

**DEPARTMENT OF LABOR****Employee Benefits Security Administration****Proposed Exemptions From Certain Prohibited Transaction Restrictions**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of Proposed Exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). If granted, these proposed exemptions allow designated parties to engage in transactions that would otherwise be prohibited provided the conditions stated there in are met. This notice includes the following proposed exemptions: D-11869, Liberty Mutual Insurance Company; and D-11916, Russell Investment Management, LLC (RIM), Russell Investments Capital, LLC (RICap), and their Affiliates.

**DATES:** All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

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

All written comments and requests for a hearing (at least three copies) should be sent via mail to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Avenue NW., Suite 400, Washington, DC 20210. Attention: Application No. \_\_\_\_\_, stated in each Notice of Proposed Exemption or via private delivery service or courier to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 122 C St. NW., Suite 400, Washington, DC 20001. Attention: Application No. \_\_\_\_\_, stated in each

Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: *e-OED@dol.gov*, by FAX to (202) 693-8474, or online through *http://www.regulations.gov* by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue NW., Washington, DC 20210.

**Warning:** All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**SUPPLEMENTARY INFORMATION:****Notice To Interested Persons**

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

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).<sup>1</sup> Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file

<sup>1</sup> 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).

with the Department for a complete statement of the facts and representations.

**Liberty Mutual Insurance Company (Liberty Mutual or the Applicant) Located in Boston, MA [Application No. D-11869]**

**Proposed Exemption**

The Department is considering granting an exemption under the authority of 29 U.S.C. 1108 (section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act)) and 26 U.S.C. 4975(c)(2) (section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code)), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).<sup>2</sup> Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department. If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), and 406(a)(1)(D) of ERISA and the sanctions resulting from the application of sections 4975(a) and 4975(b) of the Code, by reason of sections 4975(c)(1)(A), 4975(c)(1)(B), and 4975(c)(1)(D) of the Code, shall not apply to a transaction between a party in interest with respect to an employee benefit plan sponsored by Liberty Mutual or its affiliates (the Liberty Mutual Plan) and such Liberty Mutual Plan, as described in Part I of Prohibited Transaction Exemption 96-23 (PTE 96-23),<sup>3</sup> provided that the in-house asset manager (INHAM) for the Liberty Mutual Plan has discretionary control with respect to plan assets involved in the transaction, and certain conditions are satisfied.

**Summary of Facts and Representations<sup>4</sup>****Background**

1. Liberty Mutual is an insurance company domiciled in the

<sup>2</sup> For purposes of this proposed exemption, references to the provisions of section 406 of Title I of ERISA, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

<sup>3</sup> 61 FR 15975 (April 10, 1996), as amended at 76 FR 18255 (April 1, 2011).

<sup>4</sup> The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless indicated otherwise.

Commonwealth of Massachusetts, engaged primarily in the provision of property and casualty insurance. Liberty Mutual is a wholly-owned subsidiary of Liberty Mutual Holding Company Inc. (Liberty Mutual Group), which, together with its subsidiaries and affiliates, is a diversified global insurer. Liberty Mutual Group is based in Boston, Massachusetts and currently operates in 30 countries, with approximately 900 offices worldwide and over 50,000 employees.

2. Liberty Mutual Group established the Liberty Mutual Retirement Benefit Plan (the Retirement Plan) in 1951 in a consolidation of the Employees' Retirement Annuity Plan of Liberty Mutual, Liberty Mutual Fire and the Liberty Mutual Supplementary Pension Plan. Liberty Mutual represents that the Retirement Plan is a defined benefit plan providing benefits based on a cash balance formula and a final average pay formula. Liberty Mutual states that, as of December 31, 2014, the Retirement Plan had assets valued at \$6.24 billion with 77,244 participants and beneficiaries covered. Liberty Mutual represents that, prior to the enactment of ERISA, the Retirement Plan was funded under, and its assets were invested pursuant to, a group annuity contract. Liberty Mutual represents that the Retirement Plan continued to be funded and managed through the use of a group annuity contract, until 2011, when the assets of the Retirement Plan were transferred to a trust, the Liberty Mutual Retirement Plan Master Trust (the Trust).<sup>5</sup> According to Liberty Mutual, in 2011, Liberty Mutual established a separate investment management subsidiary, Liberty Mutual Group Asset Management Inc. (LMGAMI), described in more detail below, which was appointed as the Retirement Plan's investment manager. The Bank of New York Mellon became the Retirement Plan's trustee.

#### LMGAMI

3. Liberty Mutual represents that LMGAMI became a registered investment adviser (an RIA) under the Investment Advisers Act of 1940, as amended (the Advisers Act) in May 2011. According to Liberty Mutual, there were several unrelated business objectives that motivated the decision to register LMGAMI as an RIA. First, Liberty Mutual owns a number of

entities operating in, and incorporated under the laws of, non-U.S. jurisdictions. Liberty Mutual represents that, as with its U.S. operations, Liberty Mutual's preference is for LMGAMI to manage its assets internally in conjunction with the assets of other Liberty Mutual affiliates. Liberty Mutual states further that, at the time the decision was made to register LMGAMI as an RIA, the benefits derived from being able to internally manage more of Liberty Mutual's foreign operations, as well as the fees associated with managing institutional third party money, was expected to offset the financial, administrative and regulatory burdens associated with LMGAMI being an RIA.

Furthermore, Liberty Mutual states that LMGAMI's registration as an RIA provided the collateral opportunity to transfer the assets of the Retirement Plan to a trust and to appoint LMGAMI as the Retirement Plan's discretionary investment manager, as permitted under ERISA. Liberty Mutual states that investing the assets of the Retirement Plan through an independent trust could provide the Retirement Plan access to investments that were otherwise not permitted or practical under the terms of a group annuity contract. When LMGAMI became an RIA, the assets of the Retirement Plan were transferred to the Trust and LMGAMI was appointed as the investment manager of the Retirement Plan and any other employee benefit plan maintained for the benefit of the employees of Liberty Mutual and its affiliated entities that is subject to the fiduciary responsibility provisions of Part IV of Title I of ERISA (collectively with the Retirement Plan, the Liberty Mutual Plans).

4. The Department notes that the rules set forth in section 406 of ERISA proscribe certain "prohibited transactions" between plans and related parties with respect to those plans, known as "parties in interest." Under section 3(14) of ERISA, parties in interest with respect to a plan include, among others, service providers with respect to the plan, and certain of their affiliates. The prohibited transaction provisions under section 406(a) of ERISA prohibit, in relevant part, sales, leases, loans or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), as well as the use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest.<sup>6</sup> Under the authority

of ERISA section 408(a) and Code section 4975(c)(2), the Department has the authority to grant exemptions from such "prohibited transactions" in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

5. Liberty Mutual states that PTE 96-23 provides broad exemptive relief for transactions entered into on behalf of a plan at the direction of an "in-house asset manager" (*i.e.*, an INHAM), an investment manager that manages assets for related employee benefit plans, upon meeting certain requirements. The principal part of the exemption is relief for transactions between an INHAM and persons who are parties in interest to the plan solely by reason of providing services to the plan or by reason of a relationship to such a service provider; and certain "co-joint venturers" with the plan's sponsoring employer. Among other things, in order to rely on the relief, the INHAM must adopt written policies and procedures designed to ensure compliance with the conditions of the exemption, and a qualified, independent auditor must annually conduct an audit of compliance with the policies and procedures and certain conditions of the exemption.<sup>7</sup> Moreover, Liberty Mutual states that relief under PTE 96-23 is only available to entities that register as RIAs. Specifically, Part IV(a)(2) of PTE 96-23 defines an INHAM, in relevant part, as "an investment adviser registered under the [Advisers Act.]" The requirement that an INHAM be registered under the Advisers Act as an RIA was included, in addition to others, to "help to ensure that the INHAM is an entity that has developed an appropriate level of expertise in financial and business matters."<sup>8</sup> Liberty Mutual's representations regarding its experience and expertise are described in paragraph 27 below.

#### Decision To Withdraw RIA Status

6. According to Liberty Mutual, LMGAMI determined that maintaining its RIA status was more burdensome than originally anticipated and would not further Liberty Mutual's business strategy. The Applicant states that, in its insurance business, Liberty Mutual invests significant amounts of capital in long-term investment vehicles (such as private capital transactions). The Applicant states that LMGAMI's

under section 406(b) of ERISA, which do not necessitate a transaction between a plan and a party in interest. These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries.

<sup>7</sup> See 67 FR 18257, 18258 (April 1, 2011).

<sup>8</sup> See 60 FR 15600 (March 24, 1995).

<sup>5</sup> According to the Retirement Plan's Investment Policy Statement, effective October 24, 2014, a small portion of the Retirement Plan's legacy assets remain in the group annuity contract issued by Liberty Life Assurance Company of Boston. The Retirement Plan intends to transition all of its assets from the group annuity contract to the Trust.

<sup>6</sup> The prohibited transaction provisions also include certain fiduciary prohibited transactions

registration as an RIA was required to create strategic partnerships with a small number of large institutional investors with like objectives. By doing so, Liberty Mutual could enhance its ability to invest in such assets and provide additional diversification through such investments.

7. Liberty Mutual represents that: Legislative changes such as those enacted under the Dodd-Frank Wall Street Reform and Consumer Protection Act;<sup>9</sup> regulatory changes that substantially discounted the value of long-term illiquid investments for purposes of satisfying the capital requirements applicable to insurance companies and other financial services companies; and adverse changes in the capital treatment of such investments by credit rating agencies; combined to substantially diminish the appetite for such investments, among large institutions, and essentially derailed this business objective. As a result, the Applicant states, Liberty Mutual had no unaffiliated third party assets under management, and had no intention to seek to manage any such assets.

8. Without any third-party assets under its management, the Applicant states that the rules and regulations pertaining to investments made by RIAs are inapplicable to Liberty Mutual's business model. Liberty Mutual represents that a significant part of its business is the investment of assets that belong to the insurance company. Thus, the efficient investment of substantial sums of its assets is critical to its ongoing operations. As a regulated insurance company, it must maintain certain statutory reserves and meet minimum standards of risk-based capital. Liberty Mutual is subject to regulation by state authorities that monitor its ongoing solvency and establish certain rules and procedures that must be followed with respect to the investments of its assets.

9. Similarly, Liberty Mutual states the Advisers Act contains other rules and prohibitions intended to protect a third party investor from the adviser over-promoting its recommendations. The Applicant states that while such restrictions may be appropriate for protecting the interests of third-party investors, these conditions added substantial burdens for an entity managing billions of dollars of assets for an integrated group of affiliated financial services companies and did not provide any useful protection when LMGAMI was communicating with the sophisticated and financially astute

officers of Liberty Mutual and its other affiliates.<sup>10</sup>

10. Liberty Mutual states that the Advisers Act imposes the safeguards and limitations contained therein because many of a given RIA's clients are individuals without significant sophistication and/or bargaining power and without any other statutory regime to protect them against any potential adviser misconduct. However, the only "client" money under Liberty Mutual's management is that of its own Retirement Plan. As such, the Applicant states that Liberty Mutual and LMGAMI are already legally compelled as fiduciaries to act in the Retirement Plan's best interests under provisions of section 404 of ERISA. Liberty Mutual and LMGAMI are expressly precluded from acting to the detriment of the Retirement Plan, and any action undertaken to benefit itself or any of its affiliates would be precluded by the provisions of section 406 of ERISA (among others). Moreover, the Applicant states that Liberty Mutual has an economic interest in the performance of the Retirement Plan's assets, as ERISA and the Code make the company responsible for any shortfalls in the Retirement Plan's funding. Thus, Liberty Mutual states that it and the Retirement Plan have a commonality of interests when it comes to the success of the Retirement Plan's investments that is not typically present between an RIA and its client.<sup>11</sup>

11. Thus, Liberty Mutual represents that while LMGAMI's status as an RIA afforded the benefits available under PTE 96-23 and the ability to manage the Retirement Plan's assets in a trustee arrangement, the burdens for the business and its operations made continuing such status unacceptable. Liberty Mutual represents that LMGAMI filed a Form ADV-W with the Securities and Exchange Commission on October 27, 2014, to effect the withdrawal of its RIA status. As such, Liberty Mutual states, LMGAMI no longer qualifies to serve as an INHAM pursuant to PTE 96-23.

12. Upon LMGAMI discontinuing its RIA registration, Liberty Mutual, as an investment manager under section 3(38) of ERISA, assumed management responsibilities over the assets of the Retirement Plan under an investment management agreement with an

effective date of October 27, 2014 (the IMA). LMGAMI continues to provide investment services to the Retirement Plan as a sub-adviser to Liberty Mutual, at no cost, pursuant to a sub-adviser agreement between Liberty Mutual and LMGAMI, effective October 27, 2014 (the SAA). Liberty Mutual submitted the IMA and the SAA to the Massachusetts Department of Insurance (Department of Insurance) on October 10, 2014, and the Department of Insurance approved the IMA and SAA on October 24, 2014.

#### *Exemptive Relief Requested*

13. Liberty Mutual requests an individual exemption from sections 406(a)(1)(A), 406(a)(1)(B), and 406(a)(1)(D) of ERISA with regard to the management by Liberty Mutual and its asset manager affiliates (collectively, the Liberty Mutual Asset Managers) of the plan assets of the Liberty Mutual Plans. In this regard, Liberty Mutual requests exemptive relief for certain party-in-interest transactions with respect to which the Liberty Mutual Asset Managers would engage in on behalf of a Liberty Mutual Plan if PTE 96-23 were available. Such transactions include arm's-length sales or exchanges of property, the provision of necessary services, and various commercially appropriate extensions of credit. According to Liberty Mutual, the requested relief includes transactions for which no other statutory or administrative exemptions are available, including, hedges of currency risks associated with investments denominated in foreign currencies, as well as transactions with regard to assets for which there is not an established market, such as real estate transactions, secondary investments in private equity vehicles, and certain private debt offerings of reliable borrowers.

14. Liberty Mutual states that sections 3(14)(A) and 3(14)(B) of ERISA define the term "party in interest" to include, respectively, any fiduciary of a plan and any person providing services to a plan. Numerous entities currently provide, and will in the future continue to provide services to the Liberty Mutual Plans, including as brokers, custodians, investment advisers, consultants, actuaries or trustees, and therefore constitute parties in interest with respect to the Liberty Mutual Plans. Furthermore, section 3(14)(I) of ERISA defines the term "party in interest" to include certain entities (co-joint venturers) owning at least 10% of a joint venture in which an employer of employees participating in the plan (or its parent) has at least a 50% interest.

<sup>10</sup> The Department notes that it is not expressing a view whether certain rules under the Advisers Act may be unduly burdensome or inappropriate in protecting Liberty Mutual's interests.

<sup>11</sup> The Department notes that this exemption does not provide relief for LMGAMI or any other Liberty Mutual entity to receive a fee in connection with any transaction described herein.

<sup>9</sup> Public Law 111-203, 124 Stat. 1376 (2010).

15. Liberty Mutual represents that section 406(a)(1)(A) of ERISA prohibits the sale or exchange, or leasing, of property between a plan and a party in interest. Liberty Mutual states that, to the extent that any service provider, such as a broker that provides brokerage services to a Liberty Mutual Plan or any co-joint venturer, sells any security (including a debt instrument) or other property to, or purchases a security or other property from, a Liberty Mutual Plan as a principal, a prohibited transaction would occur under section 406(a)(1)(A) of ERISA.

16. Liberty Mutual represents that section 406(a)(1)(B) of ERISA prohibits the lending of money or other extension of credit between a plan and a party in interest. Thus, Liberty Mutual states, to the extent that any service provider to a Liberty Mutual Plan or a co-joint venturer of Liberty Mutual, such as a bank, holds a mortgage on real property that a Liberty Mutual Plan owns, or a broker extends credit to a Liberty Mutual Plan to effect a securities transaction, or a Liberty Mutual Plan purchases a debt obligation of any person that is also a service provider to such Liberty Mutual Plan or a co-joint venture of Liberty Mutual, a prohibited transaction would occur under section 406(a)(1)(B) of ERISA.

17. Liberty Mutual further states that section 406(a)(1)(D) of ERISA prohibits a fiduciary with respect to a plan from causing such plan to engage in a transaction, if such fiduciary knows or should know that such transaction constitutes a transfer to, or use by or for the benefit of, a party in interest, of any assets of such plan. As such, Liberty Mutual states, to the extent that any Liberty Mutual Asset Manager acting in a fiduciary capacity on behalf of any Liberty Mutual Plan were to allow such Liberty Mutual Plan to engage in a transaction with a service provider, such as the manager of an investment fund that is treated as plan assets under ERISA; or a co-joint venturer of Liberty Mutual; such transaction would involve the use or transfer to by such entity of the assets of the Liberty Mutual Plan, in violation of section 406(a)(1)(D) of ERISA.

#### *Statutory Findings—In The Interest of Liberty Mutual Plans*

18. Liberty Mutual represents that the proposed exemption, if granted, would facilitate an efficient execution of the Liberty Mutual Plans' investment strategy, by permitting the Liberty Mutual Plans to engage in a series of commercially common, beneficial transactions with counterparties that may constitute "parties in interest"

because of their status as service providers under section 3(14)(B) of ERISA.

19. Liberty Mutual represents that, while section 408(b)(17) of ERISA generally permits the sale or exchange of property or the extension of credit between a plan and a person that is a service provider to such plan, there are certain transactions beneficial to the Retirement Plan, such as hedges of currency risks associated with investments denominated in foreign currencies, which cannot be effected in reliance on the available statutory exemptions. Liberty Mutual states that the Retirement Plan incorporates into its investment strategy investments covering a wide array of investment classes, including alternative investments. Liberty Mutual states that sophisticated counterparties to the Retirement Plan usually insist on representations and warranties that no prohibited transaction will occur as a result of a transaction.

20. Furthermore, Liberty Mutual represents that, for common commercial transactions involving assets for which there is not an established market, such as real estate transactions, secondary investments in private equity vehicles, and certain private debt offerings of reliable borrowers, the requisite data to assure compliance with the statutory exemptions, such as demonstrating "adequate consideration" with regard to transactions relying upon section 408(b)(17) of ERISA, may not be available or timely available. Without the availability of such market references, the availability of the statutory exemption under section 408(b)(17) of ERISA is dependent on the judgment of the fiduciary acting on behalf of the investing plan. The Applicant represents that counterparties are sometimes unwilling to rely on a fiduciary's subjective determination of value, which often leads to additional time and expense (such as may arise from having to obtain additional independent appraisals of the value of the underlying assets from independent valuation firms at the expense of the plan) to complete an investment. The Applicant represents that counterparties may not wish to delay the consummation of the transaction in order to assure that such a valuation can be obtained, particularly if other investors are available that can rely on a statutory exemption such as PTE 96-23. Liberty Mutual states that, therefore, the requested exemption would facilitate the Retirement Plan's ability to properly diversify its investments and make it more competitive in procuring such assets for its own account.

21. Liberty Mutual represents further that it requires relief for transactions between the plan and co-joint venturers, or entities that own at least 10% of a joint venture in which an employer of employees participating in the plan (or its parent) has at least a 50% interest and are described in section 3(14)(I) of ERISA. Liberty Mutual represents that its investment arm invests in assets through comingled investment vehicles as a part of its business model. For instance, the investment arm of Liberty Mutual may invest in real estate with a joint venture partner and the joint venturer would own 10% and manage the real estate and Liberty Mutual would own the remaining interest in the real estate investment through its general account. Liberty Mutual states that it engages in such transactions with other investment vehicles also where they invest with a partnership or joint venture and Liberty owns least 50%. According to the Applicant, it is administratively burdensome to monitor every joint venture in which an employer participates in order to ensure that a plan maintained by such employer does not engage in commercially common, low-risk transactions with such entities.

Liberty Mutual represents that, given the magnitude of the assets that it manages in the ordinary course of its business, Liberty Mutual makes numerous investments, including significant investments in real estate, private equity and other types of alternative investments. Liberty Mutual represents that, in the context of real estate investments, it is common for the developer of the property to hold a substantial minority interest in the investment, while the investor that finances the development of the property holds the majority interest. However, the developer, which has the expertise to develop the property effectively, would retain operational control over the management and development of the property. On the other hand, Liberty Mutual represents, in private equity investments, Liberty Mutual will often take a direct substantial ownership position or be a significant investor in an investment fund established to make investments in portfolio companies. To this end, it would not be uncommon for Liberty Mutual to have ownership of more than 10% and less than 50% in such private equity investments. Operational control over the portfolio companies will usually be vested in the sponsor of the fund or the lead investor in a direct investment. The Applicant represents that other kinds of alternative

investments are frequently structured in a similar fashion, where Liberty Mutual is a significant minority holder, but not a controlling investor and does not have any operational control over the investment or the investment vehicle managing the assets. As such, in the ordinary course of business, Liberty Mutual owns substantial passive interests in a very large number of investments where other partners in the investment, who have unique expertise in the particular investment category, have the control over the management of the underlying investments.

Liberty Mutual represents that, compared to other employers, which generally engage in joint ventures only as part of their core business, Liberty Mutual most often engages in such relationships in its capacity as an investor. To this end, the Applicant represents that Liberty Mutual is a passive joint venture partner with a multitude of entities that ordinarily operate the applicable ventures independently from Liberty Mutual. If any Liberty Mutual Plan engaged in any transaction with such an entity, the counterparty representing the venture will conduct itself like any other independent, third party engaging in a commercial transaction. The Applicant represents that, to the extent that Liberty Mutual directs any investment on behalf of any Liberty Mutual Plan, it will be subject to ERISA's fiduciary responsibility provisions, both as a matter of law and as a condition of the exemption. Moreover, the Liberty Mutual Plan investors will often be investing side by side with the general account in those investments that are appropriate for the Plans. Thus, with regard to any such investment, the interests of Liberty Mutual and any Liberty Mutual Plan investor would be aligned.

22. Liberty Mutual states that it has not charged, and will not charge in the future, the Retirement Plan fees for the investment management services that it provides, and does not seek reimbursement for the expenses it incurs in providing the services of its employees to manage the assets of the Retirement Plan. Liberty Mutual represents that, were the Liberty Mutual Plans to retain the services of similarly qualified third party investment managers, the operating expenses of the Liberty Mutual Plans would increase significantly. Liberty Mutual states that, absent exemptive relief, even if only alternative assets were turned over to third-party managers, the incremental annual cost to the Liberty Mutual Plans would be approximately \$15 million.

23. Liberty Mutual represents that, aside from the increased cost in fees, retaining third party managers is not the optimal approach for the investment of the Retirement Plan's assets. In this regard, Liberty Mutual states that having control over the Retirement Plan's assets provides it with the ability to increase investment returns in a manner that could not be achieved if multiple unaffiliated managers were retained to invest the Retirement Plan's assets.

Liberty Mutual further represents that having control over the entire portfolio allows for efficiencies that can improve the ability to maximize returns and control investment risks by affording greater integration in the asset/liability management process. For example, with respect to managing interest rate risks, having multiple individual asset managers hedge their interest rate risk to a target (relative to liabilities) can result in inefficient trading. Some managers will be buying, while others will be selling. The Applicant represents that the net impact of having separate managers each manage the risk associated with the portion of the portfolio under their management can result in unnecessary transaction costs for the Liberty Mutual Plan.

The Applicant states that having current oversight of the entire asset base allows for more efficient risk control. Setting investment criteria relative to benchmark levels is not a static process, as index weights adjust on a daily basis. The Applicant represents that, if the Liberty Mutual Plan wants to set an absolute aggregate (across stocks and bonds) energy exposure to 10% of assets under management, the various investment management agreements or guidelines with multiple managers would need to be adjusted more frequently than is practical.

24. The Applicant states that as a matter of policy, certain counterparties will not engage in hedging transactions with plans in reliance on the service provider exemption under section 408(b)(17) of ERISA. Others may do so only with regard to currencies that are widely traded and do not fluctuate significantly in value. Thus, according to Liberty Mutual, there have been and may in the future be occasions where it would be advantageous (and a normal precaution) for the Retirement Plan to put in place a currency hedge, or perhaps an interest rate hedge, as a secondary protection for an appropriate and attractive primary investment opportunity that cannot be effected without the benefit of the requested exemption. In such circumstances, the fiduciaries on behalf of the Retirement Plan would have to determine whether

to forego the perceived beneficial investment opportunity or make the investment and assume the exposure to the risk that could otherwise be hedged.

Liberty Mutual represents that counterparties are reluctant, or may refuse, to engage in transactions with plan investors relying on other potentially available exemptions that are dependent on fact specific considerations that can vary from transaction to transaction, such as is the case with regard to the relief provided under the "service provider" exemption set forth in section 408(b)(17) of ERISA.

25. Liberty Mutual states that, if the exemption is granted, the continued absence of RIA status will not affect in any way the manner in which Liberty Mutual or LMGAMI manages the assets of Liberty Mutual Plans. Liberty Mutual represents that the fact that neither Liberty Mutual nor LMGAMI is an RIA does not preclude the Liberty Mutual Plans from any services or any transactions that Liberty Mutual or LMGAMI offers.

26. Liberty Mutual represents that it has over 80 years of experience managing insurance company assets and it conducts extensive compliance training of investment personnel, including ERISA fiduciary training. Liberty Mutual and LMGAMI collectively employ approximately 85 investment professionals dedicated to the investment of the assets under Liberty Mutual's management and control, with investment teams dedicated to distinct asset classes. Liberty Mutual states that its Chief Investment Officer has over 30 years of experience in the investment industry. Furthermore, Liberty Mutual states an investment compliance team monitors portfolio compliance in real time employing sophisticated software.

#### *Statutory Findings—Protective of the Rights of Participants*

27. Liberty Mutual represents that state insurance laws regulate Liberty Mutual's financial condition and reporting requirements, the diversification of Liberty Mutual's investment portfolio, and types of investments that Liberty Mutual can undertake. Liberty Mutual states that it files audited annual financial statements and unaudited quarterly financial statements with the insurance authorities in all 50 states, and is subject to robust, risk-focused inspections by state insurance regulators every three to five years. Liberty Mutual states that these inspections include extensive audits of its control systems and reviews of its operating procedures, investments and other transactions.

28. Furthermore, the exemption will be subject to a suite of robust, protective conditions. The terms of transactions entered into in reliance of this exemption will be negotiated on behalf of the Liberty Mutual Plan by, or under the authority and general direction of, the Liberty Mutual Asset Manager, and either the Liberty Mutual Asset Manager or, so long as the Liberty Mutual Asset Manager retains full fiduciary responsibility with respect to the transaction, a sub-adviser acting in accordance with written guidelines established and administered by the Liberty Mutual Asset Manager, makes the decision on behalf of the plan to enter into the transaction. Furthermore, the party in interest engaging in the transaction with the Liberty Mutual Plan may not have discretionary authority or control with respect to the investment of the Liberty Mutual Plan assets involved in the transaction and may not render investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets.

29. Liberty Mutual represents that, notwithstanding the withdrawal of its registration as an RIA under the Advisers Act, the exemption requires the Liberty Mutual Asset Manager to adopt, maintain, and follow policies and procedures (Policies) designed to ensure compliance with the conditions of this exemption, reinforce the Liberty Mutual Asset Manager's fiduciary duties, ensuring that the Liberty Mutual Asset Manager and its personnel operate within an impartial conduct standard in accordance with a duty of loyalty and prudence pursuant to section 404 of the Act with respect to the Liberty Mutual Plan when conducting business with, or on behalf of, the applicable Liberty Mutual Plan, and avoid conflicts of interest or risk exposure, including an investment allocation policy and best execution policy.

30. Liberty Mutual represents that its control systems are tested three times per year, with regular internal and external audits. Nevertheless, the Department views a robust independent audit requirement as an essential condition for exemptive relief hereunder. Therefore, the exemption requires that the Liberty Mutual Asset Manager must submit to an audit conducted annually by an independent auditor. The audit must cover a consecutive twelve-month period beginning on the effective date of the exemption.

31. The auditor must issue a written report (the Audit Report) to Liberty Mutual and the Liberty Mutual Asset Manager with respect to each audit that describes the procedures performed by

the auditor during the course of its examination, to be completed within six months following the end of the 12-month period to which the audit relates. The Audit Report must include, among other things, the auditor's specific determinations regarding the compliance with the conditions for the exemption; the adequacy of, and compliance with, the Policies; the auditor's recommendations (if any) with respect to strengthening such Policies; and any instances of noncompliance with the conditions for the exemption or the Policies.

32. The Liberty Mutual Asset Manager will make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any participant in a Liberty Mutual Plan.

33. The Liberty Mutual Asset Managers will prepare and make available to all participants of, and beneficiaries entitled to receive benefits under, the Liberty Mutual Plans (the Eligible Recipients) a plain English, narrative brochure (the Brochure) that contains information comparable to that required by Part 2A of Form ADV filed under the Investment Advisers Act of 1940,<sup>12</sup> modified such that the disclosure is relevant to Eligible Recipients with respect to the management of the applicable Liberty Mutual Plan. Liberty Mutual must also provide an annual update to the Brochure (the Updated Brochure), containing or accompanied by a summary of material changes.

34. As an additional condition of the exemption, each Liberty Mutual Asset Manager must establish an internal compliance program that addresses the Liberty Mutual Asset Manager's performance of its fiduciary and substantive obligations under ERISA (the Compliance Program). Each Liberty Mutual Asset Manager must designate a chief compliance officer (the CCO), who must be knowledgeable about ERISA and have the authority to develop and enforce appropriate compliance policies and procedures for the Liberty Mutual

<sup>12</sup> The Department understands that Form ADV is the uniform form used by investment advisers to register with both the Securities and Exchange Commission (SEC) and state securities authorities. The form consists of two parts. Part 2 requires investment advisers to prepare narrative brochures written in plain English that contain information such as the types of advisory services offered, the adviser's fee schedule, disciplinary information, conflicts of interest, and the educational and business background of management and key advisory personnel of the adviser. The brochure is the primary disclosure document that investment advisers provide to their clients.

Asset Manager. Also, as part of the Compliance Program, each Liberty Mutual Asset Manager must adopt and enforce a written code of ethics that, among other things, will reflect the Liberty Mutual Asset Manager's fiduciary duties to the Liberty Mutual Plans.

35. Finally, the Liberty Mutual Asset Manager must act in the Best Interest of the Liberty Mutual Plan at the time of the transaction. Furthermore, the Liberty Mutual Asset Manager's statements about material conflicts of interest and any other matters relevant to the Liberty Mutual Asset Manager's relationship with the Liberty Mutual Plan, must not be materially misleading at the time they are made.

#### *Statutory Findings—Administratively Feasible*

36. Liberty Mutual represents that the proposed exemption is administratively feasible. Liberty Mutual represents that it maintains substantial internal control systems regulating its financial reporting and related functions, including portfolio management, that are tested three times per year, with regular internal audits. Furthermore, as described above, the Liberty Mutual Asset Manager will be subject to robust annual audits to be conducted by an independent auditor. The Liberty Mutual Asset Manager must then make its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any participant in a Liberty Mutual Plan.

#### *Summary*

37. In summary, provided that the conditions described above are satisfied, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements for an exemption under section 408(a) of ERISA.

#### **Proposed Exemption Operative Language**

##### *Section I. Covered Transactions*

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), and 406(a)(1)(D) of ERISA and the sanctions resulting from the application of sections 4975(a) and 4975(b) of the Code, by reason of sections 4975(c)(1)(A), 4975(c)(1)(B), and 4975(c)(1)(D) of the Code, shall not apply to a transaction between a party in interest with respect to a Liberty Mutual Plan (as defined in Section II(h)) and such Liberty Mutual Plan, provided that the Liberty Mutual Asset Manager

(as defined in Section II(a)) has discretionary authority or control with respect to the assets of the Liberty Mutual Plan involved in the transaction and the following conditions are satisfied:

(a) The terms of the transaction are negotiated on behalf of the Liberty Mutual Plan by, or under the authority and general direction of, the Liberty Mutual Asset Manager, and either the Liberty Mutual Asset Manager or, so long as the Liberty Mutual Asset Manager retains full fiduciary responsibility with respect to the transaction, a sub-adviser acting in accordance with written guidelines established and administered by the Liberty Mutual Asset Manager, makes the decision on behalf of the Plan to enter into the transaction;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 2006–16 (71 FR 63786, October 31, 2006) (relating to securities lending arrangements) (as amended or superseded);

(2) Prohibited Transaction Exemption 83–1 (48 FR 895, January 7, 1983) (relating to acquisitions by plans of interests in mortgage pools) (as amended or superseded); or

(3) Prohibited Transaction Exemption 88–59 (53 FR 24811, June 30, 1988) (relating to certain mortgage financing arrangements) (as amended or superseded);

(c) The transaction is not part of an arrangement, agreement, or understanding designed to violate or evade compliance with ERISA or the Code;

(d) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the Liberty Mutual Asset Manager, the terms of the transaction are at least as favorable to the Liberty Mutual Plan as the terms generally available in arm's length transactions between unrelated parties;

(e) The party in interest dealing with the Liberty Mutual Plan:

(1) Is a party in interest with respect to the Liberty Mutual Plan (including a fiduciary); either

(A) Solely by reason of providing services to the Liberty Mutual Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of ERISA; or

(B) Solely by reason of being a 10-percent or more shareholder, partner or joint venturer, in a person, which is 50 percent or more owned by an employer of employees covered by the Liberty Mutual Plan (directly or indirectly in

capital or profits), or the parent company of such an employer, provided that such person is not controlled by, controlling, or under common control with such employer; or

(C) By reason of both (A) and (B) only; and

(2) Does not have discretionary authority or control with respect to the investment of the Liberty Mutual Plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(f) The party in interest dealing with the Liberty Mutual Plan is neither the Liberty Mutual Asset Manager nor a person related to the Liberty Mutual Asset Manager (within the meaning of Section II(d));

(g) The Liberty Mutual Asset Manager adopts, maintains, and follows written policies and procedures (the Policies) that:

(1) Are designed to assure compliance with the conditions of the exemption and its fiduciary responsibilities and avoid any conflicts of interest or risk exposure, including an investment allocation policy and best execution policy, and ensure that the Liberty Mutual Asset Manager and its personnel operate within an impartial conduct standard in accordance with a duty of loyalty and prudence pursuant to section 404 of the Act with respect to the Liberty Mutual Plan when conducting business with, or on behalf of, the applicable Liberty Mutual Plan;

(2) Describe the objective requirements of the exemption, and describe the steps adopted by the Liberty Mutual Asset Manager to assure compliance with each of these requirements:

(A) The requirements of Section I of the exemption, including Section I(a) regarding the discretionary authority or control of the Liberty Mutual Asset Manager with respect to the plan assets involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the Liberty Mutual Plan to enter into the transaction;

(B) That any procedure for approval or veto of the transaction meets the requirements of Section I(a);

(C) For a transaction described in Section I:

(i) That the transaction is not entered into with any person who is excluded from relief under Section I(e)(1), Section I(e)(2), or Section I(f); and

(ii) That the transaction is not described in any of the class exemptions listed in Section I(b);

(3) Are reasonably designed to prevent the Liberty Mutual Asset

Manager or its personnel from violating ERISA or other federal or state laws or regulations applicable with respect to the investment of the assets of the applicable Liberty Mutual Plan (Applicable Law);

(4) Cover, at a minimum, the following areas to the extent applicable to the Liberty Mutual Asset Manager:

(A) Portfolio management processes, including allocation of investment opportunities among any Liberty Mutual Plan and Liberty Mutual's proprietary investments, taking into account the investment objectives of the applicable Liberty Mutual Plan and any restrictions under Applicable Law;

(B) Trading practices, including procedures by which the Liberty Mutual Asset Manager satisfies its best execution obligation, and allocates aggregated trades among all Liberty Mutual Plans and/or Liberty Mutual proprietary accounts for which it provides investment management services;

(C) Personal trading activities of any employee of Liberty Mutual and its subsidiaries who has personal involvement and responsibility for investment decisions regarding the investment of the assets of the applicable Liberty Mutual Plan (an LM Advisory Employee);

(D) The Liberty Mutual Asset Manager's policies regulating conflicts of interest;

(E) The accuracy of disclosures, including account statements, made to the trustee(s) or fiduciaries of any Liberty Mutual Plan or to any regulators;

(F) Safeguarding of Liberty Mutual Plan assets from conversion or inappropriate use by any LM Advisory Employee;

(G) The accurate creation of required records and their maintenance in a manner that secures them from unauthorized alteration or use and protects them from untimely destruction;

(H) Processes to value holdings of any Liberty Mutual Plan, to the extent, if any, that such valuation is within the control of the Liberty Mutual Asset Manager;

(I) Safeguards for the privacy protection of records and information pertaining to each Liberty Mutual Plan; and

(J) Business continuity plans; and

(5) Any violations of or failure to comply with items (1) through (4) above are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing to appropriate corporate officers, the Chief

Compliance Officer (as described below in Section I(j)) of the Liberty Mutual Asset Manager, and the independent auditor described in Section I(h) below, and a fiduciary of the relevant Liberty Mutual Plan; the Liberty Mutual Asset Manager will not be treated as having failed to adopt, maintain, or follow the Policies, provided that it corrects any instances of noncompliance promptly when discovered or when they reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this item (5);

(h)(1) The Liberty Mutual Asset Manager submits to an audit conducted annually by an independent auditor, who has been prudently selected and who has the appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions and applicable securities laws to evaluate the adequacy of, and compliance with, the Policies described herein, and compliance with the requirements of the exemption, and so represents in writing. Upon the Department's request, the auditor must demonstrate its qualifications as required by this paragraph and its independence from Liberty Mutual. The audit must be incorporated into the Policies and cover a consecutive twelve-month period beginning on the effective date of the exemption. Each annual audit must be completed within six months following the end of the twelve-month period to which the audit relates;

(2) To the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, the Liberty Mutual Asset Manager and, if applicable, Liberty Mutual, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems, business records, transactional data, workplace locations, training materials, and personnel;

(3) The auditor's engagement must specifically require the auditor to determine whether the Liberty Mutual Asset Manager has complied with the conditions for the exemption, including the requirement to adopt, maintain, and follow Policies in Section I(g);

(4) The auditor's engagement shall specifically require the auditor to test the Liberty Mutual Asset Manager's operational compliance with the exemption, including the Policies in Section I(g). In this regard, the auditor must test a sample of the Liberty Mutual Asset Manager's transactions involving the Liberty Mutual Plan sufficient in size and nature to afford the auditor a

reasonable basis to determine the operational compliance with the Policies;

(5) For each audit, the auditor shall issue a written report (the Audit Report) to Liberty Mutual and the Liberty Mutual Asset Manager that describes the procedures performed by the auditor during the course of its examination, to be completed within six months following the end of the twelve-month period to which the audit relates. The Audit Report shall include the auditor's specific determinations regarding the compliance with the conditions for the exemption; the adequacy of, and compliance with, the Policies; the auditor's recommendations (if any) with respect to strengthening such Policies; and any instances of noncompliance with the conditions for the exemption or the Policies described in paragraph (g) above. Any determinations made by the auditor regarding the adequacy of the Policies and the auditor's recommendations (if any) with respect to strengthening the Policies shall be promptly addressed by the Liberty Mutual Asset Manager, and any actions taken by the Liberty Mutual Asset Manager to address such recommendations shall be included in an addendum to the Audit Report. Any determinations by the auditor that the Liberty Mutual Asset Manager has adopted, maintained, and followed sufficient Policies shall not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the Liberty Mutual Asset Manager has complied with the requirements under this subsection must be based on evidence that demonstrates the Liberty Mutual Asset Manager has actually adopted, maintained, and followed the Policies required by this exemption;

(6) The auditor shall notify the Liberty Mutual Asset Manager and Liberty Mutual of any instances of noncompliance with the conditions for the exemption or the Policies identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel or the Chief Compliance Officer (described in Section I(j)) of the Liberty Mutual Asset Manager certifies in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; addressed, corrected, or remedied any inadequacies identified in the Audit Report; and determined that the Policies in effect at the time of

signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) A senior executive officer with a direct reporting line to the highest ranking compliance officer of Liberty Mutual reviews the Audit Report and certifies in writing, under penalty of perjury, that such officer has reviewed each Audit Report; and

(9) The Liberty Mutual Asset Manager makes its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any participant in a Liberty Mutual Plan;

(i) The Liberty Mutual Asset Manager will prepare and make available to all participants of, and beneficiaries entitled to receive benefits under, the Liberty Mutual Plans (the Eligible Recipients) a plain English, narrative brochure (the Brochure) that contains all substantive information, comparable to that required by Part 2A of Form ADV filed under the Investment Advisers Act of 1940, but modified such that the disclosure is relevant to Eligible Recipients with respect to the management of the applicable Liberty Mutual Plan;

(1) The Brochure shall include, among other things:

(A) The Liberty Mutual Asset Manager's investment strategy with respect to the applicable Liberty Mutual Plan;

(B) The Liberty Mutual Asset Manager's policies regarding conflicts of interest;

(C) Any disciplinary information related to employees of the Liberty Mutual Asset Manager; and

(D) A prominent statement that the Eligible Recipients may request a copy of the Policies, with instructions on how to make such request and receive such copy;

(2) The Liberty Mutual Asset Manager must make the Brochure available to the Eligible Recipients: (1) with respect to any Liberty Mutual Plan for which Liberty Mutual or its affiliate is then acting as an investment manager, within 90 days of the effective date of this exemption; and (2) with respect to any other Liberty Mutual Plan for which any Liberty Mutual Asset Manager thereafter becomes an investment manager, within ten (10) business days of the date that the applicable Investment Management Agreement or Sub-Adviser Agreement with a Liberty Mutual Plan becomes effective;

(3) Liberty Mutual annually updates such brochure (the Updated Brochure), containing or accompanied by a



summary of material changes. Each Updated Brochure that is made available following the completion of the first audit required with respect to any Liberty Mutual Asset Manager in accordance with this exemption must include a prominently displayed statement indicating that the Liberty Mutual Asset Manager has completed the required audit, and must also provide clear instructions for obtaining a copy of the audit;

(4) The Liberty Mutual Asset Manager will be deemed to have met the requirements pertaining to the provision of the Brochure and the Updated Brochure if it makes such documents available to the Eligible Recipients through a prominently displayed link on a Web site (the Plan Benefits Web site) where it makes available information to the Eligible Recipients about their benefits and rights under the applicable Liberty Mutual Plan (Plan Information), and contact information for an appropriate representative of Liberty Mutual to direct inquiries from the Eligible Recipients, which is readily available to such Eligible Recipients. Notwithstanding the above, the Liberty Mutual Asset Manager will not be deemed to have met the requirements of this subparagraph unless it provides notice of the Plan Benefits Web site, and the link to the Brochure and Updated Brochure at least once annually, to all Eligible Recipients;

(5) For any such Eligible Recipient to whom Liberty Mutual makes Plan Information available by hard copy or other means (Supplemental Delivery), the Brochure and the Updated Brochure must be provided to such Eligible Recipient at the same time and by the same means that Plan Information is provided;

(6) The Liberty Mutual Asset Manager will also provide supplements to the Brochure (each, a Brochure Supplement) that contain information about any LM Advisory Employee, including the LM Advisory Employee's educational background, business experience, other business activities, and disciplinary history;

(7) Each Brochure Supplement must be made available in the same manner as the Brochure, and must be posted to the Plan Benefits Web site, not later than 90 days following the date that any such LM Advisory Employee begins to provide advisory services to that Liberty Mutual Plan. Such Brochure Supplement must be included with the next Updated Brochure included in the material provided to any Eligible Recipient receiving such Updated Brochure by Supplemental Delivery;

(8) With respect to any individuals who become Eligible Recipients with respect to any Liberty Mutual Plan for which Liberty Mutual or its affiliate is then acting as an investment manager (the New Eligible Recipients) after the delivery of the Brochure to the Eligible Recipients with respect to the Liberty Mutual Plan, the Liberty Mutual Asset Manager will provide a copy of the Brochure as well as the most recent Updated Brochure, if applicable, and any Brochure Supplements related to LM Advisory Employees employed by the Liberty Mutual Asset Manager at the time the New Eligible Recipients became Eligible Recipients, within 90 days of the New Eligible Recipients becoming Eligible Recipients with respect to the Liberty Mutual Plan. The Liberty Mutual Asset Manager will be deemed to have met the disclosure requirements pertaining to the New Eligible Recipients if it makes the applicable documents available to the New Eligible Recipients through a prominently displayed link on the Plan Benefits Web site described in section I(i)(4) of this exemption.

Notwithstanding the above, the Liberty Mutual Asset Manager will not be deemed to have met the requirements of this subparagraph unless it provides notice of the Plan Benefits Web site, and the link to the Brochure, Updated Brochure, and Brochure Supplements to all New Eligible Recipients. For any such New Eligible Recipient to whom Liberty Mutual makes Plan Information available by Supplemental Delivery, the Brochure and the Updated Brochure must be provided to such New Eligible Recipient at the same time and by the same means that Plan Information is provided;

(j) Each Liberty Mutual Asset Manager must establish an internal compliance program that addresses the Liberty Mutual Asset Manager's performance of its fiduciary and substantive obligations under ERISA (the Compliance Program);

(1) Each Liberty Mutual Asset Manager must designate a Chief Compliance Officer (the CCO), who must be knowledgeable about ERISA and have the authority to develop and enforce appropriate compliance policies and procedures for the Liberty Mutual Asset Manager;

(2) As part of the Compliance Program, each Liberty Mutual Asset Manager must adopt and enforce a written code of ethics that, among other things, will reflect the Liberty Mutual Asset Manager's fiduciary duties to the Liberty Mutual Plans. At a minimum, the Liberty Mutual Asset Manager's code of ethics must:

(A) Set forth a minimum standard of conduct for all LM Advisory Employees and any other employees of the Liberty Mutual Asset Manager whose responsibilities include assisting the LM Advisory Employees in managing the investments of any Liberty Mutual Plan (the LM Facilitating Employees);

(B) Require LM Advisory Employees and LM Facilitating Employees to comply with Applicable Law in fulfilling their investment management duties to the Liberty Mutual Plans;

(C) Require each LM Advisory Employee to report his or her securities holdings at the later of the time that the person becomes an LM Advisory Employee or within 90 days after this exemption becomes effective and at least once annually thereafter and to make a report at least once quarterly of all personal securities transactions in reportable securities to the Liberty Mutual Asset Manager's CCO or other designated person;

(D) Require the CCO or other designated persons to pre-approve investments by any LM Advisory Employee in IPOs or limited offerings;

(E) Require each LM Advisory Employee or LM Facilitating Employees to promptly report any violation of Applicable Law to the Liberty Mutual Asset Manager's CCO or other designated person;

(F) Require the Liberty Mutual Asset Manager to provide training on applicable law and to obtain a written acknowledgment from each LM Advisory Employee documenting his/her agreement to abide by the code of ethics, the Policies, and applicable law; and

(G) Require the Liberty Mutual Asset Manager to keep records of any violations of applicable law and of any actions taken against the violators;

(k) The Liberty Mutual Asset Manager must act in the Best Interest of the Liberty Mutual Plan at the time of the transaction. For purposes of this paragraph, a Liberty Mutual Asset Manager acts in the "Best Interest" of the Liberty Mutual Plan when the Liberty Mutual Asset Manager acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Liberty Mutual Plan, without regard to the financial or other interests of the Liberty Mutual Asset Manager, any affiliate or other party;

(l) The Liberty Mutual Asset Manager's statements about material conflicts of interest and any other matters relevant to the Liberty Mutual Asset Manager's relationship with the Liberty Mutual Plan, are not materially misleading at the time they are made. For purposes of this paragraph, a "material conflict of interest" exists when a Liberty Mutual Asset Manager has a financial interest that a reasonable person would conclude could affect the exercise of its best judgment as a Liberty Mutual Asset Manager; and

(m) The Liberty Mutual Asset Manager will not charge any asset management fees or receive any fee in connection with transactions covered by this exemption.

### Section II. Definitions

(a) The term "Liberty Mutual Asset Manager" means Liberty Mutual or any organization that is either a direct or indirect 80 percent or more owned subsidiary of Liberty Mutual, or a direct or indirect 80 percent more owned subsidiary of a parent organization of Liberty Mutual, provided that such Liberty Mutual Asset Manager:

(1) Is an insurance company which is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan, which company has, as of the last day of its most recent fiscal year, net worth (capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves) in excess of \$1,000,000;

(2) Is subject to supervision and examination by a State authority having supervision over insurance companies and is subject to periodic audits by applicable State insurance regulators in accordance with the requirements of applicable state law, which, under current law, would be no less than once every five years;

(3) Has any arrangements between it and any Liberty Mutual Plan reviewed by the applicable State insurance regulators, including any investment management agreements (or revisions thereto) with the Liberty Mutual Plan and sub-advisor agreements with any other Liberty Mutual Asset Managers, the results of which will be made available without limitation to the independent auditor conducting the audit required under Section I(i);

(4) As of the last day of its most recent fiscal year, has under its management and control total assets in excess of \$1 billion; and

(5) Together with its affiliates, maintains Liberty Mutual Plans holding aggregate assets of at least \$500 million

as of the last day of each Liberty Mutual Plan's reporting year;

(b) For purposes of Sections II(a) and II(h), an "affiliate" of a Liberty Mutual Asset Manager means a member of either (1) a controlled group of corporations (as defined in section 414(b) of the Code) of which the Liberty Mutual Asset Manager is a member, or (2) a group of trades or businesses under common control (as defined in section 414(c) of the Code) of which the Liberty Mutual Asset Manager is a member; provided that "50 percent" shall be substituted for "80 percent" wherever "80 percent" appears in section 414(b) or 414(c) of the Code or the rules thereunder;

(c) The term "party in interest" means a person described in section 3(14) of ERISA and includes a "disqualified person" as defined in section 4975(e)(2) of the Code;

(d) A Liberty Mutual Asset Manager is "related" to a party in interest for purposes of Section I(f) of this exemption, if, as of the last day of its most recent calendar quarter: (i) The Liberty Mutual Asset Manager (or a person controlling, or controlled by, the Liberty Mutual Asset Manager) owns a ten percent or more interest in the party in interest; or (ii) the party in interest (or a person controlling, or controlled by, the party in interest) owns a 10 percent or more interest in the Liberty Mutual Asset Manager.

For purposes of this definition:

(1) The term "interest" means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest if, other than in a fiduciary capacity, the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose of or to direct the disposition of such interest; and

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

(e) For purposes of this exemption, the time as of which any transaction occurs is the date upon which the transaction is entered into. In addition,

in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. Nothing in this paragraph shall be construed as exempting a transaction entered into by a plan which becomes a transaction described in section 406 of ERISA or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, Section I(e) will be deemed satisfied if the transaction was entered into between a Liberty Mutual Plan and a person who was not then a party in interest;

(f) The term "LMGAMI" means Liberty Mutual Group Asset Management Inc., a separate investment management subsidiary of Liberty Mutual;

(g) The term "Liberty Mutual" means Liberty Mutual Insurance Company; and

(h) The term "Liberty Mutual Plan" means the Liberty Mutual Retirement Benefit Plan and any other employee benefit plan subject to the fiduciary responsibility provisions of Part IV of Title I of ERISA maintained by Liberty Mutual or an affiliate of Liberty Mutual, and covering the employees of such entities.

*Effective Date:* The proposed exemption, if granted, will be effective as of the date that a final notice of granted exemption is published in the **Federal Register**.

### Notice to Interested Persons

Notice of the proposed exemption will be given to all Interested Persons within 15 days of the publication of the notice of proposed exemption in the **Federal Register**, by first class U.S. mail to the last known address of all such individuals. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. Written comments are due within 45 days of the publication of the notice of proposed exemption in the **Federal Register**.

All comments will be made available to the public.

*Warning:* If you submit a comment, EBSA recommends that you include your name and other contact

information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:**

Scott Ness of the Department, telephone (202) 693-8561. (This is not a toll-free number.)

**Russell Investment Management, LLC (RIM), Russell Investments Capital, LLC (RICap), and Their Affiliates (Collectively, Russell Investments or the Applicants) Located in Seattle, WA**

[Application No. D-11916]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of 29 U.S.C. 1108 (section 408(a) of the Act) and 26 U.S.C. (section 4975(c)(2) of the Code), in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department. If the exemption is granted, the restrictions of sections 406(a)(1)(D) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(D) through (F) of the Code,<sup>13</sup> shall not apply, effective June 1, 2016, to:

(a) The receipt of a fee by Russell Investments, from an open-end investment company or open-end investment companies (Affiliated Fund(s)), in connection with the direct investment in shares of any such Affiliated Fund, by an employee benefit plan or by employee benefit plans (Client Plan(s)), where Russell Investments serves as a fiduciary with respect to such Client Plan, and where Russell Investments: (1) Provides investment advisory services, or similar services to any such Affiliated Fund; and (2) provides to any such Affiliated

Fund other services (Secondary Service(s)); and

(b) In connection with the indirect investment by a Client Plan in shares of an Affiliated Fund through investment in a pooled investment vehicle or pooled investment vehicles (Collective Fund(s)), where Russell Investments serves as a fiduciary with respect to such Client Plan, the receipt of fees by Russell Investments from: (1) An Affiliated Fund for the provision of investment advisory services, or similar services by Russell Investments to any such Affiliated Fund; and (2) an Affiliated Fund for the provision of Secondary Services by Russell Investments to any such Affiliated Fund.

**Summary of Facts and Representations<sup>14</sup>**

*Background*

1. On October 6, 2015, the Department granted Prohibited Transaction Exemption 2015-17 (PTE 2015-17) to Frank Russell Company and Affiliates (collectively, FRC). PTE 2015-17 provides conditional relief to FRC for the receipt of a fee from an Affiliated Fund, in connection with a Client Plan's direct investment in shares of an Affiliated Fund, or a Client Plan's indirect investment in shares of an Affiliated Fund, through investment in a pooled investment vehicle (the Collective Fund), where FRC: (a) Serves as a fiduciary with respect to such Client Plan, and (b) provides to such Affiliated Fund, investment advisory services or similar services, and Secondary Services, if certain conditions are met.

PTE 2015-17 defines FRC as "Frank Russell Company and any affiliate thereof," and "affiliate" as "[a]ny person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person." While PTE 2015-17 was nominally granted to "Frank Russell Company and Affiliates," the primary intended beneficiaries of the relief provided were two entities operating as "Russell Investments"—Russell Investment Management, LLC (RIM) and Russell Investments Capital, LLC (RICap), each of which qualified as an "affiliate" of FRC within the meaning of PTE 2015-17. However, as of June 1, 2016, RIM and RICap no longer were under the control of, or common control with, FRC and, thus, no longer are "affiliates" of FRC within the meaning of PTE 2015-17.

On June 1, 2016, London Stock Exchange Group PLC (LSEG), FRC's ultimate parent company, sold Russell Investments for \$1.15 billion to certain holding companies ultimately owned by certain private equity funds sponsored by TA Associates Management, LP and Reverence Capital Partners LP (the Sale). Following the Sale, FRC continues to operate as a wholly-owned subsidiary of LSEG, whereas RIM and RICap continue to operate as "Russell Investments." Because FRC is no longer affiliated with Russell Investments by reason of the Sale, the Applicants have requested a new exemption that would apply the relief provided under PTE 2015-17 to the recently sold entities comprising Russell Investments.

*Russell Investments*

2. Russell Investments is a global asset management firm providing investment management products and services to individuals and institutions in 47 different countries. As of June 30, 2016, Russell Investments had approximately \$244 billion in assets under management. Among the companies currently comprising Russell Investments are RIM and RICap.

RIM is an investment adviser registered with the U.S. Securities and Exchange Commission. RIM provides investment advisers and broker/dealers with model strategies designed to optimize asset allocation strategies based on various investment principles, and may also provide marketing assistance and subject matter expertise to these investment advisers. RIM may also provide objective setting, asset allocation, fund and manager selection services directly to pension plans or other institutional clients. As of December 31, 2016, RIM had total assets under management of over \$40.4 billion, all of which was discretionary.

RICap is also an investment adviser registered with the U.S. Securities and Exchange Commission. RICap provides general investment advisory services and acts as an adviser to separate account clients as well as several private, private equity and hedge funds offered to select institutional investors. RICap advises private investment funds which involve privately negotiated equity and equity-related investments. As of December 31, 2016, RICap had approximately \$8.3 billion in assets under management, all of which was discretionary.

*Investment Products and Services*

3. The Applicants represent that, in the United States, certain affiliates of Russell Investments make investments in mutual funds and collective

<sup>13</sup> For purposes of this proposed exemption reference to specific provisions of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of the Code.

<sup>14</sup> The Summary of Facts and Representations is based on the Applicants' representations, unless indicated otherwise.

investment funds available to Client Plans, and develop investment products and services for such Client Plans. The investment products include open-end investment companies registered under the Investment Company Act of 1940, as amended, for which RIM serves as an investment adviser or sub-adviser (*i.e.*, the Affiliated Funds). Russell Investments may also serve as dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provider of some other Secondary Services, including brokerage services, to an Affiliated Fund.

The Applicants state that other investment products provided by Russell Investments include bank-maintained common or collective trust funds and other similar pooled funds including, potentially, insurance company pooled separate accounts (Collective Funds) managed by Russell Investments Trust Company, a RIM affiliate.

4. The Applicants represent that the services provided by Russell Investments may include various types of investment advisory and/or investment management services which may be rendered at the individual Plan level, the Collective Fund level, or the Affiliated Fund level. According to the Applicants, Plan investment advisory, investment management and similar services include money manager selection, cash management, individual security selection and trading strategies, as well as various asset allocation strategies involving asset class selection and rebalancing, including target date fund “glidepath” strategies. Such services include Russell Investments’ Adaptive Retirement Accounts asset allocation service, under which RIM provides individualized asset allocation advice to defined contribution plan participants.

5. The Applicants also represent that a Russell Investments entity acting as a fiduciary may cause a Client Plan to invest directly in one or more Affiliated Funds. It is also possible, the Applicants state, that a Russell Investments entity acting as a fiduciary to plans participating in a Collective Fund may cause a Client Plan to invest indirectly in Affiliated Funds by directing the investment of a Collective Fund in which a Client Plan participates into one or more Affiliated Funds.

#### *Prohibited Transactions*

6. Section 3(14)(A) and (B) of the Act defines the term “party in interest” to include, respectively, any fiduciary of a plan and any person providing services to a plan. Section 3(21)(A) of the Act provides, in relevant part, that a person

is a fiduciary with respect to a plan to the extent that the person: (i) Exercises any discretionary authority or control respecting management of the Plan or any authority or control respecting management or disposition of its assets, or (ii) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of a plan or has any authority or responsibility to do so.

Russell Investments may currently serve, and may in the future serve, as investment adviser, investment manager, trustee, or other fiduciary with respect to Client Plans. Accordingly, pursuant to section 3(21)(A)(i) and (ii) of the Act, Russell Investments may currently be, or may in the future be, a fiduciary with respect to Client Plans which engage in the proposed transactions. As a fiduciary, Russell Investments may currently be, or may in the future be a party in interest with respect to Client Plans which engage in the transactions described in Section I of this proposed exemption.

Section 406(a)(1)(D) of the Act prohibits a fiduciary with respect to a plan from causing such plan to engage in a transaction, if such fiduciary knows or should know, that such transaction constitutes a transfer to, or use by or for the benefit of, a party in interest, of any assets of such plan. Where Russell Investments, as investment adviser or manager to a Client Plan, invests plan assets, directly or indirectly, in shares of a collective fund or a mutual fund that is managed or advised by Russell Investments, the investment purchase transaction violates section 406(a)(1)(D) of the Act.

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

Russell Investments, as investment manager or investment adviser to a Client Plan, may invest plan assets, or cause the investment of plan assets, directly or indirectly, in shares of a collective fund or mutual fund, from which Russell Investments receives compensation. Such added compensation would violate section 406(b)(1) and (b)(2) of the Act.

With respect to section 406(b)(3) of the Act, Russell Investments, as investment manager or investment adviser to a Client Plan, may receive investment advisory fees and “secondary services” fees from one or more collective funds or mutual funds in connection with a Client Plan’s investment in such funds, subject to the terms and conditions of this proposed exemption, if granted. Such payments would implicate section 406(b)(3) of ERISA.

#### *Prohibited Transaction Exemption 77-4 (PTE 77-4)*

7. The Applicants represent that all of the Russell Investments entities to which the exemption would apply are currently part of the same controlled group. In this regard, Russell Investments maintains that—if and to the extent that Russell Investments invests Client Plan assets (directly or indirectly via Collective Funds) in Affiliated Funds, such Russell Investments entities can rely on the relief provided pursuant to PTE 77-4 (42 FR 18732 (April 8, 1977)), except as described below. PTE 77-4 exempts certain purchases and sales by a plan of shares of a registered, open-ended investment company, where the investment adviser of such fund: (a) Is a plan fiduciary or affiliated with a plan fiduciary; and (b) is not an employer of employees covered by the plan.

8. Russell Investments represents that the requested relief is essentially the same as that afforded by PTE 77-4, with the exception of the use of a “negative consent” procedure, as discussed below for: (a) Approving Fee Increases with respect to Affiliated Funds, and (b) approving in advance the addition of Affiliated Funds (not previously authorized) as investments “inside” a Russell Investments Collective Fund, subject to notice and a right to terminate the original approval at the time a new Affiliated Fund is proposed to be added.

Russell Investments maintains that obtaining advance written approval from a Second Fiduciary can be difficult, particularly in the case of a Collective Fund, where a Second Fiduciary from every investing Client Plan must provide written approval before fees payable to Russell Investments by an Affiliated Fund in which such Client Plans invest indirectly via a Collective Fund can be increased, or before a new investment in an Affiliated Fund that was not previously authorized can be made. Affirmative consent may also be difficult to obtain in a timely fashion in the context of smaller Client Plans.

*Negative Consent for Fee Increases*

9. Russell Investments requests a negative consent procedure for: (a) Any increase in the rate of a fee previously authorized in writing by the Second Fiduciary of an affected Client Plan; (b) any increase in any fee that results from an addition of services for which a fee is charged; (c) any increase in any fee that results from a decrease in the number or kind of services performed for such fee over an existing rate for such service previously authorized by the Second Fiduciary; and (d) any increase in a fee that results from Russell Investments changing from one of the fee methods to another of the fee methods.

To obtain negative consent authorization with regard to a Fee Increase, Russell Investments must provide certain disclosures, in writing, thirty (30) days in advance of any proposed Fee Increase, including but not limited to any Fee Increase for Secondary Services, as such services are described below. Such disclosures would be delivered by regular mail or personal delivery (or if the Second Fiduciary consents by electronic means), and are to be accompanied by a Termination Form and instructions on the use of such form.

The exemption would permit Russell Investments to implement a Fee Increase, without waiting until the expiration of the thirty (30) day period, provided that implementation of such Fee Increase does not start before Russell Investments delivers to each affected Client Plan the Notice of Intent of Change of Fees, as described in Section II(k), and provided further that any affected Client Plan receives a cash credit equal to its pro rata share of such Fee Increase, for the period from the date of the implementation of such Fee Increase to the earlier of the date of the termination of the investment or the thirtieth (30th) day after the date Russell Investments delivers the Notice of Change of Fee to the Second Fiduciary of each affected Client Plan. In addition, Russell Investments must pay to each affected Client Plan interest on such cash credit. An independent auditor, on at least an annual basis, will verify the proper crediting of the pro rata share of each such Fee Increase and interest. An audit report shall be completed by such auditor no later than six (6) months after the period to which it relates.

Failure of the Second Fiduciary to return the Termination Form or to provide some other written notification of the intent to terminate within a certain period of time will be deemed to be approval of the proposed Fee

Increase, including but not limited to an increase in the fee for Secondary Services.

*Negative Consent for New Affiliated Funds*

10. The exemption would further permit a Russell Investments Collective Fund holding the assets of a Client Plan, such as a Target Date Fund, to purchase shares of an Affiliated Fund not previously affirmatively authorized by the Second Fiduciary of such Client Plan, provided: (a) The organizational document of such Collective Fund expressly provides for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund and such organizational document is disclosed initially to such Client Plan; and (b) Russell Investments satisfies the requirements of the negative consent procedure for obtaining the approval of the Second Fiduciary for each Client Plan invested in such Collective Fund at the time Russell Investments proposes to add an Affiliated Fund to such Collective Fund's portfolio.

Specifically, the Second Fiduciary of each Client Plan invested in such Collective Fund would receive in advance: (a) A notice of Russell Investments' intent to add an Affiliated Fund to the portfolio of such Collective Fund; and (b) certain disclosures in writing, including a summary prospectus of such Affiliated Fund.

The disclosures are delivered by regular mail or personal delivery (or if the Second Fiduciary consents, by electronic means), and are accompanied by a Termination Form and instructions on the use of such form.

Failure of the Second Fiduciary to return the Termination Form or to provide some other written notification of the intent to terminate within a certain period of time will be deemed to be approval of the investment by such Collective Fund in such Affiliated Fund.

Authorizations for fee increases and new affiliated funds may also be made affirmatively, in writing, by a Second Fiduciary, in a manner that is otherwise consistent with the requirements of the exemption.

11. Russell Investments represents that because the Second Fiduciary of each Client Plan will receive all of the necessary disclosures and will have an opportunity to terminate the investment in any Affiliated Fund without penalty, such Client Plan and its participants and beneficiaries are adequately protected. Further, Russell Investments states that to the extent it finds it desirable to create an Affiliated Fund with new investment goals, the negative consent procedure will facilitate the

addition of an Affiliated Fund into the portfolios of Russell Investments' Collective Funds.

*Electronic Disclosures*

12. Russell Investments may utilize electronic mail with hyperlinks to documents required to be disclosed by this proposed exemption. Russell Investments will "actively" satisfy the various disclosure requirements of this proposed exemption by transmitting emails, rather than relying on "passive" postings on a Web site. Russell Investments represents that this method of disclosure will be consistent with the Department's regulations at 29 CFR 2520.104b-1. Russell Investments represents that Client Plans which do not authorize electronic delivery will receive in advance hard copies of the documents required to be disclosed, and hard copies of documents will also be available on request.

*Termination*

13. A Client Plan invested directly in shares of an Affiliated Fund or invested indirectly through a Collective Fund will have an opportunity to terminate and withdraw from investment in such Affiliated Fund, and, as applicable, to terminate and withdraw from investment in such Collective Fund in the event of a Fee Increase and in the event of the addition of an Affiliated Fund to the portfolio of a Collective Fund. In this regard, a Second Fiduciary will be provided with a Termination Form at least annually and may terminate the authorization to invest directly in shares of an Affiliated Fund or indirectly through a Collective Fund, at will, without penalty to a Client Plan. Termination of the authorization by the Second Fiduciary of a Client Plan investing directly in shares of an Affiliated Fund will result in such Client Plan withdrawing from such Affiliated Fund. Termination of the authorization by the Second Fiduciary of a Client Plan investing indirectly in shares of an Affiliated Fund through a Collective Fund will result in such Client Plan withdrawing from such Collective Fund.

Generally, Russell Investments will process timely requests for withdrawal from an Affiliated Fund within one (1) business day. Withdrawal from a Collective Fund will generally be processed within the same time frame, subject to rules designed to ensure orderly withdrawals and fairness for the withdrawing Client Plans and non-withdrawing Client Plans, but in no event shall such withdrawal be implemented by Russell Investments more than five (5) business days after

receipt by Russell Investments of a Termination Form or other written notification of intent to terminate investment in such Collective Fund from the Second Fiduciary acting on behalf of the withdrawing Client Plan. Russell Investments will pay interest on the settlement amount for the period from receipt by Russell Investments of a Termination Form or other written notification of intent to terminate from the Second Fiduciary, acting on behalf of the withdrawing Client Plan, to the date Russell Investments pays the settlement amount, plus interest thereon.

From the date a Client Plan terminates its investment in an Affiliated Fund, such Client Plan will not be subject to pay a pro rata share of the fees received by Russell Investments from such Affiliated Fund. Likewise, from the date a Client Plan terminates its investment in a Collective Fund, such Client Plan will not be subject to pay a pro rata share of the fees received by Russell Investments from such Collective Fund, nor will such Client Plan be subject to changes in the portfolio of such Collective Fund, including a pro rata share of any Affiliated Fund-Level Advisory Fee arising from the investment by such Collective Fund in an Affiliated Fund.

#### *Receipt of Fees Pursuant to the Fee Methods*

14. The exemption, if granted, includes conditions which detail various methods which ensure that Russell Investments complies with the prohibition against a Client Plan paying double investment management fees, investment advisory, and similar fees for the assets of Client Plans invested directly in shares of an Affiliated Fund or invested indirectly in shares of an Affiliated Fund through a Collective Fund. These methods are described below in Section II(a)(1)–(3).

#### *Receipt of Fees for Secondary Services*

15. Russell Investments may also receive various fees and expenses for “Secondary Services,” which are services other than investment management services, investment advisory services, and any similar service, which are provided by Russell Investments to an Affiliated Fund. These services include accounting, administrative and brokerage services. It is represented that all fees for Secondary Services received by Russell Investments at this time are paid to Russell Investments directly by the Affiliated Funds. The negative consent procedure applicable for a Fee Increase

for Secondary Services is discussed above.

Russell Investments affiliates may receive commissions for the performance of brokerage services for the mutual funds. Under the conditions of this proposed exemption, if an Affiliated Fund places brokerage transactions with Russell Investments, Russell Investments will provide the Second Fiduciary of each such Client Plan, at least annually, the disclosure described in Section II(o) of this proposed exemption.

#### *Statutory Findings*

16. According to the Applicants, the use of a Termination Form will provide both a record and a regular reminder to the Second Fiduciary of a Client Plan of such plan’s rights vis-à-vis investing in Affiliated Funds, either directly or indirectly through a Collective Fund. Further the Applicants state that with very narrow exceptions relating to the negative consent authorizations described above, all of the conditions of PTE 77–4, as amended and/or restated, must be met.

17. The Applicants represent that the proposed exemption is in the interest of Client Plans, because it will allow Russell Investments to manage or advise with respect to the assets of such Client Plans invested in shares of an Affiliated Fund, either directly or indirectly through a Collective Fund, in an efficient or timely manner and on terms that might not otherwise be available without exemptive relief.

18. The Applicants represent that the proposed exemption is protective of Client Plans because: (a) Prior to any investment by a Client Plan directly or indirectly in shares of an Affiliated Fund, such investment must be authorized by the Second Fiduciary of such Client Plan, based on full and detailed written disclosure concerning such Affiliated Fund; (b) Fee Increases and Affiliated Fund additions to the portfolios of Collective Funds will be monitored and approved by the Second Fiduciary, who will have the ability to avoid the effect of such Fee Increases of Affiliated Fund additions; (c) Client Plan investments in shares of an Affiliated Fund, either directly or indirectly, will be subject to the ongoing ability of the Second Fiduciary of such Client Plan to terminate such investment, without penalty to such Client Plan; (d) Russell Investments will provide to such Second Fiduciary, in addition to certain initial disclosures, ongoing disclosures regarding such Affiliated Funds; and (e) Russell Investments, in its fiduciary capacity, will: (i) Act in the Best Interest of the

Client Plans; (ii) charge fees which are reasonable in relation to the total services it provides to Client Plans; and (iii) not make misleading statements to Client Plans regarding recommended investments, fees, material conflicts of interest, and any other matters relevant to a Client Plan’s investment decisions.

#### *Summary*

19. Given the conditions described below, the Department has tentatively determined that the relief sought by the Applicants satisfies the statutory requirements for an exemption under section 408(a) of the Act.

#### **Proposed Exemption Operative Language**

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 46637, 66644, October 27, 2011).

#### *Section I. Transactions*

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D) and 406(b) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(D) through (F) of the Code, shall not apply, effective June 1, 2016, to:

(a) The receipt of a fee by Russell Investments, from an Affiliated Fund, in connection with the direct investment in shares of any such Affiliated Fund, by a Client Plan, where Russell Investments serves as a fiduciary with respect to such Client Plan, and where Russell Investments:

(1) Provides investment advisory services, or similar services to any such Affiliated Fund; and

(2) Provides to any such Affiliated Fund other services (Secondary Service(s)), as defined below in Section IV(i); and

(b) In connection with the indirect investment by a Client Plan in shares of an Affiliated Fund through investment in a pooled investment vehicle or pooled investment vehicles (Collective Fund(s)), where Russell Investments serves as a fiduciary with respect to such Client Plan, the receipt of fees by Russell Investments from:

(1) An Affiliated Fund for the provision of investment advisory services, or similar services by Russell Investments to any such Affiliated Fund; and

(2) An Affiliated Fund for the provision of Secondary Services by Russell Investments to any such Affiliated Fund; provided that the

conditions, as set forth below, were satisfied, as of June 1, 2016, the effective date of this exemption, and continue to be satisfied thereafter.

### Section II. Specific Conditions

(a)(1) Each Client Plan which is invested directly in shares of an Affiliated Fund either:

(i) Does not pay to Russell Investments, for the entire period of such investment, any investment management fee, any investment advisory fee, or any similar fee at the plan-level (the Plan-Level Management Fee), as defined below in Section IV(m), with respect to any of the assets of such Client Plan which are invested directly in shares of such Affiliated Fund; or

(ii) Pays to Russell Investments a Plan-Level Management Fee, based on total assets of such Client Plan under management by Russell Investments at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee, where the amount subtracted represents such Client Plan's pro rata share of any investment advisory fee and any similar fee (the Affiliated Fund Level Advisory Fee), as defined below in Section IV(o), paid by such Affiliated Fund to Russell Investments.

If, during any fee period, in the case of a Client Plan invested directly in shares of an Affiliated Fund, such Client Plan has prepaid its Plan Level Management Fee, and such Client Plan purchases shares of an Affiliated Fund directly, the requirement of this Section II(a)(1)(ii) shall be deemed met with respect to such prepaid Plan-Level Management Fee, if, by a method reasonably designed to accomplish the same, the amount of the prepaid Plan-Level Management Fee that constitutes the fee with respect to the assets of such Client Plan invested directly in shares of an Affiliated Fund:

(A) Is anticipated and subtracted from the prepaid Plan-Level Management Fee at the time of the payment of such fee; or

(B) Is returned to such Client Plan, no later than during the immediately following fee period; or

(C) Is offset against the Plan-Level Management Fee for the immediately following fee period or for the fee period immediately following thereafter.

For purposes of Section II(a)(1)(ii), a Plan-Level Management Fee shall be deemed to be prepaid for any fee period, if the amount of such Plan-Level Management Fee is calculated as of a date not later than the first day of such period.

(2) Each Client Plan invested in a Collective Fund the assets of which are

not invested in shares of an Affiliated Fund:

(i) Does not pay to Russell Investments for the entire period of such investment any Plan-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund.

The requirements of this Section II(a)(2)(i) do not preclude the payment of a Collective Fund-Level Management Fee by such Collective Fund to Russell Investments, based on the assets of such Client Plan invested in such Collective Fund; or

(ii) Does not pay to Russell Investments for the entire period of such investment any Collective Fund-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund.

The requirements of this Section II(a)(2)(ii) do not preclude the payment of a Plan-Level Management Fee by such Client Plan to Russell Investments, based on total assets of such Client Plan under management by Russell Investments at the plan-level; or

(iii) Such Client Plan pays to Russell Investments a Plan-Level Management Fee, based on total assets of such Client Plan under management by Russell Investments at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee (the "Net" Plan-Level Management Fee), where the amount subtracted represents such Client Plan's pro rata share of any Collective Fund-Level Management Fee paid by such Collective Fund to Russell Investments.

The requirements of this Section II(a)(2)(iii) do not preclude the payment of a Collective Fund-Level Management Fee by such Collective Fund to Russell Investments, based on the assets of such Client Plan invested in such Collective Fund.

(3) Each Client Plan invested in a Collective Fund, the assets of which are invested in shares of an Affiliated Fund:

(i) Does not pay to Russell Investments for the entire period of such investment any Plan-Level Management Fee (including any "Net" Plan-Level Management Fee, as described, above, in Section II(a)(2)(ii)), and does not pay directly to Russell Investments or indirectly to Russell Investments through the Collective Fund for the entire period of such investment any Collective Fund-Level Management Fee with respect to the assets of such Client Plan which are invested in such Affiliated Fund; or

(ii) Pays indirectly to Russell Investments a Collective Fund-Level Management Fee, in accordance with Section II(a)(2)(i) above, based on the

total assets of such Client Plan invested in such Collective Fund, from which a credit has been subtracted from such Collective Fund-Level Management Fee, where the amount subtracted represents such Client Plan's pro rata share of any Affiliated Fund-Level Advisory Fee paid to Russell Investments by such Affiliated Fund; and does not pay to Russell Investments for the entire period of such investment any Plan-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund; or

(iii) Pays to Russell Investments a Plan-Level Management Fee, in accordance with Section II(a)(2)(ii) above, based on the total assets of such Client Plan under management by Russell Investments at the plan-level, from which a credit has been subtracted from such Plan-Level Management Fee, where the amount subtracted represents such Client Plan's pro rata share of any Affiliated Fund-Level Advisory Fee paid to Russell Investments by such Affiliated Fund; and does not pay directly to Russell Investments or indirectly to Russell Investments through the Collective Fund for the entire period of such investment any Collective Fund-Level Management Fee with respect to any assets of such Client Plan invested in such Collective Fund; or

(iv) Pays to Russell Investments a "Net" Plan-Level Management Fee, in accordance with Section II(a)(2)(iii) above, from which a further credit has been subtracted from such "Net" Plan-Level Management Fee, where the amount of such further credit which is subtracted represents such Client Plan's pro rata share of any Affiliated Fund-Level Advisory Fee paid to Russell Investments by such Affiliated Fund.

Provided that the conditions of this proposed exemption are satisfied, the requirements of Section II(a)(1)(i)-(ii) and Section II(a)(3)(i)-(iv) do not preclude the payment of an Affiliated Fund-Level Advisory Fee by an Affiliated Fund to Russell Investments under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940 (the Investment Company Act). Further, the requirements of Section II(a)(1)(i)-(ii) and Section II(a)(3)(i)-(iv) do not preclude the payment of a fee by an Affiliated Fund to Russell Investments for the provision by Russell Investments of Secondary Services to such Affiliated Fund under the terms of a duly adopted agreement between Russell Investments and such Affiliated Fund.

For the purpose of Section II(a)(1)(ii) and Section II(a)(3)(ii)-(iv), in

calculating a Client Plan's pro rata share of an Affiliated Fund-Level Advisory Fee, Russell Investments must use an amount representing the "gross" advisory fee paid to Russell Investments by such Affiliated Fund. For purposes of this paragraph, the "gross" advisory fee is the amount paid to Russell Investments by such Affiliated Fund, including the amount paid by such Affiliated Fund to sub-advisers.

(b) The purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold directly, and the purchase price paid and the sales price received by a Client Plan for shares in an Affiliated Fund purchased or sold indirectly through a Collective Fund, is the net asset value per share (NAV), as defined below in Section IV(f), at the time of the transaction, and is the same purchase price that would have been paid and the same sales price that would have been received for such shares by any other shareholder of the same class of shares in such Affiliated Fund at that time.<sup>15</sup>

(c) Russell Investments, including any officer and any director of Russell Investments, does not purchase any shares of an Affiliated Fund from, and does not sell any shares of an Affiliated Fund to, any Client Plan which invests directly in such Affiliated Fund, and Russell Investments, including any officer and director of Russell Investments, does not purchase any shares of any Affiliated Fund from, and does not sell any shares of an Affiliated Fund to, any Collective Fund in which a Client Plan invests indirectly in shares of such Affiliated Fund.

(d) No sales commissions, no redemption fees, and no other similar fees are paid in connection with any purchase and in connection with any sale by a Client Plan directly in shares of an Affiliated Fund, and no sales commissions, no redemption fees, and no other similar fees are paid by a Collective Fund in connection with any purchase, and in connection with any sale, of shares in an Affiliated Fund by a Client Plan indirectly through such Collective Fund. However, this Section II(d) does not prohibit the payment of a redemption fee, if:

(1) Such redemption fee is paid only to an Affiliated Fund; and

(2) The existence of such redemption fee is disclosed in the summary prospectus for such Affiliated Fund in effect both at the time of any purchase

of shares in such Affiliated Fund and at the time of any sale of such shares.

(e) The combined total of all fees received by Russell Investments is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act, for services provided:

(1) By Russell Investments to each Client Plan;

(2) By Russell Investments to each Collective Fund in which a Client Plan invests;

(3) By Russell Investments to each Affiliated Fund in which a Client Plan invests directly in shares of such Affiliated Fund; and

(4) By Russell Investments to each Affiliated Fund in which a Client Plan invests indirectly in shares of such Affiliated Fund through a Collective Fund.

(f) Russell Investments does not receive any fees payable pursuant to Rule 12b-1 under the Investment Company Act in connection with the transactions covered by this proposed exemption;

(g) No Client Plan is an employee benefit plan sponsored or maintained by Russell Investments.

(h)(1) In the case of a Client Plan investing directly in shares of an Affiliated Fund, a second fiduciary (the Second Fiduciary), as defined below in Section IV(h), acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan directly in shares of such Affiliated Fund, a full and detailed disclosure via first class mail or via personal delivery of (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth below) information concerning such Affiliated Fund, including but not limited to the items listed below:

(i) A current summary prospectus issued by each such Affiliated Fund;

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

(A) Investment advisory and similar services to be paid to Russell Investments by each Affiliated Fund;

(B) Secondary Services to be paid to Russell Investments by each such Affiliated Fund; and

(C) All other fees to be charged by Russell Investments to such Client Plan and to each such Affiliated Fund and all other fees to be paid to Russell Investments by each such Client Plan and by each such Affiliated Fund;

(iii) The reasons why Russell Investments may consider investment directly in shares of such Affiliated

Fund by such Client Plan to be appropriate for such Client Plan;

(iv) A statement describing whether there are any limitations applicable to Russell Investments with respect to which assets of such Client Plan may be invested directly in shares of such Affiliated Fund, and if so, the nature of such limitations; and

(v) Upon the request of the Second Fiduciary acting on behalf of such Client Plan, a copy of the Notice of Proposed Exemption (the Notice), a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption.

(2) In the case of a Client Plan whose assets are proposed to be invested in a Collective Fund after such Collective Fund has begun investing in shares of an Affiliated Fund, a Second Fiduciary, acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan in such Collective Fund, a full and detailed disclosure via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q), as set forth below) of information concerning such Collective Fund and information concerning each such Affiliated Fund in which such Collective Fund is invested, including but not limited to the items listed, below:

(i) A current summary prospectus issued by each such Affiliated Fund;

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

(A) Investment advisory and similar services to be paid to Russell Investments by each Affiliated Fund;

(B) Secondary Services to be paid to Russell Investments by each such Affiliated Fund; and

(C) All other fees to be charged by Russell Investments to such Client Plan, to such Collective Fund, and to each such Affiliated Fund and all other fees to be paid to Russell Investments by such Client Plan, by such Collective Fund, and by each such Affiliated Fund;

(iii) The reasons why Russell Investments may consider investment by such Client Plan in shares of each such Affiliated Fund indirectly through such Collective Fund to be appropriate for such Client Plan;

(iv) A statement describing whether there are any limitations applicable to Russell Investments with respect to which assets of such Client Plan may be invested indirectly in shares of each such Affiliated Fund through such

<sup>15</sup> The selection of a particular class of shares of an Affiliated Fund as an investment for a Client Plan indirectly through a Collective Fund is a fiduciary decision that must be made in accordance with the provisions of section 404(a) of the Act.



Collective Fund, and if so, the nature of such limitations;

(v) Upon the request of the Second Fiduciary, acting on behalf of such Client Plan, a copy of the Notice, a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption; and

(vi) A copy of the organizational documents of such Collective Fund which expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund.

(3) In the case of a Client Plan whose assets are proposed to be invested in a Collective Fund before such Collective Fund has begun investing in shares of any Affiliated Fund, a Second Fiduciary, acting on behalf of such Client Plan, receives, in writing, in advance of any investment by such Client Plan in such Collective Fund, a full and detailed disclosure via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q), as set forth below) of information, concerning such Collective Fund, including but not limited to, the items listed below:

(i) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for all fees to be charged by Russell Investments to such Client Plan and to such Collective Fund and all other fees to be paid to Russell Investments by such Client Plan, and by such Collective Fund;

(ii) Upon the request of the Second Fiduciary, acting on behalf of such Client Plan, a copy of the Notice, a copy of the final exemption, if granted, and any other reasonably available information regarding the transactions which are the subject of this proposed exemption; and

(iii) A copy of the organizational documents of such Collective Fund which expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund.

(i) On the basis of the information, described above in Section II(h), a Second Fiduciary, acting on behalf of a Client Plan:

(1) Authorizes in writing the investment of the assets of such Client Plan, as applicable:

(i) Directly in shares of an Affiliated Fund;

(ii) Indirectly in shares of an Affiliated Fund through a Collective Fund where such Collective Fund has already invested in shares of an Affiliated Fund; and

(iii) In a Collective Fund which is not yet invested in shares of an Affiliated Fund but whose organizational document expressly provides for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund; and

(2) Authorizes in writing, as applicable:

(i) The Affiliated Fund-Level Advisory Fee received by Russell Investments for investment advisory services and similar services provided by Russell Investments to such Affiliated Fund;

(ii) The fee received by Russell Investments for Secondary Services provided by Russell Investments to such Affiliated Fund;

(iii) The Collective Fund-Level Management Fee received by Russell Investments for investment management, investment advisory, and similar services provided by Russell Investments to such Collective Fund in which such Client Plan invests;

(iv) The Plan-Level Management Fee received by Russell Investments for investment management and similar services provided by Russell Investments to such Client Plan at the plan-level; and

(v) The selection by Russell Investments of the applicable fee method, as described above in Section II(a)(1)–(3).

All authorizations made by a Second Fiduciary pursuant to this Section II(i) must be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(j)(1) Any authorization, described above in Section II(i), and any authorization made pursuant to negative consent, as described below in Section II(k) and in Section II(l), made by a Second Fiduciary, acting on behalf of a Client Plan, shall be terminable at will by such Second Fiduciary, without penalty to such Client Plan (including any fee or charge related to such penalty), upon receipt by Russell Investments via first class mail, via personal delivery, or via electronic email of a written notification of the intent of such Second Fiduciary to terminate any such authorization;

(2) A form (the Termination Form), expressly providing an election to terminate any authorization, described above in Section II(i), or to terminate any authorization made pursuant to negative consent, as described below in Section II(k) and in Section II(l), with instructions on the use of such Termination Form, must be provided to such Second Fiduciary at least annually, either in writing via first class mail or

via personal delivery (or if such Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q), as set forth below). However, if a Termination Form has been provided to such Second Fiduciary pursuant to Section II(k) or pursuant to Section II(l) below, then a Termination Form need not be provided pursuant to this Section II(j), until at least six (6) months, but no more than twelve (12) months, have elapsed, since the prior Termination Form was provided;

(3) The instructions for the Termination Form must include the following statements:

(i) Any authorization, described above in Section II(i), and any authorization made pursuant to negative consent, as described below in Section II(k) or in Section II(l), is terminable at will by a Second Fiduciary, acting on behalf of a Client Plan, without penalty to such Client Plan, upon receipt by Russell Investments via first class mail or via personal delivery or via electronic email of the Termination Form, or some other written notification of the intent of such Second Fiduciary to terminate such authorization;

(ii) Within thirty (30) days from the date the Termination Form is sent to such Second Fiduciary by Russell Investments, the failure by such Second Fiduciary to return such Termination Form or the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate any authorization, described in Section II(i), or intent to terminate any authorization made pursuant to negative consent, as described below in Section II(k) or in Section II(l), will be deemed to be an approval by such Second Fiduciary;

(4) In the event that a Second Fiduciary, acting on behalf of a Client Plan, at any time returns a Termination Form or returns some other written notification of intent to terminate any authorization, as described above in Section II(i), or intent to terminate any authorization made pursuant to negative consent, as described below in Section II(k) or in Section II(l);

(i)(A) In the case of a Client Plan which invests directly in shares of an Affiliated Fund, the termination will be implemented by the withdrawal of all investments made by such Client Plan in the affected Affiliated Fund, and such withdrawal will be effected by Russell Investments within one (1) business day of the date that Russell Investments receives such Termination Form or receives from the Second Fiduciary, acting on behalf of such Client Plan,

some other written notification of intent to terminate any such authorization;

(B) From the date a Second Fiduciary, acting on behalf of a Client Plan that invests directly in shares of an Affiliated Fund, returns a Termination Form or returns some other written notification of intent to terminate such Client Plan's investment in such Affiliated Fund, such Client Plan will not be subject to pay a pro rata share of any Affiliated Fund-Level Advisory Fee and will not be subject to pay any fees for Secondary Services paid to Russell Investments by such Affiliated Fund, or any other fees or charges;

(ii)(A) In the case of a Client Plan which invests in a Collective Fund, the termination will be implemented by the withdrawal of such Client Plan from all investments in such affected Collective, and such withdrawal will be implemented by Russell Investments within such time as may be necessary for withdrawal in an orderly manner that is equitable to the affected withdrawing Client Plan and to all non-withdrawing Client Plans, but in no event shall such withdrawal be implemented by Russell Investments more than five business (5) days after the day Russell Investments receives from the Second Fiduciary, acting on behalf of such withdrawing Client Plan, a Termination Form or receives some other written notification of intent to terminate the investment of such Client Plan in such Collective Fund, unless such withdrawal is otherwise prohibited by a governmental entity with jurisdiction over the Collective Fund, or the Second Fiduciary fails to instruct Russell Investments as to where to reinvest or send the withdrawal proceeds; and

(B) From the date Russell Investments receives from a Second Fiduciary, acting on behalf of a Client Plan, that invests in a Collective Fund, a Termination Form or receives some other written notification of intent to terminate such Client Plan's investment in such Collective Fund, such Client Plan will not be subject to pay a pro rata share of any fees arising from the investment by such Client Plan in such Collective Fund, including any Collective Fund-Level Management Fee, nor will such Client Plan be subject to any other charges to the portfolio of such Collective Fund, including a pro rata share of any Affiliated Fund-Level Advisory Fee and any fee for Secondary Services arising from the investment by such Collective Fund in an Affiliated Fund.

(k)(1) Russell Investments, at least thirty (30) days in advance of the implementation of each fee increase

(Fee Increase(s)), as defined below in Section IV(l), must provide in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q), as set forth below), a notice of change in fees (the Notice of Change in Fees) (which may take the form of a proxy statement, letter, or similar communication which is separate from the summary prospectus of such Affiliated Fund) and which explains the nature and the amount of such Fee Increase to the Second Fiduciary of each affected Client Plan. Such Notice of Change in Fees shall be accompanied by a Termination Form and by instructions on the use of such Termination Form, as described above in Section II(j)(3);

(2) Subject to the crediting, interest-payback, and other requirements below, for each Client Plan affected by a Fee Increase, Russell Investments may implement such Fee Increase without waiting for the expiration of the 30-day period, described above in Section II(k)(1), provided Russell Investments does not begin implementation of such Fee Increase before the first day of the 30-day period, described above in Section II(k)(1), and provided further that the following conditions are satisfied:

(i) Russell Investments delivers, in the manner described in Section II(k)(1), to the Second Fiduciary for each affected Client Plan, the Notice of Change of Fees, as described in Section II(k)(1), accompanied by the Termination Form and by instructions on the use of such Termination Form, as described above in Section II(j)(3);

(ii) Each affected Client Plan receives from Russell Investments a credit in cash equal to each such Client Plan's pro rata share of such Fee Increase to be received by Russell Investments for the period from the date of the implementation of such Fee Increase to the earlier of:

(A) The date when an affected Client Plan, pursuant to Section II(j), terminates any authorization, as described above in Section II(i), or terminates any negative consent authorization, as described in Section II(k) or in Section II(l); or

(B) The 30th day after the day that Russell Investments delivers to the Second Fiduciary of each affected Client Plan the Notice of Change of Fees, described in Section II(k)(1), accompanied by the Termination Form and by the instructions on the use of such Termination Form, as described above in Section II(j)(3).

(iii) Russell Investments pays to each affected Client Plan the cash credit, as described above in Section II(k)(2)(ii), with interest thereon, no later than five (5) business days following the earlier of:

(A) The date such affected Client Plan, pursuant to Section II(j), terminates any authorization, as described above in Section II(i), or terminates, any negative consent authorization, as described in Section II(k) or in Section II(l); or

(B) The 30th day after the day that Russell Investments delivers to the Second Fiduciary of each affected Client Plan, the Notice of Change of Fees, described in Section II(k)(1), accompanied by the Termination Form and instructions on the use of such Termination Form, as described above in Section II(j)(3);

(iv) Interest on the credit in cash is calculated at the prevailing Federal funds rate plus two percent (2%) for the period from the day Russell Investments first implements the Fee Increase to the date Russell Investments pays such credit in cash, with interest thereon, to each affected Client Plan;

(v) An independent accounting firm (the Auditor) at least annually audits the payments made by Russell Investments to each affected Client Plan, audits the amount of each cash credit, plus the interest thereon, paid to each affected Client Plan, and verifies that each affected Client Plan received the correct amount of cash credit and the correct amount of interest thereon;

(vi) Such Auditor issues an audit report of its findings no later than six (6) months after the period to which such audit report relates, and provides a copy of such audit report to the Second Fiduciary of each affected Client Plan; and

(3) Within thirty (30) days from the date Russell Investments sends to the Second Fiduciary of each affected Client Plan, the Notice of Change of Fees and the Termination Form, the failure by such Second Fiduciary to return such Termination Form and the failure by such Second Fiduciary to provide some other written notification of the Client Plan's intent to terminate the authorization, described in Section II(i), or to terminate the negative consent authorization, as described in Section II(k) or in Section II(l), will be deemed to be an approval by such Second Fiduciary of such Fee Increase.

(l) Effective upon the date that the final exemption is granted, in the case of (a) a Client Plan which has received the disclosures detailed in Section II(h)(2)(i), II(h)(2)(ii)(A), II(h)(2)(ii)(B), II(h)(2)(ii)(C), II(h)(2)(iii), II(h)(2)(iv),

II(h)(2)(v), and II(h)(2)(vi), and which has authorized the investment by such Client Plan in a Collective Fund in accordance with Section II(i)(1)(ii) above, and (b) a Client Plan which has received the disclosures detailed in Section II(h)(3)(i), II(h)(3)(ii), and II(h)(3)(iii), and which has authorized investment by such Client Plan in a Collective Fund, in accordance with Section II(i)(1)(iii) above, the authorization pursuant to negative consent in accordance with this Section II(l), applies to:

(1) The purchase, as an addition to the portfolio of such Collective Fund, of shares of an Affiliated Fund (a New Affiliated Fund) where such New Affiliated Fund has not been previously authorized pursuant to Section II(i)(1)(ii), or, as applicable, Section II(i)(1)(iii), and such Collective Fund may commence investing in such New Affiliated Fund without further written authorization from the Second Fiduciary of each Client Plan invested in such Collective Fund, provided that:

(i) The organizational documents of such Collective Fund expressly provide for the addition of one or more Affiliated Funds to the portfolio of such Collective Fund, and such documents were disclosed in writing via first class mail or via personal delivery (or, if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q)) to the Second Fiduciary of each such Client Plan invested in such Collective Fund, in advance of any investment by such Client Plan in such Collective Fund;

(ii) At least thirty (30) days in advance of the purchase by a Client Plan of shares of such New Affiliated Fund indirectly through a Collective Fund, Russell Investments provides, either in writing via first class or via personal delivery (or if the Second Fiduciary consents to such means of delivery through electronic email, in accordance with Section II(q)) to the Second Fiduciary of each Client Plan having an interest in such Collective Fund, full and detailed disclosures about such New Affiliated Fund, including but not limited to:

(A) A notice of Russell Investments' intent to add a New Affiliated Fund to the portfolio of such Collective Fund, where such notice may take the form of a proxy statement, letter, or similar communication that is separate from the summary prospectus of such New Affiliated Fund to the Second Fiduciary of each affected Client Plan;

(B) Such notice of Russell Investments' intent to add a New Affiliated Fund to the portfolio of such

Collective Fund shall be accompanied by the information described in Section II(h)(2)(i), II(h)(2)(ii)(A), II(h)(2)(ii)(B), II(h)(2)(ii)(C), II(h)(2)(iii), II(h)(2)(iv), and II(2)(v) with respect to each such New Affiliated Fund proposed to be added to the portfolio of such Collective Fund; and

(C) A Termination Form and instructions on the use of such Termination Form, as described in Section II(j)(3); and

(2) Within thirty (30) days from the date Russell Investments sends to the Second Fiduciary of each affected Client Plan, the information described above in Section II(l)(1)(ii), the failure by such Second Fiduciary to return the Termination Form or to provide some other written notification of the Client Plan's intent to terminate the authorization described in Section II(i)(1)(ii), or, as appropriate, to terminate the authorization, described in Section II(i)(1)(iii), or to terminate any authorization, pursuant to negative consent, as described in this Section II(l), will be deemed to be an approval by such Second Fiduciary of the addition of a New Affiliated Fund to the portfolio of such Collective Fund in which such Client Plan invests, and will result in the continuation of the authorization of Russell Investments to engage in the transactions which are the subject of this proposed exemption with respect to such New Affiliated Fund.

(m) Russell Investments is subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Second Fiduciary of such Client Plan requests Russell Investments to provide.

(n) All dealings between a Client Plan and an Affiliated Fund, including all such dealings when such Client Plan is invested directly in shares of such Affiliated Fund and when such Client Plan is invested indirectly in such shares of such Affiliated Fund through a Collective Fund, are on a basis no less favorable to such Client Plan, than dealings between such Affiliated Fund and other shareholders of the same class of shares in such Affiliated Fund.

(o) In the event a Client Plan invests directly in shares of an Affiliated Fund, and, as applicable, in the event a Client Plan invests indirectly in shares of an Affiliated Fund through a Collective Fund, if such Affiliated Fund places brokerage transactions with Russell Investments, Russell Investments will provide to the Second Fiduciary of each such Client Plan, so invested, at least annually a statement specifying:

(1) The total, expressed in dollars, of brokerage commissions that are paid to Russell Investments by each such Affiliated Fund;

(2) The total, expressed in dollars, of brokerage commissions that are paid by each such Affiliated Fund to brokerage firms unrelated to Russell Investments;

(3) The average brokerage commissions per share, expressed as cents per share, paid to Russell Investments I by each such Affiliated Fund; and

(4) The average brokerage commissions per share, expressed as cents per share, paid by each such Affiliated Fund to brokerage firms unrelated to Russell Investments;

(p)(1) Russell Investments provides to the Second Fiduciary of each Client Plan invested directly in shares of an Affiliated Fund with the disclosures, as set forth below, and at the times set forth below in Section II(p)(1)(i), II(p)(1)(ii), II(p)(1)(iii), II(p)(1)(iv), and II(p)(1)(v), either in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic email, in accordance with Section II(q) as set forth below):

(i) Annually, with a copy of the current summary prospectus for each Affiliated Fund in which such Client Plan invests directly in shares of such Affiliated Fund;

(ii) Upon the request of such Second Fiduciary, a copy of the statement of additional information for each Affiliated Fund in which such Client Plan invests directly in shares of such Affiliated Fund which contains a description of all fees paid by such Affiliated Fund to Russell Investments;

(iii) With regard to any Fee Increase received by Russell Investments pursuant to Section II(k)(2), a copy of the audit report referred to in Section II(k)(2)(v) within sixty (60) days of the completion of such audit report;

(iv) Oral or written responses to the inquiries posed by the Second Fiduciary of such Client Plan, as such inquiries arise; and

(v) Annually, with a Termination form, as described in Section II(j)(1), and instructions on the use of such form, as described in Section II(j)(3), except that if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) or pursuant to Section II(l), then a Termination Form need not be provided again pursuant to this Section II(p)(1)(v) until at least six (6) months but no more than twelve (12) months have elapsed since a Termination Form was provided.

(2) Russell Investments provides to the Second Fiduciary of each Client

Plan invested in a Collective Fund, with the disclosures, as set forth below, and at the times set forth below in Section II(p)(2)(i), II(p)(2)(ii), II(p)(2)(iii), II(p)(2)(iv), II(p)(2)(v), II(p)(2)(vi), II(p)(2)(vii), and II(p)(2)(viii), either in writing via first class mail or via personal delivery (or if the Second Fiduciary consents to such means of delivery, through electronic mail, in accordance with Section II(q), as set forth below:

(i) Annually, with a copy of the current summary prospectus for each Affiliated Fund in which such Client Plan invests indirectly in shares of such Affiliated Fund through each such Collective Fund;

(ii) Upon the request of such Second Fiduciary, a copy of the statement of additional information for each Affiliated Fund in which such Client Plan invests indirectly in shares of such Affiliated Fund through each such Collective Fund which contains a description of all fees paid by such Affiliated Fund to Russell Investments;

(iii) Annually, with a statement of the Collective Fund-Level Management Fee for investment management, investment advisory or similar services paid to Russell Investments by each such Collective Fund, regardless of whether such Client Plan invests in shares of an Affiliated Fund through such Collective Fund;

(iv) A copy of the annual financial statement of each such Collective Fund in which such Client Plan invests, regardless of whether such Client Plan invests in shares of an Affiliated Fund through such Collective Fund, within sixty (60) days of the completion of such financial statement;

(v) With regard to any Fee Increase received by Russell Investments pursuant to Section II(k)(2), a copy of the audit report referred to in Section II(k)(2)(v) within sixty (60) days of the completion of such audit report;

(vi) Oral or written responses to the inquiries posed by the Second Fiduciary of such Client Plan as such inquiries arise;

(vii) For each Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, a statement of the approximate percentage (which may be in the form of a range) on an annual basis of the assets of such Collective Fund that was invested in Affiliated Funds during the applicable year; and

(viii) Annually, with a Termination Form, as described in Section II(j)(1), and instructions on the use of such form, as described in Section II(j)(3), except that if a Termination Form has been provided to such Second

Fiduciary, pursuant to Section II(k) or pursuant to Section II(l), then a Termination Form need not be provided again pursuant to this Section II(p)(2)(viii) until at least six (6) months but no more than twelve (12) months have elapsed since a Termination Form was provided.

(q) Any disclosure required herein to be made by Russell Investments to a Second Fiduciary may be delivered by electronic email containing direct hyperlinks to the location of each such document required to be disclosed, which are maintained on a Web site by Russell Investments, provided:

(1) Russell Investments obtains from such Second Fiduciary prior consent in writing to the receipt by such Second Fiduciary of such disclosure via electronic email;

(2) Such Second Fiduciary has provided to Russell Investments a valid email address; and

(3) The delivery of such electronic email to such Second Fiduciary is provided by Russell Investments in a manner consistent with the relevant provisions of the Department's regulations at 29 CFR 2520.104b-1(c) (substituting the word "Russell Investments" for the word "administrator" as set forth therein, and substituting the phrase "Second Fiduciary" for the phrase "the participant, beneficiary or other individual" as set forth therein).

(r) The authorizations described in Sections II(k) or II(l) may be made affirmatively, in writing, by a Second Fiduciary, in a manner that is otherwise consistent with the requirements of those sections.

(s) All of the conditions of PTE 77-4, as amended and/or restated, are met. Notwithstanding this, if PTE 77-4 is amended and/or restated, the requirements of paragraph (e) therein will be deemed to be met with respect to authorizations described in Section II(l) above, but only to the extent the requirements of Section II(l) are met. Similarly, if PTE 77-4 is amended and/or restated, the requirements of paragraph (f) therein will be deemed to be met with respect to authorizations described in Section II(k) above, if the requirements of Section II(k) are met.

(t) *Standards of Impartial Conduct.* If Russell Investments is a fiduciary within the meaning of section 3(21)(A)(i) or (ii) of the Act, or section 4975(e)(3)(A) or (B) of the Code, with respect to the assets of a Client Plan involved in the transaction, Russell Investments must comply with the following conditions with respect to the transaction: (1) Russell Investments acts in the Best Interest (as defined below, in

Section IV(q)) of the Client Plan, at the time of the Transaction; (2) all compensation received by Russell Investments in connection with the transaction in relation to the total services the fiduciary provides to the Client Plan does not exceed reasonable compensation within the meaning of section 408(b)(2) of the Act; and (3) Russell Investments' statements about recommended investments, fees, material conflicts of interest,<sup>16</sup> and any other matters relevant to a Client Plan's investment decisions are not materially misleading at the time they are made.

For purposes of this section, Russell Investments acts in the "Best Interest" of the Client Plan when Russell Investments acts with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would exercise based on the investment objectives, risk tolerance, financial circumstances, and needs of the plan or IRA, without regard to the financial or other interests of the fiduciary, any affiliate or other party.

### Section III. General Conditions

(a) Russell Investments maintains for a period of six (6) years the records necessary to enable the persons, described below in Section III(b), to determine whether the conditions of this proposed exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred, if solely because of circumstances beyond the control of Russell Investments, the records are lost or destroyed prior to the end of the six-year period; and

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

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

(i) Any duly authorized employee or representative of the Department or the

<sup>16</sup> A "material conflict of interest" exists when a fiduciary has a financial interest that could affect the exercise of its best judgment as a fiduciary in rendering advice to a Client Plan. For this purpose, the failure of Russell Investments to disclose a material conflict of interest relevant to the services it is providing to a Client Plan, or other actions it is taking in relation to a Client Plan's investment decisions, is deemed to be a misleading statement.

Internal Revenue Service, or the Securities & Exchange Commission;

(ii) Any fiduciary of a Client Plan invested directly in shares of an Affiliated Fund, any fiduciary of a Client Plan who has the authority to acquire or to dispose of the interest in a Collective Fund in which a Client Plan invests, any fiduciary of a Client Plan invested indirectly in an Affiliated Fund through a Collective Fund where such fiduciary has the authority to acquire or to dispose of the interest in such Collective Fund, and any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of a Client Plan invested directly in shares of an Affiliated Fund or invested in a Collective Fund, and any participant or beneficiary of a Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, and any representative of such participant or beneficiary; and

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

#### Section IV. Definitions

For purposes of this proposed exemption:

(a) The term “Russell Investments” means RIM (f/k/a Russell Investment Management Company), RICap, and any affiliate thereof, as defined below, in Section IV(c).

(b) The term “Client Plan(s)” means a 401(k) plan(s), an individual retirement account(s), other tax-qualified plan(s), and other plan(s) as defined in the Act and Code, but does not include any employee benefit plan sponsored or maintained by Russell Investments, as defined above in Section IV(a).

(c) An “affiliate” of a person includes:

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

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

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

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

(e) The term “Affiliated Fund(s)” means Russell Investment Company, a series of mutual funds managed by RIM, and any other diversified open-end investment company or companies

registered with the Securities and Exchange Commission under the Investment Company Act, as amended, established and maintained by Russell Investments now or in the future for which Russell Investments serves as an investment adviser.

(f) The term “net asset value per share” and the term “NAV” mean the amount for purposes of pricing all purchases and sales of shares of an Affiliated Fund, calculated by dividing the value of all securities, determined by a method as set forth in the summary prospectus for such Affiliated Fund and in the statement of additional information, and other assets belonging to such Affiliated Fund or portfolio of such Affiliated Fund, less the liabilities charged to each such portfolio or each such Affiliated Fund, by the number of outstanding shares.

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

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

(1) Such Second Fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Russell Investments;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary, is an officer, director, partner, or employee of Russell Investments (or is a relative of such person); or

(3) Such Second Fiduciary, directly or indirectly, receives any compensation or other consideration for his or her personal account in connection with any transaction described in this proposed exemption. If an officer, director, partner, or employee of Russell Investments (or relative of such person) is a director of such Second Fiduciary, and if he or she abstains from participation in:

(i) The decision of a Client Plan to invest in and to remain invested in shares of an Affiliated Fund directly, the decision of a Client Plan to invest in shares of an Affiliated Fund indirectly through a Collective Fund, and the decision of a Client Plan to invest in a Collective Fund that may in the future invest in shares of an Affiliated Fund;

(ii) Any authorization in accordance with Section II(i), and any authorization, pursuant to negative consent, as described in Section II(k) or in Section II(l); and

(iii) The choice of such Client Plan’s investment adviser, then Section IV(h)(2) above shall not apply.

(i) The term “Secondary Service(s)” means a service or services other than an investment management service, investment advisory service, and any similar service which is provided by Russell Investments to an Affiliated Fund, including, but not limited to, custodial, accounting, administrative services, and brokerage services. Russell Investments may also serve as a dividend disbursing agent, shareholder servicing agent, transfer agent, fund accountant, or provider of some other Secondary Service, as defined in this Section IV(i).

(j) The term “Collective Fund(s)” means a separate account of an insurance company, as defined in section 2510.3–101(h)(1)(iii) of the Department’s plan assets regulations,<sup>17</sup> maintained by Russell Investments, and a bank-maintained common or collective investment trust maintained by Russell Investments.

(k) The term “business day” means any day that:

(1) Russell Investments is open for conducting all or substantially all of its business; and

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

(l) The term “Fee Increase(s)” includes any increase by Russell Investments in a rate of a fee previously authorized in writing by the Second Fiduciary of each affected Client Plan pursuant to Section II(i)(2)(i)–(iv) above, and in addition includes, but is not limited to:

(1) Any increase in any fee that results from the addition of a service for which a fee is charged;

(2) Any increase in any fee that results from a decrease in the number of services and any increase in any fee that results from a decrease in the kind of service(s) performed by Russell Investments for such fee over an existing rate of fee for each such service previously authorized by the Second Fiduciary, in accordance with Section II(i)(2)(i)–(iv) above; and

(3) Any increase in any fee that results from Russell Investments changing from one of the fee methods, as described above in Section II(a)(1)–(3), to using another of the fee methods, as described above in Section II(a)(1)–(3).

<sup>17</sup> 51 FR 41262 (November 13, 1986).

(m) The term “Plan-Level Management Fee” includes any investment management fee, investment advisory fee, and any similar fee paid by a Client Plan to Russell Investments for any investment management services, investment advisory services, and similar services provided by Russell Investments to such Client Plan at the plan-level. The term “Plan-Level Management Fee” does not include a separate fee paid by a Client Plan to Russell Investments for asset allocation service(s) (Asset Allocation Service(s)), as defined below in Section IV(p), provided by Russell Investments to such Client Plan at the plan-level.

(n) The term “Collective Fund-Level Management Fee” includes any investment management fee, investment advisory fee, and any similar fee paid by a Collective Fund to Russell Investments for any investment management services, investment advisory services, and any similar services provided by Russell Investments to such Collective Fund at the collective fund level.

(o) The term “Affiliated Fund-Level Advisory Fee” includes any investment advisory fee and any similar fee paid by an Affiliated Fund to Russell Investments under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act.

(p) The term “Asset Allocation Service(s)” means a service or services to a Client Plan relating to the selection of appropriate asset classes or target-date “glidepath” and the allocation or reallocation (including rebalancing) of the assets of a Client Plan among the selected asset classes. Such services do not include the management of the underlying assets of a Client Plan, the selection of specific funds or manager, and the management of the selected Affiliated Funds or Collective Funds.

(q) The term “Best Interest” means acting with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the plan or IRA, without regard

to the financial or other interests of Russell Investments, any affiliate or other party.

*Effective Date:* If granted, this proposed exemption will be effective as of June 1, 2016.

#### Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the Notice include each Client Plan invested directly in shares of an Affiliated Fund, each Client Plan invested indirectly in shares of an Affiliated Fund through a Collective Fund, and each plan for which Russell Investments provides discretionary management services at the time the proposed exemption is published in the **Federal Register**.

It is represented that notification will be provided to each of these interested persons by first class mail, within fifteen (15) calendar days of the date of the publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of their right to comment and to request a hearing. The Department must receive all written comments and requests for a hearing no later than forty-five (45) days from the date of the publication of the Notice in the **Federal Register**.

All comments will be made available to the public.

*Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

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

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section

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

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

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

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

Signed at Washington, DC, this 28th day of July, 2017.

**Lyssa E. Hall,**

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

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