Department of Justice sponsoring the collection: *Form Number:* 1122–0013. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 165 grantees of the Rural Program. The primary purpose of the Rural Program is to enhance the safety of victims of domestic violence, dating violence, sexual assault, stalking, and child victimization by supporting projects uniquely designed to address and prevent these crimes in rural jurisdictions. Grantees include States, Indian tribes, local governments, and nonprofit, public or private entities, including tribal nonprofit organizations, to carry out programs serving rural areas or rural communities.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the approximately 165 respondents (Rural Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Rural Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the data collection forms is 330 hours, that is 165 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 27, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–20377 Filed 9–2–08; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Henkemeyer* (D. Minn.), Civil Action No. 0:08–cv–05030–PJS–RLE, was lodged with the United States District Court for the District of Minnesota on August 27, 2008.

This proposed Consent Decree concerns a complaint filed by the United States against Gerome G. Henkemeyer, Henkemeyer Landfill, Inc., and Riley Bros. Construction, Inc. (collectively ''the Defendants'') pursuant to section 309(b) and (d) of the Clean Water Act (''CWA''), 33 U.S.C. 1319(b) and (d), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas, perform mitigation, and pay civil penalties.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Friedrich A.P. Siekert, Office of the United States Attorney for the District of Minnesota, 600 United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, and refer to *United States* v. *Henkemeyer* (D. Minn.), DJ #90–5–1–1–17415.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Minnesota, 202 United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html*.

Cherie Rogers,

Assistant Section Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. E8–20258 Filed 9–2–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11396, D–11424, D–11459 & D–11467]

Proposed Exemptions Involving *D–11396—Popular, Inc.; D–11424—Fidelity Brokerage Services, LLC; D–11459—Calpine Corporation and D–11467—Merritts Antiques, Inc. Employees Pension Plan*

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

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

Written Comments and Hearing Requests

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

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The application 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 exemption 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 exemption was 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 application contains representations with regard to the proposed exemption which is summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations.

Popular, Inc.,
Banco Popular de Puerto Rico, and
Popular Financial Holdings, Inc.
(collectively, the Applicants)
Located in the Commonwealth of Puerto Rico
[Exemption Application No. D–11396]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the U.S. Code) and in accordance with 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:

(a) The restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act shall not apply, effective November 23, 2005, to:

(1) The acquisition of stock rights (the Rights) by certain plans, described, below, in Section I(a)(1)(A) through (D) of this proposed exemption, in connection with an offering of such Rights (the Offering) by Popular, Inc. (Popular), a party in interest with respect to such plans:

(A) Popular, Inc. Retirement Savings Plan for Puerto Rico Subsidiaries (the Popular PR Plan);

(B) Banco Popular de Puerto Rico Savings and Stock Plan (the BPPR Savings Plan),

(C) Popular, Inc. U.S.A. Profit Sharing/401(k) Plan (the Popular USA Plan) [1],

(D) Popular Financial Holdings, Inc. Savings and Retirement Plan (the PFH Savings Plan), and

(2) The holding of the Rights by the certain plans, described, above, in Section I(a)(1)(A) through (D) of this proposed exemption, until the expiration of such Rights; provided that the conditions in Section II of this proposed exemption, as set forth below, are satisfied, and

(b) The sanctions resulting from the application of section 4975 of the U.S. Code, by reason of section 4975(c)(1)(A) through (E) shall not apply, effective November 23, 2005, to the acquisition of the Rights by certain plans, described, above, in Section I(a)(1)(C), and Section I(a)(1)(D) of this proposed exemption; [2] provided that the conditions in Section II of this proposed exemption, as set forth below, are satisfied.

Section II: Conditions

The relief proposed, herein, is conditioned upon adherence to the material facts and representations described herein and as set forth in the application file and upon compliance with the conditions, as set forth in this proposed exemption.

a. The receipt by each of the Participant Directed Plans of the Rights occurred in connection with the Offering made available by Popular on the same terms to all shareholders of the common stock of Popular (the Popular Stock);

b. The acquisition of the Rights by the Participant Directed Plans resulted from an independent act of Popular as a corporate entity, and all holders of the Rights, including the Participant Directed Plans, were treated in the same manner with respect to the acquisition of the Rights;

c. All shareholders of the Popular Stock, including the Participant Directed Plans received the same proportionate number of Rights based on the number of shares of Popular Stock held by such Participant Directed Plans;

d. The acquisition of the Rights by the Participant Directed Plans was made pursuant to provisions of each such plan for individually-directed investment of participant accounts (the Account(s));

e. All decisions regarding the Rights made by the Participant Directed Plans were made in accordance with the provisions of each such plan for individually-directed investment of participant Accounts, by the individual participants whose Accounts in each such plan received the Rights in connection with the Offering; and

f. Popular must refund to the Banco Popular de Puerto Rico Profit Sharing Plan and the Banco Popular de Puerto Rico Profit Restoration Plan (collectively, the P/S Plans), and to the Accounts of each of the participants in the Participant Directed Plans, the *pro rata* portion of a dealer manager/solicitation fee (the Fee) in the aggregate amount of $81,261.34. This Fee was received by Popular Securities, Inc., the co-dealer/manager of the Rights Offering, as a result of the exercise of the Rights by each such plan and by each such Account, and the payment by each such plan and each such Account of the subscription price of $21.00 per share for the Popular Stock. Furthermore, Popular must refund to each such plan and to each such Account an additional amount attributable to lost earnings experienced by each such plan and each such Account on the *pro rata* portion of such Fee, and interest on such lost earnings, for the period from December 19, 2005, to the date when Popular has refunded the *pro rata* portion of the Fee attributable to each such plan and each such Account, the lost earnings amount, plus interest on such lost earnings. For the purpose of calculating the lost earnings on the *pro rata* portion of the Fee attributable to each such plan and each such Account, plus interest, on such lost earnings, Popular will use the Online Calculator for the Voluntary Fiduciary Correction Program [3] that appears on the Web site of the Employee Benefits Security Administration.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of November 23, 2005, the date of the announcement of the Offering.

Summary of Facts and Representations (SFR)

1. Popular is a corporation organized under the laws of the Commonwealth of Puerto Rico. Popular is a diversified,

[1] The BPPR Savings Plan, the Popular PR Plan, the Popular USA Plan, and the PFH Savings Plan are referred to, herein, collectively, as the Participant Directed Plans.

[2] The Applicants represent that, because the fiduciaries for the BPPR Savings Plan, and the Popular PR Plan have not made an election under section 1022(i)(2) of the Act, whereby such plans would be treated as a trust created and organized in the United States for purposes of tax qualification under section 401(a) of the U.S. Code, that jurisdiction under Title II of the Act does not apply. Accordingly, the Department is not providing any relief for the prohibitions, as set forth in Title II of the Act, for the acquisition of the Rights by these plans.

[3] 70 FR 17516, April 6, 2005.

publicly owned bank holding company, registered under the Bank Holding Company Act of 1956, as amended, and, accordingly, is subject to the supervision and regulation of the Board of Governors of the Federal Reserve System. Popular is a full service financial services provider with operations in Puerto Rico, the United States, the Caribbean, and Latin America. As of September 30, 2005, Popular had consolidated total assets of $47.1 billion, total deposits of $22.6 billion, and stockholders' equity of $3.2 billion.

Principal subsidiaries of Popular include: (a) Popular Securities, Inc., a securities broker-dealer; (b) Popular International Bank, an international banking entity; (c) EVERTEC, Inc., a provider of electronic transaction, processing, and programming services; and (d) Banco Popular de Puerto Rico (BPPR), a banking subsidiary of Popular.

2. BPPR is a corporation which was organized under the laws of the Commonwealth of Puerto Rico in 1893. BPPR, the largest bank in Puerto Rico, offers retail and commercial banking services. As of September 30, 2005, BPPR had total assets of $25.4 billion, deposits of $14.2 billion, and stockholders' equity of $1.6 billion.

3. Popular Financial Holdings, Inc. (PFH) is a corporation organized under the laws of Delaware and is an indirect subsidiary of Popular. PFH is engaged in consumer lending services. As of September 30, 2005, PFH had total assets of $8.6 billion.

4. Popular sponsors two (2) of the Participant Directed Plans involved in the transactions for which an exemption has been requested. These two plans are described, as follows:

(a) The Popular PR Plan

The Popular PR Plan is a defined contribution profit sharing plan which includes a qualified cash or deferred arrangement intended to meet the requirements of Section 1165(e) of the Puerto Rico Internal Revenue Code of 1994, as amended (the PR Code). The Popular PR Plan was established for the exclusive benefit of the eligible employees and beneficiaries of Puerto Rican subsidiaries of affiliates of Popular. The Popular PR Plan is not intended to meet, and has never in practice met, the requirements of Section 401(a) of the U.S. Code. The Popular PR Plan is subject to Title I of the Act.

The Popular PR Plan, allows participants to direct investments of their own contributions and employer contributions into several investment alternatives, including Popular Stock.

The Popular PR Plan is funded through a trust. The trustee of the Popular PR Plan is BPPR. The Popular Puerto Rico Subsidiaries Benefits Committee (the PR Benefits Committee), a committee appointed by Popular, is the Plan Administrator of the Popular PR Plan.

As of November 7, 2005, (the Record Date), the Popular PR Plan had approximately 3,000 participants and total assets of $102,281,000. As of the Record Date, the shares of Popular Stock held by the Popular PR Plan were valued at $56,542,469 and comprised approximately fifty-five percent (55%) of the total assets of the Popular PR Plan. These shares represented approximately one percent (1%) of the total shares of Popular Stock outstanding as of the Record Date.

Effective as of January 1, 2006, the Popular PR Plan changed its name to the Popular, Inc. Puerto Rico Savings and Investment Plan.

(b) The Popular USA Plan

The Popular USA Plan is a defined contribution profit sharing plan which includes a qualified cash or deferred arrangement intended to meet the requirements of Section 401(k) of the U.S. Code. The Popular USA Plan was adopted for the exclusive benefit of employees and their beneficiaries of Popular's indirect subsidiary, Banco Popular North America (BPNA), and certain of its affiliates. The Popular USA Plan is not intended to meet the requirements of Section 1165(a) of the PR Code. The Popular USA Plan is subject to Title I and Title II of the Act.

The Popular USA Plan allows participants to direct investments of their own contributions and a portion of the employer contributions into several investment alternatives, including Popular Stock. The employer bonus matching contributions are invested in Popular Stock.

The Popular USA Plan is funded through a trust of which BPNA is the trustee. The Popular USA Benefits Committee, a committee appointed by Popular, is the Plan Administrator of the Popular USA Plan.

As of the Record Date, the Popular USA Plan had approximately 2,400 participants and total assets of $59,700,000. The shares of Popular Stock held by the Popular USA Plan were valued at $31,748,657, as of the Record Date, and comprised approximately fifty-three percent (53%) of the total assets in the Popular USA Plan. These shares represented less than one percent (<1%) of the total shares of Popular Stock outstanding as of that date.

Effective as of April 1, 2006, the Popular USA Plan changed its name to Popular, Inc. USA 401(k) Savings and Investment Plan.

5. BPPR sponsors one (1) of the Participant Directed Plans involved in the transactions for which an exemption has been requested. The BPPR Savings Plan is a profit sharing plan with a qualified cash or deferred arrangement intended to meet the requirements of Section 1165(e) of the PR Code covering employees of BPPR who are residents of Puerto Rico. This plan is not intended to meet, and has never in practice met, the requirements of Section 401(a) of the U.S. Code. This plan is subject to Title I of the Act.

The BPPR Savings Plan allows participants to direct investments of their own contributions into several investment alternatives, including Popular Stock. All employer contributions are invested in Popular Stock.

The BPPR Savings Plan is funded through a trust. BPPR is the trustee. BPPR also acts as custodian of this plan's assets, holding legal title to such assets. The PR Benefits Committee is the Plan Administrator of the BPPR Savings Plan.

As of the Record Date, the BPPR Savings Plan had approximately 7,050 participants and total assets of $68,794,200. As of the Record Date, the shares of Popular Stock held by this plan were valued at $65,569,487 and comprised approximately ninety-five percent (95%) of the total assets in such plan. These shares represented 1.2 percent (1.2%) of the total shares of Popular Stock outstanding as of that date.

Effective as of July 1, 2006, the BPPR Savings Plan merged with and into the Popular PR Plan which on January 1, 2006, had changed its name to the Popular, Inc. Puerto Rico Savings and Investment Plan, as discussed above in paragraph 4(a) of the SFR of this proposed exemption.

6. PFH sponsors one (1) of the Participant Directed Plans, which is involved in the transactions for which an exemption has been requested. The PFH Savings Plan is a defined contribution plan which includes a qualified cash or deferred arrangement intended to meet the requirements of Section 401(k) of the U.S. Code. The PFH Savings Plan was adopted for the exclusive benefit of the employees and their beneficiaries of PFH and its subsidiaries. The PFH Savings Plan is not intended to meet the requirements of Section 1165(a) of the PR Code. The PFH Savings Plan is subject to Title I and Title II of the Act.

The PFH Savings Plan allows participants to direct investments of their own contributions and employer contributions into several investment alternatives, including Popular Stock.

The PFH Savings Plan is funded through two trusts of which Banker's Trust and Delaware Charter Guarantee & Trust Company d/b/a Principal Trust Company serve as the trustees. PFH is the Plan Administrator of the PFH Savings Plan.

As of the record date, the PFH Savings Plan had approximately 2,000 participants and total assets of $35,200,000. As of the same date, the shares of Popular Stock held by the PFH Savings Plan were valued at $2,793,982 and comprised approximately eight percent (8%) of the total assets of the PFH Savings Plan. These shares represented less than one percent (<1%) of the total shares of Popular Stock outstanding as of that date.

Effective as of April 1, 2006, the PFH Plan merged with and into the Popular USA Plan, which had changed its name on the same date to the Popular, Inc. USA 401(k) Savings and Investment Plan, described in paragraph (4)(b), above, of the SFR of this proposed exemption.

7. On November 23, 2005, Popular announced an offering of up to 10,500,000 shares of Popular Stock to shareholders of record of such stock, as of the close of business on the Record Date, November 7, 2005, pursuant to the grant of Rights to such shareholders to acquire Popular Stock. Shareholders did not have to pay any amount to receive such Rights. As of the Record date, Popular had 10,856 shareholders of record. As of the Record Date, there were 267,427,050 shares of Popular Stock outstanding.

The authorized capital stock of Popular consists of 470 million shares of common stock, with a par value $6.00 per share, and 30 million shares of preferred stock, without a par value per share. The Popular Stock is traded on the NASDAQ Stock Market under the symbol of BPOP. It is represented that the last reported sale price of the Popular Stock on November 22, 2005, before the Offering was $22.59 per share.

The Rights were non-transferable and were not evidenced by certificates. No fractional Rights were issued. The number of Rights granted to each shareholder was rounded up to the next whole number. There was no market for the Rights.

For each twenty-six (26) shares of Popular Stock held, each shareholder received one (1) right to acquire one (1) share of Popular Stock. Each shareholder was entitled to subscribe for all or any portion of the Popular Stock underlying each shareholder's Rights. Each shareholder who subscribed for the full number of shares of Popular Stock received an oversubscription right to subscribe for additional shares of Popular Stock that were not otherwise subscribed for by other shareholders. It is represented that if insufficient shares of the Popular Stock were available to satisfy fully all elections, the available shares were prorated among those who elected to exercise the oversubscription rights. In November 2005, it was anticipated that all or a portion of the Popular Stock not subscribed for in the Rights Offering would be offered to the public through an underwritten public offering. However, it is represented that all of the Popular Stock available for purchase through exercise of the Rights were subscribed for by the holders of such Rights.

Even though holders of the Rights could exercise the Rights at any time between November 23, 2005, and December 19, 2005, the exercise of the Rights was effective as of December 19, 2005. After December 19, 2005, the Rights expired with no value.

To exercise the Rights, shareholders had to return a Subscription Rights Order Form to Mellon Bank, N.A., the subscription agent, along with payment in full by either a cashier's check or official check of the initial subscription price of $21.00 per share (the Initial Subscription Price), as determined by the Board of Directors of Popular. It is represented that as a public offering did not occur within thirty (30) calendar days after the end of the Rights Offering, the actual subscription price was the *lesser of*: (i) the Initial Subscription Price, or (ii) the average closing price at 4 p.m., New York City time, of Popular Stock for the five (5) trading days up to and including the expiration date of the Rights offering on December 19, 2005. The closing prices for the Popular Stock for the five (5) trading days, December 13, 14, 15, 16, 19, 2005, respectively, were $21.60; $21.69; $21.52; $21.32; and $21.13 per share. The average closing price was $21.45 per share. It is represented that if the actual subscription price were lower than the Initial Subscription Price, the difference would be refunded, without interest, to the shareholder.

Shareholders that held Popular Stock through the book entry system of the Depository Trust Company received credit for the Popular Stock purchased through the exercise of the Rights on December 29, 2005. Shareholders holding physical certificates received delivery of the Popular Stock purchased through the exercise of the Rights during January 2006. The Popular Stock acquired upon exercise of the Rights did not have any restriction on transferability.

In connection with the subscription Offering, UBS Securities LLC (UBS) and Popular Securities, Inc. (Popular Securities), an affiliate of Popular, acting as dealer managers, received a Fee in connection with solicitation services equal to 2.5% of the aggregate subscription price per share for shares issued pursuant to the Offering.[4] It is represented that UBS and Popular Securities split such Fee on a fifty/fifty basis. In addition, Popular reimbursed the dealer managers up to $25,000 for expenses incurred in connection with the Offering.

As a condition of this exemption, Popular must refund to the P/S Plans and to the Accounts of each of the participants in the Participant Directed Plans, the *pro rata* portion of the Fee, a dealer manager/solicitation fee, in the aggregate amount of $81,261.34. This Fee was received by Popular Securities, Inc., the co-dealer/manager of the Rights Offering, as a result of the exercise of the Rights by each such plan and by each such Account, and the payment by each such plan and each such Account of the subscription price of $21.00 per share for the Popular Stock. Furthermore, Popular must refund to each such plan and to each such Account an additional amount attributable to lost earnings experienced by each such plan and each such Account on the *pro rata* portion of such Fee, and interest on such lost earnings, for the period from December 19, 2005, to the date when Popular has refunded the *pro rata* portion of the Fee attributable to each such plan and each such Account, the lost earnings amount, plus interest on such lost earnings. For the purpose of calculating the lost earnings on the *pro rata* portion of the Fee attributable to each such plan and each such Account, plus interest, on such lost earnings, Popular will use the Online Calculator for the Voluntary Fiduciary Correction Program [5] that appears on the Web site of the Employee Benefit Security Administration.

In addition, the Applicants have represented that in the future, Popular, BPPR, and PFH will request a prohibited transaction exemption from the Department prior to entering into any transaction in which a fee will be paid to an affiliate of Popular, BPPR,

[4] The Department, herein, is not providing any relief for the receipt of any fees by Popular or any of its affiliates.

[5] 70 FR 17516, April 6, 2005.

and/or PFH by any plan sponsored by Popular, BPPR, and/or PFH.

8. Each of the Applicants, as employers any of whose employees are covered by one or more of the Participant Directed Plans, subject to Title I of the Act, and as fiduciaries of one or more of the Participant Directed Plans, are parties in interest with respect to each such plan, pursuant to section 3(14)(C) and section 3(14)(A) of the Act, respectively. In addition, the Applicants, as employers any of whose employees are covered by one or more of the Participant Directed Plans, which are subject to Title II of the Act, and as fiduciaries with respect to one or more of such Participant Directed Plans are disqualified persons with respect to each such plan, pursuant to section 4975(e)(2)(C) and section 4975(e)(2)(A) of the U.S. Code, respectively. Further, Popular as the owner of BPPR and the indirect owner of PFH is a party in interest, pursuant to section 3(14)(E) of the Act and a disqualified person, pursuant to section 4975(e)(2)(E) of the U.S. Code, with respect to the Participant Directed Plans.

9. The Popular Stock and the Rights satisfy the definition of ''employer securities,'' as set forth under section 407(d)(1) of the Act.[6] The Popular Stock satisfies the definition of a ''qualifying employer security,'' as set forth in section 407(d)(5) of the Act.'' However, the Rights do not satisfy the definition of ''qualifying employer securities,'' as defined under section 407(d)(5) of the Act.[7] Under section 407(a)(1) of the Act, a plan may not acquire or hold any ''employer security'' which is not a ''qualifying employer security.'' Further, section 406(a)(1)(E) of the Act prohibits the acquisition, on behalf of a plan, of any ''employer security'' in violation of section 407(a) of the Act. Further, section 406(a)(2) of the Act prohibits a fiduciary who has authority or discretion to control or manage the assets of a plan to permit the plan to hold any ''employer security'' that violates section 407(a) of the Act.

The Applicants have requested retroactive relief, from the prohibitions, as set forth in Title I of the Act, for the acquisition and holding of the Rights by the Participant Directed Plans.

The Applicants have also requested retroactive relief from the prohibitions, as set forth in section 4975(c)(1)(A) through (E) of the U.S. Code, for the acquisition of the Rights by the Popular USA Plan and the PFH Saving Plan.

10. With regard to the Rights acquired by the Participant Directed Plans, it is represented by plan design that the participants of the Participant Directed Plans controlled the assets in their Accounts in such plans and that no plan fiduciary had the authority to exercise any control over such assets. Therefore, upon receipt of the Rights by the Participant Directed Plans, the Rights were allocated to the Accounts of the participants in such plans in proportion to the Popular Stock beneficially owned by each such Account. In addition, it is represented that each participant in the Participant Directed Plans was given the opportunity to exercise the Rights. Accordingly, each participant was able to make an independent decision whether to liquidate his or her Account assets to purchase additional shares of Popular Stock.[8]

All shareholders, including the participants in the Participant Directed Plans, could exercise the Rights through the close of business (4 p.m., San Juan, Puerto Rico time) on December 19, 2005. This deadline for exercising the Rights was implemented by Popular as the issuer of the Rights. Neither the shareholders nor the participants in the Participant Directed Plans had any voice in setting the deadline with respect to the Rights.

On December 19, 2005, the necessary funds for the exercise of the Rights were transferred by the trustees to the subscription agent for the purchase of the Popular Stock. Upon receipt of the new shares, the newly received shares were allocated to the Account of each participant in the respective plan.

11. Under the Rights Offering, shareholders were entitled to subscribe to purchase additional shares of Popular Stock up to the number of shares that were not purchased by the other shareholders (the Oversubscription Privilege). In order to participate in the Oversubscription Privilege, every Right issued on every share of Popular Stock held in the Participant Directed Plans would have had to have been exercised. Because this did not occur, the Oversubscription Privilege was not available to the Participant Directed Plans.

12. It is represented that the acquisition and holding of the Rights by the Participant Directed Plans, pursuant to the Offering, was in the interests of and beneficial to such plans and to the participants and beneficiaries of such plans. In this regard, the Participant Directed Plans were given an opportunity to purchase additional shares of the Popular Stock at a discount from the market price.

13. It is represented that the acquisition and holding of the Rights by the Participant Directed Plans was protective of such plans and of the participants and beneficiaries of such plans in that all of the shareholders of Popular Stock, including the Participant Directed Plans, were treated in a similar manner with respect to the Rights.

14. It is represented that the acquisition and holding of the Rights by the Participant Directed Plans was feasible, in that the Offering was a one-time transaction, and all shareholders of the Popular Stock, including the Participant Directed Plans, were treated in the same manner with respect to the acquisition and holding of the Rights. With regard to the fact that the subject transactions were consummated prior to obtaining an exemption due to the timing of the Rights Offering, it is represented that the fiduciaries were required to engage in the Rights Offering before requesting the proposed exemption, because such fiduciaries had no control over the timing of the transactions.

Popular will bear all costs of the exemption application, and of the notification of interested persons.

15. In summary, the Applicants represent that the proposed transactions satisfy the statutory requirements for an exemption under section 408(a) of the Act and section 4975(c)(2) of the U.S. Code because:

a. The receipt by each of the Participant Directed Plans of the Rights occurred in connection with the Offering made available by Popular on the same terms to all shareholders of the Popular Stock;

b. The acquisition of the Rights by the Participant Directed Plans resulted from an independent act of Popular as a corporate entity, and all holders of the Rights, including the Participant Directed Plans, were treated in the same manner with respect to the acquisition of the Rights;

[6] Section 407((d)(1) of the Act defines the term, ''employer security,'' as ''a security issued by an employer of employees covered by the plan, or by an affiliate of such employer.''

[7] Section 407(d)(5) of the Act defines the term, ''qualifying employer security,'' as an employer security which is stock, a marketable obligation (as defined in subsection (e)), or an interest in a publicly traded partnership.

[8] The Applicants initially requested an administrative exemption from the prohibitions, as set forth in Title I and Title II of the Act, as applicable, for the exercise of the Rights by the Participant Directed Plans and the P/S Plans. Subsequently, the Applicants withdrew the request for such administrative exemption and represented that they would rely on the relief provided by the statutory exemption, pursuant to section 408(e) of the Act for such transactions. The Department is offering no view, as to whether the Applicants have satisfied the requirements of the statutory exemption provided in section 408(e) of the Act. Further, the Department, herein, is not providing any relief with respect to the exercise of the Rights by the Participant Directed Plans and the P/S Plans.

c. All shareholders of the Popular Stock, including the Participant Directed Plans, received the same proportionate number of Rights;

d. All decisions regarding the acquisition and holding of the Rights by the Participant Directed Plans were made in accordance with the provisions of each such plan for individually directed investment of participant Accounts, by the individual participants whose Accounts in each such plan received the Rights in connection with the Offering; and

e. Popular will refund to the P/S Plans and to the Accounts of each of the participants in the Participant Directed Plans, the *pro rata* portion of the Fee in the aggregate mount of $81,261.34 received by Popular Securities, Inc., as a result of the exercise of the Rights by each such plan and by each such Account, and the payment by each such plan and each such Account of the subscription price of $21.00 per share for the Popular Stock. Furthermore, Popular will refund to each such plan and to each such Account an additional amount attributable to lost earnings experienced by each such plan and each such Account on the *pro rata* portion of such Fee, and interest on such lost earnings, for the period from December 19, 2005, to the date when Popular has refunded the *pro rata* portion of the Fee attributable to each such plan and each such Account, the lost earnings amount, plus interest on such lost earnings.

Notice To Interested Persons

Those persons who may be interested (the Interested Persons) in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include:

(1) All participants in the Participant Directed Plans at the time of the transactions for which relief is proposed (including former employees with vested account balances in those plans);

(2) all retirees and beneficiaries currently receiving benefits from the Participant Directed Plans;

(3) all employers with employees who participated in the Participant Directed Plans at the time of the transactions for which relief is proposed; and

(4) all the fiduciaries of the Participant Directed Plans.

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

The Department must receive all written comments and requests for a hearing no later than thirty (30) days from the last date of the mailing of copies of the Notice and copies of the Supplemental Statement to all Interested Persons.

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

Fidelity Brokerage Services, LLC (FBS), Fidelity Management Corporation (together Fidelity) Located Boston, Massachusetts [Application No. D–11424]

Proposed Exemption

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

Section I: Covered Transactions

Effective (the date the final exemption is published in the **Federal Register**), the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA, and the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an individual retirement account or annuity pursuant to section 408(e)(2)(A) of the Code, of a Coverdell education savings account pursuant to section 530(d) of the Code, of a Archer medical savings account pursuant to section 220(e)(2) of the Code, or of a health savings account pursuant to section 223(e)(2) of the Code, by reason of section 4975(c)(1)(D), (E), and (F) of the Code, shall not apply to the receipt of an Applicable Benefit by an individual for whose benefit a Covered Plan is established or maintained, or by his or her Family Members, with respect to a Tiered Product, pursuant to an arrangement offered by Fidelity under which the Account Value of the Covered Plan is taken into account for purposes of determining eligibility to receive such Applicable Benefit, provided that each condition of Section II of this exemption is satisfied.

Section II: Conditions

(a) The Covered Plan whose Account Value is taken into account for purposes of determining eligibility to receive the Applicable Benefit under the arrangement is established and maintained for the exclusive benefit of the participant covered under the Covered Plan, his or her spouse, or their beneficiaries.

(b) The Applicable Benefit with respect to the Tiered Product must be of the type that Fidelity itself could offer consistent with all applicable federal and state banking laws and all applicable federal and state laws regulating broker-dealers.

(c) The Applicable Benefit with respect to the Tiered Product must be provided by Fidelity or its affiliate in the ordinary course of its business as a bank or broker-dealer to customers of Fidelity who qualify for such arrangement, but who do not maintain Covered Plans with Fidelity or its affiliate.

(d) For purposes of determining eligibility to receive the Applicable Benefit, the Account Value required by Fidelity for the Covered Plan is as favorable as any such requirement based on the value of any type of account used by Fidelity to determine eligibility to receive the Applicable Benefit.

(e) The rate of interest paid with respect to any assets of the Covered Plan invested in a Tiered Interest Product is reasonable.

(f) The combined total of all fees for the provision of services to the Covered Plan is not in excess of reasonable compensation within the meaning of section 4975(d)(2) of the Code and section 408(b)(2) of ERISA.

(g) The investment performance of the Covered Plan's investment(s) is no less favorable than the investment performance of an identical investment(s) that could have been made at the same time by a customer of Fidelity who is not eligible for (or who does not receive) any Applicable Benefit.

(h) The Applicable Benefits offered with respect to any Tiered Product under the arrangement to a Covered Plan customer must be the same as is offered by Fidelity with respect to such Tiered Product to non-Covered Plan customers of Fidelity having the same aggregate Account Value.

(i) If the Covered Plan is established at a broker-dealer or bank that is unrelated to Fidelity, the assets of the Covered Plan must be custodied with Fidelity and at the time the Covered Plan is established, disclosures must be made to the owner of the Covered Plan specifying that under the arrangement, services are being provided by Fidelity to the Covered Plan.

III. Definitions

(a) The term ''Fidelity'' means Fidelity Brokerage Services LLC (FBS) or any of its affiliates. An ''affiliate'' of Fidelity Brokerage Services LLC

includes any person directly or indirectly controlling, controlled by, or under common control with FBS. The term control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(b) The term ''Covered Plan'' means a plan sponsored by Fidelity or a plan with respect to which Fidelity maintains custody of its assets, and is an Individual Retirement Plan or other savings account described in section III(c), or a Keogh Plan described in section III(d).

(c) The term ''Individual Retirement Plan'' means an individual retirement account (''IRA'') described in Code section 408(a), an individual retirement annuity described in Code section 408(b), a Coverdell education savings account described in section 530 of the Code, an Archer MSA described in section 220(d) of the Code, or a health savings account described in section 223(d) of the Code. For purposes of this exemption, the term Individual Retirement Plan shall not include an Individual Retirement Plan which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

(d) The term ''Keogh Plan'' means a pension, profit-sharing or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in section 401(c) of the Code. For purposes of this exemption, the term Keogh Plan shall not include a Keogh Plan which is an employee benefit plan covered by Title I of ERISA.

(e) The term ''Account Value'' means the dollar value of investments in cash or securities held in the account for which market quotations are readily available. For purposes of this exemption, the term ''cash'' shall include (without limitation) savings accounts that are federally-insured and deposits as that term is defined in section 29 CFR Section 2550.408b–4(c)(3). The term ''Account Value'' shall not include investments in securities that are offered by Fidelity exclusively to Covered Plans.

(f) The term ''Tiered Product'' means an arrangement that is a ''Tiered Interest Product'' or a ''Tiered Loan Product.''

(g) The term ''Tiered Interest Product'' means a bank deposit, an arrangement for payment of interest on free cash held in a brokerage account, or any other arrangement under which assets in an individual's account that is eligible for the arrangement (including Covered Plans) are invested, and with respect to which interest is paid at a specified rate based on the aggregate amount of the accounts maintained with Fidelity by an individual and by his or her Family Members that are eligible to be taken into account for purposes of the arrangement, including the Account Value of the Covered Plans.

(h) The term ''Tiered Loan Product'' means any arrangement for the extension of credit to an individual, with respect to which the interest and/or Loan Expenses required to be paid are reduced to a specified rate or amount based on the aggregate amount of the accounts and other financial relationships of the individual (and his or her Family Members) eligible to be taken into account for purposes of the arrangement, including the Account Value of the Covered Plans.

(i) The term ''Loan Expenses'' means application fees, points, attorneys' fees, appraisal fees, title insurance, and any other fees or costs that an individual is required to pay in connection with the origination or maintenance of an extension of credit pursuant to a Tiered Loan Product.

(j) The term ''Applicable Benefit'' means: (i) in the case of a Tiered Interest Product, an increase in the interest paid on an account established or maintained by an individual or any of his or her Family Members (including, in either case, through a Covered Plan); and (ii) in the case of a Tiered Loan Product, a reduction in the interest and/or Loan Expenses that an individual or any of his or her Family Members is required to pay.

(k) The term ''Family Members'' means beneficiaries of an individual for whose benefit the Covered Plan is established or maintained who would be members of the family as that term is defined in Code Section 4975(e)(6), or a brother, a sister, or spouse of a brother or sister.

EFFECTIVE DATE: If granted, this exemption will be effective as of (the date of publication of the final exemption in the **Federal Register**).

Summary of Facts and Representations

1. FBS is a limited liability company with its principal office located in Boston, Massachusetts. FBS is wholly owned by FMR Corp. which is the parent company of the group of entities that together constitute Fidelity Investments (FBS and its affiliates are collectively referred to as Fidelity.) Fidelity is a financial services company that provides investment management, custody, brokerage, and other services to a wide variety of individuals and entities, including IRAs and other accounts and plans subject to Section 4975 of the Code and/or ERISA. Fidelity has approximately $1.7 million trillion assets under administration.

2. PTE 93–33 as amended (64 FR 11044, March 8, 1999), provides relief from the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of sections 4975(a) and (b), 4975(c)(3) and 408(e)(2) of the Code by reason of section 4975(c)(1)(D), (E) and (F) of the Code, and permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained or by members of his or her family, from a bank pursuant to an arrangement in which the account balance of the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided the conditions of the exemption are met. PTE 93–33 permitted banks to count IRAs and Keogh Plan established and maintained at the bank to determine a customer's eligibility to receive reduced or not cost services. Under PTE 93–33, as amended, banks are permitted to offer its customers only those services that may be offered by banks under applicable federal and state banking laws.[9] In the case where the service is offered by an affiliate of the bank, the service must be of the type that the bank itself could offer customers.

PTE 97–11 as amended, (67 FR 76425, December 12, 2002) permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained or by members of his or her family, from a broker-dealer registered under the Securities Exchange Act of 1934 pursuant to an arrangement in which the account value of, or the fees incurred for services provided to, the IRA or Keogh Plan is/are taken into account for purposes of determining eligibility to receive such services,

[9] In the notice of proposed exemption for PTE 93–2 (PTE 93–33 subsequently amended PTE 93–2) the following examples of relationship banking services were listed: free checking services, discounted safe deposit box rents, or free loan closing costs. (52 FR 8365 (February 28, 1992)). In addition, the Department notes that a bank may offer other services or benefits to customers as part of its relationship banking program. For example, under PTE 93–33 a bank may offer its relationship banking customers a higher interest rate on their investments, provided the conditions of the exemption are met.

provided that certain conditions are met. Under PTE 97–11 relief is provided from the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of sections 4975(a) and (b), 4975(c)(3) and 408(e)(2) of the Code by reason of section 4975(c)(1)(D), (E) and (F) of the Code. PTE 97–11 limits the services that may be offered by broker-dealers under a relationship brokerage program to those services that the broker-dealer itself may offer consistent with federal and state laws regulating broker-dealers.[10] Furthermore, in those cases where the services are provided by an affiliate of the broker-dealer, the service must the type that the broker-dealer itself could offer customers.

3. Fidelity seeks an exemption that would allow the balance in a customer's Covered Plan to be taken into account in setting the interest rate earned on deposits or other similar investments of that person and family members. Similarly, the requested exemption would allow such person's Covered Plan balance to be taken into account in setting the interest or expenses to be charged on a loan to such person or any of the eligible relatives. The applicant represents that the exemption is necessary and appropriate because if the exemption is granted, Covered Plans would be able to receive favorable interest rates or reductions in borrowing costs based on the total amount that an individual and certain members of his or her family have in various relationships with FBS and its affiliates.

These arrangements are similar to those contemplated in PTEs 93–33 and 97–11. However, Fidelity does not believe that the arrangement described in its application falls within the relief provided by PTEs 93–33 or 97–11 because its arrangement involves the payment of enhanced rates of interest on deposits or the charging of reduced rates of interest on loans would constitute ''the receipt of services at reduced or no cost'' within the meaning of the class exemptions.[11] In addition, Fidelity requests exemptive relief to permit plans that are outside the term ''IRA'' as defined in PTEs 93–33 and 97–11, to engage in the covered transactions.

4. The transaction covered by the proposed exemption would apply to a plan sponsored by Fidelity or a plan to which Fidelity maintains custody of its assets, and is an IRA or other savings account as described in section III(c) of the exemption, or a Keogh Plan described in section III(d) of the exemption. Under section III(c) of the exemption, the term IRA or other savings account is defined as IRAs described in section 408(a) of the Code, Individual Retirement Annuities described in section 408(b) of the Code, Archer Medical Savings Accounts described in section 220(d) of the Code, health savings accounts described in section 223(d) of the Code, Coverdell education savings account described in section 530 of the Code. However, the relief provided by the exemption, if granted, does not apply to an IRA that is an employee benefit plan that is covered by Title I of ERISA except for those IRAs that are part of a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

Under section III(d), the term Keogh means a pension, profit-sharing or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in section 401(c) of the Code. The relief provided by the exemption, if granted, does not apply to a Keogh Plan which is an employee benefit plan covered by Title I of ERISA.

Fidelity proposes to take into account the Account Value of the assets of Covered Plans of a customer or Family Members in calculating a customer's eligibility to receive Tiered Interest Products. In addition to situations in which the customer establishes the Covered Plan with Fidelity, Fidelity requests that the exemption permit Fidelity to take into account the Account Value of a Covered Plan that is established with an unrelated bank or broker-dealer, and is custodied with Fidelity. For example, an individual may establish an IRA with a broker-dealer that is unaffiliated with Fidelity under an arrangement which specifies that Fidelity will act as clearing broker for the account and will have custody of assets of the IRA. In such a case, the IRA and IRA owner may not be in privity of contract with Fidelity, but, under its agreement with the unaffiliated broker-dealer, Fidelity would be providing services to the IRA. Fidelity represents that disclosures provided to the IRA owner made by the unaffiliated broker would clearly specify the arrangement that services are being provided by Fidelity. Further, Fidelity's records would identify each such IRA and indicate that such brokerage and custodial services are being performed for the benefit of such IRA. Fidelity states there would be a significant relationship between Fidelity and the IRA. Such arrangements would operate under the exemption as arrangements involving those Covered Plans that are established directly with Fidelity.

5. According to Fidelity, offering tiered interest rate arrangements to customers who have a variety of relationships with a financial institution, have become a standard practice. Under a tiered interest rate arrangement, the total amount of all of the relationships that the individual and his or her eligible family members have with the financial institution is determined, and the rate of interest paid with respect to the individual's investment in any specified interest-bearing product (*e.g.*, a CD or other deposit, or a free credit balance arrangement) will increase, at certain breakpoints, based on that total amount. The relationships taken into account in determining that total amount may include, for example, trust, custody, or brokerage accounts with the institution, loans borrowed from the institution, or bank deposits with the institution.

Fidelity offers the following example of a tiered arrangement: (a) If the total amount of the relationships that an individual and his or her eligible family members have with the financial institution is less than $100,000, the interest rate paid on amounts held in one of those accounts and invested in a specific type of CD may be 2.5%; (b) if the total amount is at least $100,000 but less than $250,000, the interest rate may be 3.0%; (c) if the total amount is at least $250,000 but less than $1 million, the interest rate may be 3.5%; and (d)

[10] In the notice of proposed exemption for PTE 97–11 (61 FR 39996 (July 31, 1996), the following examples of relationship brokerage services were listed: financial planning services, direct deposit/debit and automatic fund transfer privileges, enhanced account statements, toll-free access to client service center, check writing privileges, debit/credit cards, special newsletter and reduced brokerage and asset management fees. In addition, the Department notes that a broker-dealer may offer its customers additional services and benefits as part of its relationship brokerage program. For example, under PTE 97–11, a broker-dealer may offer its relationship brokerage customers a higher interest rate on their investments, provided the conditions of the exemption are met.

[11] In this regard, both of the Class Exemptions define the term ''service'' to include incidental products of a de minimus value which are directly related to the provision of services covered by the exemption. It is noted that in footnote 26 of the Summary of Facts and Representations related to a recently proposed exemption sought by Citigroup, Inc. (Application No. D–11417, 72 FR 207, p 60905 (Oct. 26, 2007)), the Department indicated that offering a higher interest rate on investments and other benefits could fall within the Class Exemptions. Fidelity does not believe it can reasonably rely on this notation and requests this exemption.

if the total amount is $1 million or greater, the interest rate may be 4.0%.

6. Fidelity states that tiered interest rate arrangements have become prevalent in, *e.g.*, savings, money market, and checking vehicles because they provide substantial benefits to both the financial institutions that offer them and the individuals who take advantage of them. From the perspective of the financial institution, tiered interest rate arrangements allow the business to offer incentives to individuals to consolidate assets at that institution and to reward an individual for making that decision. From the perspective of the customer, the institution can reward the individual as the relationship grows. Amounts held in a variety of accounts may earn more favorable rates of interest through investment in the tiered interest products than would be earned if the individual's accounts were spread among various financial institutions. If these tiered arrangements are extended to Covered Plan, the assets of the Covered Plans would benefit from favorable rates of interests.

For example, an IRA owner may lock in an interest rate over a specified period by investing amounts held in the IRA in a certificate of deposit, or idle cash held in a brokerage account may earn interest under a free credit balance arrangement with the broker. Obtaining a favorable interest rate in any situation where an account is invested in an interest-bearing arrangement will help to maximize the overall return on the assets held or maintained in the account.

7. Fidelity proposes to offer Tiered Interest Products to certain eligible accounts, held in the name of customers (and Family Members), with respect to which management, advisory, custody, brokerage, or other services are provided by Fidelity. The interest rates to be paid, based upon the applicable breakpoints, would be established for each Tiered Interest Product based on the nature of the product, regulatory requirements applicable to that particular Tiered Interest Product, and relevant market considerations.

8. In addition, Fidelity proposes to offer customers tiered arrangements under which the costs of borrowing are reduced in connection with the relationships the borrower and his or her eligible family members have with Fidelity. Under such an arrangement, the aggregate amount the borrower and his or her Family Members have in relationships (*i.e.*, assets maintained with Fidelity) with Fidelity is determined, and the interest rate and/or Loan Expenses charged with respect to the loan will be decreased, at certain breakpoints, based on that total amount.

9. If the exemption is granted, Fidelity would be able to consider account balances of Covered Plans in determining a customer's eligibility to receive: (i) an increased rate of interest with respect to a Tiered Interest Product, and to other eligible accounts held or maintained in the name of the customer (or the name of his or her Family Members); or (ii) a reduction in the interest rate or Loan Expenses charged to a customer (or one of his or her Family Members) under a Tiered Loan Product.

10. In summary, and for the reasons stated in the Application, Fidelity represents the transactions will satisfy statutory criteria of Section 4975(c)(2) of the Code and Section 408(a) of ERISA since, among other things:

(a) The Covered Plan whose Account Value is taken into account for purposes of determining eligibility to receive the Applicable Benefit under the arrangement will be established and maintained for the exclusive benefit of the participant covered under the Covered Plan, his or her spouse, or their beneficiaries.

(b) The Applicable Benefit with respect to the Tiered Product will be of the type that Fidelity could offer consistent with all applicable federal and state banking laws and all applicable federal and state laws regulating broker-dealers.

(c) The Applicable Benefit with respect to the Tiered Product will be provided by Fidelity or its affiliate in the ordinary course of business as a bank or broker-dealer to customers of Fidelity who qualify for such arrangement but who do not maintain Covered Plans with Fidelity or its affiliate.

(d) For purposes of determining eligibility to receive the Applicable Benefit, the Account Value of the Covered Plan required by Fidelity will be as favorable any requirement based on the value of any type of account used by Fidelity to determine eligibility to receive the Applicable Benefit.

(e) The rate of interest paid with respect to any assets of the Covered Plan invested in a Tiered Interest Product will be reasonable.

(f) The combined total of all fees for the provision of services to the Covered Plan will not be in excess of reasonable compensation within the meaning of section 4975 (d)(2) of the Code and 408(b)(2) of ERISA.

(g) The investment performance of the Covered Plan's investment(s) will be no less favorable than the investment performance of an identical investment(s) that could have been made at the same time by a customer of Fidelity who is not eligible for (or who does not receive) any Applicable Benefit.

(h) The Applicable Benefits offered with respect to any Tiered Product under the arrangement to a Covered Plan customer will be the same as is offered with respect to such Tiered Product to non-Covered Plan customers having the same aggregate Account Value.

(i) When the Covered Plan is established at a broker-dealer or bank that is unrelated to Fidelity, the assets of the Covered Plan will be custodied with Fidelity, and at the time the Covered Plan is established, disclosures will be made to the owner of the Covered Plan specifying that under the arrangement, services will be provided by Fidelity to the Covered Plan.

Notice to Interested Persons

The applicant represents that because those potentially interested persons cannot all be identified at the time this proposed exemption is published in the **Federal Register**, the only practical means of notifying the public is by publication of the notice of pendency in the **Federal Register**. Therefore, written comments and/or requests for a public hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Allison Padams-Lavigne, U.S. Department of Labor, telephone (202) 693–8564. (This is not a toll-free number.)

Calpine Corporation Located in Houston, TX [Application No. D–11459]

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, effective January 31, 2008, the restrictions of section 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the past acquisition by the Calpine Corporation Retirement Savings Plan (the Plan) of warrants (the Warrants) issued by the Calpine Corporation (the Applicant) that would permit, under certain conditions, the purchase of shares of newly-issued

Calpine Common Stock (the New Stock) pursuant to certain bankruptcy proceedings; (2) the holding of the Warrants by the Plan; and the (3) disposition of the Warrants. This proposed exemption is subject to the following conditions:

(a) The acquisition and holding of the Warrants by the Plan occurred in connection with the Applicant's bankruptcy proceedings pursuant to which all holders of Calpine Common Stock prior to January 31, 2008 (the Old Stock) were treated in the same manner;

(b) The Plan had little, if any, ability to affect the negotiation of the Applicant's Plan of Reorganization pursuant to Chapter 11 of the United States Bankruptcy Code;

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

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

(e) All decisions regarding the holding and disposition of the Warrants by the Plan were made in accordance with Plan provisions for individually directed investment of participant accounts by the individual participants whose accounts in the Plan received the Warrants; and

(f) The Plan received the same proportionate number of Warrants as other owners of Old Stock.

Summary of Facts and Representations

1. The Plan is a defined contribution plan that provides for participant-directed investments. As of December 31, 2007, the Plan had total assets of approximately $162,756,131 and 2,906 participants. Fidelity Management Trust and Company (Fidelity) is the current trustee as well as custodian for the Warrants.

2. The Applicant is a Delaware corporation with its principal place of business in Houston, Texas. The Applicant generates and sells electricity and electricity-related products.

3. On December 20, 2005, the Applicant filed for relief under Chapter 11 of the Bankruptcy Code. On December 19, 2007, the U.S. Bankruptcy Court for the Southern District of New York approved and confirmed the Debtors' Sixth Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the United States Bankruptcy Code (POR). The Applicant represents that during the bankruptcy proceedings, the Plan had little ability to affect the outcome of the proceedings. Under the POR, the Old Stock [12] was Calpine's common stock which traded prior to January 31, 2008. Pursuant to the POR, the Old Stock was cancelled on January 31, 2008 and delisted on February 4, 2008. Pursuant to the POR, holders of the Old Stock received Warrants on January 31, 2008 which would, under certain conditions, permit the holders of the Old Stock to purchase the New Stock.

4. The Plan received 210,000 Warrants automatically which represent .4% of the total Warrants that were issued. Each Warrant entitles the holder to purchase one share of the New Stock. The Warrant holders have the ability to purchase up to ten percent (10%) of the Applicant's New Stock. The Warrants expire on August 25, 2008. On June 10, 2008, the price of a Warrant was $0.78. As of June 10, 2008, the price of the New Stock was $22.59. The Warrant exercise price for each share of the New Stock is $23.88. No fractional shares will be issued and no cash in lieu of fractional Warrants will be distributed.

5. The Applicant represents that it has analyzed the prohibited transaction implications under the Act concerning the acquisition, holding and disposition of the Warrants by the Plan under the POR. The Applicant, accordingly, has concluded that the acquisition and holding of the Warrants by the Plan may have resulted in transactions in violation of section 406 of the Act and section 4975 of the Code.

6. On December 4, 2005, the Applicant retained U.S. Trust to serve as an independent fiduciary with respect to the Old Stock and the Warrant fund under the Plan. It is represented that U.S. Trust also serves as the investment manager for the Warrants and for any New Stock that may be acquired upon exercise of the Warrants. Accordingly, U.S. Trust has the authority to dispose of the Warrants if it determines it is obligated to do so under the Act. In the event that the Warrants are in the money immediately prior to the expiration of the Warrants, U.S. Trust, as the independent fiduciary of the Warrant fund, has the obligation to sell any Warrants that have not been exercised by the Plan participants. Moreover, U.S. Trust has the power to restrict Plan participants from exercising the Warrants if the New Stock market price is less than the Warrant strike price. However, the Applicant represents that U.S. Trust has no authority to exercise the Warrants and that only Plan participants will have that authority.[13]

8. The Warrants are not listed on an exchange; however, an Over-the-Counter Market for the Warrants currently exists based on bid and ask prices listed on an electronic quotation service known as the ''Pink Sheets.'' The Applicant represents that any Warrants sold at the request of a Plan participant will be sold on the Over-the-Counter Market.

9. In summary, the Applicant represents that the transactions satisfy the statutory criteria for an exemption under Section 408(a) of the Act for the following reasons: (a) All holders of the Old Stock have been treated in the same manner with respect to the acquisition and holding of the Warrants pursuant to the Applicant's bankruptcy proceeding; (b) The Plan was unable to influence the bankruptcy proceedings; (c) The Plan acquired the Warrants automatically and without any action on the part of the Plan; (d) The Plan did not pay any fees or commissions in connection with the acquisition and holding of the Warrants; (e) Plan participants had the authority to make decisions regarding the disposition of the Warrants in accordance with the terms of the Plan. All decisions regarding the holding and disposition of the Warrants by the Plan were made in accordance with Plan provisions for individually directed investment of participant accounts by the individual participants whose accounts in the Plan received the Warrants; and The Plan received the same proportionate number of Warrants as other owners of Old Stock.

FOR FURTHER INFORMATION CONTACT: Mr. Anh-Viet Ly, Department of Labor, telephone number (202) 693–8648. (This is not a toll-free number).

Merritts Antiques, Inc. Employees Pension Plan (the Plan) Located in Douglasville, Pennsylvania [Application No. D–11467]

[12] The Old Stock traded on the Over-the-Counter Market with the ticker symbol of ''CPNLQ US.'' As of November 2, 2007, there were 482,200,000 shares outstanding of the Old Stock. The 52-week high was $3.38 on August 8, 2007 and the 52-week low was $.12 on February 2, 2008.

[13] The Applicant initially requested administrative relief for the exercise of the Warrants by Plan participants. Subsequently, the Applicant withdrew its request for administrative relief and, instead, is relying on the statutory exemption pursuant to section 408(e) of the Act to provide relief to Plan participants for the exercise of the Warrants. The Department is offering no view as to whether the exercise of the Warrants by Plan participants satisfies the conditions of section 408(e) of the Act.
have been treated in a similar manner. Plan participants were not charged a fee or commission to acquire or hold the Warrants. The Applicant represents that the Warrants are transferable. The Applicant represents that the commission rate charged by Fidelity to Plan participants for trades or for the exercise of the Warrants was 2.9 cents per Warrant.

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) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the prospective cash sale (the Sale) by the Plan of improved real property located at 1172 Old Swede Road, Amity Township, Berks County, PA (the 1172 Property) to Merritts Antiques, Inc. (the Employer), a party in interest with respect to the Plan, provided that:

(a) On the date of the cash sale of the 1172 Property by Plan to the Employer, the Plan receives an amount for the 1172 Property equal to the greater of:

(1) $180,000;

(2) The fair market value as determined by an independent, qualified appraiser, as of the date of such Sale; or

(3) The total costs to the Plan during its ownership which would include acquisition and holding costs minus all income received.

(b) The Plan incurs no fees, commissions, or other charges or expenses as a result of its participation in the Sale.

(c) The Sale is a one-time transaction for cash.

Summary of Facts and Representations

1. On March 28, 1969, the Employer adopted the Plan which is a defined benefit plan. On March 31, 2007 there were 33 Participants in the Plan and the Plan had total net assets of $2,638,170. National Penn Investors Trust Company serves as the Trustee. The Employer filed a Form 5310 (Application for Determination for Terminating Plan) with the IRS on or about September 20, 2007. On May 28, 2008, the IRS issued a favorable determination letter allowing the Plan to terminate.

2. The Employer, a corporation located in Douglasville, PA, engages in the antiques business. As an employer whose employees are covered by the Plan, the Employer is a party in interest with respect to the Plan pursuant to section 3(14)(C) of the Act.

3. On June 10, 1994, the Plan acquired a parcel of improved real property located at 1168 Old Swede Road, Amity Township, Berks County, PA (the 1168 Property) for $59,000.00 from an unrelated party. Beginning on September 1, 1998, Anna Mae Shelton, an employee of the Employer, and Kenneth Shelton (the Sheltons) leased the first floor unit of the 1168 Property for $575 per month from the Plan.[14] From May 15, 2003 until June 30, 2006, the Sheltons paid $600 per month and from July 1, 2006 until June 30, 2007, they paid $625.00 to the Plan per month. Subsequent to July 1, 2007, the Sheltons paid the Plan $650.00 per month. On April 30, 2008, the Plan sold the 1168 Property to an unrelated third party purchaser for $160,000.

4. On June 7, 1991, the Plan acquired the 1172 Property for $125,000.00 from an unrelated party. Penny and Steve Lauer (the Lauers) originally leased the 1172 Property from the Plan for $550 per month beginning in August 1991. Beginning on October 23, 2006, tenant Penny Lauer became employed by the Employer.[15] The Employer represents that Penny Lauer is not a highly-compensated employee. When the Lauers moved out of the 1172 Property on February 28, 2007, the lease payments had increased to $650.00 per month. Penny Lauer remains employed by the Employer. During the duration of its ownership of the 1172 Property, the Plan incurred holding costs (taxes, maintenance and insurance) of $63,671.48 and received gross rental income of $115,800. The total cost to the Plan for acquisition and holding of the 1172 Property after subtracting gross rental income is $72,871.48 ($125,000 plus $63,671.48 minus $115,800).

5. On February 8, 2007, an appraiser Douglas A. Haring, MAI, SRA (the Appraiser), reviewed the Plan's leases for the 1168 and 1172 Properties. It is represented that the Appraiser is qualified based on the fact the Appraiser has been a Society of Real Estate Appraiser member since April 28, 1980, a Pennsylvania Certified General Appraiser since October 25, 1991 and a Member of the Appraisal Institute since October 25, 2001. The Appraiser represents that he is independent because he received less than one percent of his income in 2006 and 2007 from the Plan and the Employer combined.

The Appraiser determined the rent received by the Plan from the Sheltons for the 1168 Property represented fair market rental value. The Appraiser also determined the rent received by the Plan from the Lauers' for the 1172 Property represented fair market rental value. The Appraiser's opinion is based on comparable rental data based on a number of similar rental units located in Berks County, PA.

6. The Employer requests an exemption for the proposed sale of 1172 Property to the Employer. On November 20, 2007, the Appraiser appraised the value of the 1172 Property at $180,000.00 using a sales comparison approach.

7. In summary, the Employer represents that the proposed transaction, in which the Plan is selling real property in order to make distributions as part of the Plan's termination, satisfies the statutory criteria for an exemption under section 408(a) of the Act because:

a. On the date of the Sale, the Plan receives an amount for the 1172 Property equal to the greater of: (i) $180,000; (ii) the fair market value of the 1172 Property as determined by an independent, qualified appraiser, as of the date of such Sale; or (iii) the cost to the Plan to acquire and hold the 1172 Property;

b. The Plan pays no fees, commissions, charges or expenses in connection to the Sale; and

c. The Sale is a one-time cash transaction.

FOR FURTHER INFORMATION CONTACT: Mr. Anh-Viet Ly of the Department, telephone 202–693–8648. (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

[14] The Department is not proposing any relief for the lease by the Plan to the Sheltons.

[15] The Department is not proposing any relief for the lease by the Plan to the Lauers.

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 exemption, 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 exemption, 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 27th day of August, 2008.

Ivan Strasfeld,

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

[FR Doc. E8–20277 Filed 9–2–08; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,317]

Union Carbide Corporation a Subsidiary of the Dow Chemical Company, West Virginia Operations, South Charleston Technology Park, South Charleston, WV; Notice of Affirmative Determination Regarding Application for Reconsideration

On August 21, 2008, the Department of Labor (Department) received a request for administrative reconsideration of the Department's negative determination regarding eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm.

The negative ATAA determination was issued on July 18, 2008, and the Department's Notice of determination was published in the **Federal Register** on July 30, 2008 (73 FR 44283). The subject workers are engaged in activities (research and development) related to the production of various chemicals.

The negative ATAA determination was based on the Department's findings during the initial investigation that conditions within the workers' industry are not adverse.

In the request for reconsideration, workers alleged that ''employment in the chemical industry for the state of West Virginia and our workers' region (Kanawha County) is adverse.'' The request included employment statistics for the chemical industry in Kanawha County (West Virginia) and for West Virginia.

The Department has carefully reviewed the request for reconsideration and has determined that the Department will conduct further investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 26th day of August 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–20348 Filed 9–2–08; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,271]

Horton Automatics a Subsidiary of Overhead Door Corporation Including On-Site Leased Workers From Remedy Staffing Corpus Christi, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 12, 2008, applicable to workers of Horton Automatics, including on-site leased workers from Remedy Staffing, Corpus Christi, Texas. The notice was published in the **Federal Register** on June 27, 2008 (73 FR 36575).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the subassembly of parts for automatic windows and doors.

New information shows that Horton Automatics is a subsidiary of Overhead Door Corporation and that some of the workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Overhead Door Corporation.

Accordingly, the Department is amending this certification to include workers of the subject firm whose UI wages are reported under the parent firm, Overhead Door Corporation.

The amended notice applicable to TA–W–63,271 is hereby issued as follows:

''Workers engaged in the subassembly of parts at Horton Automatics, a subsidiary of Overhead Door Corporation, including on-site leased workers from Remedy Staffing, Corpus Christi, Texas, who became totally or partially separated from employment on or after April 10, 2007, through June 12, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC this 25th day of August 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–20347 Filed 9–2–08; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,191]

Kurdziel Iron of Rothbury, Inc., Currently Known as Carlton Creek Ironworks, LLC, Including On-Site Leased Workers of Employment Giant Formerly Known as Select Employment, Rothbury, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 1, 2007, applicable to workers of Kurdziel Iron of Rothbury, Inc., including on-site leased workers of Employment Giant, formerly known as Select Employment, Rothbury, Michigan. The notice was published in the **Federal Register** on November 15, 2007 (72 FR 64246).