FML is converted from a mutual life insurance company into a stock life insurance company.

(d) The term ''Investor Stock'' means the common stock of the Stock Purchaser that will be allocated to Mutual Members if Post-Conversion FML is acquired by the Stock Purchaser in exchange for consideration that includes common stock of the Stock Purchaser.

(e) The term ''Mutual Member'' means a Contractholder whose name appears on FML's records as an owner of an FML Contract on the Record Date of the Fourth Amended Plan.

(f) The term ''Non-Trusteed Tax-Qualified Retirement Funding Contracts'' means FML insurance contracts which are held in connection with retirement plans or arrangements described in section 403(a) or 408 of the Internal Revenue Code or non-trusteed retirement plans described in Section 401(a) of the Internal Revenue Code.

(g) The term ''Plan'' means an employee benefit plan.

(h) The term ''Plan Credit'' means either (1) additional paid up insurance for a traditional life policy or (2) credits to the account values for Contracts that are not traditional (such as a flexible premium policy). Under FML's Fourth Amended Plan, Plan Credits are to be allocated to Mutual Members who hold Non-Trusteed Tax-Qualified Retirement Funding Contracts, in lieu of Investor Stock and/or cash.

(i) The term ''Post-Conversion FML'' means the Fidelity Mutual Life Insurance Company (In Rehabilitation) and any affiliate of FML, as defined in paragraph (a) of this Section III, as they exist after FML is converted from a mutual life insurance company into a stock life insurance company.

(j) The term ''Stock Purchaser'' means the person (e.g., individual, corporation, partnership, joint venture, etc.) selected by the Rehabilitator and approved by the Court to purchase the stock of Post-Conversion FML, or to acquire Post-Conversion FML by merger, under a stock purchase agreement or merger agreement.

This exemption is available to FML for as long as the terms and conditions of the exemption are satisfied with respect to each Mutual Member that is a Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 2000–34, refer to the proposed exemption and the grant notice which are cited above.

Signed at Washington, DC, June 26, 2007.

Ivan L. Strasfeld,

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

[FR Doc. E7–12673 Filed 6–29–07; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions and Application Numbers: D–11272, Wells Fargo & Company; D–11390, BSC Services Corp. 401(k) Profit Sharing Plan (the Plan); and D–11402 & D–11403, Owens Corning Savings Plan and Owens Corning Savings and Security (Collectively the Plans)

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: *Amoffitt.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.

Wells Fargo & Company (WFC)

Located in San Francisco, California

[Application No. D–11272]

Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (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—Transactions

If the proposed exemption is granted, the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the purchase of certain securities (the Securities), as defined, below in Section III(h), by an asset management affiliate of WFC, as ''affiliate'' is defined, below, in Section III(c), from any person other than such asset management affiliate of WFC or any affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such Securities, where a broker-dealer affiliated with WFC (the Affiliated Broker-Dealer), as defined, below, in Section III(b), is a manager or member of such syndicate and the asset management affiliate of WFC purchases such Securities, as a fiduciary:

(a) On behalf of an employee benefit plan or employee benefit plans (Client Plan(s)), as defined, below, in Section III(e); or

(b) On behalf of Client Plans, and/or In-House Plans, as defined, below, in Section III(l), which are invested in a pooled fund or in pooled funds (Pooled Fund(s)), as defined, below, in Section III(f); provided that the conditions as set forth, below, in Section II, are satisfied (An affiliated underwriter transaction (AUT)).[1]

Section II—Conditions

The proposed exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following requirements:

(a)(1) The Securities to be purchased are either—

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

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

(B) Are issued by a bank,

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

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

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

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

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

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

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

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

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

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

(1) Are non-convertible debt securities rated in one of the four highest rating categories by Standard & Poor's Rating Services, Moody's Investors Service, Inc., FitchRatings, Inc., Dominion Bond Rating Service Limited, Dominion Bond Rating Service, Inc., or any successors thereto (collectively, the Rating Organizations); provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

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

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

(a) Is a bank; or

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

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

(c) The aggregate amount of Securities of an issue purchased, pursuant to this proposed exemption, by the asset management affiliate of WFC with: (i) the assets of all Client Plans; and (ii) the assets, calculated on a pro-rata basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the asset management affiliate of WFC; and (iii) the assets of plans to which the asset management affiliate of WFC renders investment advice within the meaning of 29 CFR 2510.3–21(c) does not exceed:

[1] For purposes of this proposed exemption an In-House Plan may engage in AUT's only through investment in a Pooled Fund.

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

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

(3) 25 percent (25%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the sixth highest rating category; and

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

(5) Notwithstanding the percentage of Securities of an issue permitted to be acquired, as set forth in Section II(c)(1), (2), and (3), above, of this proposed exemption, the amount of Securities in any issue (whether equity or debt securities) purchased, pursuant to this proposed exemption, by the asset management affiliate of WFC on behalf of any single Client Plan, either individually or through investment, calculated on a pro-rata basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Securities being offered in such issue, and;

(6) If purchased in an Eligible Rule 144A Offering, the total amount of the Securities being offered for purposes of determining the percentages, described, above, in Section II(c)(1)–(3) and (5), is the total of:

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

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

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

(e) The covered transactions are not part of an agreement, arrangement, or understanding designed to benefit the asset management affiliate of WFC or an affiliate.

(f) The Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession, or other compensation or consideration that is based upon the amount of Securities purchased by any single Client Plan, or that is based on the amount of Securities purchased by Client Plans or In-House Plans through Pooled Funds, pursuant to this proposed exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designations generated by purchases of the Securities by the asset management affiliate of WFC on behalf of any single Client Plan or any Client Plan or In-House Plan in Pooled Funds.

(g)(1) The amount the Affiliated Broker-Dealer receives in management, underwriting, or other compensation or consideration is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated Broker-Dealer for foregoing any selling concessions for those Securities sold pursuant to this proposed exemption. Except as described above, nothing in this Section II(g)(1) shall be construed as precluding the Affiliated Broker-Dealer from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other compensation or consideration that is not based upon the amount of Securities purchased by the asset management affiliate of WFC on behalf of any single Client Plan, or on behalf of any Client Plan or In-House Plan participating in Pooled Funds, pursuant to this proposed exemption; and

(2) The Affiliated Broker-Dealer shall provide to the asset management affiliate of WFC a written certification, signed by an officer of the Affiliated Broker-Dealer, stating the amount that the Affiliated Broker-Dealer received in compensation or consideration during the past quarter, in connection with any offerings covered by this proposed exemption, was not adjusted in a manner inconsistent with Section II(e), (f), or (g) of this proposed exemption.

(h) The covered transactions are performed under a written authorization executed in advance by an independent fiduciary of each single Client Plan (the Independent Fiduciary), as defined, below, in Section III(g).

(i) Prior to the execution by an Independent Fiduciary of a single Client Plan of the written authorization described, above, in Section II(h), the following information and materials (which may be provided electronically) must be provided by the asset management affiliate of WFC to such Independent Fiduciary:

(1) A copy of the Notice of Proposed Exemption (the Notice) and a copy of the final exemption as published in the **Federal Register**; and

(2) Any other reasonably available information regarding the covered transactions that such Independent Fiduciary requests the asset management affiliate of WFC to provide.

(j) Subsequent to the initial authorization by an Independent Fiduciary of a single Client Plan permitting the asset management affiliate of WFC to engage in the covered transactions on behalf of such single Client Plan, the asset management affiliate of WFC will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary requests the asset management affiliate of WFC to provide.

(k)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this proposed exemption, unless the asset management affiliate of WFC provides the written information, as described, below, and within the time period described, below, in this Section II(k)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund).

(2) The following information and materials (which may be provided electronically) shall be provided by the asset management affiliate of WFC not less than 45 days prior to such asset management affiliate of WFC engaging in the covered transactions on behalf of a Pooled Fund, pursuant to this proposed exemption:

(i) A notice of the intent of such Pooled Fund to purchase Securities pursuant to this proposed exemption, a copy of this Notice, and a copy of the final exemption, as published in the **Federal Register**;

(ii) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the asset management affiliate of WFC to provide; and

(iii) A termination form expressly providing an election for the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that such plan (or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund for a period of no more than 30 days after such plan's (or such In-House Plan's) receipt of the initial notice of intent, described, above, in Section II(k)(2)(i), and that the failure of the Independent Fiduciary of such plan (or fiduciary of such In-House Plan) to return the termination form to the asset management affiliate of WFC in the case of a plan (or In-House Plan) participating in a Pooled Fund by the specified date shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in the covered transactions as an investor in such Pooled Fund.

Further, the instructions will identify WFC, the asset management affiliate of WFC, and the Affiliated Broker-Dealer and will provide the address of the asset management affiliate of WFC. The instructions will state that this proposed exemption may be unavailable, unless the fiduciary of each plan participating in the covered transactions as an investor in a Pooled Fund is, in fact, independent of WFC, the asset management affiliate of WFC, and the Affiliated Broker-Dealer. The instructions will also state that the fiduciary of each such plan must advise the asset management affiliate of WFC, in writing, if it is not an ''Independent Fiduciary,'' as that term is defined, below, in Section III(g).

For purposes of this Section II(k), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this proposed exemption for each plan be independent of the asset management affiliate of WFC shall not apply in the case of an In-House Plan.

(l)(1) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this proposed exemption to engage in the covered transactions, the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the fiduciary of such In-House Plan, as the case may be), following the receipt by such Independent Fiduciary of such plan (or by the fiduciary of such In-House Plan, as the case may be) of the written information described, above, in Section II(k)(2)(i) and (ii).

(2) For purposes of this Section II(l), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this proposed exemption for each plan proposing to invest in a Pooled Fund be independent of WFC and its affiliates shall not apply in the case of an In-House Plan.

(m) Subsequent to the initial authorization by an Independent Fiduciary of a plan (or by a fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the covered transactions, the asset management affiliate of WFC will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary of such plan (or the fiduciary of such In-House Plan, as the case may be) requests the asset management affiliate of WFC to provide.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the asset management affiliate of WFC shall furnish:

(1) In the case of each single Client Plan that engages in the covered transactions, the information described, below, in this Section II(n)(3)–(7), to the Independent Fiduciary of each such single Client Plan.

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

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

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

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

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

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

(v) The number of Securities purchased by the asset management affiliate of WFC for the Client Plan, In-House Plan, or Pooled Fund to which the transaction relates;

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

(vii) The underwriting spread in each transaction (*i.e.*, the difference, between the price at which the underwriter purchases the Securities from the issuer and the price at which the Securities are sold to the public);

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

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

(4) The Quarterly Report contains:

(i) a representation that the asset management affiliate of WFC has received a written certification signed by an officer of the Affiliated Broker-Dealer, as described, above, in Section II(g)(2), affirming that, as to each AUT covered by this proposed exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with Section II(e), (f), and (g) of this proposed exemption, and

(ii) a representation that copies of such certifications will be provided upon request;

(5) A disclosure in the Quarterly Report that states that any other reasonably available information regarding a covered transaction that an Independent Fiduciary (or fiduciary of an In-House Plan) requests will be provided, including, but not limited to:

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

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

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

(6) The Quarterly Report discloses any instance during the past quarter where the asset management affiliate of WFC was precluded for any period of time from selling Securities purchased under this proposed exemption in that quarter because of its status as an affiliate of an Affiliated Broker-Dealer and the reason for this restriction;

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

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

(o) For purposes of engaging in covered transactions, each Client Plan (and each In-House Plan) shall have total net assets with a value of at least $50 million (the $50 Million Net Asset Requirement). For purposes of engaging in covered transactions involving an Eligible Rule 144A Offering,[2] each Client Plan (and each In-House Plan) shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be) (the $100 Million Net Asset Requirement).

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

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

(p) The asset management affiliate of WFC qualifies as a ''qualified professional asset manager'' (QPAM), as that term is defined under Part V(a) of PTE 84–14. Notwithstanding the fact that the asset management affiliate of WFC satisfies the requirements, as set forth in Part V(a) of PTE 84–14, such asset management affiliate of WFC must also have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million. Furthermore, the requirement that the asset management affiliate of WFC must have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million, as set forth in this Section II(p), applies whether such asset management affiliate of WFC, qualifies as a QPAM, pursuant to Part V(a)(1), (a)(2), (a)(3) or (a)(4) of PTE 84–14.

(q) No more than 20 percent of the assets of a Pooled Fund at the time of a covered transaction, are comprised of assets of In-House Plans for which WFC, the asset management affiliate of WFC, the Affiliated Broker-Dealer, or an affiliate exercises investment discretion.

(r) The asset management affiliate of WFC, and the Affiliated Broker-Dealer, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons, described, below, in Section II(s), to determine whether the conditions of this proposed exemption have been met, except that—

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

(2) A prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of the asset management affiliate of WFC, or the Affiliated Broker-Dealer, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(s)(1) Except as provided, below, in Section II(s)(2), and notwithstanding any provisions of subsections (a)(2) and

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

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

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

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

(b) of section 504 of the Act, the records referred to, above, in Section II(r) are unconditionally available at their customary location for examination during normal business hours by—

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

(ii) Any fiduciary of any plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

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

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

(2) None of the persons described, above, in Section II(s)(1)(ii)–(iv) shall be authorized to examine trade secrets of the asset management affiliate of WFC, or the Affiliated Broker-Dealer, or commercial or financial information which is privileged or confidential; and

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

Section III—Definitions

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

(b) The term, ''Affiliated Broker-Dealer,'' means any broker-dealer affiliate, as ''affiliate'' is defined, below, in Section III(c), of the Applicant, as ''Applicant'' is defined, above, in Section III(a), that meets the requirements of this proposed exemption. Such Affiliated Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member. The term, ''manager,'' means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the Securities, as defined, below, in Section III(h), being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

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

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

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

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

(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, ''Client Plan(s),'' means an employee benefit plan(s) that is subject to the Act and/or the Code, and for which plan(s) an asset management affiliate of WFC exercises discretionary authority or discretionary control respecting management or disposition of some or all of the assets of such plan(s), but excludes In-House Plans, as defined, below, in Section III(l).

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

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

(2) Which is maintained by an asset management affiliate of WFC, (as the term, ''affiliate'' is defined, above, in Section III(c)), and

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

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

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

(i) If such fiduciary directly or indirectly controls, is controlled by, or is under common control with WFC, the asset management affiliate of WFC, or the Affiliated Broker-Dealer;

(ii) If such fiduciary directly or indirectly receives any compensation or other consideration from WFC, the asset management affiliate of WFC, or the Affiliated Broker-Dealer for his or her own personal account in connection with any transaction described in this proposed exemption;

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

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

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

(i) The term, ''Eligible Rule 144A Offering,'' shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270.10f–3(a)(4)) under the 1940 Act).

(j) The term, ''qualified institutional buyer,'' or the term, ''QIB,'' shall have the same meaning as defined in SEC

Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(k) The term, ''Rating Organizations,'' means Standard & Poor's Rating Services, Moody's Investors Service, Inc., FitchRatings, Inc., Dominion Bond Rating Service Limited, and Dominion Bond Rating Service, Inc., or any successors thereto.

(l) The term, ''In-House Plan(s),'' means an employee benefit plan(s) that is subject to the Act and/or the Code, and that is sponsored by the Applicant, as defined, above, in Section III(a) for its own employees.

Summary of Facts and Representations

The Applicant

1. WFC (*i.e.*, the Applicant) is a diversified financial services company organized under the laws of Delaware and registered as a bank holding company and financial holding company under the Bank Holding Company Act of 1956. The Applicant engages in banking and a variety of related financial services businesses. Retail, commercial and corporate banking services are provided through banking stores in a number of states. Other financial services are provided by subsidiaries engaged in various businesses, such as wholesale banking, mortgage banking, consumer finance, equipment leasing, agricultural finance, commercial finance, securities brokerage and investment banking, insurance agency services, computer and data processing services, trust services, mortgage-backed securities servicing and venture capital investment. Subsidiaries of the Applicant manage institutional portfolios for mutual funds, corporations, pension plans, endowments, foundations, health care organizations, public agencies, sovereign organizations, insurance companies and Taft-Hartley plans. These affiliates act as fiduciaries to employee benefit plans, providing trustee, recordkeeping, consulting and investment management services. The Applicant and its affiliates' activities are subject to oversight and regulation by the Securities and Exchange Commission (the SEC), the Federal Reserve Board and the Office of the Comptroller of the Currency.

Requested Exemption

2. The Applicant requests a prohibited transaction exemption that would permit the purchase of certain securities by an asset management affiliate of WFC (the Asset Manager), acting on behalf of Client Plans subject to the Act or Code, and acting on behalf of Client Plans and In-House Plans which are invested in certain Pooled Funds for which an Asset Manager acts as a fiduciary, from any person other than such Asset Manager or any affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such Securities, where an Affiliated Broker-Dealer is a manager or member of such syndicate. Further, the Affiliated Broker-Dealer will receive no selling concessions in connection with the Securities sold to such plans.

3. The Applicant represents that if the Affiliated Broker-Dealer is a member of an underwriting or selling syndicate, the Asset Manager may purchase underwritten securities for Client Plans in accordance with Part III of Prohibited Transaction Exemption (PTE) 75–1, (40 FR 50845, October 31, 1975). Part III provides limited relief from the Act's prohibited transaction provisions for plan fiduciaries that purchase securities from an underwriting or selling syndicate of which the fiduciary or an affiliate is a member. However, such relief is not available if the Affiliated Broker-Dealer manages the underwriting or selling syndicate.

4. In addition, regardless of whether a fiduciary or its affiliate is a manager or merely a member of an underwriting or selling syndicate, PTE 75–1 does not provide relief for the purchase of unregistered securities. This includes securities purchased by an underwriter for resale to a ''qualified institutional buyer'' (QIB) pursuant to the SEC's Rule 144A under the Securities Act of 1933 (the 1933 Act). Rule 144A is commonly utilized in connection with sales of securities issued by foreign corporations to U.S. investors that are QIBs. Notwithstanding the unregistered nature of such shares, it is represented that syndicates selling securities under Rule 144A (Rule 144A Securities) are the functional equivalent of those selling registered securities.

5. The Applicant represents that the Affiliated Broker-Dealer regularly serves as manager of underwriting or selling syndicates for registered securities, and as a manager or a member of underwriting or selling syndicates for Rule 144A Securities. Accordingly, the Asset Manager is currently unable to purchase on behalf of the Client Plans Rule 144A Securities sold in such offerings, resulting in such Client Plans being unable to participate in significant investment opportunities. In addition, since 1975, there has been a significant amount of consolidation in the financial services industry in the United States. As a result, there are more situations in which a plan fiduciary may be affiliated with the manager of an underwriting syndicate. Further, many plans have expanded investment portfolios in recent years to include securities issued by foreign corporations. As a result, the exemption provided in PTE 75–1, Part III, is often unavailable for purchase of domestic and foreign securities that may otherwise constitute appropriate plan investments.

Client Plan Investments in Offered Securities

6. The Applicant represents that the Asset Manager makes its investment decisions on behalf of, or renders investment advice to, Client Plans pursuant to the governing document of the particular Client Plan or Pooled Fund and the investment guidelines and objectives set forth in the management or advisory agreement. Because the Client Plans are covered by Title I of the Act, such investment decisions are subject to the fiduciary responsibility provisions of the Act.

7. The Applicant states, therefore, that the decision to invest in a particular offering is made on the basis of price, value and a Client Plan's investment criteria, not on whether the securities are currently being sold through an underwriting or selling syndicate. The Applicant further states that, because the Asset Manager's compensation for its services is generally based upon assets under management, the Asset Manager has little incentive to purchase securities in an offering in which the Affiliated Broker Dealer is an underwriter unless such a purchase is in the interests of Client Plans. If the assets under management do not perform well, the Asset Manager will receive less compensation and could lose clients, costs which far outweigh any gains from the purchase of underwritten securities.[3]

8. The Applicant states that the Asset Manager generally purchases securities in large blocks because the same investments will be made across several accounts. If there is a new offering of an equity or fixed income security that the Asset Manager wishes to purchase, it may be able to purchase the security through the offering syndicate at a lower price than it would pay in the open market, without transaction costs and with reduced market impact if it is buying a relatively large quantity. This is because a large purchase in the open market can cause an increase in the market price and, consequently, in the

[3] In fact, under the terms of the proposed exemption set forth herein, the Affiliated Broker-Dealer may receive no compensation or other consideration, direct or indirect, in connection with any transaction that would be permitted under the proposed exemption.

cost of the securities. Purchasing from an offering syndicate can thus reduce the costs to the Client Plans.

9. However, absent an exemption, if the Affiliated Broker-Dealer is a manager of a syndicate that is underwriting a securities offering, the Asset Manager will be foreclosed from purchasing any securities on behalf of its Client Plans from that underwriting syndicate. This will force the Asset Manager to purchase the same securities in the secondary market. In such a circumstance, the Client Plans may incur greater costs both because the market price is often higher than the offering price, and because of transaction and market impact costs. In turn, this will cause the Asset Manager to forego other investment opportunities because the purchase price of the underwritten security in the secondary market exceeds the price that the Asset Manager would have paid to the selling syndicate.

Underwriting of Securities Offerings

10. The Applicant represents that the Affiliated Broker-Dealer currently manages and participates in firm commitment underwriting syndicates for registered offerings of both equity and debt securities. While equity and debt underwritings may operate differently with regard to the actual sales process, the basic structures are the same. In a firm commitment underwriting, the underwriting syndicate acquires the securities from the issuer and then sells the securities to investors.

11. The Applicant represents that while, as a legal matter, a selling syndicate assumes the risk that the underwritten securities might not be fully sold, as a practical matter, this risk is reduced, in marketed deals, through ''building a book'' (*i.e.*, taking indications of interest from potential purchasers) prior to pricing the securities. Accordingly, there is no incentive for the underwriters to use their discretionary accounts (or the discretionary accounts of their affiliates) to buy up the securities as a way to avoid underwriting liabilities.

12. Each selling syndicate has a lead manager, who is the principal contact between the syndicate and the issuer and who is responsible for organizing and coordinating the syndicate. The syndicate may also have co-managers, who generally assist the lead manager in working with the issuer to prepare the registration statement to be filed with the SEC and in distributing the underwritten securities. While equity syndicates typically include additional members that are not managers, more recently, membership in many debt syndicates has been limited to lead and co-managers.

13. If more than one underwriter is involved in a selling syndicate, the lead manager, who has been selected by the issuer of the underwritten securities, contacts other underwriters, and the underwriters enter into an ''Agreement Among Underwriters.'' Most lead managers have a standing form of agreement. This document is then supplemented for the particular deal by sending an ''invitation telex'' or ''terms telex'' that sets forth particular terms to the other underwriters.

14. The arrangement between the syndicate and the issuer of the underwritten securities is embodied in an underwriting agreement, which is signed on behalf of the underwriters by one or more of the managers. In a firm commitment underwriting, the underwriting agreement provides, subject to certain closing conditions, that the underwriters are obligated to purchase the underwritten securities from the issuer in accordance with their respective commitments. This obligation is met by using the proceeds received from the buyers of the securities in the offering, although there is a risk that the underwriters will have to pay for a portion of the securities in the event that not all of the securities are sold.

15. The Applicant represents that, generally, the risk that the securities will not be sold is small because the underwriting agreement is not executed until after the underwriters have obtained sufficient indications of interest to purchase the securities from a sufficient number of investors to assure that all the securities being offered will be acquired by investors. Once the underwriting agreement is executed, the underwriters immediately begin contacting the investors to confirm the sales, first orally and then by written confirmation, and sales are finalized within hours and sometimes minutes. In registered transactions, the underwriters are particularly anxious to complete the sales as soon as possible because until they ''break syndicate,'' they cannot enter the market. In many cases, the underwriters will act as market-makers for the security. A market-maker holds itself out as willing to buy or sell the security for its own account on a regular basis.

16. The Applicant represents that the process of ''building a book'' or soliciting indications of interest occurs as follows: In a registered equity offering, after a registration statement is filed with the SEC and, while it is under review by the SEC staff, representatives of the issuer of the securities and the selling syndicate managers conduct meetings with potential investors, who learn about the company and the underwritten securities. Potential investors also receive a preliminary prospectus. The underwriters cannot make any firm sales until the registration statement is declared effective by the SEC. Prior to the effective date, while the investors cannot become legally obligated to make a purchase, they indicate whether they have an interest in buying, and the managers compile a ''book'' of investors who are willing to ''circle'' a particular portion of the issue. These indications of interest are sometimes referred to as a ''soft circle'' because investors cannot be legally bound to buy the securities until the registration statement is effective. However, the Applicant represents that investors generally follow through on their indications of interest, and would be expected to do so, barring any sudden adverse developments (in which case it is likely that the offering would be withdrawn or the price range modified and the process restarted), because, if the investors that gave an indication of interest do not follow through, the underwriters may be reluctant to include them in future offerings.

17. Assuming that the marketing efforts have produced sufficient indications of interest, the Applicant represents that the issuer of the securities and the selling syndicate managers together will set the price of the securities and ask the SEC to declare the registration effective. After the registration statement becomes effective and the underwriting agreement is executed, the underwriters contact those investors that have indicated an interest in purchasing securities in the offering to execute the sales. The Applicant represents that offerings are often oversubscribed, and many have an over-allotment option that the underwriters can exercise to acquire additional shares from the issuer. Where an offering is oversubscribed, the underwriters decide how to allocate the securities among the potential purchasers. However, pursuant to the National Association of Securities Dealers Rule 2790, new issue securities (as defined under such rule) may not be sold directly to: officers, directors, general partners or associated persons of any broker-dealer (other than limited business broker-dealers); any person who has the authority to buy or sell securities for: a bank, saving and loan institution, insurance and investment companies, investment advisors and collective investment

accounts; and certain of the family members of such persons (collectively, ''restricted persons''). Restricted persons may still participate, to a limited extent, in allocations of ''new issues'' through pooled investment vehicles in which they invest and may receive directly new issue allocations in certain other limited circumstances.

18. The Applicant represents that debt offerings may be ''negotiated'' offerings, ''competitive bid'' offerings, or ''bought deals.'' ''Negotiated'' offerings, which often involve non-investment grade securities, are conducted in the same manner as an equity offering with regard to when the underwriting agreement is executed and how the securities are offered. ''Competitive bid'' offerings, in which the issuer determines the price for the securities through competitive bidding rather than negotiating the price with the underwriting syndicate, are performed under ''shelf'' registration statements pursuant to the SEC's Rule 415 under the 1933 Act (17 CFR 230.415).[4]

19. In a competitive bid offering, prospective lead underwriters will bid against one another to purchase debt securities, based upon their determinations of the degree of investor interest in the securities. Depending on the level of investor interest and the size of the offering, a bidding lead underwriter may bring in co-managers to assist in the sales process. Most of the securities are frequently sold within hours, or sometimes even less than an hour, after the securities are made available for purchase.

20. Because of market forces and the requirements of Rule 415, the competitive bid process is generally available only to issuers of investment-grade securities who have been subject to the reporting requirements of the 1934 Act for at least one (1) year.

21. Occasionally, in highly-rated debt issues, underwriters ''buy'' the entire deal off of a ''shelf registration'' before obtaining indications of interest. These ''bought'' deals involve issuers whose securities enjoy a deep and liquid secondary market, such that an underwriter has confidence without pre-marketing that it can identify purchasers for the bonds.

Structure of Diversified Financial Services Firms

22. The Applicant represents that there are internal policies in place that restrict contact and the flow of information between investment management personnel and non-investment management personnel in the same or affiliated financial service firms. These policies are designed to protect against ''insider trading,'' *i.e.*, trading on information not available to the general public that may affect the market price of the securities. Diversified financial services firms must be concerned about insider trading problems because one part of the firm—*e.g.*, the mergers and acquisitions group—could come into possession of non-public information regarding an upcoming transaction involving a particular issuer, while another part of the firm—*e.g.*, the investment management group—could be trading in the securities of that issuer for its clients.

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

24. The Applicant represents that major clients of the Affiliated Broker-Dealer include investment management firms that are competitors of the Asset Manager. Similarly, the Asset Manager deals on a regular basis with broker-dealers that compete with the Affiliated Broker-Dealer. If special consideration were shown to an affiliate, such conduct would likely have an adverse effect on the relationships of the Affiliated Broker-Dealer and of the Asset Manager with firms that compete with such affiliate. Therefore, a goal of the Applicant's business separation policy is to avoid any possible perception of improper flows of information between the Affiliated Broker-Dealer and the Asset Manager, in order to prevent any adverse impact on client and business relationships.

Underwriting Compensation

25. The Applicant represents that the underwriters are compensated through the ''spread,'' or difference, between the price at which the underwriters purchase the securities from the issuer and the price at which the securities are sold to the public. The spread is divided into three components.

26. The first component includes the management fee, which generally represents an agreed upon percentage of the overall spread and is allocated among the lead manager and co-managers. Where there is more than one managing underwriter, the way the management fee will be allocated among the managers is generally agreed upon between the managers and the issuer prior to soliciting indications of interest. Thus, the allocation of the management fee is not reflective of the amount of securities that a particular manager sells in an offering.

27. The second component is the underwriting fee, which represents compensation to the underwriters (including the non-managers, if any) for the risks they assume in connection with the offering and for the use of their capital. This component of the spread is also used to cover the expenses of the underwriting that are not otherwise reimbursed by the issuer of the securities.

28. The first and second components of the ''spread'' are received without regard to how the underwritten securities are allocated for sales purposes or to whom the securities are sold. The third component of the spread is the selling concession, which generally constitutes 60 percent or more of the spread. The selling concession compensates the underwriters for their actual selling efforts. The allocation of selling concessions among the underwriters generally follows the allocation of the securities for sales purposes. However, a buyer of the underwritten securities may designate other broker-dealers (who may be other underwriters, as well as broker-dealers outside the syndicate) to receive the selling concessions arising from the securities they purchase.

29. Securities are allocated for sales purposes into two categories. The first and larger category is the ''institutional pot,'' which is the pot of securities from which sales are made to institutional investors. Selling concessions for securities sold from the institutional pot are generally designated by the purchaser to go to particular underwriters or other broker-dealers. If securities are sold from the institutional pot, the selling syndicate managers sometimes receive a portion of the selling concessions, referred to as a ''fixed designation,''[5] attributable to securities sold in this category, without regard to who sold the securities or to whom they were sold. For securities covered by this proposed exemption, however, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designation generated by

[4] Rule 415 permits an issuer to sell debt as well as equity securities under an effective registration statement previously filed with the SEC by filing a post-effective amendment or supplemental prospectus.

[5] A fixed designation is sometimes referred to as an ''auto pot split.''

purchases of securities by the Asset Manager on behalf of its Client Plans.

30. The second category of allocated securities is ''retail,'' which are the securities retained by the underwriters for sale to their retail customers. The underwriters receive the selling concessions from their respective retail retention allocations. Securities may be shifted between the two categories based upon whether either category is oversold or undersold during the course of the offering.

31. The Applicant asserts that the Affiliated Broker-Dealer's inability to receive any selling concessions, or any compensation attributable to the fixed designations generated by purchases of securities by the Asset Manager's Client Plans, removes the primary economic incentive for the Asset Manager to make purchases that are not in the interests of its Client Plans from offerings for which the Affiliated Broker-Dealer is an underwriter. The reason is that the Affiliated Broker-Dealer will not receive any additional fees as a result of such purchases by the Asset Manager.

Rule 144A Securities

32. The Applicant represents that a number of the offerings of Rule 144A Securities in which the Affiliated Broker-Dealer participates represent good investment opportunities for the Asset Manager's Client Plans. Particularly with respect to foreign securities, a Rule 144A offering may provide the least expensive and most accessible means for obtaining these securities. However, PTE 75–1, Part III, does not cover Rule 144A Securities. Therefore, absent an exemption, the Asset Manager is foreclosed from purchasing such securities for its Client Plans in offerings in which the Affiliated Broker-Dealer participates.

33. The Applicant states that Rule 144A acts as a ''safe harbor'' exemption from the registration provisions of the 1933 Act for sales of certain types of securities to QIBs. QIBs include several types of institutional entities, such as employee benefit plans and commingled trust funds holding assets of such plans, which own and invest on a discretionary basis at least $100 million in securities of unaffiliated issuers.

34. Any securities may be sold pursuant to Rule 144A except for those of the same class or similar to a class that is publicly traded in the United States, or certain types of investment company securities. This limitation is designed to prevent side-by-side public and private markets developing for the same class of securities as is the reason that Rule 144A transactions are generally limited to debt securities.

35. Buyers of Rule 144A Securities must be able to obtain, upon request, basic information concerning the business of the issuer and the issuer's financial statements, much of the same information as would be furnished if the offering were registered. This condition does not apply, however, to an issuer filing reports with the SEC under the 1934 Act, for which reports are publicly available. The condition also does not apply to a ''foreign private issuer'' for whom reports are furnished to the SEC under Rule 12g3–2(b) of the 1934 Act (17 CFR 240.12g3–2(b)), or to issuers who are foreign governments or political subdivisions thereof and are eligible to use Schedule B under the 1933 Act (which describes the information and documents required to be contained in a registration statement filed by such issuers).

36. Sales under Rule 144A, like sales in a registered offering, remain subject to the protections of the anti-fraud rules of federal and state securities laws. These rules include Section 10(b) of the 1934 Act and Rule 10b–5 thereunder (17 CFR 240.10b–5) and Section 17(a) of the 1933 Act (15 U.S.C. 77a). Through these and other provisions, the SEC may use its full range of enforcement powers to exercise its regulatory authority over the market for Rule 144A Securities, in the event that it detects improper practices.

37. The Applicant represents that this potential liability for fraud provides a considerable incentive to the issuer of the securities and the members of the selling syndicate to insure that the information contained in a Rule 144A offering memorandum is complete and accurate in all material respects. Among other things, the lead manager typically obtains an opinion from a law firm, commonly referred to as a ''10b–5'' opinion, stating that the law firm has no reason to believe that the offering memorandum contains any untrue statement of material fact or omits to state a material fact necessary in order to make sure the statements made, in light of the circumstances under which they were made, are not misleading.

38. The Applicant represents that Rule 144A offerings generally are structured in the same manner as underwritten registered offerings. The major difference is that a Rule 144A offering uses an offering memorandum rather than a prospectus that is filed with the SEC. The marketing process is the same in most respects, except that the selling efforts are limited to contacting QIBs and there are no general solicitations for buyers (*e.g.*, no general advertising). In addition, the Affiliated Broker-Dealer's role in these offerings is typically that of a lead or co-manager. Generally, there are no non-manager members in a Rule 144A selling syndicate. However, the Applicant requests that the proposed exemption extend to authorization for situations where the Affiliated Broker-Dealer acts only as a syndicate member, not as a manager.

Summary

39. In summary, the Applicant represents that the proposed transactions will satisfy the statutory criteria for an exemption set forth in section 408(a) of the Act because:

(a) The Client Plans will gain access to desirable investment opportunities;

(b) In each offering, the Asset Manager will purchase the securities for its Client Plans from an underwriter or broker-dealer other than the Affiliated Broker-Dealer;

(c) Conditions similar to those of PTE 75–1, Part III, will restrict the types of securities that may be purchased, the types of underwriting or selling syndicates and issuers involved, and the price and timing of the purchases;

(d) The amount of securities that the Asset Manager may purchase on behalf of Client Plans will be subject to percentage limitations;

(e) The Affiliated Broker-Dealer will not be permitted to receive, either directly, indirectly or through designation, any selling concessions with respect to the securities sold to the Asset Manager for the account of a Client Plan;

(f) Prior to any purchase of securities, the Asset Manager will make the required disclosures to an Independent Fiduciary of each Client Plan and obtain written authorization to engage in the covered transactions;

(g) The Asset Manager will provide regular reporting to an Independent Fiduciary of each Client Plan with respect to all securities purchased pursuant to the exemption, if granted;

(h) Each Client Plan will be subject to net asset requirements, with certain exceptions for Pooled Funds; and

(i) the Asset Manager must have total assets under management in excess of $5 billion and shareholders' or partners' equity in excess of $1 million, in addition to qualifying as a QPAM, pursuant to Part V(a) of PTE 84–14.

Notice to Intersted Persons: The Applicant represents that because those potentially interested Plans proposing to engage in the covered transactions cannot all be identified, the only practical means of notifying Independent Plan Fiduciaries or Plan Participants of such affected Plans is by publication of the proposed exemption in the **Federal Register**. Therefore, any

comments from interested persons must be received by the Department no later than 30 days from the publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

Owens Corning Savings Plan and Owens Corning Savings and Security Plan (collectively, the Plans)

Located in Toledo, Ohio

[Exemption Application Numbers D–11402 and D–11403, respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective October 31, 2006, to: (1) The acquisition by the Plans of certain warrants (the Warrants) issued by Owens Corning (the Applicant), a party in interest with respect to the Plans, where such Warrants have been issued in exchange for the common stock (the Old Common Stock) of the Applicant incident to a bankruptcy reorganization; (2) The holding of the Warrants by each of the Plans pending the exercise or other disposition of said Warrants; and (3) The exercise of the Warrants by participants in the Plans to permit acquisition of shares of the Applicant's new common stock (the New Common Stock), provided that the following conditions were satisfied:

(a) The Plans had no ability to affect the provisions of the Sixth Amended Joint Plan of Reorganization for Owens Corning and Its Affiliated Debtors and Debtors-in-Possession (the Reorganization Plan) approved by the United States Bankruptcy Court for the District of Delaware (the Bankruptcy Court) on September 26, 2006 pursuant to Chapter 11 of Title 11 of the United States Code (the Bankruptcy Code);

(b) The acquisition and holding of the Warrants by the Plans occurred in connection with the Reorganization Plan, in which all holders of the Applicant's stock of the same class have been and will be treated similarly;

(c) The Warrants were acquired automatically and without any action on the part of the Plans;

(d) The Plans did not pay any fees or commissions in connection with the acquisition or holding of the Warrants;

(e) The Plans will not pay any fees or commissions in connection with the exercise of the Warrants; and

(f) All decisions regarding the exercise or other disposition of the Warrants have been and will be made by the individual participants of the Plans in whose accounts the Warrants were allocated, in accordance with the respective provisions of the Plans pertaining to the individually-directed investment of such accounts.

Summary of Facts and Representations

1. The Applicant, a leading manufacturer of building materials systems and composite solutions, is a Delaware corporation with business headquarters in Toledo, Ohio. The Applicant sponsors the Plans, each of which is a defined contribution plan established and maintained pursuant to the requirements of section 401(a) of the Code. In addition, each of the Plans provides for participant-directed individual accounts in accordance with the provisions of section 404(c) of the Act and the corresponding regulations located at 29 CFR 2550.404c–1. The Owens Corning Savings and Security Plan held $158,009,167.04 in assets as of September 27, 2006, and included 3,160 participants as of October 19, 2006. The Owens Corning Savings Plan held $452,290,359.36 in assets as of September 27, 2006, and included 1,130 participants as of October 19, 2006.

2. On October 5, 2000, the Applicant (including seventeen of its United States subsidiaries) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Applicant filed for relief under Chapter 11 to address the substantial and growing demands on the Applicant's cash flow resulting from asbestos-related litigation. On September 26, 2006, the Bankruptcy Court approved a Reorganization Plan for the Company. Holders of the Old Common Stock (including the Plans) were permitted to vote on the Reorganization Plan, and individual participants in the Plans were similarly allowed to direct the voting of the Old Common Stock allocated to their accounts. The Reorganization Plan became effective on October 31, 2006, at which time the Old Common Stock was delisted from the New York Stock Exchange and all outstanding shares of the Old Common Stock were cancelled. On October 31, 2006, the Applicant issued the Warrants to stockholders (including the Plans) in full satisfaction of the Old Common Stock interests previously held by the stockholders. The Applicant represents that the Warrants do not constitute qualifying employer securities as defined in section 407(d)(5) of the Act. Each Warrant permits the holder to purchase a share of the New Common Stock issued by the Applicant at the price of $45.25 per share (the Strike Price). The Applicant represents that Warrants which are not exercised by their respective holders shall expire seven (7) years after their date of issuance.

3. The Applicant represents that, prior to September 29, 2000, participants in each of the Plans could elect to have all or a portion of their accounts invested in the Owens Corning Stock Fund (the Stock Fund), which consisted primarily of Old Common Stock. Matching contributions by the Applicant under each of the Plans that were made before September 29, 2000 were invested in the Stock Fund; in addition, 50 percent of the Applicant's profit-sharing contributions to the Plans made prior to that date were invested in the Stock Fund. The Stock Fund was closed to new investments as of September 29, 2000; after that date, participants in the Plans were no longer permitted to invest new contributions or to transfer their existing Plan balances into the Stock Fund.[6] However, participants in each of the Plans retained the right to transfer all or a portion of the amounts they had invested in the Stock Fund to any other investment fund available under the respective Plans. This transfer right ceased to apply as of October 31, 2006, when shares of the Old Common Stock were extinguished.

4. The Applicant represents that the Warrants are, by their terms, transferable. A market for the Warrants currently exists; the Applicant represents that, as of February 27, 2007, each participant in the Plans have been able to direct (and some have directed) the trustee of their respective Plans to sell the Warrants allocated to their accounts through the Plans' broker, Fidelity Brokerage Services LLC (Fidelity). Fidelity is not affiliated with the Applicant. Current trading of the Warrants occurs on the Over-the-Counter (OTC) market, and bid and ask prices for the Warrants on the OTC market are listed on a centralized,

[6] The Department expresses no opinion herein as to whether, on or before September 29, 2000, the fiduciaries of the Plans were in compliance with the general fiduciary responsibility provisions of Part 4 of Title I of the Act in connection with monitoring the investment options available to participants in the Plans, including the option to invest participant contributions in the Stock Fund.

electronic quotation service known as the Pink Sheets.[7] As of May 4, 2007, the Warrants were selling on the OTC market at $5.10–$5.15.[8] The Applicant represents that commissions and Securities and Exchange Commission (SEC) fees associated with the sale of the Warrants have been and will be paid by participants; the commissions are paid to Fidelity for execution of the trades. The Applicant further represents that the commission rate charged by Fidelity for real time trades of such securities is generally 2.9 cents per unit. In addition, as required by law, Fidelity has deducted the so-called ''SEC Fee'', currently in the amount of 0.00153%, from the cash proceeds of all the executed trades and submitted it to the SEC.

5. If the Department approves this exemption application, the Applicant represents that participants currently holding the Warrants will be permitted to exercise them to purchase shares of the New Common Stock, but not if the current market price of the New Common Stock remains below the Strike Price.[9] If a participant in one of the Plans determines to exercise the Warrants allocated to his or her account, funds will be transferred from the participant's other investment options under the Plan to purchase the New Common Stock.[10] At this particular time, the Applicant represents that there is no option that would permit a participant to invest in the New Common Stock.

6. In summary, the Applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because: (a) The Plans had no ability to affect the provisions of the Reorganization Plan approved by the Bankruptcy Court on September 26, 2006 pursuant to Chapter 11 of the Bankruptcy Code; (b) the acquisition and holding of the Warrants by the Plans occurred in connection with the Reorganization Plan, in which all holders of the Applicant's stock of the same class have been and will be treated similarly; (c) the Warrants were acquired automatically and without any action on the part of the Plans; (d) the Plans did not pay any fees or commissions in connection with the acquisition or holding of the Warrants; (e) the Plans will not pay any fees or commissions in connection with the exercise of the Warrants; and (f) all decisions regarding the exercise or other disposition of the Warrants have been and will be made by the individual participants of the Plans in whose accounts the Warrants were allocated, in accordance with the respective provisions of the Plans pertaining to the individually-directed investment of such accounts.

Notice to Interested Persons: Notice of the proposed exemption shall be given 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**. Comments and requests for a hearing are due forty-five (45) 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).

BSC Services Corp. 401(k) Profit Sharing Plan (the Plan)

Located in Philadelphia, PA

[Application No. D–11390]

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).[11]

Section I. Covered Transactions

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective April 27, 2006, to (1) The acquisition by the Plan of certain stock rights (the Rights) pursuant to a stock rights offering (the Offering) from First Bank of Delaware (the Bank), a party in interest and the parent company of BSC Services Corp. (BSC or the Applicant), which is the Plan sponsor as well as a party in interest with respect to the Plan; (2) the holding of the Rights by the Plan during the subscription period of the Offering; and (3) the disposition or exercise of the Rights by the Plan.

Section II. Conditions

This proposed exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following conditions:

(a) The Rights were acquired by the Plan pursuant to Plan provisions for the individually-directed investment of participant accounts.

(b) The Plan's receipt of the Rights occurred in connection with the Rights Offering made available to all shareholders of the Bank's common stock (the Bank Stock).

(c) All decisions regarding the holding and disposition of the Rights by the Plan were made in accordance with Plan provisions for the individually-directed investment of participant accounts by the individual participants whose accounts in the Plan received Rights in the Offering, and if no instructions were received, the Rights expired.

(d) The Plan's acquisition of the Rights resulted from an independent act of the Bank as a corporate entity, and all holders of the Rights, including the Plan, were treated in the same manner with respect to the acquisition, holding and disposition of such Rights.

(e) The Plan received the same proportionate number of the Rights as other owners of Bank Stock.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of April 27, 2006.

Summary of Facts and Representations

1. The Bank, which is located at 1000 Rocky Run Parkway, Wilmington, Delaware, is a full-service, State-chartered commercial bank that offers a variety of credit and depository banking services. The Bank's commercial loan services are primarily offered to individuals and business in the Delaware area. The Bank also makes short-term consumer loans through third-party servicers in various states and via the Internet, and it offers tax refund anticipation loans in numerous states. Moreover, the Bank offers credit and debit cards to customers nationally. The majority of loan balances from these national products are sold on a non-recourse basis.

The Bank's deposits are insured by the Federal Deposit Insurance Corporation (the FDIC). As a state

[7] The symbol for the Warrants, known as the Class A12–A in the Reorganization Plan, is OCWAZ.

[8] Based on the Applicant's representations, to the extent the Warrants are publicly traded on a national exchange to unrelated third parties, no exemptive relief is being provided by the Department.

[9] The New Common Stock currently trades on the New York Stock Exchange under the symbol OC. As of the close of trading on May 10, 2007, the share price of the New Common Stock stood at $31.69.

[10] The Applicant acknowledges that the appropriate fiduciaries of the Plans shall be responsible for monitoring the investment options available to participants in the Plans, and taking such action as they deem appropriate under the circumstances. For example, such action may include preventing participants from exercising the Warrants if the current market price for the New Common Stock is below the Strike Price, or causing the Plans to sell the Warrants in the event that it becomes clear that they would otherwise expire unexercised by participants.

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

chartered bank which is not a member of the Federal Reserve System, the Bank is subject to examination and comprehensive regulation by the Delaware State Banking Commissioner as well as by the FDIC.

As of December 31, 2006, the Bank had total assets of $123,913,000, total stockholders' equity of approximately $25,853,000, total deposits of approximately $92,636,000 and net loans receivable of approximately $67,697,000. The Bank's net income for the year ended December 31, 2005 was $3,434,000. The Bank Stock is listed for quotation on the OTC Bulletin Board under the symbol FBOD (OBB). It is represented that the Bank Stock is both an ''employer security'' [12] and a ''qualifying employer security.'' [13]

The Bank was spun off as an independent company from Republic First Bancorp., Inc. (RFB) through a distribution of the Bank's common stock on January 31, 2005. Prior to the spin-off, the Bank was a subsidiary of RFB, which was then a two-bank holding company. RFB's other subsidiary was, and still is, Republic First Bank (the PA Bank), a Pennsylvania chartered bank.

2. The Applicant is a wholly owned subsidiary of the Bank. The Applicant is the employer of employees who work for the Bank. The Applicant provides operations, accounting, compliance and human resource staffing to the Bank and the PA Bank at 1608 Walnut Street, Philadelphia, Pennsylvania.

3. FBD Capital Markets Group, Inc. (FBD Capital) is also a wholly owned subsidiary of the Bank. FBD Capital was recently formed to offer short-term, high-yield mezzanine financing primarily in Delaware. FBD Capital operates out of the same facility as the Applicant.

4. The Plan, which was formerly known as the ''Republic First Bank 401(k) Profit Sharing Plan,'' was established on September 1, 1991 by RFB. The Plan is a defined contribution plan that previously covered full-time employees of the Bank and the PA Bank. Effective January 1, 2005, the Applicant became the new Plan sponsor as part of an anticipated spin-off of the Bank, which occurred on February 1, 2005. The Plan was also adopted by the Applicant, the Bank, the PA Bank and RFB. As of May 23, 2007, the Plan had 229 participants and total assets of approximately $8.1 million.

In addition, the Plan is a participant-directed individual account plan intended to satisfy the requirements of section 404(c) of the Act. The Plan offers participants 67 funds and a personal brokerage account (the Personal Brokerage Account) in which participants can invest all or a portion of their account balances in Bank Stock. As of April 27, 2006, the Plan was the record holder of 58,161 shares of Bank Stock valued at $154,127 (or $2.65 per share) on such date, which were allocated to the Personal Brokerage Accounts of all of the Plan participants. At that time, the Bank Stock accounted for approximately 3.3 percent of the $4.6 million in total Plan assets and it represented approximately 0.007 percent of the 7,943,720 shares of total outstanding Bank Stock.

5. The Plan's trustees (the Trustees) are Harry Madonna, Chairman of the Board for the Bank, and Paul Frenkiel, Chief Financial Officer of the Bank. The Trustees also are members of the Plan Administrative Committee, which is the fiduciary responsible for Plan matters.

Further, the custodian (the Custodian) of the Plan is John Hancock Life Insurance Company, which is part of Manulife Financial. The Custodian is located at 200 Bloor Street, East Toronto, Ontario, Canada. The Custodian holds legal title to the Plan's assets and it executes investment directions in accordance with participants' written or electronic instructions. In offering a Personal Brokerage Account to each Plan participant, the Custodian partners with TRUSOURCE Trust Outsourcing Partners (Trusource) of Costa Mesa, California. TruSource administers each Personal Brokerage Account and partners with AmeriTrade, the designated broker (the Broker) for such accounts.

6. In an Offering Circular dated May 1, 2006 (the Offering Circular), the Bank announced a special Rights Offering. The Rights Offering would be an independent act of the Bank as a corporate entity under which all shareholders of Bank Stock, including the Plan, were to be treated in a like manner. The Rights Offering would allow the Bank to raise equity capital for the operation of FBD Capital. The Rights Offering would also afford its existing shareholders a preferential opportunity to subscribe for up to 3.4 million in new shares of Bank Stock and to maintain their proportionate ownership interests.

7. Holders of record of Bank Stock at 5 p.m. Eastern Daylight Saving Time on April 27, 2006 (the Record Date) each were entitled to receive a number of Rights determined by dividing (a) the number of shares of the Bank Stock owned by the shareholder by (b) 2.33639, except that, if the number so calculated included a fraction, the number of Rights the shareholder would receive was rounded down to the nearest whole number. Each Right consisted of a ''Basic Subscription Right'' and an ''Over-Subscription Right.'' The Basic Subscription Right entitled the holder to purchase one share of Bank Stock at a purchase price of $2.25 per share, which was determined by the Bank's Board of Directors. If the shareholder exercised all of his or her Basic Subscription Rights, the shareholder was entitled to exercise his/her Over-Subscription Right to purchase, for $2.25 per share, one additional share of Bank Stock for every share of Bank Stock to which the shareholder had subscribed. The Rights were not transferable.[14]

8. On May 8, 2006, all Plan participants (there were 210 at that time) were mailed: (a) A copy of the Offering Circular for the Bank; and (b) a letter from the Broker describing the procedures for participant directions with respect to the Rights Offering. Participants were required to call the toll-free number listed in the letter to direct the Broker either to exercise the Rights allocable to their Personal Brokerage Accounts or to opt out of the Rights Offering.

9. Plan participants were required to contact the Broker prior to 5 p.m. on June 19, 2006 (the Expiration Time). The Broker was responsible for exercising the Rights at the direction of each participant. In order for a participant's Rights to be exercised, RFB, the Subscription Agent, had to receive an election form from the Broker, together with payment for the shares which were to be purchased by the Expiration Time. Rights not exercised prior to the Expiration Time

[12] Under section 407(d)(1) of the Act, the term ''employer security'' means a security issued by an employer of employees covered by a plan, or by an affiliate of such employer.

[13] Under section 407(d)(5) of the Act, the term ''qualifying employer security'' means an employer security which is stock, a marketable obligation, or an interest in a publicly traded partnership.

[14] Among other things, a fiduciary of a plan is prohibited from allowing the plan to acquire any employer security which is not a ''qualifying employer security.'' Although the Rights constituted an ''employer security'' under section 407(d)(1) of the Act, inasmuch as they were issued by the Applicant, which is an employer of employees covered under the Plan, they did not represent a ''qualifying employer security'' under section 407(d)(5) of the Act. This is because the Rights were not stock, a marketable obligation or an interest in a publicly-traded partnership. Therefore, the Applicant has requested a retroactive administrative exemption from the Department with respect to the acquisition of the Rights by the Plan and the subsequent holding and exercise of the Rights by the Plan participants. If granted, the exemption would be effective as of April 27, 2006, the Record Date.

would, by their terms, terminate and have no value.

10. Thus, the Plan acquired the Rights pursuant to the Plan provisions for the individually-directed investment of participants' accounts. All decisions regarding the holding and disposition of the Rights by the Plan were made in accordance with these Plan provisions. The Plan participants were issued, and the Broker received from the Plan participants, a total of 24,893 Rights, of which 8,822 were exercised. This represented approximately 0.3 percent of the 3.4 million Rights that were issued and exercised for $2.25 per share. As noted above, those Rights not exercised expired. Of the total Rights issued and exercised, 2,347,272 Shares represented Basic Subscription Rights and 1,052,728 Shares were attributed to Over-Subscription Rights. The Rights were not listed for trading on any stock exchange or on the OTC Bulletin Board. The total number of shares of Bank Stock outstanding at the Expiration Time, as adjusted to give effect to the shares issued pursuant to the Rights Offering, was 11,343,720 shares.

The Bank compensated the Subscription Agent for fees generated in connection with the Rights Offering. Thus, no fees paid to the Subscription Agent were attributable to Plan assets. Although all shareholders of record were responsible for paying any other fees associated with the exercise of the Rights, the Subscription Agent waived all such fees.

11. For each Plan participant who directed the Broker to exercise Rights attributable to his or her Personal Brokerage Account, the funds which were needed to pay the $2.25 per share exercise price were obtained by either selling specific investments at the participant's direction or by using cash equivalents in such participant's account, again at the participant's direction. Moreover, a participant who, under the terms of the Plan, was eligible to elect to receive a taxable distribution from his or her Plan account, was permitted, under the terms of the Offering Circular, to direct the Broker to cause such participant to be substituted for the record holder of the Bank Stock held in the Plan and to exercise the Rights attributable to the Bank Stock the participant beneficially owned. This was only permissible to the extent the terms of the Plan permitted a distribution to a participant and would be treated as a taxable distribution of a portion of the participant's Plan account.

12. In summary, the Applicant represents that the transactions satisfied the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Rights were acquired by the Plan pursuant to Plan provisions for the individually-directed investment of participant accounts.

(b) The Plan's receipt of the Rights occurred in connection with the Rights Offering that was made available to all shareholders of Bank Stock.

(c) All decisions regarding the holding and disposition of the Rights by the Plan were made in accordance with Plan provisions for the individually-directed investment of participant accounts by the individual participants whose accounts in the Plan received Rights in the Offering, and if no instructions were received, the Rights expired.

(d) The Plan's acquisition of the Rights resulted from an independent act of the Bank as a corporate entity, and all holders of the Rights, including the Plan, were treated in the same manner with respect to the acquisition, holding and disposition of such Rights.

(e) The Plan received the same proportionate number of the Rights as other owners of Bank Stock.

Notice to Interested Persons: Notice of proposed exemption will be provided to all interested persons by first class mail within 30 days of publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on the proposed exemption. Comments are due within 60 days of the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M. Vaughan of the Department, telephone number (202) 693–8565. (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 26th day of June, 2007.

Ivan Strasfeld,

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

[FR Doc. E7–12672 Filed 6–29–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Proposed Information Collection Request of the ETA–5130 Benefit Appeals Report; Comment Request

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A); 3506 (b)(1)(2)(3)]. This program helps to ensure that requested data can be provided in the