AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 80 Monday,
No. 143 July 27, 2015

Part V

Department of Labor

Employee Benefits Security Administration

Exemptions From Certain Prohibited Transaction Restrictions; Notices

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: 2015–07, Rock Wool Manufacturing Company Salaried Retirement Plan, D–11786; 2015–08, Wells Fargo Company, D–11752; 2015–09, Robert W. Baird & Co. Incorporated, D–11782; 2015–10, Eli Lilly and Company and Elco Insurance Company Limited, L–11784; 2015–11, Robert A. Handelman Roth IRA No. 2, D–11798; 2015–12, Roofers Local 195 Pension Fund and Roofers Local 195 Joint Apprenticeship Training Fund, D–11809 and L–11810; and, 2015–13, First Security Group, Inc. 401(k) and Employee Stock Ownership Plan, D–11826.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, 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 proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011) [1] and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Rock Wool Manufacturing Company Salaried Retirement Plan (the Plan), Located in Leeds, AL

[Prohibited Transaction Exemption 2015–07; Exemption Application No. D–11726]

Exemption

Section I: Transaction

The restrictions of sections 406(a)(1)(A), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (E) of the Code,[2] shall not apply to the proposed in-kind contribution (the Contribution) to the Plan of a parcel of unimproved real property located at 8200 Thorton Avenue, Leeds, AL (the Property) by Rock Wool Manufacturing Company (Rock Wool), the Plan sponsor and a party in interest with respect to the Plan.

Section II: Conditions

(a) A qualified independent fiduciary (the Independent Fiduciary), acting on behalf of the Plan:

(1) Determines that the Contribution is in the interests of the Plan and protective of the Plan's participants and beneficiaries; and

(2) Determines that the Property is valued for purposes of the Contribution at the Property's fair market value as of the date of the Contribution, as determined by a qualified independent appraiser (the Independent Appraiser);

(b) The Independent Fiduciary performs the following steps in order to make the determinations described above in paragraph (a):

(1) Reviews, negotiates, and approves the specific terms of the Contribution; and

(2) Ensures, for the purposes of the Contribution, that the appraisal report rendered by the Independent Appraiser is consistent with sound principles of valuation;

(c) As of the date of the Contribution, the Independent Fiduciary monitors compliance by Rock Wool with respect to the terms of the Contribution and with respect to the conditions of this exemption, if granted, to ensure that such terms and conditions are satisfied at all times;

(d) The Plan does not pay any commissions, costs or other expenses, including any fees that are currently charged or accrued in the future by the Independent Fiduciary and the Independent Appraiser, in connection with the Contribution;

(e) The terms and conditions of the Contribution are no less favorable to the Plan than the terms and conditions that would be negotiated at arm's length between unrelated third parties under similar circumstances; and

(f) The contributed value of the Property is equal to the Property's fair market value, as determined by the Independent Appraiser on the transaction date, less a 35 percent discount to account for certain marketability limitations.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published on April 15, 2015, at 80 FR 20246. All comments and requests for hearing were due by May 31, 2015. During the comment period, the Department received no comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. D–11726), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on April 15, 2015, at 80 FR 20246.

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

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

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number.)

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

[Prohibited Transaction Exemption 2015–08; Application No. D–11752]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a)(1)(A) and 406(a)(1)(D), and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), (E), and (F) of the Code,[3] shall not apply to the purchase of certain securities (the Securities), as defined in Section V(j), during the existence of an underwriting or selling syndicate with respect to such Securities by an asset management affiliate of WFC (the Asset Manager(s)), as defined in Section V(f), from any person other than such Asset Manager, where the Asset Manager purchases such Securities, as a fiduciary: (1) On behalf of an employee benefit plan or employee benefit plans (Client Plan(s)), as defined in Section V(g); or (2) on behalf of Client Plans and/or In-House Plan(s), as defined in Section V(m), which are invested in a pooled fund or in pooled funds (Pooled Fund(s)), as defined in Section V(h), under the following circumstances:

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

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

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

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

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

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

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

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

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

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

(B) Are issued by a bank;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Is a bank; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Any other reasonably available information regarding the transactions described in Section I(a), (b), (d), and (e) that such Independent Fiduciary requests the Asset Manager to provide.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The Quarterly Report contains:

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

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

(iii) In the case of an AST as described in Section I(b), a representation of the Asset Manager affirming that, as to each

such AST, the transaction was not part of an agreement, arrangement, or understanding designed to benefit the Affiliated Servicer; and

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

(5) A disclosure in the Quarterly Report that states that any other reasonably available information regarding the transactions described in Section I(a), (b), (d), and (e), that an Independent Fiduciary (or fiduciary of an In-House Plan) requests will be provided, including, but not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section III. Conditions for Transactions Described in Section I(C)

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

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

(b) The purchase of the CMBS meets the conditions of an applicable underwriter exemption (the Underwriter Exemption(s)).[5] (c)(1) The aggregate amount of CMBS of an issue purchased by the Asset Manager with:

(i) The assets of all Client Plans;

(ii) The assets, calculated on a pro rata basis, of all Client Plans and In-House

[5] The Underwriter Exemptions are a group of individual exemptions granted by the Department to provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding, and disposition by plans of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The most recent amendment to the Underwriter Exemptions is the Amendment to Prohibited Transaction Exemption 2007–05, 72 FR 13130 (March 20, 2007), Involving Prudential Securities Incorporated, et al., To Amend the Definition of ''Rating Agency,'' [Prohibited Transaction Exemption 2013–08, 78 FR 41090 (July 9, 2013); Exemption Application No. D–11718.]

Plans investing in Pooled Funds managed by the Asset Manager; and

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

(2) Notwithstanding the percentage of CMBS of an issue permitted to be acquired, as set forth in Section III(c)(1), the amount of CMBS in any issue purchased by the Asset Manager on behalf of any single Client Plan, either individually or through investment, calculated on a pro rata basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such CMBS being offered in such issue; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The requirements of Section IV are met.

Section IV. General Conditions for Transactions Described in Section I

(a) For purposes of engaging in the transactions described in Section I, each Client Plan (and each In-House Plan) shall have total net assets with a value of at least $50 million (the $50 Million

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

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

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

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

(b) The Asset Manager is a ''qualified professional asset manager'' (QPAM), as that term is defined under Section V(a) of Prohibited Transaction Exemption (PTE 84–14),[6] as amended from time to time, or any successor exemption thereto. In addition to satisfying the requirements for a QPAM under Section V(a) of PTE 84–14, the Asset Manager also must have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million.

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

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

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

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

(g) The Independent Fiduciary of each Client Plan (and the fiduciary of each In-House Plan) that engages in the transactions described in Section I through a Pooled Fund may terminate the investment in such Pooled Fund, without penalty to such Client Plan (or such In-House Plan), within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans, after the date that the Independent Fiduciary of such Client Plan (or the fiduciary of such In-House Plan, as the case may be) informs the Asset Manager that the investment in such Pooled Fund is terminated.

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

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

Section V. Definitions

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

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

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

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

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

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

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

(e) The term ''manager'' used in Section V(d) above and Section V(f) below, means any member of an underwriting or selling syndicate who,

[6] 49 FR 9494 (March 13, 1984), as amended, 70 FR 49305 (August 23, 2005).

either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the Securities, as defined in Section V(j), being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

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

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

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

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

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

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

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

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

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

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

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

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

(k) The term ''Eligible Rule 144A Offering'' shall have the same meaning as defined in SEC Rule 10f–3(a)(4)

(17 CFR 270.10f–3(a)(4))under the 1940 Act.

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

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

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

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

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

Further, the instructions will identify WFC, the Asset Manager, the Affiliated Broker-Dealer, and as applicable, the

Affiliated Trustee, or the Affiliated Servicer, and will provide the address of the Asset Manager. The instructions will state that this exemption will not be available, unless the fiduciary of each plan participating in any of the transactions described in Section I, as applicable, as an investor in a Pooled Fund is, in fact, independent of WFC, the Asset Manager, the Affiliated Broker-Dealer, and, as applicable, the Affiliated Trustee or the Affiliated Servicer. The instructions will also state that the fiduciary of each such plan must advise the Asset Manager, in writing, if it is not an ''Independent Fiduciary,'' as that term is defined in Section V(i).

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

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

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

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

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

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

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

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

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

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

Effective Date: This exemption will be effective as of the date the Grant is published in the **Federal Register**.

Written Comments/Notice of Technical Correction

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption (the Notice), published in the **Federal Register** on November 26, 2014 at 79 FR 70631. All comments and requests for hearing were due by January 10, 2015. During the comment period, the Department received no comments and no requests for a hearing from interested persons with respect to the Notice. However, upon careful review of the Notice, the Department observed that Section II(o) had been misalphabetized and the reference should have been to Section II(n) instead. The Department has corrected the error in this grant notice.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. D–11752), including all supplemental submissions received by the Department, is available for public inspection at the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. For a more complete statement of facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published in the **Federal Register** on November 26, 2014, at 79 FR 70631.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

Robert W. Baird & Co. Incorporated (Baird), Located in Milwaukee, Wisconsin

[Prohibited Transaction Exemption 2015–09; Application No. D–11782]

Exemption

Section I. Transactions

The restrictions of sections 406(a)(1)(D) and 406(b) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986, as amended (the Code) by reason of sections 4975(c)(1)(D), (E), and (F) of the Code, shall not apply to:

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

(b) the in-kind redemptions of shares or acquisitions of shares of the Fund in exchange for Account assets transferred in-kind from an Account in connection with the Investment Adviser's discretionary management of the Account,

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

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

Section II. General Conditions

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

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

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

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

advisory fee by the Account under the following circumstances:

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

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

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

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

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

(3) An investment advisory fee may be paid by an Account based on the total assets of the Account, if the Account will receive a cash rebate of such Account's proportionate share of all fees charged to the Fund by the Investment Adviser for investment management, investment advisory or similar services no later than one business day after the receipt of such fees by the Investment Adviser;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Failure of the Second Fiduciary to return the Termination Form or provide any other written notice of termination

will result in continued authorization of the Investment Adviser to engage in the covered transactions on behalf of an Account; and

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

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

(l) In situations where the Fund-level fee is neither rebated nor credited against the Account-level fee, the Second Fiduciary of each Account invested in a particular Fund will receive full disclosure, in written or in electronic form, in a statement, which is separate from the Fund prospectus, of any proposed increases in the rates of fees for investment advisory or similar services, and any Secondary Services, at least 30 days prior to the implementation of such increase in fees, accompanied by a Termination Form. In situations where the Fund-level fee is rebated or credited against the Account-level fee, the Second Fiduciary will receive full disclosure, in a Fund prospectus or otherwise, in the same time and manner set forth above, of any increases in the rates of fees to be charged by the Investment Adviser to the Fund for investment advisory services. Failure to return the Termination Form will be deemed an approval of the increase and will result in the continued authorization of the Investment Adviser to engage in the covered transactions on behalf of an Account;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section III. Additional Conditions for In-Kind Transactions

(a) In-kind transactions with an Account shall only involve: (1) Publically-traded securities for which market quotations are readily available, as determined pursuant to procedures established by the Funds under Rule 2a–4 of the 1940 Act; (2) securities that are deemed to be liquid and that are valued based upon prices obtained from a reliable well-established third-party pricing service that is independent of the Investment Adviser (*e.g.,* Interactive Data Pricing and Reference Data, LLC) pursuant to then-existing procedures established by the Board of Directors or Trustees of the Funds under the 1940 Act and applicable Securities and Exchange Commission (SEC) rules, regulations and guidance thereunder (SEC Guidance); and (3) cash in the event that the aforementioned securities are odd lot securities, fractional shares, accruals on such securities, securities which have transfer restrictions, or securities which cannot be readily divided. Securities for which prices cannot be obtained from third-party pricing services will not be transferred in-kind. Furthermore, in-kind transfers of securities will not include:

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

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

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

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

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

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

(b) Subject to the exceptions described in Section III(a) above, in the case of an in-kind exchange of assets (in-kind redemptions and in-kind transfers of Plan assets) between an Account and a Fund, the Account will receive its pro rata portion of the securities of the Fund equal in value to that of the number of shares redeemed, or the Fund shares having a total net asset value (NAV) equal to the value of the assets transferred on the date of the transfer, as determined in a single valuation, using sources independent of the Investment Adviser, performed in the same manner as it would for any other person or entity at the close of the same business day in accordance with the procedures established by the Fund pursuant to Rule2a–4 under the 1940 Act, and the then-existing valuation procedures established by its Board of Directors or Trustees, as applicable for the valuation of such assets, that are in compliance with the rules administered by the SEC. In connection with a redemption of Fund shares, the value of the securities and any cash received by the Account for each redeemed Fund share equals the NAV of such shares at the time of the transaction. In the case of any other in-kind exchange, the value of the Fund shares received by the Account equals the NAV of the transferred securities and any cash on the date of the transfer;

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

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

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

(B) The value of each security transferred or received in-kind by the Account as of the date of the in-kind transfer, as determined by a third party pricing service that is independent of the Investment Adviser pursuant to the then-existing procedures established by the Board of Directors or Trustees of the Funds under the 1940 Act and applicable SEC Guidance;

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

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

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

1940 Act using sources independent of the Investment Adviser; and

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

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

Section IV. Definitions

(a) The term ''Account'' means either a Separately Managed Account or a Pooled Fund in which investments are made by Plans, which is managed on a discretionary basis by the Investment Adviser.

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

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

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

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

(f) The term ''Plan'' means a defined benefit pension plan described in section 3(3) of the Act and section 4975(e)(1)(A) of the Code. For purposes of this exemption, a Plan shall not include any trust, account or annuity described in Code section 4975(e)(1)(B) through (F), including, for example, an individual retirement account described in section 408(a) of the Code and a health savings account described in section 223(d) of the Code.

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

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

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

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

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

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

(j) The term ''Separately Managed Account'' means any Account other than a Pooled Fund.

Effective Date: This exemption is effective as of April 1, 2014.

Written Comment

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption (the Notice) on or before January 10, 2015. During the comment period, the Department received one written comment from Robert W. Baird & Co. Incorporated (Baird or the Applicant) and no other written comments. Baird's comment generally requested minor clarifying modifications to the operative language of the exemption and suggested clarifications to several statements in the Summary of Facts and Representations (the Summary). Baird's comment and the Department's responses thereto are described as follows.[7]

Clarifications to the Operative Language

Relief was proposed in Section I for, among other things, ''(a) the acquisition, sale or exchange by an Account of shares of an open-end investment company . . . the investment adviser for which is also a fiduciary with respect to the Account . . .;'' and ''(b) the in-kind redemptions of shares or acquisitions of shares of the Fund in exchange for Account assets transferred in-kind from an Account.'' Furthermore, Section IV(a) of the proposal defined ''Account'' to mean ''either a Separately Managed Account or a Pooled Fund in which investments are made by Plans,'' and Section IV(f) defined ''Plan'' to mean ''a plan described in section 3(3) of the Act and a plan described in section 4975(e)(1) of the Code.''

The Applicant represents that the exemption will only be used by defined benefit pension plans managed on a discretionary basis by the Investment Adviser, and will not include any plans described in Code section 4975(e)(1)(B)–(F). Therefore, in order to more accurately describe the scope of the exemption, Sections I(a) and I(b) of the proposed exemption have been modified in this final exemption by adding the phrase ''in connection with the Investment Adviser's discretionary management of the Account'' to the end of such sections; the definition of ''Account'' in Section IV(a) has been modified to mean ''either a Separately Managed Account or a Pooled Fund in which investments are made by Plans, which is managed on a discretionary basis by the Investment Adviser;'' and the definition of ''Plan'' in Section IV(f) has been modified to mean ''a defined benefit pension plan described in section 3(3) of the Act and section 4975(e)(1)(A) of the Code. For purposes of this exemption, a Plan shall not include any trust, account or annuity described in Code section 4975(e)(1)(B) through (F), including, for example, an individual retirement account described in section 408(a) of the Code and a health savings account described in section 223(d) of the Code.''

Section III(a)(3) of the proposed exemption provides, in relevant part, that ''In-kind transactions with an Account shall only involve: . . . (3) cash in the event that the aforementioned securities are odd lot securities, fractional shares, or accruals

[7] Capitalized terms not defined herein have the meanings ascribed to them in the Summary of Facts and Representations in the Proposed Exemption.

on such securities. Securities for which prices cannot be obtained from a third-party pricing service will not be transferred in-kind.'' Baird requests a modification to Section III(a)(3) to clarify that, in addition to the foregoing, securities will not be transferred or redeemed in-kind for the shares of the Fund if such securities have transfer restrictions or cannot be readily divided. The Department concurs with Baird's request, and has modified Section III(a)(3) in the final exemption to read, ''In-kind transactions with an Account shall only involve: . . . (3) cash in the event that the aforementioned securities are odd lot securities, fractional shares, accruals on such securities, securities which have transfer restrictions, or securities which cannot be readily divided. Securities for which prices cannot be obtained from third-party pricing services will not be transferred in-kind.''

Section III(a)(3)(6) of the proposed exemption provides that in-kind securities will not include securities subject to ''stop transfer'' instructions, including commercial paper or other short-term instruments issued pursuant to Section 4(2) of the 1933 Act. Baird notes that the proper cite in Section III(a)(3)(6) of the proposed exemption is Section 4(a)(2) of the 1933 Act, as opposed to Section 4(2). The Department concurs and Section III(a)(3)(6) of the final exemption has been modified accordingly.

Section III(c)(1) of the proposed exemption provides that the Investment Adviser shall provide the Second Fiduciary with a written confirmation containing information necessary to perform a post-transaction review of any in-kind transaction so that the material aspects of the transaction can be reviewed, including, in Subparagraph (B), ''the current market price of each security transferred or received in-kind by the Account as of the date of the in-kind transfer.'' Baird now believes that the term ''current market price'' is not accurate, and suggests that the language in Section III(c)(1)(B) be changed to ''the value of each security transferred or received in-kind by the Account as of the date of the in-kind transfer, as determined by a third party pricing service that is independent of the Investment Adviser pursuant to the then-existing procedures established by the Board of Directors or Trustees of the Funds under the 1940 Act and applicable SEC guidance thereunder.'' The Department concurs and Section III(c)(1)(B) of the final exemption has been modified accordingly.

Section IV(j) of the proposed exemption provides that ''the term 'Separately Managed Account' means any Account other than a Pooled Fund, and includes single-employer plans.'' Baird now believes that the language ''and includes single-employer Plans'' should be stricken from the definition of ''Separately Managed Account'' because any ERISA plan could be a separately managed account, including multiple and multi-employer plans. The Department concurs and Section IV(j) of the final exemption has been modified accordingly.

Clarification to the Summary of Facts and Representations

Paragraph eight of the Summary provides that ''. . . the Fund will value its Portfolio of fixed income securities at their closing bid prices each day . . . .'' Baird now states that the description of the Fund's valuation methodology is not accurate. Baird's comment explains that because fixed income securities are generally not listed and do not trade on a national securities exchange, the term ''closing bid price'' would not apply. Accordingly, a fund will use a third-party pricing service to provide an ''evaluated bid price'' for each fixed income security, which may, but need not be that security's closing bid price. Furthermore, under the 1940 Act and applicable SEC guidance, Baird is required to value fixed income securities at evaluated bid prices, as determined by a third party pricing service that is independent of Baird or its affiliates pursuant to the then-existing procedures established by the Board of Directors or Trustees of the Funds. In arriving at an evaluated price for fixed income securities, the third-party pricing service will take into account factors including recent trade activity, bid and ask prices and the market. The Department takes note of the Baird's clarification to the Summary.

After giving full consideration to the entire record, including the Applicant's comment, the Department has decided to grant the exemption, as described above. The complete application file is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published in the **Federal Register** on November 26, 2014, at 79 FR 70648.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Erin Brown of the Department at (202) 693–8352. (This is not a toll-free number.)

Eli Lilly and Company (Lilly) and Elco Insurance Company Limited (Elco) (together, the Applicants), Located in Indianapolis, IN and North Charleston, SC

[Prohibited Transaction Exemption 2015–10; Application No. L–11784]

Exemption

Section I. Transactions

The restrictions of sections 406(a)(1)(D) and 406(b) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act) shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Elco, an affiliate of Lilly, as the term ''affiliate'' is defined in Section III(a)(1) below, in connection with insurance contracts sold by American United Life Insurance Company (AUL) or any successor insurance company (a Fronting Insurer) to provide optional group term life insurance benefits (Optional Group Life) to participants in the Eli Lilly and Company Life Insurance and Death Benefit Plan (the Life Insurance Plan), a component of the Eli Lilly and Company Employee Welfare Plan (the Plan), provided the conditions set forth in Section II, below, are satisfied.

Section II. Conditions

(a) Elco—

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

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

(3) Has obtained a Certificate of Authority from the Director of the Department of Insurance of its domiciliary state (South Carolina), which has neither been revoked nor suspended;

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

(B) Has undergone a financial examination (within the meaning of the law of South Carolina) by the Director of the South Carolina Department of Insurance (SCDI) within five (5) years prior to the end of the year preceding the year in which such reinsurance transaction has occurred; and

(5) Is licensed to conduct reinsurance transactions by South Carolina, whose

law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

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

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

(d) Effective January 1, 2012, there was an immediate and objectively determined benefit to Plan participants and beneficiaries in the form of increased benefits. Any modification to such benefits will at least approximate the increase in benefits that are effective January 1, 2012, as described in the Notice of Proposed Exemption (the Notice) published in the **Federal Register** on April 15, 2015 at 80 FR 20249 and will continue in all subsequent years of each contract of reinsurance involving Elco and a Fronting Insurer and in every renewal of each contract of reinsurance involving Elco and a Fronting Insurer;

(e) In the initial year and in subsequent years of coverage provided by a Fronting Insurer, the formulae used by the Fronting Insurer to calculate premiums will be similar to formulae used by other insurers providing comparable optional life insurance coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formulae will be reasonable and will be comparable to the premiums charged by the Fronting Insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Fronting Insurer has a financial strength rating of ''A'' or better from A.M. Best Company (A.M. Best). The reinsurance arrangement between the Fronting Insurer and Elco will be indemnity insurance only (*i.e.,* the Fronting Insurer will not be relieved of liability to the Life Insurance Plan should Elco be unable or unwilling to cover any liability arising from the reinsurance arrangement);

(g) The Life Insurance Plan retains an independent, qualified fiduciary, as defined in Section III(c) (the Independent Fiduciary) to analyze the transactions and to render an opinion that the requirements of Section II(a) through (f) and (h) of this exemption have been satisfied;

(h) Participants and beneficiaries in the Plan will receive in subsequent years of every contract of reinsurance involving Elco and the Fronting Insurer the benefit increases effective January 1, 2012, as described in the Notice, or benefit increases no less in value, as determined by the Independent Fiduciary, than the objectively determined increased benefits such participants and beneficiaries received effective January 1, 2012;

(i) The Independent Fiduciary will monitor the transactions herein on behalf of the Plan on a continuing basis to ensure such transactions remain in the interest of the Plan; take all appropriate actions to safeguard the interests of the Plan; and enforce compliance with all conditions and obligations imposed on any party dealing with the Plan; and

(j) In connection with the provision to participants in the Life Insurance Plan of the Optional Group Life which is reinsured by Elco, the Independent Fiduciary will review all contracts (and any renewal of such contracts) of the reinsurance of risks and the receipt of premiums therefrom by Elco and must determine that the requirements of this exemption and the terms of the benefit enhancements continue to be satisfied.

Section III. Definitions

(a) 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, 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.

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

(c) The term ''Independent Fiduciary'' means a person who:

(1) Is not an affiliate of Lilly or Elco and does not hold an ownership interest in Lilly, Elco, or affiliate of Lilly or Elco;

(2) is not a fiduciary with respect to the Plan prior to its appointment to serve as the Independent Fiduciary;

(3) has acknowledged in writing that:

(i) It is a fiduciary and has agreed not to participate in any decision with respect to any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) it has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) For purposes of this definition, no organization or individual may serve as Independent Fiduciary for any fiscal year in which the gross income received by such organization or individual (or partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder) from Lilly, Elco, or affiliates of Lilly or Elco, (including amounts received for services as an independent fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds two percent (2%) of such organization's or individual's gross income from all sources for the prior fiscal year;

(5) No organization or individual which is an Independent Fiduciary and no partnership or corporation of which such organization or individual is an officer, director or ten percent (10%) or more partner or shareholder may acquire any property from, sell any property to, or borrow any funds from Lilly, Elco, or affiliates of Lilly or Elco during the period that such organization or individual serves as an Independent Fiduciary and continuing for a period of six months after such organization or individual ceases to be an Independent Fiduciary or negotiates any such transaction during the period that such organization or individual serves as an Independent Fiduciary; and

(6) In the event a successor Independent Fiduciary is appointed to represent the interests of the Plan with respect to the subject transaction, there should be no lapse in time between the resignation or termination of the former Independent Fiduciary and the appointment of the successor Independent Fiduciary.

Effective Date: This exemption is effective as of its date of publication in the **Federal Register**.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption (the Notice), published in the **Federal Register** on April 15, 2015, at 80 FR 20249. All comments and requests for a hearing were due on or before May 29, 2015. During the comment period, the Department received multiple telephone inquiries which concerned matters outside the scope of this exemption, and one comment, which requested that the exemption not be granted but provided no explanation or other detail as to the reason why. The Department received no hearing requests. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. L–11784) is available for public inspection in the Public Disclosure Room of the

Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published in the **Federal Register** on April 15, 2015, at 80 FR 20249.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Erin Brown of the Department at (202) 693–8352. (This is not a toll-free number.)

Robert A. Handelman Roth IRA No. 2 (the New IRA), Located in Akron, Ohio

[Prohibited Transaction Exemption 2015–11; Exemption Application No. D–11798]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D) and (E) of the Code, shall not apply to the purchase by the New IRA of a 100% ownership interest (the Interest) in RAH Properties Mill Street, Ltd. (the Company) from Robert A. Handelman (Mr. Handelman), the New IRA owner and a disqualified person with respect to the New IRA.[8]

This exemption is subject to the following conditions:

(a) The purchase is a one-time transaction for cash;

(b) At the time of the purchase, the price paid by the New IRA for the Interest is based on the fair market value of such Interest, without any discount, as established by a qualified independent appraiser in an updated appraisal report as of the date of the purchase;

(c) The terms and conditions of the purchase are at least as favorable to the New IRA as those available in a comparable arm's length transaction with an unrelated third party;

(d) The New IRA does not pay any commissions or other expenses in connection with the purchase or in connection with the rollover of the cash distribution from the Robert A. Handelman Roth IRA No. 1 (the Existing IRA) to the New IRA;

(e) Mr. Handelman pays all appropriate taxes that are associated with the transfer of any assets from the Existing IRA to the New IRA in connection with the purchase; and

(f) Mr. Handelman receives no compensation from the New IRA or the Existing IRA for his role as manager of the Company.

Written Comments

As Mr. Handelman is the sole participant of the New IRA, the Department determined that there was no need to distribute the Notice of Proposed Exemption (the Notice) to interested persons. Therefore, comments and requests for a hearing were due within thirty (30) days of the date of publication of the Notice in the **Federal Register** on April 15, 2015 at 80 FR 20255. All comments and requests for a hearing were due by May 15, 2015. During the comment period, the Department received no comments and no requests for a hearing.

Technical Correction of Notice

The Department has decided, on its own motion, to modify the meaning of ''fair market value'' in Condition (b) of the Notice and in Representations 11 and 13(b) of the Summary of Facts and Representations (the Summary). Condition (b) of the Notice and Representation 13(b) of the Summary state that ''At the time of the purchase, the Price paid by the New IRA for the Interest is [or will be] equal to the fair market value of such Interest as determined by a qualified independent appraiser in an updated appraisal report as of the date of the purchase.'' Representation 11 of the Summary describes the appraisal of the Interest by Jason Bogniard, the qualified independent appraiser, and states that the fair market value of the Interest, as determined by Mr. Bogniard, was $580,000, as of November 17, 2014. In valuing the Interest, Mr. Bogniard applied a 5% discount from the Interest's equity value of $610,000 due to the Interest's lack of marketability.

The Department is concerned that if the new IRA purchases the Interest from Mr. Handelman at the discounted value of $580,000, the $30,000 excess over the equity value of such Interest could violate the contribution limits under the Code for the New IRA. To avoid the possibility of an adverse consequence for the New IRA, the Department has decided that the term ''fair market value,'' as used herein, should reflect the $610,000 equity value of the Interest rather than the $580,000 discounted value for such Interest. For emphasis, the Department has added the parenthetical ''(without any discount)'' to Condition (b), and it notes this corresponding revision to Representation 13(b) of the Summary.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. D–11798), and all supplemental submissions received by the Department, are available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published in the **Federal Register** on April 15, 2015, at 80 FR 20255.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

Roofers Local 195 Pension Fund (the Pension Fund) and Roofers Local 195 Joint Apprenticeship Training Fund (the Training Fund), Located in Cicero, NY

[Prohibited Transaction Exemption 2015–12; Exemption Application Nos. D–11809 and L–11810]

Exemption

The restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Employee Retirement Income Security Act of 1974, as amended (the Act), shall not apply to the sale (the Sale) of a building located at 6200 NYS Route 31, Cicero, New York (the Building) by the Pension Fund to the Training Fund, provided that the following conditions are satisfied:[9]

(a) At the time of the Sale, the Pension Fund receives a one-time cash payment in exchange for the Building, equal to the fair market value of the Building as established in an appraisal (the Appraisal) by a qualified, independent appraiser, updated on the date of the Sale, and provided to the Department no later than 60 days from the date of the Sale;

(b) The Training Fund does not finance more than 80% of the cost of its purchase of the Building, and any financing must be with an independent, third-party bank (the Bank);

(c) The Training Fund pays no fees, commissions or other expenses associated with the Sale, and no brokerage commissions associated with the Sale may be paid by either the Training Fund or the Pension Fund;

(d) A qualified, independent fiduciary (the Independent Fiduciary), acting on behalf of the Training Fund, represents

[8] Pursuant to 29 CFR 2510.3–2(d), the New IRA is not within the jurisdiction of Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[9] For purposes of this exemption, references to Section 406 of the Act should be read to refer as well to the corresponding provisions of Section 4975 of the Internal Revenue Code of 1986, as amended.

the Training Fund's interests for all purposes with respect to the Sale, including the financing of the Building, and must: Determine that it is in the best interest of the Training Fund to proceed with the Sale; review and approve the methodology used in the Appraisal; and ensure that such methodology is properly applied by the qualified, independent appraiser in determining the fair market value of the Building on the date of the Sale;

(e) The Board of Trustees of the Pension Fund, prior to entering the Sale, must determine that the Sale is feasible, in the interest of the Pension Fund, and protective of the rights of participants and beneficiaries of the Pension Fund;

(f) The Pension Fund is not a party to the commercial mortgage between the Training Fund and the Bank;

(g) Under the terms of the loan agreement between the Bank and the Training Fund, in the event of a default by the Training Fund, the Bank has recourse only against the Training Fund's interest in the Building and not against the general assets of the Training Fund; and

(h) The terms and conditions of the Sale are at least as favorable to each Fund as those obtainable in an arms-length transaction with an unrelated third party.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published on April 15, 2015, at 80 FR 20257. All comments and requests for a hearing were due by May 30, 2015. During the comment period, the Department received no comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application Nos. D–11809 and L–11810), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 15, 2015 in the **Federal Register** at 80 FR 20257.

FOR FURTHER INFORMATION CONTACT: Ms. Erica R. Knox of the Department, telephone (202) 693–8644. (This is not a toll-free number.)

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

[Prohibited Transaction 2015–13; Exemption Application No. D–11826]

Exemption

Section I: Transactions

Effective for the period beginning August 21, 2013, and ending on September 20, 2013, the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code,[10] shall not apply:

(a) To the acquisition of certain subscription right(s) (the Right or Rights) by the individually-directed account(s) (the Account or Accounts) of certain participant(s), beneficiaries, and alternate payees in the Plan (the Invested Participant(s)) in connection with an offering (the Offering) by First Security Group, Inc. (FSG), of shares of common stock (the Common Stock) of FSG, the sponsor of the Plan and a party in interest with respect to the Plan; and

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

Section II: Conditions

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

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

(c) Each shareholder of the Common Stock, including the Plan, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of Common Stock held by each such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investment of the Accounts by the Invested Participants, all or a portion of whose Accounts in the Plan held the Common Stock;

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

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

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

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

Effective Date: This exemption is effective for the period beginning on August 21, 2013, the commencement date of the Offering, and ending on September 20, 2013, the closing date of the Offering.

Written Comments

In the Notice of Proposed Exemption (the Notice), published in the **Federal Register** on November 26, 2014 at 79 FR 70658, the Department invited all interested persons to submit written comments and requests for a hearing within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on November 26, 2014. All comments and requests for a hearing were due by January 10, 2015.

During the comment period, the Department received one comment letter, dated January 9, 2015, and no requests for a public hearing. The comment letter, which was submitted by FSG (the Applicant), requests certain clarifications and corrections to the operative language and the Summary of Facts and Representations (the Summary) of the Notice, as discussed below.

1. *Reference to Invested Participants.* Section I(a) of the operative language defines the term ''Invested Participants'' as ''certain participants in the Plan.'' The Applicant believes that this phrase should have read ''certain participants,

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

beneficiaries, and alternate payees in the Plan.''

The Department concurs and has revised Section I(a) of the grant notice.

2. *Plan as Recordholder of Common Stock.* Section II(a) of the operative language states, in part, that ''the Rights were made available by FSG on the same material terms to all shareholders of record of Common Stock of FSG, including the Accounts of Invested Participants.'' In addition, Section II(c) of the proposed exemption provides that ''Each shareholder of the Common Stock, including each of the Accounts of Invested Participants, receiving the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of Common Stock held by each such shareholder.'' The Applicant notes that the Plan was treated as a single shareholder for purposes of determining the number of Rights that it would receive, as required by the Stock Purchase Agreement. The Rights were then allocated, by Federated Retirement Plan Services, the Recordkeeper, to the Plan Accounts of the Invested Participants so the Rights could be exercised, not exercised, or held by such participants until the Rights expired. Therefore, according to the Applicant, the phrase ''each of the Accounts of the Invested Participants'' should have said ''the Plan.''

The Department concurs and has modified Sections II(a) and II(c) of the grant notice to reflect these changes. The Department also notes the requested modification for purposes of the Summary.

3. *Reference to Institutional Investors.* Representation 4 of the Summary lists, in the second sentence of the first paragraph, certain institutional investors who entered into the Stock Purchase Agreement described therein. The Applicant suggests the following revision: ''[. . .] including affiliates of EJF Capital LLC, GP Financial II, LLC, MFP Partners, L.P., and Ulysses Partners, LP.''

In response to this comment, the Department notes this modification to the Summary.

4. *Issuance of Common Stock during the Rights Offering.* The second paragraph of Representation 7 of the Summary states that ''The Plan was issued 138,200 shares of Common Stock under the Basic Subscription Privilege and 205,008 shares of Common Stock under the Over-Subscription Privilege . . .'' The Applicant explains that while this information generally reflects the information contained in the exemption application, due to a scrivener's error these numbers were reversed. Accordingly,the Applicant suggests that the statement be revised to read as follows:

> The Plan was issued 205,008 shares of Common Stock under the Basic Subscription Privilege and 138,260 shares of Common Stock under the Over-Subscription Privilege, for a total of 343,268 shares of Common Stock. As noted in the special notice to Invested Participants, the Plan held approximately 102,502 shares of Common Stock on the Record Date. Due to an error on the part of the Tabulator, the Plan elected and was issued four more shares than it should have been able to receive under the Basic Subscription Privilege. Those four shares should have been elected as part of the Over-Subscription Privilege. Had the proper election been made and processed, the Plan would still have received a total of 343,268 shares and each of the Invested Participants would still have received the amount he or she elected.

In response to this comment, the Department notes the foregoing revisions to the Summary.

5. *Insertion of Clarifying Language.* In Representation 13 of the Summary, the Applicant wishes to clarify that the phrase ''as of the Record Date'' should have been inserted after the phrase ''all shareholders of Common Stock of FSG.'' The Applicant explains that the prospectus for the Rights Offering, specified that the Rights were issued to holders of record as of the applicable record date.''

In response to this comment, the Department notes these clarifications to the Summary.

Accordingly, after full consideration and review of the entire record, including the comment letter filed by the Applicant, the Department has determined to grant the exemption, as set forth above. The Applicant's comment letter has been included as part of the public record of the exemption application. The complete application file (D–11826) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published on November 26, 2014 at 79 FR 70658.

FOR FURTHER INFORMATION CONTACT: Ms. Blessed Chuksorji-Keefe of the Department, telephone (202) 693–8567. (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 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of July, 2015.

Lyssa E. Hall,

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

[FR Doc. 2015–18139 Filed 7–24–15; 8:45 am]

BILLING CODE 4510–29–P