone was authorized to increase the Outside Fee periodically, it never implemented this change. Assuming the Outside Fee had been increased, Keystone would have been required to notify the Independent Fiduciaries of all IRAs participating in the Investment Advisory Program, in writing, at least 30 days prior to the effective date of a such fee increase. The Independent Fiduciary would have been permitted to withdraw from the Investment Advisory Program at will and without penalty, and the fee increase would only have gone into effect if the Independent Fiduciary did not elect to withdraw by the effective date.

As stated above, each investing IRA did not pay any sales loads on the purchase of Portfolio shares through the Investment Advisory Program. The Accounts were invested only in Portfolios which charged no front- end or back-end sales charges or for which the sales charges had been waived.

As discussed in Representation 3, Martindale received Advisory Fees from the Affiliated Funds. These annualized fees were paid at the Fund Portfolio-level and were based on a percentage of the assets held by such Portfolio, of between 0.20 percent and 0.50 percent. Similarly, GGA received annualized Advisory Fees of between 0.15 percent and 0.70 percent and Martindale received sub-advisory fees ranging from 0.05 percent to 0.50 percent.

In addition to the Advisory Fees, GGA and BISYS received Administrative Fees from the Affiliated Funds of 0.115 percent.

Further, Keystone and its affiliates received Rule 12b–1 Fees from certain Third Party Fund distributors with respect to IRA assets invested in the Third Party Funds through the Investment Advisory Program. The Rule 12b–1 Fees were in the form of trailing commissions of up to 0.25 percent per annum of the net asset value of each Third Party Fund.

Besides the aforementioned fees, each Portfolio incurred certain expenses. These expenses included charges for legal and accounting services, printing costs, registration fees, regulatory compliance costs, costs associated with maintaining the Fund's legal existence, and shareholder communication costs.

19. Keystone represents that with respect to each Account, it offset, quarterly, against the Outside Fee it received, (a) all Advisory Fees (including sub-advisory fees that were paid to third party sub-advisers), (b) all Administrative Fees GGA and BISYS received from the Affiliated Funds, and (c) all Rule 12b–1 Fees that were paid to Keystone and its affiliates by the respective Third Party Funds. Thus, the sum of the offset and the net Outside Fee would always equal the aggregate Outside Fee and the selection of Affiliated Funds or Third Party Funds would always be revenue-neutral. Moreover, Keystone believed this method of offsetting of all Fund-level fees would eliminate any conflicts of interest resulting from the investment of an Account's assets in certain Fund Portfolios that generated higher overall fees for Keystone and its affiliates.

At the end of each quarter, Keystone calculated the percentage of gross revenues that it and its affiliates earned during the quarter in the form of Advisory Fees (from the Affiliated Funds) or Rule 12b–1 Fees (from the Third Party Funds). These figures were calculated as a percentage of the average daily net value of assets in each Portfolio. The weighted average of such revenues (the Offset Percentage) were then calculated for each Asset Allocation Model as shown below in TABLE II. This yielded the amount of the Advisory Fees and Rule 12b–1 Fees that were earned by Keystone and its affiliates. Such fees were expressed as a percentage of the average daily net value of Account assets. Because the Outside Fee was also calculated as a percentage of the average daily net value of Account assets, Keystone reduced the Outside Fee for the quarter for each IRA by subtracting from the Outside Fee, the Offset Percentage for the Asset Allocation Model in which the IRA's assets had been invested during the quarter. Only after the Offset Percentage had been subtracted would Keystone deduct the Outside Fee from the IRA's Account.

TABLE II.—EXAMPLE OF OUTSIDE FEE OFFSET BASED ON AN ACCOUNT WITH AN AVERAGE DAILY VALUE OF $150,000 OR MORE

[All percentages annualized]

Fund type	Asset class	Total revenues (percentage)		Percentage of assets allocated to fund		Weighted fee percentage
Affiliated Fund	Fixed Income	0.60	×	35.00	....	21.00
Affiliated Fund	Money Market	0.40	×	30.00	....	12.00
Third Party Fund	International Equity	0.20	×	35.00	....	7.00
Total			....	100	....	40.00
Outside Fee:			....	1.30	....	
Weighted Average of Keystone Revenues (40 ÷ 100):			....	0.40	....	
Net Account Fee (Annual) Would be Calculated Quarterly.			....	0.90	....	

20. Like the Affiliated Funds, the Third Party Funds also incurred expenses for shareholder services, custody, the costs of regulatory compliance, legal fees, and shareholder communication costs, as well as the management and service fees imposed by investment advisers and service providers unaffiliated with Keystone or its affiliates. As for both the Affiliated and the Third Party Funds, these Fund-level expenses were not offset against Keystone's Outside Fee.

Termination Form

21. An Independent Fiduciary had the ability to withdraw from the Investment Advisory Program at any time, provided such fiduciary gave proper notice to Keystone. In addition, Keystone was authorized to provide 30 days' advance written notice to the Independent Fiduciary if it wished to change the asset mix of an Account outside of an Asset Allocation Model, divide an Asset Class, replace a Third Party Fund with an Affiliated Fund or vice versa, or increase its Outside Fee. The written notice was required to (a) state that the Independent Fiduciary could terminate the IRA's participation in the Investment Advisory Program at will and without penalty, upon receipt by Keystone of written notice from the Independent Fiduciary; and (b) explain that any of the changes noted above would go into effect if the Independent Fiduciary did not elect to withdraw by the effective date.

However, under either circumstance, there was no formalized structure in place whereby Keystone could inform an Independent Fiduciary of his or her right to withdraw from the Investment Advisory Program on a more frequent basis or to document the Independent Fiduciary's withdrawal decision. Therefore, on March 24, 1999, Keystone began distributing the Termination Form to each Independent Fiduciary participating in the Investment Advisory Program. Although distribution of such form would be required thereafter, at least annually (*i.e.*, during the first calendar quarter of each year), it was considered mandatory in all cases where Keystone wished to make the changes noted above.

The Termination Form was to be accompanied by instructions on its use. The instructions, which contained information similar to the contents of Keystone's formerly-disseminated notice, provided that (a) the authorization was terminable at any time and without penalty, either by completing and returning the Termination Form or by sending other written notice to Keystone; and (b) no purchases and sales under the Account Agreement would be executed after the next business day following Keystone's receipt of the Termination Form or other written withdrawal notice. Assuming Keystone proposed to modify an asset mix or raise its Outside Fee, the Termination Form would also have stated that the change would only go into effect if the Independent Fiduciary did not elect to withdraw by the effective date.

Keystone represents that it never replaced an Affiliated Fund with a Third Party Fund Portfolio or vice versa, nor did it otherwise make an additional Third Party Fund Portfolio available for investment under the Investment Advisory Program, change an asset mix outside of an Asset Allocation Model or increase its Outside Fee. Therefore, there were no special circumstances to warrant an earlier distribution of such form. Moreover, because of the contemplated termination of the Investment Advisory Program on June 30, 2000, Keystone made no further annual distribution of the Termination Form to Independent Fiduciaries.

22. It is represented that the transactions satisfied the statutory criteria for an exemption under section 4975(c)(2) of the Code because:

(a) The investment of an IRA's assets under the Investment Advisory Program was made by a fiduciary that was independent of Keystone and its affiliates and such Independent Fiduciary maintained complete discretion with respect to the IRA's continued participation in the Investment Advisory Program.

(b) No IRA paid a fee or commission by reason of the acquisition or redemption of shares of Fund Portfolios.

(c) As to each IRA, the total fees that were paid to Keystone and its affiliates constituted no more than reasonable compensation for the services provided.

(d) Prior to investing under the Investment Advisory Program, each Independent Fiduciary received offering materials and disclosures from Keystone which set forth all material facts concerning the purpose, fee structure, rebate arrangement, operation, rebalancing, risks and participation in such Program.

(e) Keystone provided written documentation to an Independent Fiduciary of its recommendations based upon objective criteria that were uniformly applied.

(f) The quarterly Outside Fee that was paid by an IRA to Keystone for asset allocation and related services rendered to such IRA under the Investment Advisory Program was offset by—(1) all gross Advisory Fees received by Keystone and/or its affiliates from the Affiliated Funds, including sub-advisory fees that are paid to third party sub-advisers; (2) all Administrative Fees received by GGA and BISYS from the Affiliated Funds; and (3) all Rule 12b-1 Fees that were paid by the Third Party Funds to Keystone and/or its affiliates, such that the sum of the Outside Fee

and the Offset Fees equaled the total Outside Fee, and the selection of Affiliated or Third Party Fund Portfolios was revenue-neutral.

(g) Although Keystone had discretion to make unilateral Model Adjustments to an IRA's Asset Allocation Model, it was bound by the financial goals and risk tolerances that the Model represented and it was limited in the degree of change that it could make to an Asset Allocation Model's investment mix.

(h) In rebalancing an IRA investor's Account, neither Keystone nor its affiliates exercised discretionary management or control over the IRA.

(i) Although the Independent Fiduciary could withdraw from the Investment Advisory Program at any time, any authorizations made by such IRA investors with respect to increases in the Outside Fee, Model Adjustments that were outside of an Asset Allocation Model, the addition or substitution of a Fund, would be terminable at will and without penalty to the IRA, upon receipt by Keystone of a Termination Form from such IRA investor which would advise the Independent Fiduciary (1) of his or her right to withdraw from the Investment Advisory Program and (2) that absent affirmative approval, the change would be effective as of a given date.

(j) Each Independent Fiduciary received disclosures from Keystone regarding the participation of the IRA in the Investment Advisory Program.

(k) All dealings between an IRA, the Funds and Keystone remained on a basis which was at least as favorable to the IRA as such dealings are with other shareholders of the Funds holding the same classes of shares as the IRA.

Notice to Interested Persons

Keystone will provide notice of the proposed exemption to Independent Fiduciaries of IRAs formerly investing in the Investment Advisory Program within 30 days of the publication of the notice of pendency in the **Federal Register**. Such notice will be provided by first-class mail and will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Therefore, comments and requests for a hearing must be received by the Department no later than 60 days from the date of the publication of this notice of proposed exemption in the **Federal Register**.

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

Reagent Chemical & Research, Inc. Employees Profit Sharing Plan and Trust (the Plan) Located in Middlesex, New Jersey

[Application No. D–10793]

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 (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of a certain residential lot (the Property) by the Plan to Mr. Brian Skeuse and Mrs. Jan Skeuse (the Skeuses), parties in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) the sale is a one-time cash transaction;

(b) the Plan receives the greater of either: (i) $105,000; or (ii) the current fair market value for Property established at the time of the sale by an independent qualified appraiser; and

(c) the Plan pays no commissions or other expenses associated with the sale.

Summary of Facts and Representations

1. The Plan was adopted on December 12, 1962. The Plan is a defined contribution plan with approximately 309 participants. As of July 22, 1999, the Plan had approximately $30,438,854 in total assets. Reagent Chemical & Research, Inc. (RCR) is the sponsor of the Plan. RCR is a subchapter ''S'' corporation organized under the laws of State of Delaware. RCR is in the business of manufacture, distribution and sale of specialty chemicals. The Plan's current trustees are John T. Skeuse, brother of Brian Skeuse, and Stephen T. Finney, brother-in-law of Brian Skeuse.

2. On November 3, 1980, the Plan purchased approximately 34.58 acres of land (the Land) from Joe and Wenona Russo, unrelated third parties, for $225,000.[8] The Property is a 2.5 acre parcel of the Land. Therefore, the applicant represents that the cost of the Property to the Plan, based on the per acre price paid for the Land, was $16,304.35. The Property is adjacent to the Skeuses' personal family residence. It is represented that the decision to purchase the Property as a investment for the Plan was made by Robert Dallas and Thomas Skeuse, Sr., who were the Plan's trustees at the time of the transaction.[9]

The Property is held in the Plan's aggregate portfolio and has not been allocated to any participant's account in the Plan. At the time of the Plan's purchase in 1980, the Property represented less than 1% of the Plan's total assets. The applicant represents that as of November 27, 2000, the Property continued to represent less than 1% of the total value of the Plan's assets.

3. The applicant represents that the Property has not been used or leased by anyone, including the parties in interest described herein, since it was acquired by the Plan. Thus, the applicant states that the Property has not been an income-producing asset and has been held for possible appreciation.

The Plan has paid for taxes, insurance and maintenance on the Property since the acquisition (the Holding Costs). Specifically, the Plan has paid a total of approximately $34,870 in property taxes for the Property during this period. Further, the Plan has paid approximately $4,500 for the design and approval of a residential septic tank system for the Property. The applicant estimates that the insurance costs incurred by the Plan for the Property during the period from 1980 until 1999 were approximately $1,000. The applicant states that the Holding Costs for the Property have been approximately $40,370. Therefore, the total cost for the Property (*i.e,* the acquisition price of $16,304, plus the Holding Costs of approximately $40,370) was approximately $56,674 as of December 2000.

[8] The Plan sold approximately 10 acres of the Land in 1987 to Brian Skeuse, a party in interest, pursuant to the terms and conditions of Prohibited Transaction Exemption (PTE) 87–17, 52 FR 2630 (January 23, 1987). The Department is providing no opinion herein as to whether the conditions of PTE 87–17 were met.

[9] The Department is not providing any opinion in this proposed exemption as to whether the acquisition and holding of the Land, including the Property, by the Plan violated any of the provisions of Part 4 of Title I of the Act.

However, the Department notes that an investigation regarding the subject investments made by the Plan and related transactions has been conducted by the Department's Regional Office in New York. In this regard, the proposed exemption, if granted, will enable the Plan to be made ''whole'' with regard to the total costs to the Plan for the Property and will allow the Plan to reinvest the proceeds of the proposed sale in other assets which may yield greater returns.

4. The Property is located on 30 Old Hill Road, Raritan Township, Hunterdon County, New Jersey. The Property was appraised on May 11, 1999, as having a fair market value of $95,000 (the Appraisal). The Appraisal was prepared by George A. Copeland, Jr., MAI (Mr. Copeland), who is an independent, qualified real estate appraiser in the State of New Jersey. Mr. Copeland is with Copeland Appraisal Associates, Inc., located at 971 U.S. Route 202 in Somerville, New Jersey. Mr. Copeland states that consideration was given in the Appraisal to three approaches to value, *i.e.,* the cost approach, sales comparison approach, and income approach. However, Mr. Copeland relied on the sales comparison approach to determine the fair market value of the Property.

Mr. Copeland also submitted several updates to the Appraisal of the Property. The first update is dated March 23, 2000 (Update I). Update I states that the fair market value of the Property was $100,000 as of March 23, 2000.

The second update to the Appraisal of the Property is dated November 20, 2000 (Update II). Update II states that the fair market value of the Property was $105,000, as of November 20, 2000.

Finally, the applicant also submitted a supplement to the Update II dated December 22, 2000 (the Supplement). Because the Property is adjacent to the Skeuses' personal family residence, Mr. Copeland considered whether a sale of the Property by the Plan to the Skeuses would merit a premium above the fair market value for the Property. However, in the Supplement, Mr. Copeland states that the Property would not merit a premium above its fair market value in any sale to an adjacent property owner.

5. The applicant now proposes that the Skeuses purchase the Property from the Plan in a one-time cash transaction. The applicant represents that the proposed transaction would be in the best interest and protective of the Plan. The Plan will pay no commissions or other expenses associated with the sale. The Skeuses will pay the Plan the greater of either: (a) $105,000; or (b) the current fair market value of the Property, as established by a qualified independent appraiser at the time of the transaction. In this regard, Mr. Copeland or another independent qualified appraiser will update the Appraisal to determine the current fair market value for the Property at the time of the proposed sale. The sale of the Property will enable the Plan to sell an illiquid non-income producing asset and reinvest the sale proceeds in assets that may yield higher returns.

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

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

(b) the Plan will receive the greater of either: (i) $105,000; or (ii) the current fair market value for the Property, as established at the time of the sale by an independent qualified appraiser;

(c) the Plan will pay no fees, commissions or other expenses associated with the sale; and

(d) the sale will enable the Plan to divest itself of a non-income producing asset and acquire investments which may yield higher returns.

Notice to Interested Persons

The applicant represents that notice of the proposed exemption (the Notice) will be distributed to interested persons, by first class mail, or by posting in RCR's facilities, within thirty (30) days of the date the Notice is published in the **Federal Register**. Such interested persons will include all participants in the Plan, all fiduciaries of the Plan, and any officer or director of RCR. The distribution to interested persons shall include a copy of the Notice, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform such persons of their right to comment and/or request a hearing with respect to the Notice.

Comments and requests for a public hearing with respect to the Notice are due sixty (60) days following the publication of the Notice in the **Federal Register**.

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

Ibbotson Associates, Inc. (Ibbotson) Located in Chicago, Illinois

[Exemption Application No.: D–10897]

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) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the provision of asset allocation services (the Service) by Ibbotson to Plan participants and the receipt of fees by Ibbotson from Service Providers in connection with the provision of such asset allocation services, provided that the following conditions are met.

I. General Conditions

A. The retention of Ibbotson to provide the Service will be expressly authorized in writing by an independent fiduciary of each Plan.

B. Ibbotson shall provide the independent fiduciary of each Plan with the following, in writing:

(1) Prior to authorization, a complete description of the Service and disclosures of all fees and expenses associated with the Service.

(2) Any other reasonably available information regarding the Service that the independent fiduciary requests.

(3) A contract for the provision of the Service which defines the relationship between Ibbotson, the Service Providers and the Plan sponsor, and the obligations thereunder. Such contract shall be accompanied by a termination form with instructions on the use of the form. The termination form must expressly state that a Plan may terminate its participation in the Service without penalty at any time. However, a Plan which terminates its participation in the Service before the expiration of the contract will pay its pro-rata share of the fees that it would otherwise owe for the Service under the contract and, if applicable, any direct costs actually incurred by Ibbotson which would have been recovered from the Plan but for the termination of the contract, including any direct setup expenses not previously recovered. Thereafter, the termination form shall be provided no less than annually.

(4) At least 45-days prior to the implementation of any material change to the Service or increase in fees or expenses charged for the Service, notification of the change and an explanation of the nature and the amount of the change in the Service or increase in fees or expenses.

(5) A copy of the proposed and final exemption, if granted, as published in the **Federal Register**.

(6) An annual report of Plan activity which summarizes the performance of the asset allocation categories provided to the Plan and provides a breakdown of all fees and expenses paid to Ibbotson in connection with the provision of the Service to the Plan for the year. Such report shall be provided no more than 45 days after the period to which it relates. Upon the independent fiduciary's or Plan sponsor's request,

such report may be provided more frequently.

C. Ibbotson will provide each Plan participant with the following:

(1) Written notice that the Service is available and provided by Ibbotson, an entity independent of the Service Provider and the Plan sponsor.

(2) Prior to using the Service, full written disclosures that will include information about Ibbotson and a description of the Service.

(3) Access to Ibbotson's web site or paper-based communications which will clearly indicate that the Plan participant is receiving the Service from Ibbotson, and that Ibbotson is independent of the Service Provider.

(4) A tolerance questionnaire which must be completed prior to utilization of the Service.

(5) An investment advisory service agreement under which the Plan participant will acknowledge his or her understanding that the Service is provided by Ibbotson and not the Service Provider. This agreement must be completed prior to utilization of the Service.

D. Any investment advice given to a Plan participant by Ibbotson under the Service will be based solely on the responses provided by the Plan participant through the Service's interactive computer program or through a paper or telephone interview and will be based on the application of an objective methodology developed by Ibbotson.

E. Any investment advice given to a Plan participant will be implemented only at the express direction of the Plan participant.

F. The total fees paid to Ibbotson and a Service Provider, in connection with the provision of the Service, by each Plan does not exceed ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

G. The only fees which are payable to Ibbotson in connection with the provision of the Service include, subject to negotiation, one or more of the following:

(1) An annual flat fee based on a fixed dollar amount per Plan participant for the Service. This fee may be paid by the Plan, Plan sponsor, Plan participant or the Service Provider.

(2) A technology licensing fee payable by the Service Provider in the first year that the Service is provided to a Plan. The fee will be a fixed dollar amount based on the number of Plan participants and beneficiaries contained on the Service Provider's record-keeping system. Each time the number of Plan participants and beneficiaries on the Service Provider's record-keeping system increases by at least 10%, an additional fixed dollar amount based on the increase in Plan participants and beneficiaries will be assessed and charged to the Service Provider for the new Plan participants and beneficiaries (the Revised Technology Fee).

(3) For subsequent years, Ibbotson will charge the Service Provider an annual technology maintenance fee equal to up to 20% of the technology licensing fee charged to the Service Provider in the first year plus up to 20% of the Revised Technology Fee.

(4) Ibbotson will charge the Plan or Plan sponsor an Internet customization fee where a Plan sponsor contracts directly with Ibbotson for the provision of the Service. This flat fee will be based on the time spent by Ibbotson personnel on its customization of the Service for the particular Plan.

(5) For those Plan sponsors electing to receive a Plan analysis report, an annual flat fee based on a fixed dollar amount per Plan investment analysis report. This fee will be paid by the Plan sponsor or Service Provider.

H. No portion of any fee or other consideration payable by the Plan or the Plan sponsor to Ibbotson in connection with the Service will be received or shared with a Service Provider.

I. Neither the fees charged nor the compensation received by Ibbotson will be affected by the investment selections or the decisions made by the Plan participants and beneficiaries regarding investments of the assets in their accounts.

J. Each Service Provider shall represent to Ibbotson that it will not impose any additional fees and/or charges (relating to the investment products made available to Plans) on Plans who contract for the Service unless such fees and charges are imposed on the Service Provider's similarly situated clients who do not contract for the Service.

K. Ibbotson will maintain insurance coverage from an insurer with a rating in one of the three highest generic categories by at least one nationally recognized statistical rating service, in the amount of at least $5 million for the payment of any liabilities that may arise with respect to the Service by reason of a breach of fiduciary duty described in section 404 of the Act or a violation of the prohibitions of section 406 of the Act or section 4975 of the Code. Such insurance coverage will be provided under a ''claims made'' policy. In the event that Ibbotson changes insurers or ceases to provide the Service, Ibbotson will maintain ''trail coverage'' with respect claims made during the period in which the policy was in effect for a period of three years following such a change or cessation of the Service.

L. No Service Provider shall at any time own any interest, by vote or value in Ibbotson, and neither Ibbotson nor any affiliate shall own any interest, by vote or value, in a Service Provider.

M. The annual revenues derived by Ibbotson from any one Service Provider shall not constitute more than 5% of the annual revenues of Ibbotson.

N. Ibbotson will maintain for a period of six years, the records necessary to enable the persons described in paragraph (O) of this section to determine whether the conditions of the exemption are met, including records of the recommendations made to Plan participants and beneficiaries and their investment choices, except that—

1. A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Ibbotson, the records are lost or destroyed prior to the end of the six year period.

2. No party in interest, other than Ibbotson shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code if records are not maintained or not available for examination as required by this paragraph and paragraph O(1) below.

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

(a) Any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission,

(b) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary,

(c) Any contributing employer to any participating Plan or any duly authorized representative of such employer, or an employee organization whose members are participants and beneficiaries of a participating Plan; or

(d) Any Plan participant or beneficiary of any participating Plan or any duly authorized representative of such Plan participant or beneficiary.

(2) None of the persons described in paragraph (1)(b)–(d) of this paragraph (O) shall be authorized to examine trade secrets of Ibbotson, or commercial or financial information which is privileged or confidential.

III. Definitions

A. The term ''Service'' means the asset allocation service provided by Ibbotson to Plans which is accessed through computer software and other written communications in order to provide personalized recommendations to Plan participants regarding the allocation of their investments among the options offered under their Plan.

B. The term ''Service Provider'' means an entity that has been in the financial services business for at least three years, and during such period, has not been convicted of a felony offense involving abuse or misuse of such entity's employee benefit plan position or employment, or any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary. Such entity is also described in one of the following categories:

1. A bank, savings and loan association, insurance company or registered investment adviser which meets the definition of a ''qualified professional asset manager'' (QPAM) set forth in section V(a) of Prohibited Transaction Exemption 84–14 (49 Fed. Reg. 9494 (Mar. 13, 1984)), as corrected at 50 Fed. Reg. 41430 (Oct. 10, 1985) and in addition, has, as of the last day of its most recent fiscal year, total client assets under management and control in an amount not less than $250 million; or

2. A broker dealer registered under the Securities Exchange Act of 1934, which has, as of the last day of its most recent fiscal year, $1 million in shareholders' or partners' equity, and total client assets under management and control in an amount not less than $250 million.

C. The term ''independent fiduciary'' means a Plan fiduciary which is independent of Ibbotson and its affiliates and independent of the Service Provider and its affiliates.

D. The term ''affiliate'' includes:

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

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

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

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

F. The term ''Plan'' means an employee benefit pension plan as defined in section 3(2) of the Act.

Summary of Facts and Representations

1. Ibbotson, founded by Professor Roger Ibbotson in 1976, provides products and services to help investment professionals make asset allocation decisions for their clients. Ibbotson's mission is to help its clients gather, manage and retain assets. Its clients include financial planners, brokers, brokerage firms, mutual fund companies, institutional and small money managers, pension funds, 401(k) providers, banks and private bankers and insurance companies. In its application, Ibbotson states that Professor Ibbotson's study, Stocks, Bonds, Bills and Inflation, has become an indispensable annual reference tool for investment and financial professionals.

2. The Applicant represents that the Service will be beneficial to Plan participants because it will provide Plan participants with guidance involving analytical techniques and financial concepts that typically result in a more focused and well thought out program for Plan investments. The Applicant further states that the Service, thereby, allows Plan participants to more fully exercise their rights to self-direct their investments. The Service integrates retirement planning and fund allocation recommendations, including current Plan savings, other retirement savings, personal retirement income goals and tolerance for risk, time horizon to retirement and the fund choices specifically available in a participant's Plan. According to Ibbotson, these factors can be the most crucial in developing an effective individual retirement plan.

The Applicant further indicates that the individual guidance which is provided by the Service is not typically available due to the hesitancy of Plan sponsors and Service Providers to provide such advice out of concern for potential liability, and the high cost of obtaining this type of advice on an individual basis. Ibbotson believes that the advice provided by the Service is similar to that used by professional investment managers for the allocation of assets in a defined benefit plan.

3. Before a Plan's independent fiduciary may authorize the Plan's participation in the Service, Ibbotson must provide the independent fiduciary with a complete description of the Service, written disclosures of all fees and expenses associated with the Service, and a written contract for the provision of the Service which defines the relationship between Ibbotson, the Service Provider and the Plan sponsor and the obligations thereunder.[10] Such contract will be renewable annually and will include: (a) A provision under which the Plan shall have 45 days notice prior to implementation of any material change to the Service or any fee or expense increases in connection with the provision of the Service by Ibbotson; and (b) a provision which states that a Plan may terminate its participation in the Service at any time without penalty. However, a Plan which terminates its participation in the Service before the expiration of the contract will be responsible for the payment of its pro-rata share of the fees owed under the contract as of the date of termination, and, if applicable, any direct costs actually incurred by Ibbotson which would have been recovered by Ibbotson but for the termination of the contract, including any direct setup expenses not previously recovered. In addition, Ibbotson shall provide the independent fiduciary with a copy of the proposed and the final exemption, if granted, as published in the **Federal Register**.

4. Ibbotson will provide the Service either directly to Plan participants through an agreement with the Plan sponsor or through an agreement with the Service Providers sponsoring the investment vehicles offered to Plan participants. In situations where Ibbotson contracts directly with the Plan Sponsor, Ibbotson will customize the Service for each Plan.[11] The fees

[10] In this regard, the Department notes that the fiduciary responsibility provisions of the Act apply to the decision of a Plan's independent fiduciary to authorize the Plan's participation in the Service. Section 404 of the Act requires, among other things, that a fiduciary of a plan must 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. Accordingly, the Plan's independent fiduciary must act prudently when deciding to participate in the Service, and in considering the fees associated with the Service. The Department expects that the Plan's independent fiduciary, prior to authorizing the Plan's participation in the Service, will understand fully the operation of the Service, and the compensation paid thereunder, following disclosure by Ibbotson of all relevant information pertaining to the Service.

[11] The provision of investment advisory services to plans would be exempt from the prohibitions of section 406(a) of ERISA if the conditions of section 408(b)(2) are met. Section 2550.408b–2(a) of the Department's regulations provides that section 408(b)(2) of the Act exempts from the prohibitions of section 406(a), payment by a Plan to a party in interest, including a fiduciary for * * * any service (or combination of services) if (1) such service is necessary for the establishment or operation of the Plan; (2) such * * * service is furnished under a contract or arrangement which is reasonable; and (3) no more than reasonable compensation is paid for such * * * service. The regulation also provides that section 408(b)(2) does not contain an exemption from acts described in a section 406(b) even if such act occurs in connection with a provision of services that is exempt under section

Continued

charged for the Service will be based on a flat fee per participant. In many instances, Ibbotson will need to coordinate with the Plan's record-keeper or another Service Provider in offering the Service to a Plan's participants. Such entities will be independent of Ibbotson. All fees for the Service will be paid by the Plan sponsor or the Plan to Ibbotson, and the Service Providers will not receive any portion of such fees or other consideration from Ibbotson.

In the second situation, Ibbotson will provide the Service to Plan participants pursuant to a contract that the Plan sponsor enters into with a Service Provider. In these instances, the fees for the Service will still be based on a flat dollar amount per Plan participant, but will be paid to Ibbotson by the Service Provider, the Plan or Plan participant. In addition, Ibbotson will enter into a written agreement with the Plan sponsor defining the relationship between the Plan sponsor, Ibbotson and the Service Provider.

5. The Applicant states that, once a Plan fiduciary has authorized its Plan's participation in the Service, Plan participants will receive written notice that the Service is available and provided by Ibbotson, an entity which is independent of the Service Provider. Each Plan participant will receive an investment advisory service agreement under which each participant will acknowledge his or her understanding that the Service is provided by Ibbotson and not the Service Provider. In addition, Plan participants will receive full disclosures about Ibbotson and the Service.

Access to the Service will be provided to Plan participants through the Internet, or by written materials. A Plan participant will answer a questionnaire which consists of multiple questions that are designed to evaluate a Plan participant's anticipated time horizon to retirement, savings rate and other personal financial factors. After the interview is completed, the Plan participant will receive recommendations with respect to his or her savings rate, retirement age and asset allocation[12] and the percentage of assets that the Plan participant should allocate to each option.

If a Plan participant elects to receive his/her advice through the Internet, the Plan participant will first access a website provided by the Service Provider or the Plan sponsor. There will be an electronic link from the Plan sponsor's or Service Provider's website to Ibbotson's website where the questionnaire and investment advice is housed. The Applicant represents that Ibbotson will always retain sole control over the content of the Service and the advice contained therein. Ibbotson will regularly monitor the contents of the Service and the advice contained therein to ensure that it remains the product of the objective methodology developed by Ibbotson. Ibbotson states that it will be apparent to the Plan participant that Ibbotson is the sole-provider of such advice.

For those Plan participants using the Internet, the completed questionnaire is scored by computer. For those Plan participants who select to receive his/her advice in paper form, Ibbotson will mail the Service materials to Plan sponsors or Plan participants after the Plan sponsor has decided to hire Ibbotson. The Plan participants will mail their written responses back to Ibbotson. Ibbotson will, in turn, score the questionnaire and send its recommendations, etc., directly back to the Plan participant. The Plan participant, will, if she or he chooses to implement the recommendations, then mail or telephone the instructions to the Service Provider (or other designated agent for receiving such investment instructions.) All recommendations will be generated by Ibbotson's proprietary forecasting engine based on an analysis of Plan participant's responses to the questionnaire and an analysis of the investment options offered under the relevant Plan, including any employer stock fund.[13] Based on the score, the Plan participant is categorized into one of several investment recommendations.[14]

Each recommendation contains a description of the investor profile associated with such recommendation that a Plan participant can review to see if he or she feels that he or she has been correctly classified. The Service will also allow Plan participants to experiment with different risk/return scenarios to better understand what impact the recommended allocation will likely have on his/her retirement.

6. The Applicant states that the advice provided to Plan participants will be based on the application of an objective methodology developed by Ibbotson. The investment recommendations generated by the Service are standardized. Such recommendations are generated through an automated process that is then applied to each Plan and Plan participant advised by Ibbotson. The advice provided to a Plan participant through the Service may only be implemented if it is expressly authorized in writing by the Plan participant. The Service will inform Plan participants periodically of the need to review their situation. Plan participants are advised that the investment advice is valid for one year and it is advisable to repeat the questionnaire process periodically and if there are significant life events (such as the birth of a child or an increase in salary.)

7. The Applicant represents that its role in performing the Service on behalf of a Plan, includes gathering information about the investment options offered in a particular Plan, and developing a recommended portfolio for each investor type. First, each Plan's investment option style is analyzed. Then, seven (or more) Plan-specific asset allocation recommendations (from lower to higher risk) are generated by using proprietary Ibbotson software. Finally, the allocations are electronically transferred to a web site ''server'' (computer system) where one of the asset allocations is recommended to a Plan participant, based on his/her inputs.

Ibbotson constructs portfolios with different risk and return characteristics using the investment options available under the Plan. These portfolios form the foundation of the advice which is provided to a Plan participant. This methodology can be broken into five steps.

Step 1: Selection of asset classes. Before creating specific portfolios for each investment option, Ibbotson believes that it is first necessary to construct strategic asset-class level portfolios. These strategic portfolios reflect the underlying asset allocations that Ibbotson would like to achieve

408(b)(2). Section 2550.408b–2(e)(1) further provides that a fiduciary does not engage in an act described in section 406(b)(1) of the Act if the fiduciary does not use any of the authority, control or responsibility which makes such person a fiduciary to cause the Plan to pay additional fees for a service furnished by such fiduciary or to pay a fee for a service furnished by a person in which the fiduciary has an interest which may affect the exercise of such fiduciary's best judgment as a fiduciary. In general, whether a violation of section 406(b) occurs during the operation of an investment advisory program is an inherently factual matter. *See* Advisory Opinion 84–04 (January 4, 1984).

[12] The recommendation will describe and identify the specific investment options available through the participant's Plan and in which options the Plan participant should invest.

[13] The Service will not, however, make any recommendations will respect to investments in employer stock. Instead the Service will treat the participant-designated level of employer stock holdings as an investment in the particular asset class in which the stock falls (*i.e.,* large capitalized equity) with two times the volatility of that class and develop an overall recommendation with this assumption.

[14] These recommendation involve lower to high risk portfolios.

using the specific investment options available under the Plan. Asset classes used to create the strategic portfolios may include: Large, mid and small cap stocks, international stocks, emerging stocks, long, intermediate and short term government bonds, high-yield bonds, municipal bonds, cash, and company stock. The asset classes used depend on the number and types of investment options available in the 401(k) plan. Ibbotson requires that the investment options in a plan provide exposure to at least small and large stocks, cash, and bonds for advice to be given. If the exposure to each of these asset classes is not available, Ibbotson will not provide advice services.

Step 2: Develop expected returns. Ibbotson uses historical relationships and current yields on government bonds to generate expected returns. This approach separates the expected return of each asset class into three components. The first two components are a real risk-free rate of return and an estimate of future inflation. It is Ibbotson's belief that the current yield on a long-term, zero coupon government bond is the best estimate of these two components. The third component is the difference between the historical return on any asset class and the historical return on long-term, zero coupon government bonds. This difference represents the incremental return over the risk free rate investors have earned from taking on the risk of investing in an asset class. The sum of these components is the expected return Ibbotson uses in the mean-variance optimization process. Standard deviations and correlations for the asset classes are calculated using historical data.

Step 3: Build model portfolios. Ibbotson employs the standard mean-variance analysis from Modern Portfolio Theory to evaluate and determine its strategic, asset-level portfolio recommendations. However, rather than taking portfolios directly off of the efficient frontier defined by the estimates created in Step 2, Ibbotson chooses portfolios that are very close to the efficient frontier under many different economic and investment performance scenarios. Ibbotson believes that choosing portfolios this way ensures that the strategic portfolio characteristics will be relatively stable over time and will avoid drastic asset class shifts. Ibbotson deems that it is essential to build portfolios that have these stable properties to minimize the need for the Plan participant to make frequent changes to his or her portfolio.

Step 4: Select funds. Once asset-level model portfolios are developed, they are implemented using the investment options available under the plan. Since at any time most funds are investing in securities from several asset classes, Ibbotson employs a statistical method to determine what asset classes a fund's investment approach is exposing the Plan participant to. Using the asset exposures from this technique, Ibbotson combines the funds so that the total asset class exposure of the funds in the portfolio equals the desired strategic portfolio weights. Since consistency of asset exposure in funds through time is so important, investment options that have little or no history must provide sufficient additional information to base reasonable expectations on. A mutual fund's manager tenure and fees and expenses are also evaluated as part of this process.

Step 5: Monitor and re-balance. The portfolio choices must be reviewed regularly and rebalanced. Portfolio rebalancing is the process of moving a fund's asset class exposures toward its strategic target. This process seeks to reduce the relative performance risk associated with moving the asset class exposures away from what was intended in the strategic asset allocation. There are a variety of conditions that could cause a rebalancing of a portfolio. Market movements, fund asset exposure changes, removal and replacement of mutual funds can trigger rebalancing.

As part of this ongoing process, the funds are evaluated quarterly and the strategic asset allocations are updated once a year. A set of criteria, including absolute and relative performance, is used to evaluate the funds used in the advice portfolios. Funds that do not meet the criteria will be placed on a watch list. The placement of a fund on the watch list does not mean that the fund will be replaced, it is a trigger to begin further due diligence on the fund.

To be removed from the watch list, certain pre-established qualitative and quantitative measures must be met. After a fund has been placed on the watch list and further due diligence has determined that the fund no longer meets the objectives of one or more of the portfolios, Ibbotson will advise the plan sponsor to consider a suitable replacement. Any new fund entering the program will be studied and analyzed using the same methodology for initial fund selection outlined above.

8. Ibbotson next describes the steps involved in providing individualized advice to Plan participants. The steps start with forecasting many possible expected investment returns scenarios and the collecting of the Plan participant's individual needs and risks. These are then combined with the relevant tax and plan rules to show the Plan participant the risk of his or her current investment path and to calculate advice to optimize the 401(k) plan portfolio. Rather than using a questionnaire to approximate the risk tolerance level of the Plan participant, Ibbotson uses a simulation-based forecasting approach designed to show a Plan participant the risks of various investment decisions personalized to his or her individual circumstances. The advice generated recommends a portfolio risk level, a savings rate and a retirement age appropriate to that Plan participant's retirement income goals.

Step 1: Generate return and inflation data. Ibbotson's first step in this process is to generate hundreds of sets of asset return and inflation data covering the next 40 years. This data is randomly calculated using historical data and the relationships it has exhibited through time. This forecasting software uses this data to model the many possible wealth and income paths a Plan participant might face. By generating a variety of possible future wealth patterns, the Plan participant gets a better picture of not just the average path his or her wealth might take but also of shortfalls that are possible.

Holdings of individual stocks are modeled but company stock is modeled as a separate asset class included along with all of the asset classes in the system. If a Plan participant is required or chooses to hold company stock then that will be included in the solution; however, company stock is factored into the solution with the same return as the appropriate capitalization group asset class with twice the standard deviation.

All of this simulation data is updated annually along with the strategic asset allocation portfolios.

Step 2: Gather data from plan participant and record keeper. Ibbotson's forecasting process enables the Plan participant to input data to take into account all of the Plan participant's needs and assets (college funding, new house, etc.) and assets (taxable and nontaxable) before selecting the appropriate portfolio. Ibbotson believes that this approach yields a more appropriate overall portfolio/savings match with the Plan participant's needs. To the extent input is provided by the Plan participant, the Ibbotson process takes into account items such as savings, current balances, investment makeup, and projected cash in-flows and out-flows for both Plan participant and his or her spouse.

Step 3: Calculate current situation. The Plan participant will be shown two separate scenarios through the Ibbotson

advice application. The first calculates what chance the Plan participant might have of making his or her retirement goals if he or she continues with the current portfolio risk level and savings rate as entered in Step 2. The second recommends an advice solution and is described in Step 4.

To calculate what chances the Plan participant has of making the retirement goals if no change to the portfolio or savings rate is made, the software uses the simulation data to calculate the wealth that might be accumulated under hundreds of possible future scenarios. These calculations take into account Social Security payments, taxes, and all of the other savings and withdrawals the Plan participant has entered as well as the various investment return and inflation scenarios. Some of these future wealth and income levels will be good, some will be average and some will be inadequate relative to the Plan participant's individual retirement goals. The results of all of these calculations are summarized into a few probability statistics that are communicated to the Plan participant.

Step 4: Calculate advice. Ibbotson states that its advice methodology provides the Plan participant with a recommendation that includes the portfolio risk level, savings rate and retirement age. Since in the 401(k) plan world, the advice can only be given on that portfolio alone, the Ibbotson methodology takes all of the Plan participant's total holdings into account (taxable and tax deferred) and proposes a 401(k) portfolio that gets the Plan participant's total holdings as close to optimal as possible.

Ibbotson believes that this presents the Plan participant with a more balanced solution for achieving his or her goals with the flexibility to change the parameters if he or she sees fit. Starting with a better balanced portfolio means that Plan participants just looking for an answer will get a sound answer more quickly and Plan participants that want to experiment with different levels of risk, savings rate, and or retirement age will start from a more solid position.

Step 5: Present results. The advice process has many steps. However, the user only sees the results of Steps 4 and 5. The typical statistics that will be shown include the most likely income level that the Plan participant might have along with the least likely possibilities. These statistics for the scenario where no changes are made and for those where the Plan participant implements the advice will be displayed side by side so the Plan participant can easily see the differences. When compared to the level of income the Plan participant would like in retirement, this process shows the Plan participant just how much risk is being taken and just how likely the Plan participant is of hitting his or her goals. Ibbotson believes there is no better way to show a Plan participant in terms that can be understood of the risk and reward of the decisions he or she makes. Ibbotson also presents a short-term risk measure to assist in understanding volatility on the way to retirement and its impact on long-term goals. A Plan participant can further individualize the solution if he or she wants to take more risk, cannot save as much as recommended, or wants to change his or her retirement age.

Once finalized, the Plan participant can then implement his or her decision. Although the solution is a ''snapshot'' based on the then-inputted data, the system will inform the Plan participant periodically of the need to review his or her situation. It will also be stated that his revisiting is most important if there have been any changes in the Plan participant's assumptions such as a promotion or the birth of a child. Under any circumstances, a Plan participant will be cautioned to review his or her situation once a year to update any changes to the information upon which the advice was based and to adjust their 401(k) portfolio, if needed.

9. Ibbotson represents that it will maintain insurance coverage in the amount of at least $5 million for the payment of any liabilities that may arise by reason of a breach of fiduciary duty described in section 404 of the Act or a violation of the prohibited transaction provisions of section 406 of the Act or section 4975 of the Code. This insurance coverage will be available to provide financial support to Ibbotson in the event a breach of fiduciary duty claim is brought against Ibbotson, and it is determined that Ibbotson has incurred liabilities by reason of such breach. The insurance shall be provided pursuant to a ''claims made'' policy which covers claims made during the policy period. In the event that Ibbotson changes insurers or ceases to provide the Service, Ibbotson will maintain ''tail coverage'' with respect to claims made for a period of up to three years after such change.[15]

10. The Applicant represents that potential Service Providers will include banks and trust companies, mutual fund companies, brokerage firms and insurance companies. They will be required to meet minimum standards prior to participating in the provision of the Service. To qualify as a Service Provider, the entity must either be: (a) A commercial bank or trust company, savings and loan association, insurance company, or registered investment adviser which meets the definition of a ''qualified professional asset manager'' (QPAM) set forth in Part V(a) of Prohibited Transaction Exemption 84–14; and have total client assets under management and control in an amount no less than $250 million, or (b) a broker-dealer regulated under the Securities Exchange Act of 1934 and which had, as of the last day of its most recent fiscal year, $1 million in shareholders' and partners' equity, or total client assets under management and control in an amount no less than $250 million.

In addition, the Applicant will require that each candidate meet minimum standards to ensure: (1) The availability of multiple investment options across a number of asset classes, (2) adequate service capabilities and service performance standards, with an ongoing adherence to those standards, (3) the absence of dependence solely upon bundled products[16] for defined contribution Plans, and (4) the Service Provider must in Ibbotson's view, have a high level of professionalism and accountability.

Further, the entity must have adequate capitalization; have been in the financial services business for three years and not been convicted of a felony offense involving abuse or misuse of such entity's employee benefit plan position or employment, or any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary.

11. In providing the Service, depending on the specific circumstances surrounding a particular Plan and the outcome of negotiations between Ibbotson and the Plan sponsor or Service Provider, the fees that Ibbotson will charge will include some or all of the following fees. A technology licensing fee will be charged to the Service Provider. This fee is a one-time fee charged in the first year the Service is provided to a Plan based on the

[15] The Department notes that the condition requiring the maintenance of $5 million of insurance coverage will not foreclose future consideration by the Department of another mechanism designed to assure some degree of financial accountability in the event of breaches of fiduciary duty described in section 404 or violations of the prohibited transaction provisions.

[16] Bundled products provide employers with a package of services including record-keeping, legal, administrative, trust, educational, investment, etc., with respect to the establishment and maintenance of plans by employers.

number of Plan participants contained on a Service Provider's record-keeping system. For subsequent years, Ibbotson will charge to the Service Provider a flat per Plan participant fee for each occurrence of at least 10% growth in Plan participants on its record-keeping system (the Revised Technology Fee). In the second year of operation with a Service Provider, Ibbotson will charge a Service Provider a technology maintenance fee equaling up to 20% of the first year's technology licensing fee plus up to 20% of the Revised Technology Fee.

When a Plan sponsor contracts with Ibbotson to customize the Service to its particular Plan, Ibbotson will charge an Internet customization fee to the Plan or the Plan sponsor. This fee is based on the time spent by Ibbotson personnel in its customization of the Service to a particular Plan. In addition, Ibbotson will charge a flat annual per Plan participant advice fee which may be paid by the Plan, Plan sponsor, the Plan participants or the Service Provider.

Finally, Ibbotson will also offer a Plan investment analysis report to Plan sponsors. This report is separate from the investment analysis advice provided to Plan participants and is optional. Ibbotson will analyze the Plan and its investment options. For those Plan sponsors who elect to receive a Plan investment analysis by Ibbotson, Ibbotson will also charge a Plan investment analysis fee based on a flat dollar amount per year. This fee may be paid by the Plan sponsor or the Service Provider.

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

(a) The participation in the Service will be expressly authorized in writing by an independent fiduciary.

(b) Ibbotson shall provide the independent fiduciary of each Plan with written disclosure describing the Service and all fees and expenses associated with the Service, a written contract for the provision of the Service, a copy of the proposed and final exemption, and summary of annual Plan activity and expense reports.

(c) Ibbotson will furnish the Plan participants with the following: notice that the Service is provided by Ibbotson, an entity that is independent from the Service Provider and the Plan sponsor; and full disclosure about the Service and Ibbotson; and a risk tolerance questionnaire.

(d) Any investment advice given to Plan participants will be based on the Plan participants' responses to the questionnaire and any investment advice provided only will be implemented at the express direction of the Plan participant.

(e) The total fees paid to Ibbotson and a Service Provider by each Plan participant participating in the Service does not exceed reasonable compensation within the meaning of section 408(b)(2) of the Act.

(f) No portion of any fee or other consideration paid to Ibbotson or in connection with the Service will be shared or received by a Service Provider.

(g) Neither the fees charged nor the compensation received by Ibbotson will be affected by the investment selections of Plan participants.

(h) Participation in the Service will not cause the Plan to pay any additional fees or commissions with respect to acquisitions or dispositions of investments offered under the Plan.

(i) No Service Provider shall own any interest in Ibbotson.

(j) Neither Ibbotson nor any affiliate shall own an interest in a Service Provider.

(k) The annual revenues derived by Ibbotson from any one Service Provider shall not be more than 5% of its annual revenues.

(l) Ibbotson will maintain fiduciary liability insurance in the amount of at least $5 million.

Notice to Interested Persons

The Applicant represents that because potentially interested Plan participants and beneficiaries cannot be identified at this time, the only practical means of notifying such Plan participants and beneficiaries of this proposed exemption is by publication in the **Federal Register**. Therefore, comments and requests for a hearing must be received by the Department not later than February 21, 2001.

FOR FURTHER INFORMATION CONTACT: Allison Padams Lavigne , US Department of Labor, (202)219–8971. (This is not a toll free number.)

General Information

The attention of interested persons is directed to the following:

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

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

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

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

Signed at Washington, DC, this 10th day of January, 2001.

Ivan Strasfeld,

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

[FR Doc. 01–1197 Filed 1–19–01; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on January 27, 2001. The meeting will begin at 10 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Embassy Suites Hotel, 300 Tallapoosa Street, Montgomery, AL.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is