DEPARTMENT OF LABOR

Employee Benefits Security Administration

D–11456, PNC Financial Services Group, Inc.; and D–11602, State Street Bank and Trust Company, et al.

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. 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 requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

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.

Proposed Exemption

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

Section I—Exemption for Receipt of Fees

In connection with the investment in an open-end investment company (a Fund(s)), as defined, below, in Section III, by certain employee benefit plans (Client Plan(s)) for which PNC (PNC or the Applicant), as defined below, serves as a fiduciary and is a party in interest with respect to such Client Plan, the restrictions of section 406(a)(1)(D) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) through (F) [1] of the Code, shall not apply, effective February 1, 2008 to:

(a) The receipt of fees by PNC and its affiliate PNC Capital Advisors, Inc. (PCA) from the Funds in connection with the investment by the Client Plans in shares of the Funds where PNC or its affiliate PCA acts as an investment advisor for such Funds; and

(b) the receipt of fees by PNC or its affiliates from the Funds in connection with providing certain secondary services, as defined below, (Secondary Services) to such Funds in which a Client Plan invests; provided that the conditions of Section II are met.

Section II—General Conditions

(a) PNC, which serves as a fiduciary for a Client Plan, satisfies any one (but not all) of the following:

(1) A Client Plan invested in a Fund does not pay any plan-level investment management fee, investment advisory fee, or similar fee (Plan-Level Fee(s)) to PNC or its affiliates with respect to any of the assets of such Client Plan which are invested in shares of such Fund for the entire period of such investment (the Offset Fee Method). This condition does not preclude the payment of investment advisory fees by the Funds to PNC under the terms of an investment management agreement adopted in accordance with section 15 of the Investment Company Act of 1940 (the "1940 Act");

(2) A Client Plan invested in the Funds pays an investment management fee or similar fee based on total Client Plan assets from which a credit has been subtracted representing such Client Plan's pro rata share of investment advisory fees paid by the Funds to PNC (the Subtraction Fee Method). If, during any fee period for which a Client Plan has prepaid its investment management or similar fee, the Client Plan purchases shares of such Fund, the requirement of this Section II(a)(2) shall be deemed to have been met with respect to such prepaid fee if, by a method reasonably designed to accomplish the same, the amount of the prepaid fee that constitutes the fee with respect to plan assets invested in shares of such Fund

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

(i) is anticipated and subtracted from the prepaid fee at the time of payment of such fee, (ii) is returned to the Client Plan no later than during the immediately following fee period, or (iii) is offset against the prepaid fee for the immediately following fee period or for the fee period immediately following thereafter. For purposes of this Section II(a)(2), a fee shall be deemed to have been prepaid for any fee period if the amount of such fee is calculated as of a date not later than the first day of such period; or

(3) A Client Plan invested in a Fund receives a "credit" [2] (the Credit Fee Method) of such Plan's proportionate share of all fees charged to the Funds by PNC for investment advisory or similar services, on a date which is no later than one business day after receipt of such fees by PNC from the Fund. The crediting of all such fees to such Client Plan by PNC is audited by an independent accountant firm (the Auditor) on at least an annual basis to verify the proper crediting of such fees to such Client Plan.

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

(c) PNC, including any officer or director of PNC, does not purchase or sell shares of the Funds from or to any Client Plan;

(d) A Client Plan does not pay sales commissions in connection with any purchase or sale of shares of a Fund, and a Client Plan does not pay redemption fees in connection with any sale of shares to a Fund, unless

(1) Such redemption fee is paid only to a Fund, and

(2) The existence of such redemption fee is disclosed in the prospectus for such Fund in effect both at the time of the purchase of such shares and at the time of such sale;

(e) The combined total of all fees received by PNC for the provision of services by PNC to Client Plans and to Funds in which a Client Plan invests, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act;

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

(g) No Client Plan is an employee benefit plan sponsored or maintained by PNC;

(h) A second fiduciary (Second Fiduciary), as defined below in Section III, who is acting on behalf of a Client Plan receives, in advance of any initial investment by a Plan Client in a Fund, full and detailed written disclosure of information concerning such Fund including but not limited to:

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

(2) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(i) Any investment advisory or similar services to be paid by such Fund,

(ii) Any Secondary Services to be paid by such Fund to PNC, and

(iii) All other fees to be charged to or paid by the Client Plan and by such Fund;

(3) The reason why PNC, acting as a fiduciary for such Client Plan, considers investment in such Fund to be appropriate for such Client Plan;

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

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

(i) On the basis of the information described, above, in Section II(h), a Second Fiduciary, acting on behalf of a Client Plan, authorizes in writing: (1) The investment of the assets of such Client Plan in shares of each particular Fund; and (2) the fees received by PNC in connection with services provided by PNC to such Fund. Such authorization by a Second Fiduciary must be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(j)(1) All authorizations described above, in Section II(i), made by a Second Fiduciary, regarding:

(i) Investments by a Client Plan in a Fund;

(ii) Fees paid to PNC for investment management advisory services or similar services; and

(iii) Fees paid for Secondary Services shall be terminable at will by the Second Fiduciary, acting on behalf of such Client Plan, without penalty to such Client Plan, upon receipt by PNC, acting as fiduciary on behalf of such Client Plan, of a written notice of termination. A form (the Termination Form), as defined, below, in Section III(j), expressly providing an election to terminate the authorizations, described, above, in Section II(i), with instructions on the use of such Termination Form must be provided to such Second Fiduciary at least annually. However, if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) and (l), below, then a Termination Form need not be provided again, pursuant to this Section II(j), unless at least six (6) months but no more than twelve (12) months have elapsed, since a Termination Form was provided, pursuant to Section II(k) and (l), below.

With respect to j(1)(i), (ii), and (iii) above, all such investments and fees shall be terminable at will by the Second Fiduciary acting on behalf of such Client Plan.

(2) The instructions for the Termination Form must include the following information:

(i) The authorization, described above in Section II(i), is terminable at will by the Second Fiduciary acting on behalf of a Client Plan, without penalty to the Client Plan, upon receipt by PNC of written notice from such Second Fiduciary; and

(ii) Failure by such Second Fiduciary to return the Termination Form will be deemed to be an approval by the Second Fiduciary and will result in the continued authorization, as described above, in Section II(i) of PNC to engage in the transactions described in this proposed exemption;

(k) For a Client Plan invested in a Fund which uses one of the fee methods described, above, in Section II(a)(1), (a)(2), or (a)(3) in the event of a proposed change from one of the fee methods to another or in the event of a proposed increase in the rate of any fee paid by such Fund to PNC for any investment advisory service or similar service that PNC provides to a Fund over an existing rate for such service or method of determining the fee for such service, which had been authorized by the Second Fiduciary for such Client Plan, in accordance with Section II(i), above, PNC, at least thirty (30) days in advance of the implementation of such change and/or such increase, provides a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of such Fund and which explains the nature and amount of such change from one of the fee methods to

[2] PNC represents that it would be accurate to describe "the credit" as a "credited dollar amount" to cover situations in which the "credited amount" is used to acquire additional shares of a Fund, rather than being held by a Client Plan in the form of cash. It is represented that the standard practice is to reinvest the "credited dollar amount" in additional shares of the same Fund with respect to which the fees were credited.

another or increase in fee) to the Second Fiduciary of each Client Plan affected by such change from one fee method to another fee method or increase in fee. Such notice shall be accompanied by a Termination Form, with instructions on the use of such Termination Form, as described, above, in Section II(j).

(l) In the event of:

(i) A proposed addition of a Secondary Service for which an additional fee is charged; or

(ii) A proposed increase in the rate of any fee paid by a Fund to PNC for any Secondary Service, or

(iii) A proposed increase in the rate of any fee paid for Secondary Services that results from the decrease in the number or kind of services performed by PNC for such fee over an existing rate for services which had been authorized, in accordance with Section II(i), by the Second Fiduciary for a Client Plan invested in such Fund, PNC will at least thirty (30) days in advance of the implementation of such fee increase or additional service for which an additional fee is charged or a decrease in the number or kind of services being performed, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of such Fund and which explains the nature and amount of the additional service for which an additional fee is charged or the nature and amount of the increase in fees or the decrease in the number or kind of services) to the Second Fiduciary of each Client Plan invested in such Fund which is proposing to increase fees or add services for which an additional fee is charged or decreasing the number or kind of services being performed. Such notice shall be accompanied by a Termination Form, with instructions on the use of such Termination Form, as described, above in Section II(j);

(m) On an annual basis, PNC provides the Second Fiduciary of such Client Plan invested in a Fund with:

(1) A copy of the current prospectus for such Fund in which such Client Plan invests,

(2) Upon the request of such Second Fiduciary, a copy of the Statement of Additional Information for such Fund which contains a description of all fees paid by such Fund to PNC;

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

(4) Oral or written responses to inquiries of the Second Fiduciary of such Client Plan, as such inquiries arise.

(n) All dealings between a Client Plan and a Fund are on a basis no less favorable to such Client Plan than dealings between such Fund and other shareholders invested in such Fund.

(o) PNC maintains for a period of six (6) years the records necessary to enable the persons described, below, in Section II(p) 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 solely because of circumstances beyond the control of PNC, the records are lost or destroyed prior to the end of the six-year period, and

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

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

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

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

(iii) Any participant or beneficiary of a Client Plan or duly authorized employee or representative of such participant or beneficiary.

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

Section III—Definitions

For purposes of this exemption:

(a) The term "PNC" means The PNC Financial Services Group, Inc., and any affiliate thereof as defined below in paragraph (b) of this section.

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

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

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

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

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

(d) The term "Client Plan" means any employee benefit plan as defined in section 3(3) of the Act; as well as Keogh plans and individual retirement accounts, for which PNC is a fiduciary as defined in section 3(21) of the Act (excluding any employee benefit plans sponsored by PNC or its affiliates).

(e) The term "Fund" or "Funds" shall mean the PNC Funds, Inc. or any other diversified open-end investment company or companies registered under the 1940 Act for which PNC serves as an investment advisor, but not sub-advisor, and for which PNC may serve as a custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provide some other "Secondary Service," as defined below in Section III which has been approved by such Funds.

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

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

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

(1) Such fiduciary, directly or indirectly controls, through one or more intermediaries, is controlled by, or is under common control with PNC;

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

(3) Such fiduciary, directly or indirectly, receives any compensation or other consideration for his or her personal account in connection with

any transaction described in this exemption.

If an officer, director, partner, or employee of PNC (or relative of such persons) is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of such Client Plan's investment advisor, (ii) the approval of any such purchase or sale between such Client Plan and a Fund, and (iii) the approval of any change in fees charged to or paid by such Client Plan in connection with any of the transactions described in Section I above, then Section III(h)(2), above, shall not apply.

(i) The term, "Secondary Service(s)," means a service which is provided by PNC to a Fund, including custodial, accounting, and/or administrative services. The fees for providing Secondary Services to a Fund are paid to PNC by such Fund.

(j) The term, "Termination Form," means the form supplied to a Second Fiduciary which expressly provides an election to such Second Fiduciary to terminate on behalf of a Client Plan the authorization described, above, in Section II(i).

(k) The term, "business day," means any day that:

(1) PNC is open for conducting all or substantially or substantially all of its banking functions, and

(2) The New York Stock Exchange (or any successor exchange) is open for trading.

Effective Dates: If granted, this proposed exemption will be effective February 1, 2008.

Summary of Facts and Representations

1. PNC is a bank holding company that owns or controls PNC Bank, National Association (PNC Bank, NA), PNC Bank, Delaware, and Yardville National Bank and a number of non-bank subsidiaries. PNC provides, through its subsidiaries, a wide variety of trust and banking services to individuals, corporations and institutions. Through its banking subsidiaries, PNC provides investment management, fiduciary and trustee services to employee benefit plans and charitable and endowment assets, and provides non-discretionary services and investment options for defined contribution plans.

On March 2, 2007, PNC acquired Mercantile Bankshares Corporation (Mercantile), the parent company of eleven Mercantile subsidiary banks (the Mercantile Subsidiary Banks). PNC merged the Mercantile Subsidiary Banks with and into PNC Bank, NA on September 14, 2007, pursuant to an application filed with and approved by the Office of the Comptroller of the Currency. Immediately after consummation of the merger, PNC Bank, NA transferred to PNC Bank, Delaware, nine Delaware branches previously held by two of the Mercantile Subsidiary Banks, pursuant to a Bank Merger Act application filed with and approved by the Federal Reserve Bank of Cleveland.

2. After October 1, 2007, the Mercantile Funds Inc. became the Funds or the PNC Funds, Inc. The Funds are diversified open-end investment company or companies registered under the 1940 Act. Each of the individual Funds constitutes a distinct investment vehicle, which has its own prospectus or joint prospectus with one or more other Funds. The shares of each Fund represent proportionate interests in the assets of that Fund. The Funds have 14 individual funds that offer portfolios of equity, fixed income and money market investments. The Funds that will be available for investment in connection with the transactions described in this proposal include the following: Prime Money Market Fund, Government Money Market Fund, Limited Maturity Bond Fund, Total Return Bond Fund, Capital Opportunities Fund, International Equity Fund, Growth & Income Fund, Diversified Real Estate Fund, Equity Income Fund, and Equity Growth Fund.

The overall management of the Funds, including the negotiation of investment advisory contracts, rests with the Board of Directors of the Funds. The Applicant represents that all of the Board's current Directors are independent of PNC and its affiliates.

3. PNC, through its affiliate PCA, serves as the investment advisor to each Fund within the meaning of section 2(20) of the 1940 Act. Prior to September 17, 2007, PCA was called Mercantile Capital Advisors, Inc. PCA has retained unaffiliated sub-advisors to manage certain Funds. PNC represents that PCA pays for the fees charged by its sub-advisors so that such sub-advisor fees are not an additional expense for such Funds. PNC receives maximum gross investment advisory fees from each Fund that vary between .20% and 1.30% of the Fund's average net assets on a daily basis. These fees are subject to waivers and reimbursements and currently the maximum advisory fee charged is 1.06%. The Funds charge a Rule 12b–1 distribution fee of between .50% and a 1.00% with respect to their Class A and Class C shares. Client Plans invest only in Fund institutional shares which do not pay 12b–1 fees.

PCA also serves as administrator for the Funds. As administrator, PCA maintains the Fund's office, prepares filings with state securities commissions, coordinates federal and state tax returns and performs other administrative functions. In its capacity as administrator, PCA is entitled to an administrative fee, computed daily and paid monthly. On February 1, 2008, the Fund began using service providers which are PNC affiliates. However, the custodian for the Client Plans is not a PNC affiliate.

4. Employee benefit plans, as defined in section 3(3) of the Act, and plans, as defined in section 4975(e)(1) of the Code, as to which PNC serves as fiduciary, are the subject plans of the proposed transaction. PNC, through its subsidiaries and affiliates, serves as trustee, investment manager, and in other similar fiduciary capacities with respect to retirement plans qualified under 401(a) of the Code, individual retirement accounts (IRA) described in section 408 of the Code, and welfare and or other employee benefit plans that constitute "employee plans" as defined in section 3(3) of the Act and/or "plans" as defined in section 4975(e)(1) of the Code. The specific Client Plans of PNC for which this exemption is being requested are those to which PNC is a fiduciary with investment discretion and whose assets either (1) are currently invested in the Funds or (2) may in the future be invested in the Funds.

5. As of June 30, 2007, PNC performed discretionary management services for over 940 employee benefit accounts with total assets in excess of $6.2 billion. These services include discretionary investment management programs under which PNC invests assets of Client Plans in securities, including shares of open-end investment companies (i.e., mutual funds) registered under the 1940 Act, the investment advisors to which may or may not be affiliated with PNC.

When PNC is acting as discretionary trustee or investment manager, PNC has investment discretion over the Client Plan's assets and is responsible for implementing the Plan's investment discretion objectives within the guidelines established by the Plan sponsor or named fiduciary. PNC may serve as a Plan custodian, in which capacity it is responsible for maintaining custody over all or a portion of the Client Plan's assets, for providing trust accounting and valuation services, for asset and transaction reporting, and for execution and settlement of transactions.

The Client Plans pay fees in accordance with fee schedules established or negotiated with PNC. Fees for custodian, trustee, and

investment management services are based on a percentage of assets in the account, subject to certain minimum fee amounts. PNC may also provide other services to a Client Plan, as selected by other Plan sponsors or named fiduciaries. Fees may be paid by the Client Plan or the Client Plan sponsor, depending on the particular circumstances. Where PNC provides discretionary investment management services for Client Plans, it may invest Plan assets in the Funds as a means of obtaining more specialized management along with enhanced liquidity, economies of scale, and greater diversification than would be available through a separate account investment.

6. Investments by Client Plans in the Funds occur through direct purchases of shares of the Funds on an ongoing basis. These investments are made in the institutional shares classes of the Funds, which are not subject to 12b–1 fees. There are no sales commissions, loads, or transaction fees imposed on the Client Plans for buying or selling shares of the Funds. The Funds may impose redemption fees not to exceed 2% of the value of the shares redeemed, provided that such fees are imposed only in accordance with Rule 22c–2 of the 1940 Act and the conditions of PTE 77–4, 42 FR 18732, (April 8, 1977).

7. Section 406(a)(1)(D) of the Act prohibits a fiduciary with respect to a plan from causing such plan to engage in a transaction, if he knows or should know, that such transaction constitutes a transfer to, or use by or for the benefit of, a party in interest, of any assets of such plan.

Sections 3(14)(A) and (B) of the Act define the term, "party in interest," to include, respectively, any fiduciary of a plan and any person providing services to a plan. Under section 3(21)(A)(i) of the Act, a person is a fiduciary with respect to a plan to the extent such person exercises authority or control with respect to the management or disposition of a plan's assets.

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

Reliance on PTE 77–4

8. PTE 77–4 provides an exemption from section 406 of the Act and section 4975 of the Code for a plan's purchase or sale of mutual fund shares where such fund's investment advisor: (1) Is a plan fiduciary or affiliated with a plan fiduciary; and (2) is not an employer of employees covered by the plan. The conditions of PTE 77–4 prohibit the payment of commissions by a plan, limit the payment of redemption fees by such plan, prohibit the payment of double investment advisory fees, and require prior disclosure to and approval by a Second Fiduciary.

In order to meet the condition of PTE 77–4 that a Client Plan does not pay duplicative fees for investment advisory services, PNC has not charged a Client Plan any direct fees for investment management services for assets that are invested in the Funds. With respect to such assets, these Client Plans have paid fees to PNC solely for non-investment trust or custody services. The fees PNC has received for investment management of a Client Plan's assets that were invested in the Funds have come from the Funds in accordance with relevant investment advisory and sub-advisory agreements with such Fund. Where PNC is a fiduciary with respect to a Client Plan, the investment of that Client Plan's assets in a Fund advised by an affiliate of PNC may potentially raise issues under sections 406(a)(1)(D), 406(b)(1), 406(b)(2) and 406(b)(3) of the Act, unless an exemption is available.

9. Client Plans have not paid any commissions or other sales charges in connection with their investments in the Funds, as required under PTE 77–4. In addition, PNC has satisfied certain conditions in PTE 77–4. These conditions include advance written disclosure of information to a Client Plan regarding the fees to be received by PNC from each Fund as well as advance written authorization from an independent and unrelated Second Fiduciary of such Client Plan for investment in the Fund. The Second Fiduciary is generally the Plan's named fiduciary or sponsoring employer, and in the case of an IRA, the Second Fiduciary is generally the owner of the IRA.

10. PNC is requesting an exemption similar to PTE 77–4, with respect to the receipt of fees by PNC and related entities from the Funds for acting as investment advisor, as well as for providing non-advisory Secondary Services. The requested exemption, however, contains two differences from PTE 77–4. First, beginning on February 1, 2008, use of a "Termination Form" took the place of the PTE 77–4 requirement that an independent fiduciary approve any change in mutual fund fees—substituting a "negative consent" requirement for those fee changes in place of affirmative approval. Second, the requested exemption would permit a Credit Fee Method with respect to PNC's receipt of Plan and Fund-Level Fees. As a result, the requested exemption would allow three ways to deal with duplicative fee—a Client Plan may use the (a) Offset Fee Method, (b) Credit Fee Method, or (c) the Subtraction Fee Method.

Receipt of Fees Pursuant to the Fee Methods

11. PNC will charge investment advisory fees to the Funds in accordance with the investment advisory agreement between PNC and the Funds, payable monthly. This agreement is approved annually by the independent members of the Board of Directors of the Funds, in accordance with the applicable provisions of the 1940 Act, and any subsequent changes in the gross fees will have to be approved by such Directors. These fees will not be increased without the approval of the shareholders of the affected Funds. PNC represents that as of February 1, 2008, the following fee methods dealing with duplicative fees were in place: (a) The Offset Fee Method, (b) the Subtraction Fee Method, and (c) the Credit Fee Method,[3] as described in Section II(a)(1), (a)(2), and (a)(3) of this proposed exemption.

Offset Fee Method

12. With regard to the Offset Fee Method, PNC represents that it does not charge a Client Plan any direct fees for investment management with respect to such Client Plan's assets invested in the Funds. Such Client Plan pays fees to PNC solely for non-investment trust or custody services. The fees a Client Plan pays for those assets invested in the Funds come solely from the Funds in accordance with certain advisory agreements. The result is that the Plan-Level Fees are offset, and the Client Plan pays only an investment advisory or similar Fund-Level Fee with respect to those plan assets invested in a Fund.

[3] 77–4 for PNC's. It is the view of PNC that the Credit Fee Method is covered by PTE 77–4. The Department does not concur with PNC's view that the Credit Fee Method is covered under PTE 77–4. Accordingly, the Department has determined that no relief is available under use of the Credit Fee Method.

Subtraction Fee Method

13. Under this method, PNC charges the Client Plan a direct investment management fee, but credits to the benefit of such client Plan, as a subtraction to such Client Plan's Plan-Level Fees, its proportionate share of the investment advisory fee of Client Plan assets invested in the Funds and paid to PNC, including the Client Plan's share of any investment advisory fees paid by PNC to sub-advisors, as reduced by any waiver or rebate by PNC of such fees to the Funds, such as a waiver or rebate due to state law or other limits on Fund expenses.[4] The result is that the Client Plan pays only one investment management fee with respect to those assets. The subtraction is solely against those Plan-Level Fees charged by PNC for serving as investment manager, and does not include non-investment management trustee fees.

The credit under this Subtraction Fee Method and the Credit Fee Method, below, will not include the fees for "Secondary Services" payable by the Funds to PNC, because such services rendered at the Fund level will not be duplicative of any services provided directly to the Client Plan. The services to the Client Plan may involve maintaining custody over all or a portion of the Client Plan's assets (which may include Fund shares, but not the assets underlying the Fund shares), providing trust accounting, asset and transaction reporting, execution and settlement of transactions, processing benefit payments and loans, valuing loan assets, and producing statement and reports regarding overall plan holdings. PNC represents that these Plan-level services will be necessary regardless of whether such Client Plan's assets are invested in the Funds.

Credit Fee Method

14. Under this method, PNC will charge standard (or negotiated) fees, as applicable to each Client Plan, for serving as trustee and/or investment manager. At the beginning of each month, and in no event later than one business day after the payment of investment advisory fees by the Funds to PNC for the previous month, PNC will pay a "credited dollar amount" to a Client Plan that constituted its proportionate share of all investment advisory fees charged by PNC to the Funds for the previous month. The standard practice will be to reinvest this "credited dollar amount" in additional shares of the same Fund with respect to which the fees were credited. The additional shares so acquired will be valued at the net asset value on the date the purchase request is transmitted to the Fund, which is the same day the "credited dollar amount" is made to the Client Plan's account.

It is represented that a Client Plan could request that a rebate be made in cash. The cash would be invested in a money market account pending investment direction from the investment officer for the account. PNC does not anticipate notifying Client Plans in each instance that they have the option to request that credits be made in cash rather than additional shares.

15. PNC, as a trustee and investment manager for Client Plans in connection with the decision to invest Client Plan assets in the Funds, will monitor all fees paid by a Fund to PNC and third parties for services provided to the Fund, to ensure that there will not be any payment of "double" fees for duplicative services to the Fund.

For each Client Plan, the combined total of all fees PNC receives directly and indirectly from Client Plans for the provision of services to the Plans and/or to the Funds will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

Audit of the Credit Fee Method

16. It is represented that there are sufficient safeguards to permit exemptive relief for the use by PNC of the Credit Fee Method. Accordingly, PNC will maintain a system of internal accounting controls for the rebating of investment advisory fees to Client Plans. In addition, PNC will retain the services of an independent Auditor to audit annually the crediting of fees to the Client Plans under the Credit Fee Method. Such audits will provide independent verification of the proper crediting to such Client Plans. In the annual audit of the Credit Fee Method, the Auditor will use procedures designed to review and test compliance with the specific operational controls and procedures established by PNC for making the credits. Specifically, the Auditor will: (i) Verify on a test basis the investment advisory fees paid by the Funds to PNC; (ii) verify on a test basis the monthly factors used to determine the investment advisory fees; (iii) verify on a test basis the credits paid in total for a one-month period; (iv) re-compute, on a test basis, using the monthly factors described above, the amount of the credit determined for selected Client Plans; (v) verify on a test basis the proper assignment of identification fields for receipt of fee credits to the Client Plans; and (vi) verify on a test basis that the credits were posted to the Client Plans within the required time frame.

In the event either the internal audit made by PNC or the independent audit made by the Auditor identifies an error in the crediting of fees to a Client Plan, PNC will correct the error. With respect to any shortfall in credited fees to a Client Plan, PNC will make a cash payment to such Client Plan equal to the amount of the error, plus interest paid at money market rates offered by PNC for the period involved. Any excess credits made to a Client Plan will be corrected by an appropriate deduction from such Client Plan or reallocation of cash during the next payment period after discovery of the error to reflect accurately the amount of total credits due to such Client Plan for the period involved.

Receipt of Secondary Services Fees

As described in Representation 3 above, on February 1, 2008, the Funds used PNC-affiliated service providers for secondary services. Accordingly, PNC requests an administrative exemption, effective as of February 1, 2008 for receipt of fees by PNC for the provision of Secondary Services to the Funds.

In the Interest of Client Plans

17. The applicant represents that the proposed exemption is in the interest of the Client Plans and their participants and beneficiaries. In this regard, the Funds provide advantages for Client Plans, including professional management, the ability to monitor performance on a daily basis, and the flexibility to purchase and redeem shares on a daily basis. It is represented that no sales commissions are charged to Client Plans in connection with the purchase or sale of shares in any of the Funds. In addition, these investments in the Funds by Client Plans are made in certain classes of shares, which are not subject to 12b–1 fees. Redemption fees are charged only if disclosed in the prospectuses in effect at both the time of the original investment in the shares of a Fund and the time of redemption.

It is further represented that the Funds provide a means for Client Plans with limited assets to achieve diversification of investment in a manner that may not be attainable through direct investment. For these reasons, the applicant maintains that the availability of the Funds as investments

[4] While fees above a certain limit may be waived or rebated by PNC, as a technical matter, the Funds may pay the excess fees and then simultaneously receive a credit of the excess amount. For purposes of the fee structure described in this section, PNC intends to credit to Client Plans only the net fees that it receives, and not to credit any of the excess fees that have been rebated to the Funds.

enables PNC, as investment manager, to better meet the investment goals and strategies of a Client Plan.

Protective of Client Plans

18. It is represented that the proposed exemption contains sufficient safeguards for the protection of the Client Plans invested in the Funds. In this regard, prior to any investment by a Client Plan in a Fund, the investment must be authorized in writing by the Second Fiduciary of such Client Plan, based on full and detailed written disclosure concerning such Fund.

In addition to the initial disclosures received by the Second Fiduciary of a Client Plan invested in a Fund, PNC provides to such Second Fiduciary ongoing disclosures regarding such Fund and the fee methods. Specifically, on an annual basis, such Second Fiduciary receives copies of the current Fund prospectuses, as well as copies of the annual financial disclosure reports containing information about the Funds and audit findings of the Auditor within sixty (60) days of the preparation of such report.

It is represented that PNC or an appropriate affiliate, thereof, will respond to inquiries from a Second Fiduciary. In addition, a Second Fiduciary, upon request, will receive copies of the Statements of Additional Information for the Funds and a copy of the proposed exemption and a copy of the final exemption, if granted, once such documents are published in the **Federal Register**.

Furthermore, each investment of the assets of a Client Plan in a Fund will be subject to the ongoing ability of the Second Fiduciary of such Client Plan to terminate the investment in such Fund without penalty to such Client Plan at any time upon written notice of termination to PNC. In this regard, a Termination Form, expressly providing an election to terminate the authorization, with instructions on the use of such Termination Form, will be supplied to the Second Fiduciary at least annually.

The Termination Form may be used to notify PNC, in writing to effect a termination by selling the shares of the Funds held by a Client Plan. Such sales are to occur within one (1) business day, as defined in Section III(k) of this exemption, following receipt by PNC of the Termination Form. If, due to circumstances beyond the control of PNC, the sale cannot be executed within one (1) business day, PNC will be obligated to complete the sale within the next business day.

By using the Termination Form that PNC provides thirty (30) days in advance of any increase in the rate of fees and change in services, the Second Fiduciary will have sufficient opportunity to terminate a Client Plan's investment in a Fund, without penalty to the Client Plan, and withdraw the Client Plan's investment from such Fund in advance of any such increase in fee and change in services.

Feasibility

19. PNC represents that the proposed exemption is feasible in that compliance with the terms of the exemption will be monitored by the Second Fiduciary of a Client Plan who is independent of PNC. Further, PNC provides internal accounting safeguards to ensure the accuracy of the calculation of the "credited dollar amounts" under the Credit Fee Method, and an independent Auditor will provide assurance that the Credit Fee Method is properly administered. For these reasons, the applicant maintains that the Department will not have to monitor the implementation and enforcement of the exemption.

It is represented that the negative consent procedure, as described herein, for obtaining the approval from the Second Fiduciary of each Client Plan invested in a Fund for increases in fees and the addition of services for which a fee is charged is more efficient, cost effective, and administratively feasible than written affirmative consent approval, as described in PTE 77–4.

Under PTE 77–4, an increase in fees and any change in services may not be implemented until written approval of such increase or change is obtained from every Second Fiduciary of Client Plans invested in a Fund. A communication failure that results in not obtaining an affirmative written approval from a Second Fiduciary of a Client Plan could force PNC to transfer a Client Plan's investments out of a Fund.

Under the negative consent procedure, as set forth herein, the difficulties of obtaining written affirmative approval from the Second Fiduciary of each Client Plan and coordinating any fee increases and any additional services for which a fee is charged will be avoided while such Second Fiduciary will still receive the necessary disclosures. Specifically, each Second Fiduciary of a Client Plan invested in a Fund will receive advance notice in a statement separate from such Fund's prospectus of any proposed change from one fee method to another or any proposed increase in a rate of fee for investment advisory services, or similar services, paid to PCA that was previously disclosed in the Fund prospectus. In addition, each Second Fiduciary will receive advance notice of any additional Secondary Service for which a fee is charged and any increase of any rate of any fee paid for Secondary Services to PNC or an increase in a rate of any fee that results from a decrease in the number or kind of service performed by PNC in connection with a previously authorized fee for such service. With regard to the affected Fund, the advance notice will contain an explanation of the nature and amount of the increase in fees and the nature and amount of the addition (or elimination) of a service for which an additional fee is charged. The Second Fiduciary will receive such advance notice thirty (30) days prior to the effective date of such increase in the rate of fees and change in services with respect to a Client Plan's investment in a Fund. Such advance notice must be accompanied by a Termination Form that would allow the Second Fiduciary to terminate, without penalty to the Client Plan, the authorization to invest in the Funds. The notice requirement would not apply if an increase is the result of the cessation of a voluntary temporary waiver of fees by PNC, and the full fee level had previously been described in writing to and authorized by the Second Fiduciary. Failure to return the Termination Form by the thirtieth (30th) day will result in the negative consent of the Second Fiduciary to the increase in fees or to the increase in the fees that results from an addition or elimination in the number or kind of service performed by PNC in connection with a previously authorized fee for such service and to the addition of services for which an additional fee is charged.

20. In summary, the proposed transactions satisfy or will satisfy the statutory criteria of section 408(a) of ERISA for the following reasons:

a. The Funds provide the Client Plans with an effective investment vehicle.

b. Client Plan investments in the Funds and the payment of any fees by the Funds to PNC in connection with such investments will require an advance authorization in writing by the Second Fiduciary after full written disclosure, including current prospectuses for the Funds and a statement describing the fee method to be used.

c. Any authorization made by the Second Fiduciary will be terminable at will by that fiduciary, without penalty to the Client Plan, within one business day following receipt by PNC of written notice of termination from the fiduciary on a form expressly providing an election to terminate the authorization,

which will be supplied to the Second Fiduciary no less than annually, or in any other written notice of termination.

d. No sales commissions will be paid by the Client Plans in connection with the acquisition or sale of shares of the Funds. Redemption fees not to exceed two percent (2%) of the value of the shares redeemed may be paid only in accordance with Rule 22c–2 of the 1940 Act and the conditions imposed on such fees by PTE 77–4.

e. All dealings among the Client Plans, any of the Funds, PCA, as well as PNC and its affiliates will be on a basis no less favorable to the Client Plans than such dealings with the other shareholders of the Funds.

f. Plans investing in the Funds would pay only a single level of investment advisory-type fees with respect to their assets so invested, either receiving a rebate of the Fund investment advisory fees or not being charged the Plan-Level investment management fees.

g. PNC will require annual audits by an independent accounting firm to verify that the Client Plan using the Credit Fee Method receives proper credits for the fees paid to the Funds.

For Further Information Contact: Mr. Anh-Viet Ly of the Department, telephone (202) 693–8648. (This is not a toll-free number.)

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, in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[5]

If the proposed exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act (or ERISA) 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 as of December 22, 2009 to the cash sale of certain fixed income securities (the Securities) for an aggregate purchase price of $113,977,880.15 by the Quality D Short-Term Investment Fund (the Fund) to State Street, a fiduciary with respect to the Fund and a party in interest with respect to employee benefit plans (the Plans) invested, directly or indirectly, in the Fund, provided that the following conditions are met:

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

(b) The Fund received an amount which was equal to the sum of (1) the aggregate current amortized cost of the Securities as of the date of the transaction plus (2) the aggregate accrued interest on the Securities through the date of the transaction, calculated at the applicable contract rate for each of the Securities;

(c) The Fund did not bear any commissions, fees, transaction costs, or other expenses in connection with the sale;

(d) The amount received by the Fund with respect to each of the Securities was no less than the fair market value of each such Security, based upon the closing price obtained from an independent pricing service, as of the close of business on the date prior to the date of the transaction;

(e) State Street, as trustee of the Fund, determined that the sale of the Securities was appropriate for and in the best interests of the Fund, and the Plans invested, directly or indirectly, in the Fund, at the time of the transaction;

(f) State Street took all appropriate actions necessary to safeguard the interests of the Fund and the Plans invested, directly or indirectly, in the Fund, in connection with the transaction;

(g) State Street and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the person described below in paragraph (h)(1), to determine whether the conditions of this exemption have been met, except that:

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

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

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

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

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

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

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

(2) None of the persons described, above, in paragraphs (h)(1)(B)–(D) shall be authorized to examine trade secrets of State Street or its affiliates, or commercial or financial information which is privileged or confidential; and

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

Effective Date: If granted, this exemption will be effective as of December 22, 2009.

Summary of Facts and Representations

1. State Street is a Massachusetts state-chartered trust company subject to regulation by the Massachusetts Division of Banks. As of December 31, 2009, State Street managed assets in excess of $1.9 trillion. State Street provides a wide range of banking and fiduciary services to a broad array of clients, including employee benefit plans subject to the Act and plans subject to Section 4975 of the Code. State Street is a subsidiary of State Street Corporation, a financial holding company organized under the laws of Massachusetts.

2. The Fund is a group trust that is exempt from federal income tax pursuant to Rev. Rul. 81–100. State Street serves as a trustee and investment manager for the Fund. The Fund is a short-term investment fund that values its assets based on their amortized cost, and seeks to maintain a constant unit value equal to $1.00. The Fund invests primarily in fixed income investments, including certificates of deposit, asset-backed securities, commercial paper, corporate notes, asset-backed

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

commercial paper, bank notes, time deposits and repurchase agreements. The Fund is maintained in connection with State Street's securities lending program, and it is maintained exclusively for the purposes of investing cash collateral generated by that program.

3. As of December 21, 2009, the value of the Fund's portfolio was approximately $48,594,086,914. As of December 21, 2009, there were approximately 136 direct investors in the Fund, a substantial number of which were employee benefit plans or trusts subject to the Act, with the remaining investors being government-sponsored employee benefit plans, church-sponsored employee benefit plans and unaffiliated group trusts.[6] No in-house Plan of State Street invested in the Fund. Of the ERISA-covered Plans investing in the Fund, none had a greater that 20% interest (direct or indirect) therein.

4. On December 22, 2009, the Fund held the following asset backed securities, which it valued at their amortized cost:

CUSIP No.	Issuer	Acquisition date	Original face value	Maturity date
78442GPR1	SLM Student Loan Trust	08/19/05	$26,132,000.00	10/25/40
14041NCR0	Capital One Multi-Asset Execution	03/02/06	22,581,000.00	12/16/13
161571BB9	Chase Issuance Trust	02/21/06	64,371,000.00	04/15/13
78453VAA7	Superannuation Members Home	11/18/03	9,900,000.00	05/09/30
Total			$122,984,000.00	

The decision to invest in the Securities was made by State Street. Prior to each investment, State Street conducted an investigation of the potential investment, examining and considering the economic and other terms of the Securities. State Street represents that each investment in the Securities was consistent with the applicable investment policies and objectives of the Fund, including the Fund's desire to maintain a constant unit value equal to $1.00. At the time the Fund acquired each of the Securities, each Security was rated at least "A–1+" by Standard & Poor's Corporation and "P–1" by Moody's Investor Services, Inc. Based on its consideration of the relevant facts and circumstances, State Street states that it was prudent and appropriate for the Fund to acquire the Securities.[7] State Street also represents that none of the issuers or sellers of the Securities were related to State Street.

5. State Street represents that prior to December 22, 2009, the market value of the Securities had decreased and the Securities had been consistently trading below their amortized cost. In addition, market conditions with respect to the Securities reflected a diminished degree of liquidity with respect to the Securities.

6. In view of the foregoing, State Street, as trustee of the Fund, determined that it would be appropriate and in the best interest of the Fund to sell each of the Securities to State Street at a price equal to the greater of (a) the fair market value of such Security (determined based on the closing price of such Security on the day prior to the date of the sale transaction, as obtained from an independent pricing service) or (b) the sum of (i) the Fund's current amortized cost of the applicable Security on the date of the sale transaction, plus (ii) accrued interest on the applicable Security through the date of the sale transaction, calculated at the applicable contract rate for such Security. State Street determined that such a sale would protect the Fund from any potential investment loss with respect to the Securities, enhance the liquidity of the Fund, be consistent with the Fund maintaining a constant unit value equal to $1.00, and alleviate any concerns the investors in the Fund might have regarding the foregoing matters. Finally, State Street determined that the purchase of the Securities would be permissible under applicable banking law.

7. On December 21, 2009, prior to consummation of the transaction, State Street sent written notice to the designated representative of each of the investors having a direct interest in the Fund of State Street's intent to cause the Fund to sell the Securities to State Street. While such notice did not contemplate or require any response, it should be noted that this notice did not generate any negative reaction from any of the recipients thereof.

8. State Street represents that on December 22, 2009, it purchased the Securities from the Fund for an aggregate lump sum cash payment of $113,977,880.15, which amount represented the sum of (a) the aggregate current amortized cost of the Securities ($113,959,596.43) on the date of the sale transaction plus (b) the aggregate accrued interest on the Securities through the date of the sale transaction, calculated at the applicable contract rate for each of the Securities ($18,283.72). Three of the four Securities had a current amortized cost equal to their face value. The fourth Security had a current amortized cost slightly less than the purchase price because it was

[6] It is represented that section 408(b)(8) of the Act would apply to the investment by the ERISA-covered Plans in the Fund. Section 408(b)(8) of the Act provides a statutory exemption for any transactions between a plan and a common or collective trust fund maintained by a party in interest which is a bank or trust company supervised by a State or Federal agency if certain requirements are met.

[7] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the Securities by the Fund violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

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

purchased on the secondary market at a discount to face value. The purchase price of each Security was determined as follows:

CUSIP No.	Face value as of 12/22/09	Amortized cost	Accrued interest	Net proceeds
78442GPR1	$26,132,000.00	$26,131,247.84	$12,917.07	$26,144,164.91
14041NCR0	22,581,000.00	22,581,000.00	1,999.25	22,582,199.25
161571BB9	64,371,000.00	64,371,000.00	3,418.65	64,374,418.65
78453VAA7	876,348.59	876,348.59	748.75	877,097.34
Total	113,960,348.59	113,959,596.43	18,283.72	113,977,880.15

The contract rate used to calculate the applicable accrued interest for each Security was a floating rate based on a LIBOR-based formula that resets on a monthly or quarterly basis.

9. Prior to its consummation of the foregoing transaction, State Street represents that it contacted Interactive Data Corporation (IDC), an independent pricing service, to obtain the closing price of each of the Securities on December 21, 2009 (the day preceding the date of the transaction) and determined that such closing price for each Security was less than the price State Street would pay for each such Security. The information provided by IDC was as follows:

CUSIP No.	Market price	Fair market value
78442GPR1	83.5324	$21,828,058.47
14041NCR0	99.30296	22,423,601.40
161571BB9	99.54217	64,076,290.25
78453VAA7	99.7209	873,902.70
Total	.....	109,201,852.82

10. State Street, as trustee of the Fund, believed that the sale of the Securities by the Fund to State Street was in the best interests of the Fund and the Plans invested, directly or indirectly, in the Fund, at the time of the transaction. State Street states that any sale of the Securities on the open market at that time would have produced losses for the Fund and for the participating investors in the Fund.

11. State Street represents that the sale of the Securities by the Fund to State Street benefited the Plan investors in the Fund because the purchase price paid by State Street for each Security exceeded the fair market value of such Security. In addition, State Street represents that the transaction was a one-time sale for cash in connection with which the Fund did not bear any commissions, fees, transaction costs or other expenses. State Street further represents that it took all appropriate actions necessary to safeguard the interests of the Fund and its participating investors in connection with the sale of the Securities.

Accordingly, State Street requests an administrative exemption from the Department with respect to the sale of the Securities by the Fund to State Street. If granted, the exemption will be effective as of December 22, 2009.

12. In summary, State Street represents that the transaction satisfied the statutory criteria of section 408(a) of the Act and section 4975 of the Code because: (a) The sale of the Securities by the Fund to State Street was a one-time transaction for cash; (b) the Fund received an amount equal to the sum of (i) the aggregate current amortized cost of the Securities as of the date of the transaction, plus (ii) the aggregate accrued interest on the Securities through the date of the transaction, calculated at the applicable contract rate for each of the Securities, which amount was greater than the closing price of each of the Securities as of the close of business on the date immediately prior to the date of the sale transaction, as determined based on information obtained from IDC, an independent pricing service; (c) the Fund did not pay any commissions, fees, transaction costs, or other expenses with respect to the sale; (d) the amount received by the Fund with respect to each of the Securities was no less than the fair market value of each such Security as of the close of business on the date prior to the date of the transaction; and (e) State Street, as trustee of the Fund, determined that the sale of the Securities by the Fund to State Street was in the best interests of the Fund and the Plans invested, directly or indirectly, in the Fund, at the time of the transaction.

For Further Information Contact: Mr. Brian Shiker of the Department, telephone (202) 693–8552. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

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

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

(3) The proposed exemptions, if granted, will be supplemental to, and

not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

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

Signed at Washington, DC, this 26th day of April 2010.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration.

[FR Doc. 2010–10065 Filed 4–29–10; 8:45 am]

BILLING CODE 4510–29–P

OFFICE OF MANAGEMENT AND BUDGET

Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Management and Budget, Office of Federal Financial Management.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on the renewal without change of two standard forms: SF–270, Request for Advance or Reimbursement and SF–271, Outlay and Request for Reimbursement for Construction Programs. We are particularly interested in comments on whether the information collected in the forms could be more consistent with other governmentwide grant-related information collections.

DATES: Comments must be received by June 29, 2010. Due to potential delays in OMB's receipt and processing of mail sent through the US Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

ADDRESSES: Comments may be sent to *regulations.gov,* a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type "SF–270 PRA" (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record. Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503; telephone 202–395–7844; fax 202–395–3952; e-mail *mpridgen@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Marguerite Pridgen at the addresses noted above.

OMB Control No.: 0348–0004.

Title: Request for Advance or Reimbursement.

Form No.: SF–270.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, universities, non-profit organizations.

Number of Responses: 100,000.

Estimated Time Per Response: 60 minutes.

Needs and Uses: The SF–270 is used to request funds for all nonconstruction grant programs when letters of credit or predetermined advance payment methods are not used. The Federal awarding agencies use information reported on this form for the award and general management of Federal assistance program awards.

OMB Control No.: 0348–0002.

Title: Outlay and Request for Reimbursement for Construction Programs.

Form No.: SF–271.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Universities, Non-Profit Organizations.

Number of Responses: 40,000.

Estimated Time Per Response: 60 minutes.

Needs and Uses: The SF–271 is used to request reimbursement for all construction grant programs. The Federal awarding agencies use information reported on this form for the award and general management of Federal assistance program awards.

Debra J. Bond,

Deputy Controller.

[FR Doc. 2010–10112 Filed 4–29–10; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee #13883; Notice of Meeting

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

Name: Astronomy and Astrophysics Advisory Committee (#13883).

Date and Time: May 20, 2010, 12 p.m.–5 p.m.

Place: Teleconference National Science Foundation, Room 1020, Stafford I Building, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. James S. Ulvestad, Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4909.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: April 27, 2010.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 2010–10083 Filed 4–29–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit