DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10630 thru D–10632, et al.]

Proposed Exemptions; Genito Urinary Surgeons, Inc. Profit Sharing Plan (GUS Plan); Michael J. Rosenberg Money Purchase Pension Plan (Rosenberg Plan); Robert Savage Qualified Retirement Plan (Savage Plan) (Collectively, the Plans)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

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

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

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

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

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

Genito-Urinary Surgeons, Inc. Profit Sharing Plan (GUS Plan); Michael J. Rosenberg Money Purchase Pension Plan (Rosenberg Plan); Robert Savage Qualified Retirement Plan (Savage Plan) (collectively, the Plans) Located in Toledo, Ohio

[Application Nos. D–10630, D–10631 and D–10632, respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the cash sale of certain shares of preferred stock (the Preferred Stock) issued by TTC Holdings Inc. (TTC) to TTC, by the individually-directed account of Dr. Gregor Emmert in the GUS Plan (the Emmert Account), by the individually-directed account of Mr. Michael J. Rosenberg in the Rosenberg Plan (the Rosenberg Account), and by the individually-directed account of Mr. Robert Savage in the Savage Plan (the Savage Account) (collectively, the Accounts); and (2) the subsequent purchase of certain shares of common stock (the Common Stock) issued by TTC by Messrs. Emmert, Rosenberg and Savage (collectively; the Participants), in their own name, from TTC pursuant to an agreement with TTC that the purchase of the Common Stock was to occur immediately after the sale of the Preferred Stock by the Plans; provided that the following conditions were met:

(a) The sale of the Preferred Stock to TTC by the Accounts and the purchase of the Common Stock from TTC by the Participants, acting in their individual capacity, were one-time transactions for cash;

(b) The transactions described in (a) above took place on the same business day;

(c) The amount paid to the Accounts by TTC was the fair market value of the Preferred Stock, as determined by a qualified independent appraiser at the time of the sale;

(d) The Participants, in their individual capacity, purchased from TTC shares of the Common Stock which were equal in number and value to the shares of Preferred Stock sold by the Accounts to TTC;

(e) A qualified independent fiduciary (the Independent Fiduciary) determined that the transactions described herein were in the best interests and protective of the Accounts at the time of the transactions; and

(f) The Independent Fiduciary supervised the transactions; assured that the conditions of this proposed exemption were met; and took whatever actions necessary to protect the interests of the Accounts, including reviewing amounts paid by TTC for the Preferred Stock.

EFFECTIVE DATE: This exemption, if granted, will be effective as of December 1, 1998.

Summary of Facts and Representations

1. The applicants describe the Plans and the Accounts as follows:

a. The GUS Plan is an individual account, defined contribution plan sponsored by Genito-Urinary Surgeons, Inc., a medical practice located in Toledo, Ohio. The trustee of the GUS Plan is the Fifth-Third Bank. Currently, the GUS Plan has 45 participants and holds assets valued at approximately $19,900,000. As of August 12, 1998 the Emmert Account held assets valued at $1,480,734.07.

b. The Rosenberg Plan is an individual account, defined contribution plan sponsored and trusteed by Michael J. Rosenberg. Currently, the Rosenberg Plan has two participants and holds assets valued at approximately $266,000. As of December 31, 1997, the Rosenberg Account held assets valued at $231,380.

c. The Savage Plan is an individual account, defined contribution plan sponsored and trusteed by Robert Savage. Currently, the Savage Plan has 45 participants and holds assets valued at $2,200,000. As of December 31, 1997, the Savage Account held assets valued at $1,174,488.15.

2. TTC, the issuer of the Preferred Stock, is an Ohio corporation that was incorporated in April 1990. The Trust Company of Toledo (TTCOT) is a wholly-owned subsidiary of TTC. The applicant represents that TTCOT is a "Bank" as that term is defined in Section 202(a)(2) of the Investment Advisers Act of 1940.[1]

3. TTC was capitalized with one class of common stock (the Common Stock), one class of Preferred Stock and $1,000,000 of 9% debentures (the Debentures). Originally, 3,531 shares of Common Stock were outstanding prior to the subject transactions. These shares were owned in equal amounts by Theodore T. Hahn, Julie B. Higgins and David A. Snavely. These individuals are the three founders, principals and partners of TTC.

Prior to the subject transactions, there were 20,000 shares of the Preferred Stock outstanding that were held by 65 different shareholders. The Preferred Stock was issued by TTC through a private offering that took place in 1990. The offering provided investors with the opportunity to acquire units comprised of 200 shares of Preferred Stock and one $10,000 Debenture, which had a maturity date of December 31, 2000.[2] The price for each unit was $30,000. Of this amount, $20,000 was allocated to the Preferred Stock and $10,000 was allocated to the Debenture.[3]

The following table outlines the percentage of each Participant's Account assets invested in the units of Preferred Stock and Debentures at the time of acquisition and at the time of the subject trans action:[4]

Plan	Shares of preferred stock	Cost	Debenture	% Assets then	% Assets now
Emmert	200	$20,000	$10,000	7.5	5.3
Rosenberg	200	20,000	10,000	48	23.4
Savage	200	20,000	10,000	16.5	6.5

4. While owning shares of the Preferred Stock, each Account had been a minority shareholder of TTC. However, the applicants represent that the Participants did not, in their individual capacity, own shares of the Preferred Stock prior to the subject transactions. As such, the applicants state that the purchase of shares of the Common Stock by the Participants pursuant to the subject transaction did not cause any of the Participants to become majority shareholders of TTC. The applicants further represent that none of the Participants was, or currently is, an officer, director, principal or employee of TTC or TTCOT. Finally, the applicants represent that, at the time of original acquisition of the Preferred Stock by the Accounts, neither TTC nor TTCOT was a party in interest with respect to the Plans.

5. TTC recently obtained authority from its shareholders to amend, by total restatement, its Amended and Restated Articles of Incorporation. Due to business and income tax considerations, TTC adopted the Second Amended and Restated Articles of Incorporation to change its corporate tax status, in accordance with section 1362 of the Code,[5] from a Subchapter C corporation to a Subchapter S corporation for the taxable years commencing January 1, 1999. As part of the change, the amendment called for the full conversion of the Preferred Stock into Common Stock.

6. On May 1, 1998, TTC sent certain documents to its shareholders, including the Participants. These documents stated that TTC planned to redeem, via cancellation, all of the shares of the Preferred Stock held by those shareholders who would have adverse tax consequences from continued ownership of shares in a Subchapter S corporation or who were ineligible to hold shares in a Subchapter S corporation pursuant to the Code.

TTC provided a mechanism whereby eligible shareholders, including employee benefit plans, could designate a related party to purchase shares of TTC Common Stock equal to the number of shares sold by the Accounts. Such purchase was to be for a cash amount equal to the price paid per share by TTC for redemption of the Preferred Stock.

7. The applicants request exemptive relief for the sale of the Preferred Stock by each Account to its respective Participant. The applicants represent that the Accounts benefitted from significant appreciation since purchasing the Preferred Stock as demonstrated by the fact that the value of the Preferred Stock increased from $100 per share in 1990 to $291.70 as of December 31, 1997.[6] The applicants believe that at the time of the subject transactions, price levels were such that an excellent opportunity for the sale of the Preferred Stock existed. Accordingly, they wished to sell the

[1] The applicant represents that under Section 202(a)(2) of the Investment Advisers Act of 1940, a "Bank" means (A) banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other institution or trust company, whether incorporated or not, doing business under the laws of any State of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the U.S. Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this subchapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

[2] The outstanding principal amount of the Debentures held by the Accounts and other investors was prepaid by TTC in December 1998, prior to the subject transactions, in accordance with terms of the Debentures.

[3] Pursuant to the Memorandum, dividends were not expected to be paid on the Preferred Stock, and no dividends were paid on such shares.

[4] The Department notes that the Internal Revenue Service has taken the position that a lack of diversification of investments may raise questions in regard to the exclusive benefit rule under section 401(a) of the Code. *See, e.g.* Rev. Rul. 73–5332, 1973–2 C.B. 128. However, it is not within the purview of the Department's jurisdiction to express an opinion in this proposed exemption regarding whether violations of the Code have taken place with respect to the purchase and subsequent retention of the Stock by Mr. Rosenberg.

[5] Section 1362 of the Code contains provisions which allow a small business corporation to elect and terminate Subchapter-S corporate status.

[6] As for the Debentures, which were redeemed in annual installments of $200,000, the outstanding principal amount was $400,000 as of March 31, 1998.

Preferred Stock from their respective Accounts to ensure that each Account realized a substantial profit.

In addition, the applicants represented that the continued holding of the newly issued Common Stock would have caused the Accounts to incur unrelated business income tax pursuant to section 512 of the Code.

Due to the aforementioned reasons, the applicants seek relief for the following transactions: (1) the cash sale of shares of the Preferred Stock to TTC by the Emmert Account, the Rosenberg Account, and the Savage Account; and (2) the subsequent purchase under the above described agreement with TTC of an equal number and value of shares of the Common Stock by Messrs. Emmert, Rosenberg and Savage, in their own name, from TTC immediately after the sale by the Accounts.

8. The sales price for the Preferred Stock was obtained through a written valuation of the shares dated May 6, 1998 prepared by Austin Financial Services, Inc. (Austin), a qualified, independent consulting firm with substantial experience in the financial services industry. Austin was retained by the TTC Board of Directors for the purpose of valuing TTC and its shares of Preferred Stock and Common Stock. In determining fair market value of the Preferred and Common Stock, Austin relied on the discounted cash flow method and the capitalization of earnings method. After weighing the two methods, Austin determined that the fair market value of all the outstanding shares of the Preferred and Common Stock was approximately $7,263,035, or $308.66 per share for each outstanding share of Preferred and Common Stock. Austin updated this valuation at the time of the transaction, and reached the same conclusion regarding the fair market value. Accordingly, each Account received a total of $61,732 for its shares of Preferred Stock, as of the date of Conversion.

9. TTC also engaged the law firm of Callister Nebeker & McCullough of Salt Lake City, Utah (CNM) to serve as the Independent Fiduciary for the Plans. CNM, which represented that it had experience serving as independent fiduciary for employee benefit plans, was hired to review the offer of redemption of the Preferred Stock, to render an opinion as to the prudence of the investment decisions relating thereto, and to direct the sale of shares as appropriate. In a report dated April 29, 1998 (the Report), CNM acknowledged its appointment as the Independent Fiduciary for the Accounts regarding the subject transactions.

As the Independent Fiduciary, CNM determined whether the subject transactions, and the actions taken by the Accounts in connection therewith, were in the best interests of such Accounts and in accordance with the requirements of the Act. Before doing so, each Participant made a separate determination that the proposed transactions would be in the best interests of their Accounts. Subsequent to arriving at this conclusion, a determination was made to retain CNM as Independent Fiduciary for the Accounts to ensure that the terms of such transactions, including the appraisal made of the fair market value of the Preferred Stock, would be protective of the Accounts.

In a letter dated August 25, 1998 that was submitted to the Department, CNM acknowledged that, as an independent fiduciary, it understood the duties and responsibilities imposed by the Act. Further, CNM concluded that the subject transactions would be prudent and in the best interest of each of the Accounts. Finally, CNM stated that it would ensure, among other things, that the fair market value of the Preferred Stock would be updated on the date of the transactions, and that each Account would receive the correct amount of cash for the Preferred Stock.

10. The Independent Fiduciary appointed Houlihan Valuation Advisors (HVA), an independent appraisal firm maintaining offices in Salt Lake City, Utah, to provide an opinion as to the fairness (the Fairness Opinion) of the proposed sale transaction from a financial standpoint. In the Fairness Opinion, HVA stated that the Preferred Stock was essentially equivalent to the Common Stock because the Preferred Stock: (a) was convertible at the option of the holder into Common Stock; (b) had voting privileges identical to the Common Stock; and (c) paid no preferred dividends. The Preferred Stock did have a $100 per share liquidation presence; however, according to HVA, the fair market value of TTC is significantly higher than its liquidation value, rendering this liquidation preference virtually meaningless.

Based on the foregoing, HVA concluded that the sale of the Preferred Stock by the Accounts to TTC would be fair to the Accounts because the Accounts would receive adequate consideration for their shares.

11. In summary, the applicant represents that the subject transactions satisfied the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The sale of the Preferred Stock to TTC by the Accounts and the purchase of the Common Stock from TTC by the Participants, in their individual capacity, were one-time transactions for cash;

(b) The transactions described in (a) above took place on the same business day;

(c) The amount paid to the Accounts by TTC was the fair market value of the Preferred Stock, as determined by a qualified independent appraiser at the time of the sale;

(d) The Participants, in their individual capacity, purchased from TTC shares of the Common Stock which were equal in number and value to the shares of Preferred Stock sold by the Accounts to TTC;

(e) The Independent Fiduciary determined that the transactions described herein were in the best interests and protective of the Accounts at the time of the transactions; and

(f) The Independent Fiduciary supervised the transactions; assured that the conditions of this proposed exemption were met; and took whatever actions necessary to protect the interests of the Accounts, including reviewing amounts paid by TTC for the Preferred Stock.

Notice to Interested Persons: Because the only assets of the Plans involved in the subject transactions are those held in the Accounts, and no other participants in the Plans are affected by the transactions, it has been determined that there is no need to distribute this notice of proposed exemption to any interested persons other than the Participants. Comments and requests for a hearing on the proposed exemption are due 30 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James Scott Frazier of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Mellon Financial Markets, Inc. (Mellon) Located in Pittsburgh, Pennsylvania

[Application No. D–10695]

Proposed Exemption

I. Transactions

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

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between

the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

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

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

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[7]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

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

(i) The plan is not an Excluded Plan;

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

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

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[8] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

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

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

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

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

(2) The pooling and servicing agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[9]

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

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

II. General Conditions

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

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

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

(3) The certificates acquired by the plan have received a rating from a rating agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

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

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

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

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

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

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

Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B.(1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificateholders or by a rating agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this proposed exemption:

A. ''Certificate'' means:

(1) a certificate—

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

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

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Internal Revenue Code of 1986; and

(b) That is issued by, and is an obligation of, a trust; with respect to certificates defined in (1) and (2) above for which Mellon or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

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

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

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

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

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

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

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

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

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

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

(b) Cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) Cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) Are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)–(g) of subsection II.A.(7) are met and/or;

(ii) Are credited to a capitalized interest account (as defined in section III.X.); and

(iii) Are held in the trust for a period ending no later than the first distribution date to certificateholders occurring after the end of the pre-funding period.

For purposes of this clause (c) of subsection III.B.(3), the term ''permitted investments'' means investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and servicing agreement; and are permitted by the rating agency; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) the investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a rating agency for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption.

C. ''Underwriter'' means:

(1) Mellon;

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

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

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

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

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

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

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

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

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

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

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

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

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

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

M. ''Affiliate'' of another person includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

T. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

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

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

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

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

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

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

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

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

W. ''Rating Agency'' means Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D & P) or Fitch IBCA, Inc. (Fitch), or their successors.

X. ''Capitalized Interest Account'' means a trust account: (i) which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. ''Closing Date'' means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. ''Pre-Funding Account'' means a trust account: (i) which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. ''Pre-Funding Limit'' means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. ''Pre-Funding Period'' means the period commencing on the closing date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. ''Mellon'' means Mellon Financial Markets, Inc. and its affiliates.

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

Summary of Facts and Representations

1. Mellon is a broker-dealer registered with the Securities and Exchange Commission and is a member of the National Association of Securities Dealers, Inc. As of December 31, 1997, it had total assets of $78.8 million.

Mellon is a wholly-owned subsidiary of Mellon Bank Corporation (MBC), a bank holding with its principal offices located in Pittsburgh, Pennsylvania. Mellon was established as a broker-dealer subsidiary of MBC pursuant to an order of the U.S. Federal Reserve Board effective April 17, 1995, as modified by a release adopted December 20, 1996 (as modified, the Order). The Federal Reserve Board regulates MBC as a bank holding company and restricts non-banking activities of MBC and its affiliates under the Glass-Steagall Act.

Under the Order, Mellon is authorized to engage, to a limited extent, in underwriting and dealing in certain mortgage-related securities, municipal revenue bonds, commercial paper and consumer receivables-related securities. In addition, Mellon is authorized to act as agent in the private placement of all types of securities, including providing related advisory services, and to buy and sell securities on the order of investors. The Order is subject to the condition that Mellon does not derive more than a limited percentage of its total gross revenues over any two-year period from underwriting and dealing in certain categories of securities, including asset-backed securities of the type described herein.

Several other broker-dealer subsidiaries of bank holding companies have been authorized by the Federal Reserve Board to engage in so-called ''Tier 2'' activities (in addition to the ''Tier 1'' activities described in the Order), including the ability to underwrite and deal in all types of debt and equity securities. Mellon intends to apply for the additional authorization and hopes to obtain an approving order from the Federal Reserve Board in the near future.

Mellon has been involved in the structuring and placement of asset-backed securities transactions since November 1995. Mellon has served as co-lead underwriter in public offerings of certificates backed by insurance premium finance loans, home equity revolving line of credit loans, residential mortgage loans and credit card receivables, involving amounts ranging from $200 million up to $869 million. In March, 1997, Mellon instituted a program to securitize mortgage-related assets.

MBC, the parent of Mellon, is one of the largest commercial banking organizations in the United States, with total assets of approximately $45 billion as of the end of 1997 (and approximately $1.5 trillion in assets under management and administration). MBC's subsidiaries include Mellon Bank, N.A., a leading national bank that provides a full range of corporate and consumer banking, trust, custody and investment management services, and The Dreyfus Corporation, a sponsor of investment companies (i.e., mutual funds) registered under the Investment Company Act of 1940.

Trust Assets

2. Mellon seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) single and multi-family

residential or commercial mortgage investment trusts;[10] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[11]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[12]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee.[13] The sponsor or servicer of a trust selects assets to be included in the trust.[14] These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.[15]

Typically, on or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Typically, all receivables to be held in the trust are transferred as of the closing date, but in some transactions, as described more fully below, a limited percentage of the receivables to be held in the trust may be transferred during a limited period of time following the closing date, through the use of a pre-funding account.

Mellon, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated are to be underwritten by Mellon on a firm commitment basis. In addition, Mellon anticipates that it may privately place certificates on both a firm commitment and an agency basis. Mellon may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive distributions of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable. These distributions will be made monthly, quarterly, semi-annually, or at such other intervals and dates as specified in the related prospectus or private placement memorandum.

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

5. Some of the certificates will be multi-class certificates. Mellon requests exemptive relief for two types of multi-class certificates: ''strip'' certificates and ''fast-pay/slow-pay'' certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[16]

''Fast-pay/slow-pay'' certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with

[10] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. Mellon requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Mellon has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

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

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

[13] The Department is of the view that the term ''trust'' includes a trust: (a) the assets of which, although all specifically identified by the sponsor or the originator as of the closing date, are not all transferred to the trust on the closing date for administrative or other reasons but will be transferred to the trust shortly after the closing date, or (b) with respect to which certificates are not purchased by plans until after the end of the pre-funding period at which time all receivables are contained in the trust.

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

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

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

different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[17]

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

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

In some cases the trust will be maintained as a Financial Asset Securitization Investment Trust (''FASIT''), a statutory entity created by the Small Business Job Protection Act of 1996, adding sections 860H, 860J, 860K and 860L to the Code. In general, a FASIT is designed to facilitate the securitization of debt obligations, such as credit card receivables, home equity loans, and auto loans, and thus, allows certain features such as revolving pools of assets, trusts containing unsecured receivables and certain hedging types of investments. A FASIT is not a taxable entity and debt instruments issued by such trusts, which might otherwise be recharacterized as equity, will be treated as debt in the hands of the holder for tax purposes. However, a trust which is the subject of the proposed exemption will be maintained as a FASIT only where the assets held by the FASIT will be comprised of secured debt; revolving pools of assets or hedging investments will not be allowed unless specifically authorized by the exemption, if granted, so that a trust maintained as a FASIT will be maintained as an essentially passive entity.

Trust Structure With Pre-Funding Account

Pre-Funding Accounts

7. As described briefly above, some transactions may be structured using a pre-funding account or a capitalized interest account. If pre-funding is used, cash sufficient to purchase the receivables to be transferred after the closing date will be transferred to the trust by the sponsor or originator on the closing date. During the pre-funding period, such cash and temporary investments, if any, made therewith will be held in a pre-funding account and used to purchase the additional receivables, the characteristics of which will be substantially similar to the characteristics of the receivables transferred to the trust on the closing date. The pre-funding period for any trust will be defined as the period beginning on the closing date and ending on the earliest to occur of (i) the date on which the amount on deposit in the pre-funding account is less than a specified dollar amount, (ii) the date on which an event of default occurs under the related pooling and servicing agreement or (iii) the date which is the later of three months or ninety (90) days after the closing date. Certain specificity and monitoring requirements described below will be met and will be disclosed in the pooling and servicing agreement and/or the prospectus or private placement memorandum.

For transactions involving a trust using pre-funding, on the closing date, a portion of the offering proceeds will be allocated to the pre-funding account generally in an amount equal to the excess of (i) the principal amount of certificates being issued over (ii) the principal balance of the receivables being transferred to the trust on such closing date. In certain transactions, the aggregate principal balance of the receivables intended to be transferred to the trust may be larger than the total principal balance of the certificates being issued. In these cases, the cash deposited in the pre-funding account will equal the excess of the principal balance of the total receivables intended to be transferred to the trust over the principal balance of the receivables being transferred on the closing date.

On the closing date, the sponsor transfers the assets to the trust in exchange for the certificates. The certificates are then sold to an underwriter for cash or to the certificateholders directly if the certificates are sold through a placement agent. The cash received by the sponsor from the certificateholders (or the underwriter) from the sale of the certificates issued by the trust in excess of the purchase price for the receivables and certain other trust expenses, such as underwriting or placement agent fees and legal and accounting fees, constitutes the cash to be deposited in the pre-funding account. Such funds are either held in the trust and accounted for separately, or are held in a sub-trust. In either event, these funds are not part of assets of the sponsor.

Generally, the receivables are transferred at par value, unless the interest rate payable on the receivables is not sufficient to service both the interest rates to be paid on the certificates and the transaction fees (i.e., servicing fees, trustee fees and fees to credit support providers). In such cases, the receivables are sold to the trust at a discount, based on an objective, written, mechanical formula which is set forth in the pooling and servicing agreement and agreed upon in advance between the sponsor, the rating agency and any credit support provider or other insurer. The proceeds payable to the sponsor from the sale of the receivables transferred to the trust may also be reduced to the extent they are used to pay transaction costs (which typically include underwriting or placement agent fees and legal and accounting fees). In addition, in certain cases, the sponsor may be required by the rating agencies or credit support providers to set up trust reserve accounts to protect the certificateholders against credit losses.

The pre-funding account of any trust will be limited so that the percentage or

[17] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the proposed exemption does not provide relief for plan investment in such subordinated certificates.

ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered (the pre-funding limit) will not exceed 25%. The pre-funding limit (which may be expressed as a ratio or as a stated percentage or a combination thereof) will be specified in the prospectus or the private placement memorandum.

Any amounts paid out of the pre-funding account are used solely to purchase receivables and to support the certificate pass-through rate (as explained below). Amounts used to support the pass-through rate are payable only from investment earnings and are not payable from principal. However, in the event that, after all of the requisite receivables have been transferred into the trust, any funds remain in the pre-funding account, such funds will be paid to the certificateholders as principal prepayments. Upon termination of the trust, if no receivables remain in the trust and all amounts payable to certificateholders have been distributed, any amounts remaining in the trust would be returned to the sponsor.

A dramatic change in interest rates on the receivables held in a trust using a pre-funding account would be handled as follows. If the receivables (other than those with adjustable or variable rates) had already been originated prior to the closing date, no action would be required as the fluctuations in the market interest rates would not affect the receivables transferred to the trust after the closing date. In contrast, if interest rates fall after the closing date, loans originated after the closing date will tend to be originated at lower rates, with the possible result that the receivables will not support the certificate pass-through rate. In such situations, the sponsor could sell the receivables into the trust at a discount, and more receivables would be used to fund the trust in order to support the pass-through rate. In a situation where interest rates drop dramatically and the sponsor is unable to provide sufficient receivables at the requisite interest rates, the pool of receivables would be closed. In this latter event, under the terms of the pooling and servicing agreement, the certificateholders would receive a repayment of principal from the unused cash held in the pre-funding account. In transactions where the certificate pass-through rates are variable or adjustable, the effects of market interest rate fluctuations are mitigated. In no event will fluctuations in interest rates payable on the receivable affect the pass-through rate for fixed rate certificates.

The cash deposited into the trust and allocated to the pre-funding account is invested in certain permitted investments (see below), which may be commingled with other accounts of the trust. The allocation of investment earnings to each trust account is made periodically as earned in proportion to each account's allocable share of the investment returns. As pre-funding account investment earnings are required to be used to support (to the extent authorized in the particular transaction) the pass-through amounts payable to the certificateholders with respect to a periodic distribution date, the trustee is necessarily required to make periodic, separate allocations of the trust's earning to each trust account, thus ensuring that all allocable commingled investment earnings are properly credited to the pre-funding account on a timely basis.

The Capitalized Interest Account

8. In certain transactions where a pre-funding account is used, the sponsor and/or originator may also transfer to the trust additional cash on the closing date, which is deposited in a capitalized interest account and used during the pre-funding period to compensate the certificateholders for any shortfall between the investment earnings on the pre-funding account and the pass-through interest rate payable under the certificates.

The capitalized interest account is needed in certain transactions since the certificates are supported by the receivables and the earnings on the pre-funding account, and it is unlikely that the investment earnings on the pre-funding account will equal the interest rates on the certificates (although such investment earnings will be available to pay interest on the certificates). The capitalized interest account funds are paid out periodically to the certificateholders as needed on distribution dates to support the pass-through rate. In addition, a portion of such funds may be returned to the sponsor from time to time as the receivables are transferred into the trust and the need for the capitalized interest account diminishes. Any amounts held in the capitalized interest account generally will be returned to the sponsor and/or originator either at the end of the pre-funding period or periodically as receivables are transferred and the proportionate amount of funds in the capitalized interest account can be reduced. Generally, the capitalized interest account terminates no later than the end of the pre-funding period. However, there may be some cases where the capitalized interest account remains open until the first date distributions are made to certificateholders following the end of the pre-funding period.

In other transactions, a capitalized interest account is not necessary because the interest paid on the receivables exceeds the interest payable on the certificates at the applicable pass-through rate and the fees of the trust. Such excess is sufficient to make up any shortfall resulting from the pre-funding account earning less than the certificate pass-through rate. In certain of these transactions, this occurs because the aggregate principal amount of receivables exceeds the aggregate principal amount of certificates.

Pre-Funding Account and Capitalized Interest Account Payments and Investments

9. Pending the acquisition of additional receivables during the pre-funding period, it is expected that amounts in the pre-funding account and the capitalized interest account will be invested in certain permitted investments or will be held uninvested. Pursuant to the pooling and servicing agreement, all permitted investments must mature prior to the date the actual funds are needed. The permitted types of investments in the pre-funding account and capitalized interest account are investments which are either: (i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency, as set forth in the pooling and servicing agreement and as required by the rating agencies. The credit grade quality of the permitted investments is generally no lower than that of the certificates. The types of permitted investments will be described in the pooling and servicing agreement.

The ordering of interest payments to be made from the pre-funding and capitalized interest accounts is pre-established and set forth in the pooling and servicing agreement. The only principal payments which will be made from the pre-funding account are those made to acquire the receivables during the pre-funding period and those distributed to the certificateholders in the event that the entire amount in the pre-funding account is not used to acquire receivables. The only principal payments which will be made from the capitalized interest account are those made to certificateholders if necessary to support the certificate pass-through rate or those made to the sponsor either periodically as they are no longer needed or at the end of the pre-funding period when the capitalized interest account is no longer necessary.

The Characteristics of the Receivables Transferred During the Pre-Funding Period

10. In order to ensure that there is sufficient specificity as to the representations and warranties of the sponsor regarding the characteristics of the receivables to be transferred after the closing date:

(i) All such receivables will meet the same terms and conditions for eligibility as those of the original receivables used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. However, the terms and conditions for determining the eligibility of a receivable may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by a rating agency;

(ii) The transfer to the trust of the receivables acquired during the pre-funding period will not result in the certificates receiving a lower credit rating from the rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(iii) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(iv) The trustee of the trust (or any agency with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to receivables that were acquired as of the closing date, the characteristics of the additional obligations subsequently acquired will either be: (i) monitored by a credit support provider or other insurance provider which is independent of the sponsor; or (ii) an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, Mellon and the trustee) stating whether or not the characteristics of the additional obligations acquired after the closing date conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date.

Each prospectus, private placement memorandum and/or pooling and servicing agreement will set forth the terms and conditions for eligibility of the receivables to be included in the trust as of the related closing date, as well as those to be acquired during the pre-funding period, which terms and conditions will have been agreed to by the rating agencies which are rating the applicable certificates as of the closing date. Also included among these conditions is the requirement that the trustee be given prior notice of the receivables to be transferred, along with such information concerning those receivables as may be requested. Each prospectus or private placement memorandum will describe the amount to be deposited in, and the mechanics of, the pre-funding account and will describe the pre-funding period for the trust.

Parties to Transactions

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

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

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

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

The trustee will be an independent entity, and therefore will be unrelated to Mellon, the trust sponsor, the servicer or any other member of the Restricted Group (as defined in section III.L.). Mellon represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor or out of the trust assets. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

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

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

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

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

The *underwriter* (i.e., Mellon, its affiliate, or a member of an underwriting syndicate or selling group of which Mellon or its affiliate is a manager or co-manager) will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placement of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

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

Certificate Price, Pass-Through Rate and Fees

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

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

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

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[18] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

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

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

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

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

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

20. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of

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

the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

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

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

Certificate Ratings

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

Provision of Credit Support

23. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

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

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

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

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

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

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

Disclosure

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

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

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

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

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

(e) A description of the sponsor and servicer;

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

(g) A description of the credit support;

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

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

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

(k) A statement as to the duration of any pre-funding period and the pre-funding limit for the trust.

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

26. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission (SEC), a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates and copies of the statements sent to certificateholders. While the SEC's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

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

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

Forward Delivery Commitments

28. Mellon may contemplate entering into forward delivery commitments in connection with the offering of pass-through certificates. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and Mellon may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

29. Mellon's normal policy would be to attempt to make a market for securities for which it is lead or co-managing underwriter, and it is Mellon's intention to make a market for any certificates for which it is lead or co-managing underwriter, although it is under no obligation to do so. At times, Mellon will facilitate sales by investors who purchase certificates if Mellon has acted as agent or principal in the original private placement of the certificates and if such investors request Mellon's assistance.

Summary

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

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

(b) In the case where a pre-funding account is used, the characteristics of the receivables to be transferred to the trust during the pre-funding period will be substantially similar to the characteristics of those transferred to the trust on the closing date, thereby giving the sponsor and/or originator little discretion over the selection process, and compliance with this requirement will be assured by the specificity of the characteristics and the monitoring mechanisms contemplated under the proposed exemption. In addition, certain cash accounts will be established to support the certificate pass-through rate and such cash accounts will be invested in short-term, conservative investments; the pre-funding period will be of a reasonably short duration; a pre-funding period limit will be imposed; and any Internal Revenue Service requirements with respect to pre-funding intended to preserve the passive income character of the trust will be met. The fiduciary of the plans making the decision to invest in certificates is thus fully apprised of the nature of the receivables which will be held in the trust and has sufficient information to make a prudent investment decision.

(c) Certificates in which plans invest will have been rated in one of the three highest rating categories by a rating agency. Credit support will be obtained to the extent necessary to attain the desired rating;

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

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

(f) Mellon anticipates that it will make a secondary market in certificates (although it is under no obligation to do so).

Notice to Interested Persons

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

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

Operating Engineers Local 324 Journeyman and Apprentice Training Fund (the Plan), located in Howell, Michigan (Application No. L–10645).

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32826, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b) (1) and (2) of the Act shall not apply to: (1) The proposed loan of $1,500,000 (the Loan) to the Plan by the International Union of Operating Engineers Local 324, AFL–CIO (the Union), a party in interest with respect to the Plan, for the repayment of certain outstanding loans (the Original Loans) made to the Plan by the Michigan National Bank (the Bank), an unrelated party; and (2) as of March 12, 1998, the pledging of certificates of deposit by the Union as security for the Original Loans; provided that the following conditions are met:

(a) The terms and conditions of the Loan are at least as favorable to the Plan as those which the Plan could have obtained in an arm's-length transaction with an unrelated party;

(b) The Plan's trustees determine that the Loan is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries;

(c) An independent fiduciary acting on behalf of the Plan (the Independent Fiduciary) reviews the terms of the Loan and determines that the Loan is protective of and in the best interests of the Plan;

(d) The Independent Fiduciary monitors the Loan, as well as the conditions of this proposed exemption (if granted), and takes whatever actions are necessary to safeguard the interests of the Plan under the Loan;

(e) The Loan is repaid by the Plan solely with funds the Plan retains after paying all of its operational expenses; and

(f) The terms and conditions relating to the pledging of the certificates of deposit by the Union as security for the Original Loans were in the best interest of the Plan and its participants and beneficiaries.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of March 12, 1998.

Summary of Facts and Representations

1. The Union is located in Livonia, Michigan and represents workers who are engaged primarily in heavy construction projects throughout the state of Michigan. The Plan was established by the Union in 1964 as a training program for individuals who are members of the Union and are employed by contributing employers with regard to the Plan. The purpose of the Plan is to provide eligible participants (the Participants) with the skills necessary to operate and repair construction equipment. The Plan had approximately 11,500 participants and $12,664,604 in total assets, as of August 31, 1998.

2. Among the Plan's assets is an indoor training facility (the Facility) located in Howell, Michigan. The Facility is comprised mainly of classrooms and an indoor work area, and is used by the Participants to acquire additional construction training. The Facility is situated on 365 acres of real property (the Property) which is also owned by the Plan. The Property is used by the Participants as an outdoor construction training area.

3. The trustees of the Plan (the Trustees) represent that, in the spring of 1997, they anticipated a significant increase in the amount of training hours the Participants would be spending in the Facility during the upcoming years. The Trustees state that this potential increase was due to a growing demand for construction workers throughout Michigan, stricter training requirements for workers who handle hazardous waste, and increasingly sophisticated construction equipment. In this regard, the Participants trained a total of approximately 32,000 hours in the Facility in 1997, and will train a total of approximately 43,200 hours in the Facility in 1998. The Trustees believe that there will be additional increases in Participant usage of the Facility in future years.

4. The Trustees determined that the Facility was inadequate to handle the anticipated increase in use by the Participants. As a result, in March 1998, the Trustees decided to expand the Facility (the Expansion) at a projected cost of $1,500,000. The Expansion consisted of the addition of three classrooms to the Facility and an enlargement of the Facility's indoor repair area. The Expansion also included maintenance repairs on the Facility. The Expansion was completed on September 26, 1998.

5. To finance the Expansion, the Trustees caused the Plan to receive two loans (i.e. the Original Loans) from the Bank. The first loan (the First Loan) was entered into on May 12, 1998 for $1,000,000 and was secured with a certificate of deposit (CD) pledged by the Union in the amount of $1,000,000. The second loan (the Second Loan) was entered into on July 28, 1998 for $500,000 and was secured with a CD pledged by the Union in the amount of $500,000.

6. The Original Loans each had a term of 12 months and required that the Plan pay a fixed rate of interest. At the time the First Loan and the Second Loan

were made, the interest rates for each were set at two percentage points above the interest rate the Bank currently paid on its 12 month CDs. At the time the First Loan was made, the Bank was paying 5.25% on its 12 month CDs. As a result, the interest rate the Plan pays on the First Loan is 7.25%. At the time the Second Loan was made, the Bank was paying 5.17% on its 12 month CDs. As a result, the interest rate the Plan pays on the Second Loan is 7.17%.

7. The Union proposes to lend the Plan, under the terms of the Loan, an amount equal to the entire principal amount of the Original Loans (i.e. $1,500,000). The Union represents that the Loan will be used by the Plan to repay the Original Loans. The Union also represents that the Plan will not pay any fees associated with the Loan. The Loan will have a term of seven years and will be unsecured. Additionally, the Loan will have a seven year amortization schedule (the Schedule) and monthly payments of principal and interest until maturity.

The Trustees of the Plan represent that the Schedule is beneficial to the Plan since it allows the Plan to gradually pay down the principal amount of the Loan. The Trustees represent that the terms of the Original Loans do not provide for amortization of the Original Loans' principal amounts. Thus, absent any renewals of the Original Loans by the Bank, the Plan must repay the entire principal amount of the Original Loans at maturity. In this regard, the Trustees represent that the terms of the Original Loans cause a liquidity problem for the Plan in that the Plan is required to reserve funds for the repayment of the principal amounts of the Original Loans. The Trustees represent that the Schedule allows for a more efficient allocation of Plan resources.

8. The Union represents that the terms of the Loan are more favorable to the Plan than the terms of the Original Loans. The Union represents that the Plan will repay the Loan solely with funds retained by the Plan after paying for all of its operational expenses (the Excess Funds).[19] In the event that the Plan has no Excess Funds at the time a payment by the Plan is due, the Union represents that the Loan will be suspended (the Suspension Period).[20] The Union represents that during any Suspension Period, the Plan will not be required to make any principal or interest payments on the Loan.[21] In addition, the Union represents that no interest on the Loan will accrue during the Suspension Period.

The Trustees represent that the interest rate paid by the Plan to the Union on the Loan will be less than the interest rates paid by the Plan on the Original Loans. The interest rate the Plan will pay on the Loan (the New Rate) will be a floating rate based on the Wall Street Journal Jumbo CD Rate (the WSJ CD Rate) for CDs with a duration of 12 months. The New Rate will be initially set at the lesser of (i) 6.02% (the WSJ CD Rate as of November 9, 1998, plus 1%), or (ii) a rate which is 1% above the WSJ CD Rate at the time the Loan is consummated. The New Rate will be reset on the first day of January, April, July, and October to equal the rate which is 1% above the WSJ CD Rate at that time. However, in no event will the New Rate exceed 7.25% per annum, the rate the Plan currently pays the Bank under the First Loan.

In addition, the New Rate will be more favorable to the Plan than the interest rate the Plan would have paid on a renewal of the Original Loans from the Bank. The New Rate will only be 1% above the WSJ CD Rate for 12-month CDs which will be significantly less than a rate which is 2% above the Bank's 12-month CD rate. The Trustees estimate that setting the interest rate on the Loan at the New Rate will result in a savings to the Plan in excess of $61,000 during the term of the Loan.

9. The terms of the Loan will be monitored by Richard Czapski (Mr. Czapski) of Plante and Moran, LLP (Plante and Moran), who will act as the Plan's Independent Fiduciary. Plante and Moran is a public accounting firm having offices in Michigan and Ohio. Mr. Czapski is a partner with Plante and Moran. Mr. Czapski represents that he is qualified to act as the Independent Fiduciary because he is experienced in matters concerning pension plans and bank loans. Mr. Czapski states that he will rely on the advice of an experienced ERISA counsel, if necessary, to determine what actions are appropriate to safeguard the interests of the Plan throughout the duration of the Loan.

Mr. Czapski represents that he has evaluated the terms of the Loan and has determined that the Loan would be in the best interests and protective of the Plan and its participants and beneficiaries. Mr. Czapski states that he will monitor the Plan's repayment of the Loan. Mr. Czapski will represent the Plan, as the Independent Fiduciary, to enforce the Plan's rights under the terms and conditions of the Loan and will take whatever actions are necessary to protect the interests of the Plan.

10. In summary, the applicant represents that the transactions satisfy the statutory criteria contained in section 408(a) of the Act for the following reasons:

(a) The terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party;

(b) The Trustees have determined that the Loan is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries;

(c) Mr. Czapski, as the Plan's Independent Fiduciary, has reviewed the terms and conditions of the Loan and determined that the Loan would be appropriate for, and in the best interests of, the Plan;

(d) Mr. Czapski, as the Plan's Independent Fiduciary, will monitor the Loan, as well as the conditions of this proposed exemption (if granted), and will take whatever actions are necessary to safeguard the interests of the Plan;

(e) The New Rate initially will be the lesser of 6.02% or 1% above the WSJ CD Rate as of the date of the Loan, an interest rate which will be significantly less than the rates currently paid by the Plan under the Original Loans (i.e. 7.25% and 7.17%, respectively); and

(f) The Loan will be repaid by the Plan solely with funds retained by the Plan after paying for all of its operational expenses.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta of the Department, telephone (202) 219–8883 (this is not a toll free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction

[19] The Union represents that the Plan's operational expenses are funded by contributions made to the Plan by contributing employers. These contributions are based on a portion of each Participant's hourly wage that is paid by such employers. The Union represents that the Participants' hourly wage rate is negotiated between the Union and the contributing employers each year. Thus, the Union represents that the Particicants' wage deduction amount for contributions made by the employers to the Plan is determined by the parties each year.

[20] The Union represents that computation of the amount of Excess Funds available for the repayment on the Loan will be done according to generally accepted accounting principles by a certified public accountant representing the Plan.

[21] The Union represents that if the Suspension Period causes there to be an outstanding principal balance on the Loan at the end of the seven-year term, the duration of the Loan will be extended and the Plan will be obligated to continue making monthly payments of principal and interest until the Loan is paid in full. In this regard, the Plan will not be required to make any lump-sum payment for the outstanding principal balance at any time.

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 accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 14th day of January 1999.

Ivan Strasfeld,

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

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