

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 30th day of December, 1999.

Ivan Strasfeld,

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

[FR Doc. 00-221 Filed 1-4-00; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 99-49;
Exemption Application No. D-10244, et al.]**

**Grant of Individual Exemptions;
Massachusetts Mutual Life Insurance
Company (MM), et al.**

AGENCY: Pension and Welfare Benefits
Administration, Labor.

ACTION: Grant of individual exemptions.

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

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at

the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, 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 proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Massachusetts Mutual Life Insurance Company (MM) Located in Springfield, MA

[Prohibited Transaction Exemption 99-49;
Exemption Application No. D-10244]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: the sale and/or exchange by MM of a partial or complete interest in certain properties (the Properties) from its general investment account assets to one or more separate investment accounts (Separate Accounts), or other types of entities (such as limited partnerships or limited liability companies, hereafter referred to as "Other Entities" as defined in Section III) managed by MM or an affiliate which are deemed to hold plan assets under 29 CFR section 2510.3-101 (the Plan Asset Regulation),

for which MM shall receive as consideration cash and/or a corresponding interest in such Separate Account or Separate Accounts or Other Entities, provided the conditions set forth in section II are satisfied.

Section II. Conditions

(A) The sale and exchange of the Properties is a one-time transaction with respect to each Separate Account or Other Entity of MM which will be established for the Properties; i.e., all Properties transferred in that transaction will be conveyed at the same time, and no further properties will be transferred from MM to such Separate Account or Other Entity;

(B) In no event shall MM provide any financing with respect to any sale or exchange transaction which is the subject of this exemption;

(C) Before the subject transaction is consummated, (i) an independent appraisal firm will have valued each Property to be transferred by MM to one or more Separate Accounts or Other Entities; (ii) if the appraisal is more than one year old, the value of each Property so appraised will be updated by the appraiser as of a date not less than two weeks prior to the issuance of interests to third party investors in the Separate Accounts or Other Entities, and if a material change has occurred the appraiser will revise its appraisal to reflect that new value; (iii) an independent fiduciary for each employee benefit plan subject to the Act (collectively, the Plans) will, prior to agreeing to invest in the Separate Account or Other Entity, be provided with all information regarding the Properties to be sold to the Separate Account or Other Entity, including third party appraisals and a private placement memorandum or other offering document, which will describe the legal structure and include risk disclosures, a summary of principal terms and a schedule of fees; and (iv) such independent fiduciary will have reviewed all pertinent terms of the sale and exchange of the Properties to the Separate Accounts or Other Entities and will have concluded that the transaction is in the best interest of the Plan;

(D) Any Covered Transaction will be effected at fair market value as of the time of the transaction; and

(E) Only Plans with total assets having an aggregate fair market value of at least \$50 million are permitted to engage in the Covered Transactions, provided, however, that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization,

whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity engages in a Covered Transaction, the foregoing \$50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such group trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which engages in a Covered Transaction, the foregoing \$50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to Plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to Plan investment in the commingled entity, which are in excess of \$100 million. (In addition, none of the entities described above are formed for the sole purpose of engaging in the Covered Transactions.)

Section III. Definitions

(A) The term "Other Entities" means any investment advisory account, trust, limited partnership or other investment account or fund managed by MM or its affiliate, as defined below in (C), that is neither a separate account managed by MM or its affiliate, nor a general account maintained by MM or its affiliate,

(B) The terms "general account" or "general investment account" mean the general asset account of MM and any of its affiliates, as defined below in (C), which are insurance companies licensed to do business in at least one State, as defined in section 3(10) of the Act.

(C) The term "affiliate" of MM includes:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with MM,

(ii) Any officer, director, or employee of MM or person described in (C)(i), and

(iii) Any partnership in which MM is a partner.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on August 11, 1999 at 64 FR 43738.

Written Comments

The only written comments received by the Department were submitted by the applicant, MM. These comments sought several changes to the Notice, each of which is discussed below.

First, the exemption as proposed had permitted transfers of partial or complete interests in real property from MM to one or more separate investment accounts. The applicant requested that the exemption be expanded to include transfers to one or more other types of entities, such as limited partnerships or limited liability companies, managed by MM or its affiliates, so long as these Other Entities are deemed to hold "plan assets" under the Plan Asset Regulation. MM stated that it was requesting this change to provide Plans with the opportunity to invest in vehicles which are most advantageous to the particular type of real estate investment involved in the transaction. Since the Plan fiduciary would still receive all pertinent information about the investment and have adequate opportunity to evaluate the terms of the Plan's investment, the Department has agreed to expand the Covered Transactions of Section I of the exemption to include Other Entities as requested by MM.

In addition, the Department has added a definition of the term "Other Entities" as well as definitions of the terms "general account" and "affiliate" of MM in order to clarify the meaning of these terms with respect to the Covered Transactions in Section I. These definitions are included in Section III of this exemption and are based on similar definitions included in a prior exemption for MM covering the

sale or transfer of an interest in a shared investment between two or more accounts (subject to the conditions described therein). In this regard, interested persons should see Prohibited Transaction Exemption 98-28 (63 FR 33727, June 19, 1998).

With respect to the appraisals of the Properties to be furnished to the independent Plan fiduciaries, the applicant had represented in the Notice that the value of each Property so appraised will be confirmed by the appraiser as of a date not more than two weeks prior to the issuance of interests to third party investors in the Separate Accounts, and if a material change has occurred, the appraiser will revise its appraisal to reflect that new value. The applicant in its comment letter noted that the updated appraisal should be provided to the independent fiduciary not later than two weeks before the issuance of interests to third party investors in the Separate Accounts (or Other Entities) in order to provide the independent fiduciaries adequate opportunity to review the updated appraisals and re-evaluate their investment decisions by the closing date. The applicant also confirmed that any Covered Transaction will be effected at fair market value as of the time of the transaction.

Accordingly, the Department has agreed to this change, and has revised Section II.(C)(ii) of the granted exemption to require that if the appraisal is more than one year old, the value of each Property so appraised will be updated by the appraiser as of a date not less than two weeks prior to the issuance of interests to third party investors in the Separate Accounts or Other Entities, and if a material change has occurred the appraiser will revise its appraisal to reflect that new value. The Department has added Section II.(D) to reflect MM's representation that any Covered Transaction will be effected at fair market value as of the time of the transaction. The Department notes that Section II.(D) would not be satisfied if the appraisal did not accurately represent the fair market value of each Property at the time of the transaction. It is the responsibility under the granted exemption for MM to have the appraisals updated as necessary to reflect fair market value.

MM also sought clarification with respect to the requirement contained in Section II.(C)(iii) of the Notice that independent appraisals of the Properties will be provided to the independent fiduciaries for the Plans prior to their agreement to invest in a Separate Account. MM commented that in an investment vehicle with a large number

of Properties, the appraisals may contain thousands of pages. Accordingly, MM asked the Department to confirm that Section II.(C)(iii) will be satisfied if executive summaries of the appraisals of each Property are delivered to the independent fiduciary for each Plan, with the full text of any appraisal available upon request by the independent fiduciary for the Plan, and the appraisals and accompanying exhibits readily available for inspection and copying by such fiduciary at a central site. The Department has agreed that this procedure would satisfy the condition contained in Section II.(C)(iii). The Department notes that such executive summaries should be reasonably comprehensive and convey sufficient information to enable a Plan fiduciary to determine whether a review of the full text of an appraisal is necessary.

In its comment letter, MM also noted a correction to Representation 2 of the Summary of Facts and Representations contained in the Notice (the Summary). MM stated that its life and health insurance business was sold on March 31, 1996. After a transition period under the purchase and sale agreement, MM will no longer offer group life and health insurance. Also, with respect to Representation 3 of the Summary, MM stated that effective June 1, 1999, the defined benefit plan for Connecticut Mutual Life Insurance Company employees was merged into the MassMutual Employee Pension Plan.

The Department has considered the entire record and has determined to grant the exemption with the revisions noted herein.

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

Bankers Trust Company (BT) Located in New York, NY

[Prohibited Transaction Exemption 99-50; Exemption Application No. D-10756]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (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 lending of securities to affiliates of BT, a wholly owned subsidiary of Deutsche Bank AG (DB), which are (i) either banks, supervised by the United States or by a State within the United States, or broker-dealers registered under the

Securities Exchange Act of 1934 (the 1934 Act), or (ii) certain foreign affiliates (the Foreign Affiliates) of BT and DB which are broker-dealers or banks in jurisdictions specified in this exemption (collectively, the Affiliated Borrowers), by employee benefit plans (the Client Plans), including commingled investment funds holding Client Plan assets, for which BT, DB, or either of their current or future affiliates or successors acts as securities lending agent (or sub-agent) (the DB Lending Agent); and (2) the receipt of compensation by the DB Lending Agent in connection with these transactions, provided the general conditions set forth below in Section II are met.

Section II. General Conditions

(a) For each Client Plan, neither the DB Lending Agent nor an Affiliated Borrower, nor an affiliate of either, has or exercises discretionary authority or control with respect to the investment of Client Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets.

(b) Any arrangement for a DB Lending Agent to lend Client Plan securities to an Affiliated Borrower in either an agency or sub-agency capacity is approved in advance by a Client Plan fiduciary who is independent of the DB Lending Agent.¹ In this regard, the independent Client Plan fiduciary also approves the general terms of the securities loan agreement (the Loan Agreement) between the Client Plan and the Affiliated Borrowers, although the specific terms of the Loan Agreement are negotiated and entered into by the DB Lending Agent and the DB Lending Agent acts as a liaison between the lender and the borrower to facilitate the lending transaction.

(c) The terms of each loan of securities by a Client Plan to the Affiliated Borrowers is at least as favorable to such Client Plans as those of a comparable arm's length transaction between unrelated parties.

(d) A Client Plan may terminate the agency or sub-agency arrangement at any time without penalty to such Client Plan on five business days notice, whereupon the Affiliated Borrowers will deliver securities identical to the borrowed securities (or the equivalent in

¹ The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than the DB Lending Agent, beyond that provided pursuant to Prohibited Transaction Exemption (PTE) 81-6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and PTE 82-63 (47 FR 14804, April 6, 1982).

the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Client Plan within (1) the customary delivery period for such securities, (2) five business days, or (3) the time negotiated for such delivery of by the Client Plan and the Affiliated Borrowers, whichever is less.

(e) The Client Plan receives from the Affiliated Borrower (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to the Affiliated Borrower, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by a person other than the DB Lending Agent or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81-6, as it may be amended or superseded.

(f) As of the close of business on the preceding business day, the fair market value of the collateral initially equals at least 102 percent of the market value of the loaned securities and, if the market value of the collateral falls below 100 percent, the applicable Affiliated Borrower delivers additional collateral on the following day such that the market value of the collateral is again at least equal to 102 percent.

(g) Prior to entering into the lending program, the Affiliated Borrower furnishes the DB Lending Agent its most recently available audited and unaudited statements, which are, in turn, provided to a Client Plan, as well as a representation by such Affiliated Borrower, that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently-furnished statement that has been disclosed to such Client Plan; provided, however, that in the event of a material adverse change, the DB Lending Agent does not make any further loans to such Affiliated Borrower unless an independent fiduciary of the Client Plan is provided notice of any material adverse change and approves the loan in view of the changed financial condition.

(h) In return for lending securities, the Client Plan either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (Under such circumstances, the Client Plan may pay

a loan rebate or similar fee to an Affiliated Borrower, if such fee is not greater than the fee the Client Plan would pay in a comparable arm's length transaction with an unrelated party.)

(i) All procedures regarding the securities lending activities conform to the applicable provisions of PTE 81-6 and PTE 82-63 as such class exemptions may be amended or superseded as well as to applicable securities laws of the United States or the jurisdiction in which the Foreign Affiliate is domiciled, as appropriate.

(j) The DB Lending Agent or an affiliate which is domiciled in the United States will indemnify and hold harmless each lending Client Plan in the United States against any shortfall in the collateral, as set forth in the applicable Loan Agreement, plus interest and any transaction costs incurred (including attorney's fees of the Client Plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the Client Plan may incur or suffer directly arising out of the lending of securities of such Client Plan to such Affiliated Borrower, to the extent permitted by law.² In the event that an Affiliated Borrower defaults on a loan, the DB Lending Agent will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, the DB Lending Agent or the applicable affiliate will indemnify the Client Plan for any shortfall in the collateral, as set forth in the Loan Agreement, plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan arising out of the default on the loans or the failure to indemnify properly under this provision). Alternatively, if such identical securities are not available on the market, the DB Lending Agent or the applicable affiliate will pay the Client Plan cash equal to (1) the market value of the borrowed securities as of the date they should have been returned to the Client Plan, plus (2) all the accrued financial benefits derived from the beneficial ownership of such loaned securities as of such date, plus (3) interest from such date to the date of payment.

(k) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to

purchase additional securities, or other distributions.

(l) The DB Lending Agent provides to Client Plans, prior to any Client Plan's approval of the lending of its securities to an Affiliated Borrower, copies of the notice of proposed exemption (the Notice) and the final exemption.

(m) Each Client Plan receives monthly reports with respect to its securities lending transactions, including, but not limited to, the information described in Representation 31 of the Notice (published on October 22, 1999 at 64 FR 57142, 57150), so that an independent fiduciary of the Client Plan may monitor such transactions with Affiliated Borrowers.

(n) Only Client Plans with total assets having an aggregate market value of at least \$50 million are permitted to lend securities to Affiliated Borrowers; provided, however, that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (i.e., the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3-101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with a DB Lending Agent, the foregoing \$50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (i.e., the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with a DB Lending Agent, the foregoing \$50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the

controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the \$50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$100 million.

In addition, none of the entities described above are formed for the sole purpose of making loans of securities.

(o) With respect to each successive two-week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers.

(p) In addition to the above, all loans involving a Foreign Affiliate have the following supplemental requirements:

(1) As applicable, such Foreign Affiliate is registered as a broker-dealer or bank with—

(i) The Securities and Futures Authority (the SFA) or the Financial Services Authority (the FSA) in the United Kingdom;

(ii) The Deutsche Bundesbank and/or the Federal Banking Supervisory Authority, i.e., der Bundesaufsichtsamt fuer das Kreditwesen (the BAK) or the Bundesaufsichtsamt fuer den Wertpapierhandel (the BAWe) in Germany;

(iii) The Ministry of Finance (the MOF) and/or the Tokyo Stock Exchange in Japan;

(iv) The Ontario Securities Commission (the OSC) and/or the Investment Dealers Association (the IDA), or the Office of the Superintendent of Financial Institutions (the OSFI) in Canada;

(v) The Swiss Federal Banking Commission in Switzerland; and (vi) The Australian Prudential Regulation Authority (APRA) or the Australian Securities and Investments Commission (ASIC), and/or the Australian Stock Exchange Limited (ASEL) in Australia.

(2) Such broker-dealer or bank is in compliance with all applicable provisions of Rule 15a-6 (17 CFR 240.15a-6) under the 1934 Act which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or dollar-denominated securities or letters of

² Where the law prohibits such indemnification by the DB Lending Agent, the Affiliated Borrower will provide the identical indemnification.

credit (unless an applicable exemption provides otherwise);

(4) All collateral is held in the United States (unless an applicable exemption provides otherwise) and the situs of the Securities Loan Agreements are maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)-1; and

(5) Each Foreign Affiliate provides the DB Lending Agent a written consent to service of process in the United States and to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the securities lending transaction, which consent provides that process may be served on such borrower by service on the DB Lending Agent.

(q) The DB Lending Agent and its affiliates maintain, or cause to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (r)(1) to determine whether the conditions of the exemption have been met, except that—

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

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

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

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

(ii) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Client Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(r)(2) None of the persons described above in paragraphs (r)(1)(ii)–(r)(1)(iv) of this paragraph (r)(1) are authorized to examine the trade secrets of the DB Lending Agent or commercial or financial information which is privileged or confidential.

III. Definitions

For purposes of this exemption,

(a) The term “affiliate” means any entity now or in the future, directly or indirectly controlling, controlled by or under common control with BT, DB or their successors.

(b) The term “Affiliated Borrower” means an affiliate of BT or DB that is a bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (the Advisers Act), that is supervised by the United States or a State, or a broker-dealer registered under the 1934 Act, or any Foreign Affiliate.

(c) The term “Foreign Affiliate” means an affiliate of BT or DB that is a broker-dealer or bank that is supervised by (1) the SFA or the FSA in the United Kingdom; (2) the Deutsche Bundesbank and/or the BAK, or the BAWe in Germany; (3) the MOF and/or the Tokyo Stock Exchange in Japan; (4) the OSC, the IDA and/or OSFI in Canada; (5) the Swiss Federal Banking Commission in Switzerland; and (6) APRA, ASIC and/or ASEL in Australia.

EFFECTIVE DATE: This exemption is effective as of April 9, 1999.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to the Notice published on October 22, 1999 at 64 FR 57142.

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

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a

prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

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

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in 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, D.C., this 30th day of December, 1999.

Ivan Strasfeld,

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

[FR Doc. 00–220 Filed 1–4–00; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

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

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date/Time: January 11, 2000, 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 770, Arlington, VA 22230.

Type Of Meeting: Closed.

Contact Person: Dr. S. Chic Liu, Program Director, Information Technology and Infrastructure Systems, National Science Foundation, 4201 Wilson Boulevard, Room 545, Arlington, VA 22230. (703) 306–1360.