DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Nos. and Proposed Exemptions; D–11397, PNC Financial Services Group, Inc. (PNC Financial); D–11552, Barclays Bank PLC and Barclays Capital Inc. (Collectively, Barclays or the Applicants; D–11536 Through D–11550, Individual Retirement Accounts (the IRAs) for Ralph Hartwell, Harold Latin, Kenlon Johnson, Carol Johnson, Shanon Taylor, Michael Ball, Dianne Barkas, Roy Barkas, Harry DeWall, Alice Pike, Steven Larsen, C. Timothy Hopkins, Wayne Meuleman, Robert L. Miller, and Richard T. Scott (Collectively, the Participants), et al.]

Notice of Proposed Exemptions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

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

Written Comments and Hearing Requests

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

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

Notice to Interested Persons

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

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

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

PNC Financial Services Group, Inc. (PNC Financial) Located in Pittsburgh, Pennsylvania [Application No. D–11397]

Proposed Exemption

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

Section I—Exemption for Receipt of Fees

In connection with the investment in an open-end investment company (a Fund or Funds), as defined, below, in Section IV(e), by certain employee benefit plans (Client Plan or Client Plans) for which PNC, as defined, below, in Section IV(a), serves as a fiduciary and is a party in interest with respect to such Client Plan(s), if the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (F) [1] of the Code, shall not apply, effective September 29, 2006, to:

(a) The receipt of fees by PNC from a Fund where BlackRock, as defined, below, in Section IV(b), acts as the investment adviser for such Fund, and the receipt of fees by BlackRock for the provision of investment advisory services, or similar services, to such Fund;

(b) the receipt of fees by PNC from a Fund for providing certain service(s) (Secondary Service(s)), as defined, below, in Section IV(i), to such Fund; and

(c) the receipt of fees by PNC from BlackRock in connection with administrative service(s) (Mutual Fund Administration Service(s)), as defined, below, in Section IV(l), provided to a Fund in which a Client Plan invests; provided that the conditions, as set forth in Section II and Section III, below, were satisfied, as of the effective date of this exemption and thereafter.

Section II—Specific Conditions

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

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

(2) A Client Plan invested in a Fund pays an investment management fee or similar fee based on total assets of such Client Plan from which a credit has been subtracted representing such Client Plan's *pro rata* share of

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

investment advisory fees or similar fees paid by such Fund to BlackRock (the Subtraction Fee Method). If, during any fee period for which a Client Plan has prepaid its investment management or similar fee, such Client Plan purchases shares of such Fund, the requirement of this Section II(a)(2) shall be deemed met with respect to such prepaid fee if, by a method reasonably designed to accomplish the same, the amount of the prepaid fee that constitutes the fee with respect to the assets of such Client Plan invested in shares of such Fund: (i) Is anticipated and subtracted from the prepaid fee at the time of payment of such fee, (ii) is returned to such Client Plan no later than during the immediately following fee period, or (iii) is offset against the prepaid fee for the immediately following fee period or for the fee period immediately following thereafter. For purposes of this Section II(a)(2), a fee shall be deemed to be prepaid for any fee period, if the amount of such fee is calculated as of a date not later than the first day of such period; or

(3) A Client Plan invested in a Fund receives a ''a credit'' [2] (the Credit Fee Method) of such Client Plan's proportionate share of all fees charged to such Fund by BlackRock for investment advisory services or similar services for a particular month: (1) Effective for the period, September 29, 2006, through December 31, 2008, on the *earlier* of either: (a) The same day as PNC receives a fee from BlackRock for Mutual Fund Administration Services provided for that month to such Fund by PNC, or (b) the fifth business day before the end of the month following the month in which fees for investment advisory services, or similar services, accrued, or (2) effective for the period beginning, January 1, 2009, and continuing thereafter, on a date which is no later than one business day after BlackRock receives fees from the Fund for investment advisory services, or similar services, provided for that month to such Fund by BlackRock. The crediting of all such fees to such Client Plan by PNC is audited by an independent accounting firm (the Auditor) on at least an annual basis to verify the proper crediting of such fees to such Client Plan.

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

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

(d) A Client Plan does not pay sales commissions in connection with any purchase or sale of shares of a Fund, and a Client Plan does not pay redemption fees in connection with any sale of shares to a Fund, unless (1) such redemption fee is paid only to a Fund, and

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

(e) The combined total of all fees received by PNC for services provided by PNC:

(1) To Client Plans, and

(2) To Funds in which Client Plans invest is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act;

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

(g) A Client Plan is not an employee benefit plan sponsored or maintained by PNC;

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

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

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

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

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

(iii) Any Mutual Fund Administration Services to be paid by BlackRock to PNC, and

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

(3) The reasons why PNC, acting as fiduciary for such Client Plan, may consider investment in such Fund to be appropriate for such Client Plan;

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

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

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

(j)(1) All authorizations, described, above, in Section II(i), made by a Second Fiduciary, regarding: (i) Investments by a Client Plan in a Fund, (ii) fees paid for investment advisory services or similar services provided by BlackRock to such Fund, (iii) fees paid for Secondary Services provided by PNC to such Fund, and (iv) fees paid by BlackRock to PNC for Mutual Fund Administration Services provided by PNC to such Fund, shall be terminable at will by the Second Fiduciary, acting on behalf of such Client Plan, without penalty to such Client Plan, upon receipt by PNC of a written notice of termination. A form (the Termination Form), as defined, below, in Section IV(j), expressly providing an election to terminate the authorizations, described, above, in Section II(i), with instructions on the use of such Termination Form must be provided to such Second Fiduciary at least annually. However, if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) and (l), below, then a Termination Form need not be provided again, pursuant to this Section II(j), unless at least six (6) months but no more than twelve (12) months have elapsed, since a Termination Form was provided, pursuant to Section II(k) and (l), below.

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

(i) The authorization, described, above, in Section II(i), is terminable at will by the Second Fiduciary, acting on

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

behalf of a Client Plan, without penalty to such Client Plan, upon receipt by PNC of written notice from such Second Fiduciary.

(ii) Failure by such Second Fiduciary to return the Termination Form on behalf of such Client Plan will be deemed to be an approval by the Second Fiduciary and will result in the continuation of the authorization, as described, above, in Section II(i), of PNC to engage in the transactions which are the subject of this exemption.

(k) For a Client Plan invested in a Fund which uses one of the fee methods described, above, in Section II(a)(1), (a)(2), or (a)(3), in the event of a proposed change from one of the fee methods to another or in the event of a proposed increase in the rate of any fee paid by a Fund to BlackRock for any investment advisory service, or similar service that BlackRock provides to such Fund over an existing rate for such services or method of determining the fee for such services, which had been authorized, in accordance with Section II(i), above, by the Second Fiduciary for such Client Plan, at least thirty (30) days in advance of the implementation of such change from one of the fee methods to another or such increase in a fee, PNC will provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of such Fund and which explains the nature and amount of such change from one of the fee methods to another or increase in fee) to the Second Fiduciary of each Client Plan affected by such change from one of the fee methods to another or increased fee. Such notice shall be accompanied by a Termination Form, with instructions on the use of such Termination Form, as described, above, in Section II(j).[3]

(l) In the event of:

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

(ii) A proposed addition of a Mutual Fund Administration Service provided by PNC to a Fund in which a Client Plan invests and for which an additional fee is charged; or

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

(iv) A proposed increase in the rate of any fee paid by BlackRock to PNC for Mutual Fund Administration Services provided to such Fund, or

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

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

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

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

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

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

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

Section III—General Conditions

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

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

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

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

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

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

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

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

Section IV—Definitions

For purposes of this exemption:

(a) The term, ''PNC,'' means PNC Financial, and any affiliate thereof, as defined, below in Section IV(c).

(b) The term, ''BlackRock,'' means BlackRock, Inc., and any affiliate thereof, as defined, below in Section IV(c).

(c) An ''affiliate'' of a person includes:

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

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

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

[3] It is represented that PNC furnished only disclosure, not advanced notice, of a mid-2007 advisory fee change to the Second Fiduciaries of Client Plans invested in Funds using the Credit Fee Method. The change, which resulted in increased fees to BlackRock of 0.5 basis points, (which it is represented was credited back to the Client Plans) occurred effective June 1, 2007, with the disclosure being provided in October 2007, after the effective date of such change. As the Second Fiduciaries of the Client Plans did not receive notification of such increase at least thirty (30) days in advance of the implementation of such increase, the Department, herein, is not providing relief for the receipt of such fee increase by BlackRock.

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

(e) The term, ''Fund(s),'' shall mean any diversified open-end investment company or companies registered with the Securities and Exchange Commission under the Investment Company Act, as amended, for which BlackRock serves as an investment adviser (but not sub-adviser).

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

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

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

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

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

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

If an officer, director, partner, or employee of PNC or of BlackRock (or relative of such persons) is a director of such Second Fiduciary, and if he or she abstains from participation in:

(i) The choice of such Client Plan's investment adviser,

(ii) The approval of any such purchase or sale between such Client Plan and a Fund, and

(iii) The approval of any change in fees, as described, above, in Section II(k) or (l), charged to or paid by such Client Plan in connection with any of the transactions described in Section I above, then Section IV(h)(2), above, shall not apply.

(i) The term, ''Secondary Service(s),'' means a service or services which is/are provided by PNC to a Fund, including but not limited to custodial, accounting, or administrative services. The fees for providing Secondary Services to a Fund are paid to PNC by such Fund.

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

(k) The term, ''business day,'' means any day that

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

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

(l) The term, ''Mutual Fund Administration Services,'' means a service or services which is/are provided by PNC to, or on behalf of, a Fund, including PNC's maintaining records of investments by Client Plans in such Fund, processing Fund transactions for Client Plans, transmitting account statements and shareholder communications, responding to inquiries from Client Plans regarding account balances and dividends, and providing information to such Fund on sales and assisting in monitoring possible market timing. The fees for providing Mutual Fund Administration Services to a Fund are paid to PNC by BlackRock, rather than by such Fund.

DATES: *Effective Date:* If granted, this proposed exemption will be effective as of September 29, 2006.

Summary of Facts and Representations

1. PNC Financial is a bank holding company that owns or controls two banks and a number of non-bank subsidiaries. PNC Financial provides, through its subsidiaries, a wide variety of trust and banking services to individuals, corporations, and institutions. Through its banking subsidiaries, PNC Financial provides investment management, fiduciary and trustee services to employee benefit plans and charitable and endowment assets, and provides non-discretionary services and investment options for defined contribution plans. PNC Financial also provides a range of tailored investment, trust, and private banking products to affluent individuals and families. In addition, PNC Financial and its affiliates provide various types of administrative services to mutual funds, including acting as transfer and disbursing agents and providing custodial and accounting services.

As of June 30, 2006, PNC Financial had $50 billion in assets under management.

2. The Funds are open-end investment companies registered with the Securities and Exchange Commission under the Investment Company Act, as amended. The investment adviser to the Fund is BlackRock Advisors, Inc. (BlackRock Advisors), a wholly-owned subsidiary of BlackRock, Inc. which is a subsidiary of PNC Financial. BlackRock Advisors had $464.1 billion in assets under management, as of June 30, 2006. Based in New York, BlackRock Advisors currently manages assets for institutional and individual investors worldwide through a variety of equity, fixed income, cash management, and alternative investment products.

The overall management of the Funds, including the negotiation of investment advisory contracts, rests with the Board of Trustees that are elected by the shareholders of the Funds.

3. PFPC Inc. serves as co-administrator, transfer agent, and dividend disbursing agent for the Funds, and its parent company, PFPC Trust Company, serves as custodian for the Funds. Both are indirect wholly-owned subsidiaries of PNC Financial. The distributor for the Funds is BlackRock Distributors, Inc., a wholly-owned subsidiary of PFPC Inc. In the application file, PNC Financial represents that the Funds or their agents may pay fees to broker-dealers that are affiliates of PNC for omnibus account services with regard to shareholders that have invested through such broker-dealers. In this regard, PNC Financial has agreed to the exclusion from the scope of relief under this proposed exemption of brokerage services provided to the Funds by affiliated brokers for the execution of securities transactions engaged in by the Funds.[4]

4. The Client Plans which are the subject of this exemption, include employee benefit plans, as defined in section 3(3) of the Act, and plans, as defined in section 4975(e)(1) of the Code.

PNC Financial, through its subsidiaries and affiliates serves as trustee, investment manager, and in other similar fiduciary capacities with

[4] The Department, herein, is not providing any relief for brokerage services provided to the Funds by affiliated brokers for the execution of securities transactions engaged in by the Funds.

respect to retirement plans qualified under section 401(a) of the Code, individual retirement accounts (IRAs) described in section 408 of the Code, and welfare or other employee benefit plans that constitute ''employee plans,'' as defined in section 3(3) of the Act and/or plans, as defined in section 4975(e)(1) of the Code. These services include discretionary investment management programs under which PNC Financial and its affiliates invest the assets of plans in securities, including shares of open-end investment companies registered under the Investment Company Act, the investment advisers of which may or may not be affiliated with PNC Financial and its affiliates.

The specific Client Plans for which this exemption has been requested are Client Plans to which PNC Financial or one of its affiliates is a fiduciary with investment discretion and whose assets either: (1) Are currently invested in the Funds; or (2) may in the future be invested in the Funds.

The exemption is not being requested for in-house plans of PNC Financial or its affiliates.

5. PNC provides discretionary investment management services to a number of its Client Plans. As of June 30, 2006, PNC performed discretionary asset management services, including through the management of asset allocation models, for 1,102 employee benefit accounts with total assets of $4.299 billion. PNC receives asset-based compensation for its services to the Client Plans, which is paid for either by a Client Plan from its assets or by the sponsor of a Client Plan. In the course of managing assets for Client Plans, PNC may invest the assets of such Client Plans in the Funds as a means of obtaining more specialized management along with enhanced liquidity, economies of scale, and greater diversification than would be available through a separate account arrangement.

Investments by Client Plans in the Funds occur through direct purchases of shares of the Funds on an ongoing basis. PNC also offers an asset allocation product, Capital Directions, which utilizes the Funds.

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

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

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

Where PNC is a fiduciary with respect to a Client Plan, the investment of that Client Plan's assets in a Fund advised by BlackRock may potentially raise issues under sections 406(a)(1)(D), 406(b)(1), 406(b)(2) and 406(b)(3) of the Act, unless an exemption is available.

Reliance on PTE 77–4

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

PNC is considered a fiduciary with respect to Client Plans for which it has investment discretion. PNC has in the past used and continues using investment discretion to invest the assets of Client Plans in the Funds. In the past, PNC has relied on the relief provided by PTE 77–4.

Description of Merger

8. On September 29, 2006, Merrill Lynch and Co., Inc. (Merrill Lynch) merged its asset management group, Merrill Lynch Investment Managers (MLIM), with BlackRock Advisors, in return for an interest in BlackRock Advisors. The new company formed by the merger operates under the ''BlackRock'' name and is governed by a Board of Directors with a majority of independent members. As a result of the merger, Merrill Lynch holds a 49.8 percent (49.8%) economic stake and about 45 percent (45%) of the common stock of the new company, and the interest of PNC in the common stock was reduced from approximately 70 percent (70%) to approximately 34 percent (34%) of the new company. Further, as a result of the merger, mutual funds previously advised by MLIM now have BlackRock Advisors, acting as the investment adviser. The Funds previously advised by BlackRock continue to operate as before. It is represented that certain Funds with similar investment objectives will be merged to simplify investment offerings. All Funds will be labeled with the ''BlackRock'' name. For purposes of this proposed exemption, the term, ''Fund(s),'' includes those former Merrill Lynch funds that, following the merger, have BlackRock Advisors as the investment adviser.

Availability of PTE 77–4 after the Merger

9. As discussed above, PTE 77–4 provides relief for investments in a Fund by a Client Plan for which PNC is a fiduciary with investment discretion. However, PTE 77–4 applies only where the investment adviser to such Fund is also a fiduciary to such Client Plan, or an affiliate of such a fiduciary. BlackRock is the investment adviser to the Funds. However, because PNC, rather than BlackRock, is the fiduciary to the Client Plan, PNC is concerned with its reliance on the relief provided under PTE 77–4.

Retroactive Relief

10. The Applicant has requested retroactive relief pursuant to ERISA Technical Release 85–1.[5] It is represented that after the merger was initially approved in February of 2006, PNC decided in June of 2006, to seek an individual exemption. On September 26, 2006, the Department received an application for exemption filed on behalf of PNC which was dated September 25, 2006. It is represented that the application was submitted as soon as possible under the circumstances. In going forward on the basis of the requested relief, PNC represents that it acted in good faith in this matter. Accordingly, PNC requests that the proposed exemption be granted

[5] *Reprinted at* [August 1983–August 1985 Transfer Binder] Pens. Plan Guide (CCH) ¶ 23,672D.

retroactively to September 29, 2006, the date of the merger.

Receipt of Fees pursuant to the Fee Methods

11. PNC represents that, prior to the effective date of this proposed exemption, it relied on PTE 77–4 for exemptive relief for each of the fee methods: (a) The Offset Fee Method, (b) the Subtraction Fee Method, and (c) the Credit Fee Method,[6] as described in Section II(a)(1), (a)(2), and (a)(3) of this proposed exemption. PNC has confirmed that all three fee methods were in place on the effective date of this exemption, September 29, 2006. As of this effective date, the proposed exemption, if granted, would specifically permit PNC to use any one of these three (3) fee methods to comply with the prohibition against a Client Plan paying double investment management fees, investment advisory or similar fees for assets of Client Plans invested in a Fund, provided that the conditions of this exemption are satisfied.

It is represented that where a Client Plan is investing in a Fund, all Fund-Level Fees for advisory or similar services related to that Client Plan's investment in such Fund are subject to the same fee method. It is represented that the fee methods are not applied on a fund-by-fund basis. PNC Financial determines the fee method to be used, subject to plan approval. As a general rule, Client Plan accounts use the Credit Fee Method. An exception to the general rule involves Client Plan accounts investing through Capital Directions, an asset allocation program, which uses the Subtraction Fee Method. IRA's also use the Subtraction Fee Method. The fee method to be used is described in the disclosure provided at the opening of a Client Plan account, and affirmatively approved at that time by the Second Fiduciary for such Client Plan. It is represented that the Second Fiduciary of such Client Plan is notified in advance of any change in the fee method and is provided with a Termination Form. Failure by the Second Fiduciary of such Client Plan to return the Termination Form on behalf of such Client Plan is deemed to be an approval by the Second Fiduciary of a change in the fee method.

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

Offset Fee Method

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

Subtraction Fee Method

13. With regard to the Subtraction Fee Method, PNC represents that under this method, PNC charges a Client Plan a direct investment management fee but credits to the benefit of such Client Plan, as a subtraction to such Client Plan's Plan-Level Fees, its proportionate share of the investment advisory fee for Client Plan assets invested in a Fund and paid to BlackRock (as reduced by any waiver or rebate by BlackRock of such fees to the Fund due to state law or other limits on Fund expenses).[7] The result is that a Client Plan pays only one investment management fee with respect to those assets. The subtraction is solely against those Plan-Level Fees charged by PNC for serving as investment manager, and does not include non-investment management trustee fees.

The credit under this Subtraction Fee Method and the credit under the Credit Fee Method, as discussed below, do not include the co-administrator, custodial, transfer agent, or other non-advisory fees payable by the Funds to PNC, because these services rendered to the Fund are not duplicative of any services provided directly to a Client Plan. The co-administrator services assist in the administration and operation of a Fund, which are matters particular to such Fund. The custodial services provided by PNC to a Fund involve maintaining custody and providing reporting relative to the individual securities owned by such Fund. The custodial services provided by PNC to a Client Plan, by contrast, involve maintaining custody over all or a portion of the Client Plan's assets, which would include the Client Plan's shares in a Fund, but not the assets underlying such Fund shares. These Client Plan custody services are necessary regardless of whether such Client Plan's assets are invested in the Funds.

[7] It is represented that while fees above a certain limit may be waived or rebated by BlackRock, as a technical matter the Funds may pay the excess fees and then simultaneously receive a rebate of the excess amount. For purposes of the Subtraction Fee Method, described in this section, PNC intends to credit to Client Plans only the net fees that BlackRock receives, and not to credit any of the excess fees that have been rebated to the Funds.

Credit Fee Method

14. PNC represents that in 1989 at the time PNC converted its collective investment funds into mutual funds, it started using the Credit Fee Method to avoid duplicative investment advisory fees. PNC's understanding at the time was that the Credit Fee Method was covered by PTE 77–4.[8]

Under the Credit Fee Method, PNC charges standard fees, as applicable to each Client Plan, for serving as trustee and investment manager, without any offset. In this method, a Client Plan receives ''a credited dollar amount'' from BlackRock of such Client Plan's proportionate share of all investment advisory fees charged by BlackRock to the Funds for the particular month (as reduced by any waiver or rebate by BlackRock of such fees, as described above). The result of the Credit Fee Method is that a Client Plan pays its proportionate share of the Fund-Level Fees, but receives a ''credited dollar amount'' of such payment.

It is represented that the standard practice is to reinvest the ''credited dollar amount'' in additional shares of the same Fund with respect to which the fees were credited. The additional shares so acquired are valued at the net asset value on the date the purchase request is transmitted to the Fund, which is the same day the ''credited dollar amount'' is made to the Client Plan's account.

It is represented that the Client Plans could, in theory, request that the ''credited dollar amount'' be made in cash, instead of additional shares. No such request has occurred to date, because it has not been the practice of PNC to notify Client Plans that they have the option to request cash, rather than additional shares. If such a request were to be made, it is represented that the cash would be invested in a money market account pending an investment direction from the investment officer for the account.

The applicant points out that in other exemptions granted by the Department, the timing of the credits generally occurred within one business day of the date that the mutual fund investment adviser received investment advisory fees. In the subject case, the applicant represents that the fees for investment

[8] *See supra.*, footnote 6.

advisory services, or similar services, provided by BlackRock to a Fund that have accrued for a given month are not paid out to BlackRock until certain calculations are confirmed between BlackRock and the accountant for such Fund, which is generally not before the third week of the next month. For example, the fees for investment advisory services, or similar services, which accrue for the month of January, may not be paid to BlackRock until the third week of February, or later. However, it is represented that there is no consistent period of time after BlackRock receives such fees for investment advisory services, or similar services, that BlackRock then pays PNC the fees for Mutual Fund Administration Services provided by PNC to such Fund. For instance, under this example, BlackRock may not pay PNC until the following month, *i.e.*, March. For this reason, PNC has adopted a practice of crediting the accrued fees for investment advisory services, or similar services, for a given month to its Client Plans no later than the fifth business day before the end of the month following the month in which fees for investment advisory services or similar services accrued—in this example, by the fifth business day before the end of February—even if PNC has not yet received payment from BlackRock of the fees for the provision of Mutual Fund Administrations Services by PNC to such Fund. It is represented that PNC is implementing a system whereby it will be notified when BlackRock receives its fees for investment advisory services, or similar services, which will allow PNC to make the credits to its Client Plans within one business day of when BlackRock is paid. However, this system will not be in place until January 2009. Therefore, while PNC agrees that the credit of the fees for investment advisory services, or similar services, to the Client Plans will occur no later than one business day after the receipt of such fees by BlackRock, this condition is effective only for the fees for investment advisory services, or similar services, accrued after January 1, 2009. For prior periods, PNC has requested that consistent with the original language in its application for exemption and with PNC's practice prior to January 1, 2009, the requirement should be that the credit of the fees for investment advisory services, or similar services, accrued for a given month be made no later than the earlier of either: (1) The same day as the receipt by PNC of the fees from BlackRock for the provision of Mutual Fund Administration Services to a Fund for that month, or (2) the fifth business day before the end of the month following the month in which fees for investment advisory services, or similar services, accrued. Accordingly, section II(a)(3) of this proposed exemption reads as follows:

A Client Plan invested in a Fund receives a ''a credit'' of such Client Plan's proportionate share of all fees charged to such Fund by BlackRock for investment advisory services, or similar services, for a particular month: (1) Effective for the period, September 29, 2006, through December 31, 2008, on the *earlier* of either: (a) The same day as PNC receives a fee from BlackRock for Mutual Fund Administration Services provided for that month to such Fund by PNC, or (b) the fifth business day before the end of the month following the month in which fees for investment advisory services, or similar services, accrued, or (2) effective for the period beginning, January 1, 2009, and continuing thereafter, on a date which is no later than one business day after BlackRock receives fees from the Fund for investment advisory services, or similar services, provided for that month to such Fund by BlackRock.

Audit of the Credit Fee Method

15. It is represented that there are sufficient safeguards to permit exemptive relief for the use by PNC of the Credit Fee Method. In this regard, PNC will establish and maintain a system of internal accounting controls for crediting the fees under the Credit Fee Method. In addition, PNC will retain the services of an independent Auditor to audit annually the crediting of fees to the Client Plans under the Credit Fee Method. Such audits will provide independent verification of the proper crediting to such Client Plans.

In the annual audit of the Credit Fee Method, the Auditor will use procedures designed to review and test compliance with the specific operational controls and procedures established by PNC for making the credits. Specifically, the Auditor will: (i) Verify on a test basis the investment advisory fees paid by the Funds to BlackRock; (ii) verify on a test basis the monthly factors used to determine the investment advisory fees; (iii) verify on a test basis the credits paid in total for a one-month period; (iv) re-compute, on a test basis, using the monthly factors described above, the amount of the credit determined for selected Client Plans; (v) verify on a test basis the proper assignment of identification fields for receipt of fee credits to the Client Plans; and (vi) verify on a test basis that the credits were posted to the Client Plans within the required timeframe.

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

Receipt of Secondary Services Fees

16. Prior to the effective date of this proposed exemption, it is represented that the receipt by PNC of fees paid out of the assets of a Fund for Secondary Services, such as custodial, administrative, accounting, and transfer agency services, provided by PNC to such Fund were treated as exempt under PTE 77–4, pursuant to Advisory Opinion 93–12A (Apr. 27, 1993, addressed to PNC Financial). It is further represented that Advisory Opinion 93–12A permits such fees for Secondary Services: (a) To be paid to PNC by a Fund where PNC also receives fees as the investment adviser to such Fund, and (b) to be retained by PNC without the need for PNC to offset or waive such fees.[9]

PNC requests an administrative exemption, effective as of September 29, 2006, for receipt of fees by PNC for the provision of Secondary Services to the Funds, because it is no longer clear that relief for the receipt of Secondary Services fees by PNC, which prior to the merger was treated as exempt under PTE 77–4, pursuant to Advisory Opinion 93–12A, continues to be available after the merger.

Receipt of Mutual Fund Administration Services Fees

17. It is represented that PNC also has provided in the past and continues to provide Mutual Fund Administration Services to, or on behalf of, the Funds. Mutual Fund Administration Services are part of an omnibus arrangement which includes maintaining records of investments by Client Plans in the Funds, processing Fund transactions for Client Plans, transmitting account

[9] With respect to the relief available under PTE 77–4, pursuant to Advisory Opinion 93–12A, no reference is made to the Credit Fee Method. Accordingly, the Department has determined that the relief available under PTE 77–4, pursuant to Advisory Opinion 93–12A was not in the past and is not now available for the Credit Fee Method.

statements and shareholder communications, responding to inquiries from Client Plans regarding account balances and dividends, and providing information to the Funds on sales and assisting in monitoring possible market timing.

PNC has received fees in the past and continues to receive fees for the provision of Mutual Fund Administration Services to the Funds. The Funds do not pay the fees for the Mutual Fund Administration Services provided by PNC. Instead, BlackRock, the investment adviser to the Fund, pays the fees to PNC for Mutual Fund Administration Services. It is represented that many mutual fund advisers have adopted the practice of covering service costs out of their own assets, a practice referred to as ''adviser pay.''

It is represented that the fees for the provision of Mutual Fund Administration Services by PNC are currently fifteen (15) basis points for assets in money market funds, twenty (20) basis points for assets in fixed income funds (except three funds as to which the fee is five (5) basis points), and twenty-five (25) basis points for assets in equity funds (except one fund as to which the fee is four (4) basis points). It is represented that the fees for such Mutual Fund Administration Services are subject to negotiation.

The Department believes that the receipt of fees by PNC from BlackRock for the provision of Mutual Fund Administration Services by PNC to the Funds is beyond the scope of relief provided by PTE 77–4. PNC has not requested, and the Department is not providing, relief in this proposed exemption for the payment, prior to the date of the merger, by BlackRock of fees for the provision of Mutual Fund Administration Services by PNC to the Funds.

However, PNC has requested an individual administrative exemption, effective as of September 29, 2006, the date of the merger, to cover the payment by BlackRock to PNC Bank, National Association (PNC Bank), an affiliate of PNC, of fees for the provision of Mutual Fund Administration Services by PNC Bank to the assets in a Fund for which BlackRock serves as investment adviser.

In the Interest of Client Plans

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

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

Protective of Client Plans

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

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

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

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

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

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

Feasibility

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

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

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

Client Plan could force PNC to transfer a Client Plan's investments out of a Fund.

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

21. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) The Funds will provide Client Plans with an effective investment vehicle;

(b) The investment by Client Plan in the Funds and the payment of fees for Secondary Services by the Funds to PNC, the payment of fees for Mutual Fund Administration Services by BlackRock to PNC, and the payment of fees for investment advisory or similar services by the Funds to BlackRock in connection the investment in the Funds by Client Plans will require an authorization in writing in advance by a Second Fiduciary after full written disclosure, including current prospectuses for the Funds and a statement describing the fee method to be used;

(c) Any authorization made by a Second Fiduciary will be terminable at will by that Second Fiduciary, without penalty to the Client Plan, within one (1) business day or one additional business day, if necessary, following receipt by PNC of written notice of termination from the Second Fiduciary on a form expressly providing an election to terminate the authorization, which will be supplied to the Second Fiduciary at least annually, or any other written notice of termination;

(d) No sales commissions will be paid by Client Plans in connection with the acquisition or sale of shares of the Funds and only redemption fees disclosed in a Fund's prospectus will be paid by Client Plans;

(e) All dealings among the Client Plans, any of the Funds, PNC, and BlackRock will be on a basis no less favorable to such Client Plans than such dealings with the other shareholders of the Funds;

(f) Client Plans investing in the Funds will pay only a single level of investment management, investment advisory, or similar fees with respect to the assets of such Client Plans so invested; and

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

Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include the Second Fiduciary of each Client Plan invested in any of the Funds.

It is represented that notification will be provided to these interested persons by first class mail, within fifteen (15) calendar days of the date of the publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all interested person of their right to comment and to request a hearing.

The Department must receive all written comments and requests for a hearing no later than forty-five (45) days from the date of the publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number.)

Barclays Bank PLC and Barclays Capital Inc. (Collectively, Barclays or the Applicants)

Located, respectively, in London, England and New York, New York

[Application No. D–11552]

Background

Barclays has requested an individual exemption that would replace and modify exemptive relief, previously provided pursuant to Prohibited Transaction Exemption 96–62,[10] for its securitization activities, which generally permits employee benefit plans to purchase, hold, sell or exchange certain securities representing interests in asset-backed or mortgage-backed investment pools. Barclays requests exemptive relief for sales of ''pass through'' notes/securities to investors, including employee benefit plans, representing pools of secured notes and senior unsecured notes issued by small and mid-sized banks.

In response to the current financial and liquidity crisis, the FDIC adopted the TLG Program, which guarantees newly issued senior unsecured debt of certain financial institutions. The FDIC guarantee is backed by the full faith and credit of the United States. In general, the requested exemption would permit Barclays and its affiliates to underwrite and sell the pass through notes/securities and also to service, manage and operate the trust holding the pools of bank debt guaranteed under the TLG Program.

Because Barclays has represented that the FDIC is considering whether the Debt Guarantee Program should be extended to secured bank debt that supports new consumer lending, the Department also specifically solicits

[10] For more information, see item number 3 under the heading entitled ''Summary of Facts and Representations.''

comments on extending the scope of the proposed exemptive relief to include such debt. The Department believes that in order to make the requisite section 408(a) findings for the proposed exemptive relief with respect to such secured debt, the debt must be explicitly included in the Debt Guarantee Program and also must be subject to the same protections that the FDIC affords to senior unsecured debt. To the extent that this would not be the case, the Department will consider, based upon public comments, whether to retain or eliminate such secured debt issuances from the exemptive relief granted by the Department.

Proposed Exemption

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

I. Transactions

A. 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 section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

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

(3) The continued holding of Securities 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 of the Act for the acquisition or holding of a Security 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.[11]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 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 Securities in the initial issuance of Securities 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 Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, 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 Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities 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 Issuer is acquired by persons independent of the Restricted Group;

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

(iv) Immediately after the acquisition of the Securities, 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 Securities representing an interest in an Issuer containing assets sold or serviced by the same entity.[12] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in an Issuer if it is merely a Subservicer of that Issuer;

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

(3) The continued holding of Securities 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 sections 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 an Issuer, including the use of any Eligible Swap transaction; or the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(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 Securities issued by the Issuer;[13] and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

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 Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

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 Code section 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

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

[12] 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.

[13] 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 securities 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. For purposes of this exemption, references to the term ''prospectus'' include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

person is deemed to be a party in interest or disqualified person (including a fiduciary), with respect to the 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 Securities.

II. General Conditions

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

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

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories.

(4) The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter. For purposes of this requirement:

(a) The Trustee shall not be considered 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; and

(b) Subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as a result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that:

(i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the date such Servicer became an Affiliate of the Trustee; and

(ii) Such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer 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 Securities is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund an Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations as specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), 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 vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities 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 Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the Issuer 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 Issuer 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 Trustee) 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 on 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 or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act.

(8) In order to ensure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A ''true sale'' of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent or a Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon this exemption only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

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 Securities, shall be denied the relief provided under section I., if the provision of subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, 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 Securities) 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).

III. Definitions

For purposes of this proposed exemption:

A. ''Security'' means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. ''Issuer'' means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be 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 Code); and the corpus or assets of which 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); 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/or commercial real property (including obligations secured by leasehold interest on residential or 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; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(i)(2) [14]; and/or

(f) Secured debt and senior unsecured debt (excluding mandatory convertible debt), issued by an eligible entity, as defined in 12 CFR 370.2(a), that are fully guaranteed as to timely payment of principal and interest by the Federal Deposit Insurance Corporation (FDIC) under the Debt Guarantee Program of the Temporary Liquidity Guarantee Program (TLG Program) and that are backed by the full faith and credit of the United States; and/or

(g) Fractional undivided interests in any of the obligations described in clauses (a)–(f) of this subsection B.(1).[15]

Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that: (i) the rights and interests evidenced by Securities issued in such Designated Transactions (as defined in section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) The outstanding principal balance due under the obligation which is held by the Trust and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.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 securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement, and/or

(c) Cash transferred to the Issuer 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 paragraphs (a)–(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to securityholders 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: (i) Are either (A) 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 (B) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and (iii) are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in section III.B.(1).

However, notwithstanding the foregoing, the term ''Issuer'' does not include any investment pool unless: (i) The assets of the type described in paragraphs (a)–(e) and paragraph (g) (excluding fractional interests in any of the obligations described in paragraph (f) of this subsection B.(1)) of section III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this exemption, and (iii) Securities 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 such Securities pursuant to this exemption. For purposes of this paragraph, Securities evidencing interests in investment pools containing assets described in Section III.B.(1)(f) are rated in one of the three highest generic rating categories by a Rating Agency at the time of such acquisition.

C. ''Underwriter'' means:

(1) The Applicants,

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

(3) Any member of an underwriting syndicate or selling group of which a person described in Section III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

D. ''Sponsor'' means the entity that organizes an Issuer by depositing obligations therein in exchange for Securities.

E. ''Master Servicer'' means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. ''Servicer'' means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. ''Trust'' means an Issuer, which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. ''Trustee'' means the Trustee of any Trust, which issues Securities, and also includes an Indenture Trustee. ''Indenture Trustee'' means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created.

[14] In ERISA Advisory Opinion 99–05A (February 22, 1999), the Department expressed its view that mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR 2510.3–101(i)(2).

[15] It is the Department's view that the definition of ''Issuer'' contained in section III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the Underwriter Exemptions generally provide relief for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the Servicer.

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

K. ''Obligor'' means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer 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 Issuer, or subject to any lease securing an obligation included in the Issuer.

L. ''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.

M. ''Restricted Group'' with respect to a class of Securities 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 Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

(8) Any Affiliate of a person described in subsections III.M.(1)–(7).

N. ''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.

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

P. 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 assets of such person.

Q. ''Sale'' includes the entrance into a Forward Delivery Commitment, 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 exemption applicable to sales are met.

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

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

T. ''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 subsection III.T.(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 Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. ''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 Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as the Issuer would have if the equipment note were secured only by the equipment and not the lease.

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

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

(2) The Issuer owns or holds a security interest in the leased motor vehicle; and

(3) The Issuer's security interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. ''Pooling and Servicing Agreement'' means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. ''Pooling and Servicing Agreement'' also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. ''Rating Agency'' means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.; Moody's Investors Service, Inc.; Fitch Ratings; DBRS Limited; or DBRS, Inc.; or any successors thereto.

Y. ''Capitalized Interest Account'' means an Issuer account: (i) which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the interest rate payable under the Securities; and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

Z. ''Closing Date'' means the date the Issuer is formed, the Securities are first issued and the Issue'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 Issuer.

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

BB. ''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 Securities being offered, which is less than or equal to 25 percent.

CC. ''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.

DD. ''Designated Transaction'' means a securitization transaction in which the assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. ''Ratings Dependent Swap'' means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a ''Non-Ratings Dependent Swap.'' With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. ''Eligible Swap'' means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (*e.g.*, LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (*i.e.*, payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of Securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF. (1) through (4) without the consent of the Trustee.

GG. ''Eligible Swap Counterparty'' means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under this exemption, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. ''Qualified Plan Investor'' means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the exemption, such a fiduciary is either:

(1) A ''qualified professional asset manager'' (QPAM), [16] as defined under Part V(a) of Prohibited Transaction Exemption (PTE) 84–14, 49 FR 9494, 9506, (March 13, 1984), as amended by 70 FR 49305, August 23, 2005);

(2) An ''in-house asset manager'' (INHAM),[17] as defined under Part IV(a) of PTE 96–23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. ''Excess Spread'' means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. ''Eligible Yield Supplement Agreement'' means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (*e.g.*, LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not ''leveraged'' as described in subsection III.FF. (4);

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[16] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (*e.g.*, banks, insurance companies, registered investment advisers with total client assets under management in excess of $85 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[17] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ. (1)–(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B. (1), (2) and (3).

Effective Date: If granted, and except as otherwise provided, this proposed exemption will be effective as of February 4, 2004. The exemptive relief, if granted, for investment pools consisting solely of debt described in section III.B.(1)(f) will be effective as of February 27, 2009 and will expire on the later of: July 1, 2012; or the expiration of the FDIC's Debt Guarantee Program, which is part of the TLG Program.

Summary of Facts and Representations

1. Barclays Bank PLC is an authorized institution under the Banking Act of 1987 in the United Kingdom and is regulated by the Bank of England. As of December 31, 2007, Barclays Bank PLC (Consolidated Balance Sheet) had approximately £1,227,583,000,000 in assets and £31,821,000,000 in stockholders' equity. Barclays Bank PLC has several affiliates that are broker-dealers or banks. Barclays Capital Inc., a subsidiary of Barclays Bank PLC, is incorporated under the laws of the State of Connecticut and is registered and regulated by the Securities and Exchange Commission as a U.S. broker-dealer under Section 15 of the Securities and Exchange Act of 1934, as amended. As of June 30, 2008, Barclays Capital Inc. (Unaudited Consolidated Balance Sheet) has approximately US$ 269,433,856,000 in assets and US$ 2,518,536,000 in stockholders' equity.

2. Barclays Bank PLC and Barclays Capital Inc. (hereinafter Barclays), alone or together with other broker-dealers, act as underwriter or placement agent with respect to the sale of securities. Barclays also may act as the manager or co-manager for a syndicate of securities underwriters or selling group.

3. Barclays received authorization from the Department pursuant to Prohibited Transaction Exemption (PTE) 96–62, 67 FR 44622 (July 3, 2002), that certain prohibited transaction provisions do not apply to transactions substantially similar to transactions described in the Underwriter Exemptions as described in its 2003 ''EXPRO'' authorization request (File #: E00342). See Final Authorization Number (FAN) 04–03E, February 4, 2004 (hereinafter FAN 04–03E). The information contained in the administrative file for E00342 as well as the facts and representations contained in FAN 04–03E also were considered and relied upon by the Department for purposes of this notice.[18] The Underwriter Exemptions are a group of individual exemptions that provide substantially identical relief for the servicing, management and operation of certain asset-backed or mortgage-backed investment pools and the acquisition, holding, sale or transfer by employee benefit plans of certain securities representing interests in those investment pools. These exemptions provide relief from certain of the prohibited transaction restrictions of sections 406(a), 406(b) and 407(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986, as amended (the Code), by reason of certain provisions of section 4975(c)(1) of the Code.

4. The Applicants are requesting, among other things, individual exemptive relief that would add senior unsecured debt guaranteed by the Federal Deposit Insurance Corporation (FDIC) pursuant to its Temporary Liquidity Guarantee Program (TLG Program) to the permissible assets of an Issuer, which currently are restricted to certain secured receivables, certain secured instruments, certain secured obligations and guaranteed governmental mortgage pool certificates as defined in 29 CFR 2510.3–101(i)(2). If this proposed exemption is granted by the Department, it would replace and expand the exemptive relief authorized in FAN 04–03E.

5. The TLG Program was announced by the FDIC on October 14, 2008, as an initiative to deal with the recent disruptions in the financial markets that have impaired the ability of creditworthy companies to issue commercial paper, particularly at maturities longer than 30 days. The TLG Program is designed to encourage liquidity in the banking system in order to ease lending to creditworthy businesses and consumers.

6. One component of the TLG Program is the Debt Guarantee Program, by which the FDIC will guarantee the payment of certain newly-issued senior unsecured debt by entities described in 12 CFR 370.2(a) (*i.e.*, insured depositary institutions, certain U.S. bank holding companies, certain U.S. savings and loan holding companies, and certain affiliates of an insured depositary institution that the FDIC designates as an eligible entity). The FDIC's payment obligation is triggered by a payment default rather than bankruptcy or receivership.

7. Under the TLG Program, effective as of December 6, 2008, the term ''senior unsecured debt'' excludes any obligation with a stated maturity of 30 days or less (including debt with a maturity of ''one month''). The guarantee on any previously issued senior unsecured debt instrument issued with a stated maturity of 30 days or less will expire on the earlier of: (i) the date the issuer ''opts out'' pursuant to the TLG Program, or the maturity date of the instrument.

8. The debt instruments covered by the TLG Program are unsecured borrowings that: (i) Are evidenced by a written agreement or trade confirmation; (ii) have a specific and fixed principal to be paid in full on demand or on a date certain; (iii) are not contingent and contain no embedded options, forwards, swaps or other derivatives; and (iv) are not, by their terms, subordinated to any other liability. The debt may pay interest at a fixed or floating rate. Any floating interest rate must be based on a commonly used reference rate, including a single index of a Treasury bill rate, the prime rate, or the London Interbank Offered Rate (LIBOR). For more information about the TLG Program, see the FDIC's final rule at 73 FR 72244 (November 26, 2008)[19] and the FDIC Internet site at *http://www.fdic.gov/.*

9. Barclays represents that the debt covered by the TLG Program is substantially similar to, and in some respects more secure, than guaranteed governmental mortgage pool certificates. The applicant states that although interest and principal payable pursuant to a guaranteed governmental mortgage

[18] The Underwriter Exemptions, including PTE 2002–41, 67 FR 54487 (August 22, 2002) and PTE 2000–58, 65 FR 67765 (November 13, 2000), and PTE 97–34, 62 FR 39021 (July 21, 1997), were amended by PTE 2007–05, 72 FR 13130 (March 20, 2007) and PTE 2008–08, 73 FR 27570 (May 13, 2008). Additional information about the Underwriter Exemptions also is available in the notices of proposed exemption with respect to each of the foregoing individual exemptions.

[19] On March 4, 2009, the FDIC published an interim rule that extends its guarantee to certain new issues of mandatory convertible debt into common shares of the issuing entity at a specified date no later than the expiration of the FDIC's guarantee. Because the requested exemptive relief relates to pools of debt, the proposed exemption would not apply to such mandatory convertible debt.

pool certificate are guaranteed by an agency of instrumentality thereof (*e.g.*, Freddie Mac, Fannie Mae and Farmer Mac), such agencies are not backed by the full faith and credit of the United States unlike the FDIC. The full faith and credit backing is significant because it represents an unconditional commitment from the United States to pay interest on defaulted notes. The Applicant further represents that because of the full faith and credit backing of the debt, there likely also will be a ready market for these notes. In this regard, Barclays states that plans already may invest directly in senior unsecured bank debt under the TLG PROGRAM in accordance with investor-based exemptions.[20]

10. The FDIC board announced on January 16, 2009, that it will soon propose rule changes to its Temporary Liquidity Guarantee Program to extend the maturity of the guarantee from three to up to 10 years where the debt is supported by collateral and the issuance supports new consumer lending.[21] Barclays also has requested in its application that the individual exemptive relief apply to such debt.

11. The underwriter (*i.e.*, Barclays, their affiliates, or a member of an underwriting syndicate or selling group of which Barclays or their 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 securities.

12. The issuer is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of an issuer selects assets to be included in a trust, partnership, special purpose corporation or limited liability company.

13. As a general matter, Securityholders will be entitled to receive distributions of principal and/or interest, 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.

14. The trustee of a trust is the legal owner of the obligations in the trust and is responsible for enforcing all the rights in favor of securityholders pursuant to the documents and instruments deposited in the trust. The trustee will be an independent entity, and therefore will be unrelated to any member of the Restricted Group (as defined in section III.M.) other than an underwriter.

15. The servicer of an issuer administers the receivables on behalf of the securityholders (*e.g.*, notifying borrowers of amounts due on receivables, maintaining payment records, and instituting foreclosure or similar proceedings in the event of default). The issuer will be maintained as an essentially passive entity. Therefore, both the plan sponsor's discretion and the servicer's discretion with respect to assets included in an issuer are severely limited.

16. The Applicants request that the exemptive relief, for bank debt guaranteed under the TLG Program by the FDIC, if granted, be made retroactive to February 27, 2009.

Notice to Interested Persons and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address above, within time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made part of the record. Comments received will be available for public inspection with the application at the address set forth above.

With respect to notification of interested persons, the Applicants will distribute this notice of proposed exemption by first class mail to an independent plan fiduciary for all ERISA pension plans for which the Applicants and their subsidiaries provide fiduciary services. All notifications will be mailed within three business days after publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps, Office of Exemption Determinations, Employee Benefits Security Administration, US. Department of Labor, telephone (202) 693–8532. (This is not a toll-free number).

Individual Retirement Accounts (the IRAs) for Ralph Hartwell, Harold Latin, Kenlon Johnson, Carol Johnson, Shanon Taylor, Michael Ball, Dianne Barkas, Roy Barkas, Harry DeWall, Alice Pike, Steven Larsen, C. Timothy Hopkins, Wayne Meuleman, Robert L. Miller, and Richard T. Scott (Collectively, the Participants), Located in Idaho Falls, Idaho, and Elsewhere [Exemption Application Numbers: D–11536 through D–11550]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A), (D), and (E) of the Code, shall not apply to the cash sales (the Sales) of certain shares of closely held common stock (the Stock) of the Bank of Idaho Holding Company (the Company) by the IRAs [22] to the Participants, disqualified persons with respect to their respective IRAs, provided that the following conditions are satisfied:

(a) The Sale of the Stock by each IRA is a one-time transaction for cash;

(b) The terms and conditions of each Sale are at least as favorable to each IRA as those obtainable in an arm's length transaction with an unrelated party;

(c) Each IRA receives the fair market value of the Stock on the date of the Sale as determined by a qualified, independent appraiser; and

(d) Each IRAs does not pay any commissions, costs, or other expenses in connection with each Sale.

Summary of Facts and Representations

1. The IRAs are individual retirement accounts, as described in section 408(a) of the Code. Each of the IRAs is self-directed. Among the assets of each IRA are shares of closely-held stock in the Company, a one-bank holding company domiciled in the state of Idaho and registered with the Board of Governors of the Federal Reserve System. The sole asset of the Company is the Bank of Idaho (the Bank), located in Idaho Falls, Idaho. The applicants describe the Participants, the IRAs, and their holdings of the Stock as follows:

(a) The IRA of Ralph Hartwell, a Director of the Bank, currently holds total assets of approximately $975,897.07, which includes 41,004 shares of the Stock. The IRA of Ralph Hartwell acquired all of the Stock from the Company on August 28, 1985.

(b) The IRA of Harold Latin, a Director of the Bank, currently holds total assets of approximately $28,703.51, which includes 1,071 shares of the Stock. The IRA of Harold Latin acquired all of the

[20] See, for example, PTE 84–14 and PTE 96–23, which are referenced, respectively, in earlier footnotes to this proposed exemption.

[21] See FDIC Press Release (PR) 4–2009. To date, the FDIC has not published such a rule in the Federal Register. See the caption in the preamble entitled ''Supplementary Information'' as to the Department's solicitation of comments with respect to secured debt.

[22] Because each IRA has only one Participant, there is no jurisdiction under 29 CFR § 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Stock from the Company on August 28, 1985.

(c) The IRA of Kenlon Johnson, a Director of the Bank, currently holds total assets of approximately $448,673.63, which includes 400 shares of the Stock. The IRA of Kenlon Johnson acquired all of the Stock from the Company on July 12, 2004.

(d) The IRA of Carol Johnson, the spouse of Kenlon Johnson, currently holds total assets of approximately $120,165.26, which includes 1,000 shares of the Stock. The IRA of Carol Johnson acquired all of the Stock from the Company on February 16, 2000.

(e) The IRA of Shanon Taylor, an employee of the Bank, currently holds total assets of approximately $23,641.36, which includes 910 shares of the Stock. The IRA of Shanon Taylor is a Roth IRA that acquired all of the Stock from the Company on November 15, 1996.

(f) The IRA of Michael Ball currently holds total assets of approximately $27,438.54, which includes 1,050 shares of the Stock. The IRA of Michael Ball acquired all of the Stock from the Company on January 18, 1999.

(g) The IRA of Dianne Barkas currently holds total assets of approximately $162,479.85, which includes 6,380 shares of the Stock. The IRA of Dianne Barkas acquired all of the Stock from the Company on August 28, 1985.

(h) The IRA of Roy Barkas currently holds total assets of approximately $83,554.74, which includes 3,262 shares of the Stock. The IRA of Roy Barkas acquired all of the Stock from the Company on August 28, 1985.

(i) The IRA of Harry DeWall currently holds total assets of approximately $419,921.88, which includes 10,000 shares of the Stock. The IRA of Harry DeWall acquired all of the Stock from the Company on September 11, 1999.

(j) The IRA of Alice Pike currently holds total assets of approximately $36,165.72, which includes 1,117 shares of the Stock. The IRA of Alice Pike acquires all of the Stock from the Company on September 28, 2000.

(k) The IRA of Steven Larsen currently holds total assets of approximately $792,100.40, which includes 3,877 shares of the Stock. The IRA of Steven Larsen acquired all of the Stock from the Company on August 28, 1985.

(l) The IRA of C. Timothy Hopkins currently holds total assets of approximately $488,139.96, which includes 2,000 shares of the Stock. The IRA of C. Timothy Hopkins acquired all of the Stock from the Company on September 11, 1999.

(m) The IRA of Wayne Meuleman currently holds total assets of approximately $42,651.09, which includes 1,680 shares of the Stock. The IRA of Wayne Meuleman acquired all of the Stock from the Company on August 28, 1985.

(n) The IRA of Robert L. Miller currently holds total assets of approximately $39,816.46, which includes 1,543 shares of the Stock. The IRA of Robert L. Miller acquired all of the Stock from the Company on August 28, 1985.

(o) The IRA of Richard T. Scott currently holds total assets of approximately $17,209.21, which includes 653 shares of the Stock. The IRA of Richard T. Scott acquired all of the Stock from the Company on February 16, 2000.

The applicants represent that the Bank is the custodian for all of the IRAs, except that: (i) The custodian of the IRA of Kenlon Johnson is Wachovia Securities (Wachovia); (ii) the custodian of the IRA of Michael Ball is TD Ameritrade Institutional (TD Ameritrade); (iii) the custodian of the IRA of Steven Larsen is Merrill Lynch Pierce Fenner & Smith (Merrill Lynch); and (iv) the custodian of the IRA of C. Timothy Hopkins is Raymond James Financial Services, Inc (Raymond James). Wachovia, TD Ameritrade, Merrill Lynch, and Raymond James are all national brokerage firms.

2. The applicants request an administrative exemption for the Sale of the Stock by each individual IRA to its respective Participant. The applicants also represent that the IRAs acquired the Stock directly from the issuer (*i.e.*, the Company).[23] Prior to January 1, 2007, the applicants represent that the Company was a Subchapter C corporation. The applicants state that business and income tax considerations caused the Company to elect to be taxed as a Subchapter S corporation pursuant to the Code, effective on January 1, 2007. The applicants further represent that, while section 1361(c)(2)(vi) of the Code permits an IRA to be an eligible shareholder in a bank holding company upon the company's conversion to a Subchapter S corporation, the applicants nevertheless remain liable for unrelated business tax income (UBTI) in their respective IRAs subsequent to the conversion, which negatively impacts the accounts. Accordingly, the applicants seek to effectuate the Sale of the Stock from their IRAs.[24] The applicants also represent that the acquisition of the Stock by each IRA was done for investment purposes and that, in fact, each IRA made a profit on its original investment.

3. The Stock was initially appraised by the valuation firm of Southard Financial, which is located in Memphis, Tennessee. In an appraisal report dated October 9, 2008, Southard Financial

[23] The Department notes that, to the extent that the Company or the other sellers were not disqualified persons with respect to the IRAs under section 4975(e) of the Code, the purchase of the Stock would not have constituted a prohibited transaction under section 4975(c)(1) of the Code. Accordingly, to the extent that there were violations of section 4975(c)(1) of the Code with respect to the purchases and holdings of the Stock by the IRAs, the Department is extending no relief for these transactions.

Further, the purchase and holding of the Stock by the IRAs whose Participants are officers or directors of the Company and/or the Bank raises questions under section 4975(c)(1)(D) and (E) of the Code depending on the degree (if any) of the IRA Participant's interest in the transaction. Section 4975(c)(1)(D) and (E) of the Code prohibits the use by or for the benefit of a disqualified person of the income or assets of a plan and prohibits a fiduciary from dealing with the income or assets of a plan in his own interest or for his own account. Those IRA Participants who are officers and/or directors of the Company or of the Bank, may have had interests in the transactions which affected their best judgment as fiduciaries of their IRAs. In such circumstances, the transactions may have violated sections 4975(c)(1)(D) and (E) of the Code. See Advisory Opinion 90–20A (June 15, 1990). Accordingly, to the extent that there were violations of section 4975(c)(1)(D) and (E) of the Code with respect to the purchases and holdings of the Stock by the IRAs, the Department is extending no relief for these transactions.

[24] Section 4975(d)(16) of the Code provides a statutory exemption from the prohibited transaction provisions of the Code for the sale of stock held by a trust which constitutes an individual retirement account under section 408(a) of the Code to the individual for whose benefit such account is established, provided that: (i) Such stock is in a bank (as defined in section 581 of the Code) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)); (ii) such stock is held by such trust as of the date of the enactment of this paragraph; (iii) such sale is pursuant to an election under section 1362(a) of the Code by such bank or company; (iv) such sale is for fair market value at the time of sale (as established by an independent appraiser) and the terms of the sale are otherwise at least as favorable to such trust as the terms that would apply on a sale to an unrelated party; (v) such trust does not pay any commissions, costs, or other expenses in connection with the sale; and (vi) the stock is sold in a single transaction for cash not later than 120 days after the S corporation election is made.

The applicants represent that, because the Stock of the Company was not sold within 120 days of the Company's S Corporation election on January 1, 2007, the proposed Sales of the Stock would not qualify for exemptive relief under section 4975(d)(16) of the Code. The applicants further represent that advisors to the Company at the time of the Subchapter S election were unaware of the negative income tax ramifications of the election on the IRA holders, and did not inform the holders that the election had been made. The applicants also represent that, had the IRA holders been made aware of the election, the IRA holders would have taken action consistent with the statutory exemption. Accordingly, the applicants have applied to the Department for an administrative exemption under section 4975(c)(2) of the Code for the proposed Sale of the Stock.

offered its opinion of the fair market value of the Stock as of August 31, 2008. The appraisal report was signed by Mr. Douglas K. Southard (Mr. Southard), Mr. David A. Harris (Mr. Harris), and Mr. Mark A. Orndorff (Mr. Orndorff), each of whom is an accredited appraiser with the firm. Mr. Southard, Mr. Harris, and Mr. Orndorff (collectively, the Appraisers) each represent that they are full-time, qualified appraisers and are senior members of the American Society of Appraisers (ASA). In addition, Mr. Southard and Mr. Harris, as principals of Southard Financial, represent that they and their firm are independent of, and unrelated to, the Participants, the Company, and the Bank.

In arriving at a value for the Stock, the Appraisers utilized a combined valuation methodology, according weight to both the income approach and the market approach (in the latter approach, the Appraisers took into account the price/book valuation method, the price/earnings method, and the prior transactions method). Applying these combined methodologies, the Appraisers arrived at a per share value for the Stock of $23.82. In this connection, the Appraisers determined that, because there is often local demand for the ownership of closely held community bank stock (as opposed to other businesses in a local market), no discount for a lack of marketability of the Stock should be taken in the appraisal. The Appraisers rounded the $23.82 figure for the value of the Stock to $23.80 to reflect what they believed was the imprecision inherent in the various assumptions used in the fair market value determination.

Applying the $23.80 per share valuation, the aggregate fair market value of the Stock held by the respective IRAs of the Participants as of August 31, 2008 is reflected in the following table:

Individual retirement account (IRA) of	Number of shares of stock held in each IRA	Fair market value of the stock in each IRA as of 8/31/2008	Percentage of total IRA assets represented by the stock
Ralph Hartwell	41,004	$975,895.20	99.99
Harold Latin	1,071	25,489.80	88.80
Kenlon Johnson	400	9,520	2.12
Carol Johnson	1,000	23,800	19.81
Shanon Taylor	910	21,658	91.61
Michael Ball	1,050	24,990	91.08
Dianne Barkas	6,380	151,844	93.45
Roy Barkas	3,262	77,635.60	92.92
Harry DeWall	10,000	238,000	56.68
Alice Pike	1,117	26,584.60	73.51
Steven Larsen	3,877	92,272.60	11.65
C. Timothy Hopkins	2,000	47,600	9.75
Wayne Meuleman	1,680	39,984	93.75
Robert L. Miller	1,543	36,723.40	92.23
Richard T. Scott	653	15,541.40	90.31

4. The applicants represent that the combined Stock held by each of the IRAs (*i.e.*, 75,947 shares) represents only 5.75% of the 1,319,757 shares of the Stock of the Company that are currently outstanding. The applicants also represent that the proposed Sales of the Stock by the IRAs will not result in any of the Participants becoming holders of 10% or more of the shares of the Company, nor will the Sales give any of the Participants a controlling interest in the Company. The applicants further state that, if the Department grants an administrative exemption for the proposed Sales, an updated appraisal will be undertaken by a qualified, independent appraiser to determine the fair market value of the Stock as of the date that the Sales are consummated.

5. The applicants represent that the transactions are administratively feasible because each Sale will be a one-time transaction for cash. The applicants also represent that the transactions are in the interests of the IRAs because each IRA will dispose of all its shares of the Stock at a price which equals the Stock's fair market value at the time of the Sale. As a result, greater diversification of the IRAs' assets will be achieved by reinvesting the proceeds of the Sales in other assets. Furthermore, the applicants represent that the transactions are protective of the rights of the Participants and beneficiaries of the IRAs because each IRA will receive the fair market value of the Stock currently owned by each IRA as of the date of the Sale, as determined by a qualified, independent appraiser. Finally, the IRAs will not incur any commissions, costs, or other expenses as a result of the Sales.

6. In summary, the applicants represent that the transactions will satisfy the statutory criteria of section 4975(c)(2) of the Code because: (a) The Sale of the Stock by each IRA is a one-time transaction for cash; (b) The terms and conditions of each Sale is at least as favorable to each IRA as those obtainable in an arm's length transaction with an unrelated party; (c) Each IRA receives the fair market value of the Stock on the date of the Sale as determined by a qualified, independent appraiser; and (d) Each IRAs does not pay any commissions, costs, or other expenses in connection with each Sale.

Notice To Interested Persons: Because the applicants are the only participants in the IRAs, it has been determined that there is no need to distribute this notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Judge of the Department, telephone (202) 693–8339. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

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

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

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

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

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

Signed at Washington, DC, this 20th day of March, 2009.

Ivan Strasfeld,

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

[FR Doc. E9–6619 Filed 3–25–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Wage and Hour Division

Withdrawal of Interpretation of the Fair Labor Standards Act Concerning Relocation Expenses Incurred by H–2A and H–2B Workers

AGENCY: Employment and Training Administration, Department of Labor in concurrence with the Wage and Hour Division, Employment Standards Administration, Department of Labor.

ACTION: Notice of withdrawal of interpretation.

SUMMARY: The Department of Labor (DOL or the Department) withdraws for further consideration an interpretation of the Fair Labor Standards Act (FLSA) published on December 18 and 19, 2008. The interpretation, which was published at 73 FR 77148–52 (H–2A program) and 73 FR 78039–41 (H–2B program), articulated an opinion that the FLSA and its implementing regulations do not require employers to reimburse workers under the H–2A and H–2B nonimmigrant visa programs, respectively, for relocation expenses even when such costs result in the workers being paid less than the minimum wage. This interpretation is hereby withdrawn for further consideration by the Department and may not be relied upon as a statement of agency policy.

DATES: *Effective Date:* March 26, 2009.

FOR FURTHER INFORMATION CONTACT: Richard Brennan, Director of Office of Interpretations and Regulatory Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–3506, Washington, DC 20210; Telephone (202) 693–0051 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.*, requires covered employers to pay their nonexempt employees a federal minimum wage and overtime premium pay of time and one-half the regular rate of pay for hours worked in excess of 40 in a week. The agency responsible for administration of the FLSA is the Wage and Hour Division, Employment Standards Administration, of the Department of Labor. The FLSA and its regulations prohibit an employer from either deducting from an employee's pay or imposing an expense upon an employee for costs that are primarily for the benefit of the employer, if to do so results in an employee receiving less than the minimum wage. 29 U.S.C. 203(m); 29 CFR part 531. Thus, during the first workweek, workers must be compensated at a rate that would bring their wages up to minimum wage, taking into account pre-employment expenses that primarily benefit the employer. In *Arriaga* v. *Florida Pacific Farms, L.L.C.*, 305 F.3d 1228 (11th Cir. 2002), the U.S. Court of Appeals for the Eleventh Circuit held that, under the FLSA regulations, the transportation from Mexico to Florida and visa costs of temporary nonimmigrant workers coming to the U.S. under the H–2A visa program, *see* 8 U.S.C. 1101(a)(15)(H)(ii)(a), were primarily for the grower's benefit because such costs were necessary and incident to the employment of such workers. A number of U.S. district courts have extended the *Arriaga* holding regarding the FLSA requirements to temporary nonimmigrant workers admitted into the U.S. under the H–2B visa program, 8 U.S.C. 1101(a)(15)(H)(ii)(b). *See, e.g., De Leon-Granados* v. *Eller & Sons Trees Inc.*, 2008 WL 4531813 (N.D. Ga., Oct. 7, 2008); *Rosales* v. *Hispanic Employee Leasing Program*, 2008 WL 363479 (W.D. Mich. Feb. 11, 2008); *Rivera* v. *Brickman Group*, 2008 WL 81570 (E.D. Pa. Jan. 7, 2008); *Recinos-Recinos* v. *Express Forestry Inc.*, 2006 WL 197030 (E.D. La. Jan. 24, 2006); *but see Castellanos-Contreras* v. *Decatur Hotels LLC*, No. 07–30942 (5th Cir. Feb. 11, 2009), *pet. for reh'g filed* (Mar. 11, 2009), *rev'g*, 488 F. Supp. 2d 565 (E.D. La. 2007).

On December 18, 2008, DOL published final regulations revising the procedures for the issuance of labor certifications to employers sponsoring H–2A nonimmigrants for admission to perform temporary agricultural labor or services and the procedures for enforcing compliance with attestations made by those employers. 73 FR 77110. The H–2A Final Rule became effective on January 17, 2009. The preamble accompanying the H–2A Final Rule included a discussion of the *Arriaga* issue, concluding that the Eleventh Circuit's decision was wrongly decided and that inbound travel expenses of H–2A workers do not primarily benefit their employers. 73 FR 77148–52. DOL characterized this discussion as an interpretation of the FLSA, 73 FR 77151, and did not seek public comment on the issue when it issued the H–2A Notice of Proposed Rulemaking, 73 FR 8538 (Feb. 13, 2008). Prior to the issuance of the preamble discussion, courts uniformly had held that relocation expenses were primarily for the benefit of employers.

On December 19, 2008, DOL published final regulations revising the procedures for the issuance of labor certifications to employers sponsoring H–2B nonimmigrants for admission to perform temporary nonagricultural labor or services and the procedures for enforcing compliance with attestations made by those employers. 73 FR 78019. The Final Rule became effective on January 18, 2009. The preamble accompanying the Final H–2B Rule included a discussion of the *Arriaga* issue, concluding that the Eleventh Circuit's decision and the district court