

Privacy Act Systems of Records, which were identified in the revised Table of Contents published in the **Federal Register** on November 14, 2006, 71 FR 66,347 (November 14, 2006), and corrected on December 4, 2006, 71 FR 70,426 (December 4, 2006).

On November 14, 2006, the Commission published a proposal to modify all of its systems of records to include a new routine use that would allow disclosure to appropriate persons and entities for purposes of response and remedial efforts in the event that there had been a breach of the data contained in the systems. 71 FR 66,347 (November 14, 2006). In accordance with 5 U.S.C. 552a(e)(4) and (11), the public was given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, required a 40-day period in which to conclude its review of the systems.

As a result of comments received, the Commission is making a minor modification to the language of the routine use in order to provide greater clarity. A concern was raised that the condition set forth in clause (1) of the routine use ("when (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised") does not clearly identify precisely who has to suspect or confirm the compromise. While it was the intent of the drafters that it be the Commission that must suspect or confirm the compromise, because that intent was expressed only implicitly in the routine use, the Commission is modifying the language of the first condition to provide additional clarity.

The text of the modification to the Commission's systems of records is set forth below. In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress. The new routine use will be effective February 13, 2007.

Accordingly, pursuant to the provisions of 5 U.S.C. 552a, the Foreign Claims Settlement Commission hereby publishes notice that it is supplementing the list of Routine Uses of the Records Maintained in each of its Privacy Act Systems of Records, including the Categories of Users and the Purposes of Such Uses, by including the following additional Routine Use: "To appropriate agencies, entities, and persons when (1) The Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the

suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm."

**Mauricio J. Tamargok,**  
*Chairman.*

[FR Doc. E7-2403 Filed 2-12-07; 8:45 am]

**BILLING CODE 4410-BA-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

[Application Nos. D-11324, Deutsche Bank AG (DB); D-11383, L-11384 and D-11385]

**Kern County Electrical Pension Trust (the Pension Plan), Kern County Electrical Joint Apprenticeship and Training Trust (the Apprenticeship Plan), Kern County Electrical Health and Welfare Plan (the Welfare Plan), The International Brotherhood of Electrical Workers Local Union 428 (the Local Union); L-11302 and L-11303, OPET Health Care and Life Insurance Plans RM3A and RM5A (Together the H&L Plans); and OPET Prescription Drug Plan RRx (Plan RRx); All Three Together, the Plans), et al.; Proposed Exemptions: Involving Deutsche Bank, Kern County and OPET Health Care**

**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-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. \_\_\_\_\_, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov*, or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

### Notice to Interested Persons

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

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

Therefore, these notices of proposed exemption are issued solely by the Department.

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

**Deutsche Bank AG (DB), Located in Germany, With Affiliates in New York, New York and Other Locations**

[Application No. D-11324]

*Proposed 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), the Department of Labor (the Department) is considering granting an exemption to DB and its affiliates (the Applicants) which will supersede Prohibited Transaction Exemption 2003-24 (PTE 2003-24) (68 FR 48637, August 14, 2003, *as amended*, 68 FR 55993, September 29, 2003).<sup>1</sup>

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:

(a) To the purchase of certain securities (the Securities), as defined, below in section III(h), by an asset management affiliate of DB, as “affiliate” is defined, below, in section III(c), from any person other than such asset management affiliate of DB or any affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such Securities, where a broker-dealer affiliated with DB (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 DB purchases such Securities, as a fiduciary:

(1) On behalf of an employee benefit plan or employee benefit plans (Client Plan(s)), as defined, below, in section III(e) and/or on behalf of a Master Trust

or Master Trusts (Master Trust(s)), as defined, below, in section III(o); or

(2) On behalf of Client Plans, Master Trusts, and/or In-House Plans, as defined, below, in section III(q), which are invested in a pooled fund or in pooled funds (Pooled Fund(s)), as defined, below, in section III(f); or

(3) On behalf of Client Plans, Master Trusts, and/or In-House Plans which are invested in a fund or in funds (Advised Fund(s)), as defined, below, in section III(a); provided that the conditions as set forth, below, in section II, are satisfied. (An affiliated underwriter transaction (AUT)); and/or

(b) to the purchase of Securities by an asset management affiliate of DB from any person other than such asset management affiliate of DB or any affiliate thereof, where a trustee affiliated with DB (the Affiliated Trustee), as defined, below, in section III(l), serves as a trustee of a trust that issued the Securities (whether or not such Securities are debt securities) or serves as an indenture trustee of Securities that are debt securities and where the asset management affiliate of DB purchases such Securities:

(1) On behalf of a Client Plan or Client Plans and/or on behalf of a Master Trust or Master Trusts; or

(2) On behalf of Client Plans, Master Trusts, and/or In-House Plans which are invested in a Pooled Fund or in Pooled Funds; or

(3) On behalf of Client Plans, Master Trusts, and/or In-House Plans which are invested in an Advised Fund or in Advised Funds; provided that the conditions as set forth, below, in section II, are satisfied (an affiliated trustee transaction (ATT)).<sup>2</sup>

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.

<sup>1</sup> For a discussion of how this proposed exemption will affect other applicants that are entitled to relief under PTE 2003-24, see the discussion in paragraph number 4 in the Summary of Facts and Representations of this proposed exemption.

<sup>2</sup> For purposes of this proposed exemption, an In-House Plan may engage in AUT's and ATT's only through investment in a Pooled Fund or an Advised Fund.

(b) The issuer of the Securities to be purchased pursuant to this 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 exemption, by the asset management affiliate of DB with: (i) The assets of all Client Plans and all Master Trusts; and (ii) the assets, calculated on a *pro-rata* basis, of all Client Plans, Master Trusts, and In-House Plans investing in Pooled Funds managed by the asset

management affiliate of DB and investing in Advised Funds; and (iii) the assets of plans to which the asset management affiliate of DB renders investment advice within the meaning of 29 CFR 2510.3–21(c) does not exceed:

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

(2) 35 percent (35%) of the total amount of such 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 such 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, any Master Trust (and the assets of any Client Plans, any Master Trusts and any In-House Plans investing in Pooled Funds and in Advised 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 exemption, the amount of Securities in any issue (whether equity or debt securities) purchased, pursuant to this exemption, by the asset management affiliate of DB on behalf of any single Client Plan or any Master Trust, either individually or through investment, calculated on a *pro-rata* basis, in a Pooled Fund or Advised 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 or Master Trust in purchasing any Securities which are the subject of this exemption, including any amounts paid by any Client Plan, Master Trust, or In-House Plan in purchasing such Securities through a Pooled Fund or an Advised 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, Master Trust, or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan, Master Trust, 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 DB or an affiliate.

(f) If the transaction is an AUT, 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 Master Trust or that is based on the amount of Securities purchased by Client Plans, Master Trusts, or In-House Plans through Pooled Funds or Advised Funds, pursuant to this 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 DB on behalf of any single Client Plan or Master Trust or any Client Plan, Master Trust, or In-House Plan in Pooled Funds or Advised Funds.

(g) If the transaction is an AUT,

(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 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 DB on behalf of any single Client Plan or Master Trust or on behalf of any Client Plan, Master Trust, or In-House Plan participating in Pooled Funds and in Advised Funds, pursuant to this exemption; and

(2) The Affiliated Broker-Dealer shall provide to the asset management affiliate of DB 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 exemption, was not adjusted in a manner inconsistent with Section II(e), (f), or (g) of this 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), or by a master trustee (the Master Trustee), as defined, below, in Section III(n), of each Master Trust).

If an Independent Fiduciary acting on behalf of a single Client Plan (or if a Master Trustee acting on behalf of a Master Trust, as the case may be) executed a written authorization with respect of AUTs, as required under another prohibited transaction exemption covering the same asset management affiliate of DB, prior to publication of this exemption in the **Federal Register**, the written authorization requirement of this Section II(h) shall be deemed satisfied with respect to ATTs and AUTs, if such asset management affiliate of DB provides to the same Independent Fiduciary (or the same Master Trustee) the materials described, below in Section II(i), together with a termination form expressly providing an election for the Independent Fiduciary (or Master Trustee) to terminate the authorization with respect to AUTs or ATTs, or both, and a statement to the effect that the asset management affiliate of DB proposes to engage in ATTs on a specified date, unless the Independent Fiduciary (or Master Trustee) signs and returns the termination form to such asset management affiliate of DB prior to such specified date. Such specified date shall not be less than 45 days after the date the asset management affiliate of DB sent the notice of the intent to engage in ATTs to the Independent Fiduciary (or to the Master Trustee).

(i) Prior to the execution by an Independent Fiduciary of a single Client Plan (or by a Master Trustee of a Master

Trust, as the case may be) 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 DB to such Independent Fiduciary (and to such Master Trustee):

(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 (or such Master Trustee) requests the asset management affiliate of DB to provide.

(j) Subsequent to the initial authorization by an Independent Fiduciary of a single Client Plan (or by a Master Trustee of a Master Trust, as the case may be) permitting the asset management affiliate of DB to engage in the covered transactions on behalf of such single Client Plan (or on behalf of such Master Trust), the asset management affiliate of DB 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 (or the Master Trustee) requests the asset management affiliate of DB to provide.

(k)(1) In the case of an existing employee benefit plan investor (or existing Master Trust 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 exemption, unless the asset management affiliate of DB provides the written information, as described, below, and within the time period described, below, in this Section II(k)(3), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the Master Trustee of each such Master Trust and to the fiduciary of each such In-House Plan participating in such Pooled Fund).

(2) In the case of an existing employee benefit plan investor (or existing Master Trust investor or existing In-House Plan investor, as the case may be) in an Advised Fund, such Advised Fund may not engage in any covered transactions pursuant to this exemption, unless the asset management affiliate of DB provides the written information, as described, below, and within the time period described, below, in this Section II(k)(3), to the fiduciary who establishes and maintains the Advised Fund (the Appointing Fiduciary), as defined, below, in Section III(m); provided that:

(i) Such Appointing Fiduciary is contractually obligated pursuant to a written agreement with the asset management affiliate of DB to distribute to the Independent Fiduciary of each such plan participating in such Advised Fund (and to the Master Trustee of each such Master Trust, and to the fiduciary of each such In-House Plan participating in such Advised Fund) the written information, described, below, in this Section II(k)(3); and (ii) after completing the distribution of such written information, such Appointing Fiduciary confirms in writing to the asset management affiliate of DB the date that the written information, described, below, in this Section II(k)(3), was sent to the Independent Fiduciary of each such plan participating in such Advised Fund (and to the Master Trustee of each such Master Trust and to the fiduciary of each such In-House Plan participating in such Advised Fund).

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

(i) A notice of the intent of such Pooled Fund or such Advised Fund to purchase Securities pursuant to this 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 Master Trustee of a Master Trust or fiduciary of an In-House Plan) participating in a Pooled Fund requests the asset management affiliate of DB to provide or in the case of a plan (or Master Trust or In-House Plan) participating in an Advised Fund, any other reasonably available information that the Independent Fiduciary of such plan (or Master Trustee of such Master Trust or fiduciary of such In-House Plan) has requested the Appointing Fiduciary of such Advised Fund to provide; and

(iii) A termination form expressly providing an election for the Independent Fiduciary of a plan (or Master Trustee of a Master Trust or fiduciary of an In-House Plan) participating in a Pooled Fund or in an Advised Fund to terminate such plan's (or Master Trust's or In-House Plan's) investment in such Pooled Fund or in such Advised Fund without penalty to such plan (or to such Master Trust or to such In-House Plan). Such form shall

include instructions specifying how to use the form. Specifically, the instructions will explain that such plan (or such Master Trust or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund or an Advised Fund for a period of no more than 30 days after such plan's (or such Master Trust's or such In-House Plan's) receipt of the initial notice of intent, described, above, in Section II(k)(3)(i), and that the failure of the Independent Fiduciary of such plan (or Master Trustee of such Master Trust or fiduciary of such In-House Plan) to return the termination form to the asset management affiliate of DB in the case of a plan (or Master Trust or In-House Plan) participating in a Pooled Fund or to return the termination form to the Appointing Fiduciary in the case of a plan (or Master Trust or In-House Plan) in an Advised Fund by the specified date shall be deemed to be an approval by such plan (or such Master Trust or such In-House Plan) of its participation in the covered transactions as an investor in such Pooled Fund or in such Advised Fund.

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

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 exemption for each plan be independent of the asset management affiliate of DB 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 Master Trust and 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 exemption to engage in the covered transactions, the investment by such plan (or by such Master Trust or 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 Master Trustee of such Master Trust or 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 Master Trustee of such Master Trust or the fiduciary of such In-House Plan, as the case may be) of the written information described, above, in Section II(k)(3)(i) and (ii).

(2) In the case of each plan (and in the case of each Master Trust and each In-House Plan) whose assets are proposed to be invested in an Advised Fund after such Advised Fund has satisfied the conditions set forth in this exemption to engage in the covered transactions:

(i) The investment by such plan (or Master Trust or In-House Plan) in such Advised Fund is subject to the prior written authorization of the Independent Fiduciary representing such plan (or the prior written authorization by the Master Trustee of such Master Trust or by the fiduciary of such In-House Plan, as the case may be), following the receipt by such Independent Fiduciary (or by such Master Trustee or by such fiduciary of such In-House Plan) of the written information described, above, in Section II(k)(3)(i) and (ii), which information the asset management affiliate of DB is required to provide, not less than 30 days prior to the investment of such plan (or such Master Trust or such In-House Plan) in such Advised Fund, to the Appointing Fiduciary of such Advised Fund; and

(ii) The investment by such plan (or Master Trust or In-House Plan) in such Advised Fund is subject further to the requirement that, pursuant to a written agreement with the asset management affiliate of DB, the Appointing Fiduciary is contractually obligated to distribute the written information described, above, in Section II(k)(3)(i) and (ii) to the Independent Fiduciary of each plan proposing to invest in such Advised Fund (or to the Master Trustee of each Master Trust or to the fiduciary of each In-House Plan proposing to invest in such Advised Fund, as the case may be) and is contractually obligated to confirm in writing to the asset management

affiliate of DB the date that such information was sent to the Independent Fiduciary of each plan (or Master Trustee of each Master Trust or fiduciary of each In-House Plan, as the case may be) proposing to invest in such Advised Fund, and is contractually obligated to confirm in writing to the asset management affiliate of DB the date that the Appointing Fiduciary obtained the written authorization of the Independent Fiduciary of each plan (or the Master Trustee of each Master Trust or fiduciary of each In-House Plan, as the case may be); provided that such date is not less than 30 days prior to the date of the investment by such plan (or Master Trust or In-House Plan, as the case may be) in such Advised Fund.

(3) 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 exemption for each plan proposing to invest a Pooled Fund or in an Advised Fund be independent of DB and its affiliates shall not apply in the case of an In-House Plan.

(m)(1) Subsequent to the initial authorization by an Independent Fiduciary of a plan (or by a Master Trustee of a Master Trust or fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the covered transactions, the asset management affiliate of DB 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 Master Trustee of such Master Trust or the fiduciary of such In-House Plan, as the case may be) requests the asset management affiliate of DB to provide; and

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

(n) At least once every three months, and not later than 45 days following the three (3) month period, the asset

management affiliate of DB shall furnish:

(1) In the case of each single Client Plan (and in the case of each Master Trust) that engages in the covered transactions, the information described, below, in this Section II(n)(4)–(8), to the Independent Fiduciary of each such single Client Plan (and to the Master Trustee of each such Master Trust, as the case may be).

(2) In the case of each Pooled Fund in which a Client Plan (or in which a Master Trust or in which an In-House Plan) invests, the information described, below, in this Section II(n)(4)–(7) and (9), to the Independent Fiduciary of each such Client Plan (and to the Master Trustee of each such Master Trust and to the fiduciary of each such In-House Plan) invested in such Pooled Fund.

(3) In the case of each Advised Fund in which a Client Plan (or in which a Master Trust or in which an In-House Plan) invests, the information described, below, in this Section II(n)(4)–(7) and (9), to the Appointing Fiduciary of such Advised Fund who is contractually obligated to distribute such information, not later than 30 days following receipt of such information, to the Independent Fiduciary of each such Client Plan (and to the Master Trustee of each such Master Trust and to the fiduciary of each such In-House Plan) invested in such Advised Fund, and is contractually obligated to confirm in writing to DB the date when such distribution was sent to the Independent Fiduciary of each such Client Plan (and to the Master Trustee of each such Master Trust and to the fiduciary of each such In-House Plan) invested in such Advised Fund).

(4) A quarterly report (a Quarterly Report) (which may be provided electronically) which discloses all the Securities purchased pursuant to the exemption during the period to which such report relates on behalf of the Client Plan, Master Trust, In-House Plan, Pooled Fund, or Advised 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 DB for the Client Plan, Master

Trust, In-House Plan, Pooled Fund, or Advised Fund to which the transaction relates;

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

(vii) In the case of an AUT, 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) In the case of an ATT, the basis upon which the Affiliated Trustee was compensated in each transaction;

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

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

(5) The Quarterly Report contains: (i) In the case of AUTs, a representation that the asset management affiliate of DB 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 exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with Section II(e), (f), and (g) of this exemption, and a representation that copies of such certifications will be provided upon request, and

(ii) In the case of ATTs, a representation of the asset management affiliate of DB, affirming that, as to each ATT, the transaction was not part of an agreement, arrangement, or understanding designed to benefit the Affiliated Trustee;

(6) A disclosure in the Quarterly Report that states that any other reasonably available information regarding a covered transaction that an Independent Fiduciary (or Master Trustee 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 Master Trust or In-House Plan) to which the disclosure relates (including Securities purchased by Pooled Funds or Advised Funds in which such Client Plan, (or such Master Trust or such In-House Plan) invests;

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

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

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

(8) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each single Client Plan (and to the Master Trustee of each Master Trust) 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 (or such Master Trust), within five (5) days after the date that the Independent Fiduciary of such single Client Plan (or the Master Trustee of such Master Trust) informs the person identified in such notification that the authorization to engage in the covered transactions is terminated; and

(9) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each Client Plan (and to the Master Trustee of each Master Trust and to the fiduciary of each In-House Plan) that engages in the covered transactions through a Pooled Fund or an Advised Fund that the investment in such Pooled Fund or such Advised Fund may be terminated, without penalty to such Client Plan (or such Master Trust 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 the Independent Fiduciary of such Client Plan (or the Master Trustee of such Master Trust 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 or such Advised Fund is terminated.

(o) For purposes of engaging in covered transactions, each Client Plan (and each Master Trust 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,<sup>3</sup> each Client Plan (and

<sup>3</sup> SEC Rule 10f-3(a)(4), 17 CFR 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

each Master Trust 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 (such Master Trust or such In-House Plan, as the case may be) (the \$100 Million Net Asset Requirement).

For purposes of a Pooled Fund or an Advised Fund engaging in covered transactions, each Client Plan (and each Master Trust and each In-House Plan) in such Pooled Fund or Advised 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 Master Trust and each such In-House Plan) in such Pooled Fund or Advised 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 or in such Advised Fund are held by Client Plans (or by Master Trusts, 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 or an Advised Fund engaging in covered transactions involving an Eligible Rule 144A Offering, each Client Plan (and each Master Trust and each In-House Plan) in such Pooled Fund or in such Advised 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 Master Trust or such In-House Plan, as the case may be). Notwithstanding the foregoing, if each such Client Plan (and each such Master Trust and each such In-House Plan) in such Pooled Fund or in such Advised Fund does not have total net assets of at least \$100 million in securities of issuers that are not affiliated with such Client Plan (Master Trust 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 or in such Advised Fund are held by Client Plans (or by Master Trusts or by In-House Plans), each of which has total net assets of at least \$100 million in securities of issuers that are not affiliated with such Client Plan (or such Master Trust or such In-House

Plan, as the case may be), and the Pooled Fund or the Advised Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

Solely for purposes of applying this Section II(o) in calculating whether 50 percent (50%) or more of the units of beneficial interest in a Pooled Fund or in an Advised Fund is held by "Client Plans" each of which has total net asset with a value of at least \$50 million (or in the case of an Eligible Rule 144A Offering, has total net assets of at least \$100 million in securities of issuers that are not affiliated with such Client Plan (such Master Trust or such In-House Plan, as the case may be)), the word, "Client Plans," includes governmental plans within the meaning of section 3(32) of the Act; provided that each such government plan has total net assets with a value of at least \$50 million (or in the case of an Eligible Rule 144A Offering, has total net assets of at least \$100 million in securities of issuers that are not affiliated with such government plan).

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 under a Master Trustee, as defined, below, in Section III(n), in a single Master Trust, as defined, below, in Section III(o) of this exemption.

For purposes of complying with the net asset requirements, as set forth in this Section II(o), the Appointing Fiduciary with respect to an Advised Fund which engages in the transactions described, above, in Section I of this exemption, must enter into a contractual obligation, pursuant to a written agreement with the asset management affiliate of DB, to ensure that the \$50 Million Net Asset Requirement and the \$100 Million Net Asset Requirement, as set forth in this Section II(o), is satisfied; to maintain records with respect thereto; and to provide written confirmation of compliance with Section II(o) upon request from the asset management affiliate of DB.

(p) The asset management affiliate of DB 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 DB satisfies the

requirements, as set forth in Part V(a) of PTE 84-14, such asset management affiliate of DB 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 DB must have total client asset 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 DB, 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 (20%) of the assets of a Pooled Fund or of an Advised Fund, at the time of a covered transaction, are comprised of assets of In-House Plans, for which DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, or an affiliate exercises investment discretion.

(r) The asset management affiliate of DB, 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 exemption have been met, except that—

(1) No party in interest with respect to a plan which engages in the covered transactions, other than DB, the asset management affiliate of DB, and the Affiliated Broker-Dealer, or Affiliated Trustee, 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 if, due to circumstances beyond the control of the asset management affiliate of DB, the Affiliated Broker-Dealer, or Affiliated Trustee, 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 (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

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.



(ii) Any fiduciary of any plan (and any Master Trustee of a Master Trust) that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary or Master Trustee; 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 DB, or the Affiliated Broker-Dealer, or the Affiliated Trustee, or commercial or financial information which is privileged or confidential; and

(3) Should the asset management affiliate of DB, or the Affiliated Broker-Dealer, or the Affiliated Trustee 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 DB 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.

(t) An indenture trustee whose affiliate has, within the prior 12 months, underwritten any Securities for an obligor of the indenture securities will resign as indenture trustee if a default occurs upon the indenture securities.

(u) The Appointing Fiduciary of an Advised Fund must enter into a written contractual obligation with the asset management affiliate of DB to distribute the written disclosures, as required by Section II(k), (l), (m), and the written reports, as required by Section II(n), to each investor participating in such Advised Fund which is an employee benefit plan subject to the fiduciary responsibility provisions of the Act or which is established pursuant to section 4975 of the Code or which is a Master Trust, as defined in Section III(o).

### Section III—Definitions

(a) The term, “Advised Fund(s),” means a common or collective trust fund(s) or pooled investment fund(s), in which employee benefit plan(s) subject to the Act and/or Code invest, which is established and maintained by an Appointing Fiduciary, as defined, below, in Section III(m), and such

Appointing Fiduciary (and not an affiliate thereof) is directly responsible for the selection of an asset management affiliate of DB to exercise discretionary authority or discretionary control over the management or disposition of some or all of the assets in such fund; or to render investment advice, as described in section 3(21)(A)(ii) of the Act, with respect to some or all of the assets in such fund. The term, “Advised Fund(s),” does not include any common or collective trust fund(s) or pooled investment fund(s) in which employee benefit plan(s) subject to the Act and/or Code invest, which is established and maintained by an Appointing Fiduciary but for which an entity, other than such Appointing Fiduciary, has selected an asset management affiliate of DB to exercise discretionary authority or discretionary control over the management or disposition of some or all of the assets of such plan(s) or to render investment advice, as defined in section 3(21)(A)(ii) of the Act, with respect to some or all of the assets invested in such fund, and for which such entity serves as a fiduciary, as defined in section 3(21) of the Act.

In addition to the foregoing, the proposed exemption does not apply to any AUT and ATT transactions involving plan assets which are invested in certain multi-tiered pooled arrangements. In this regard, if a common or collective trust fund or other pooled investment fund (except for a Master Trust, as defined, below, in Section III(o)) containing the assets of employee benefit plans(s) subject to the Act and/or the Code, invests, directly or indirectly, some or all such plan assets in a Pooled Fund, as defined, below, in Section III(f), or in an Advised Fund, as defined, in this Section III(a), then the exemption does not apply to any AUT or ATT transactions engaged in by such Pooled Fund or such Advised Fund.

(b) The term, “Affiliated Broker-Dealer,” means any broker-dealer affiliate, as “affiliate” is defined, below, in Section III(c), of the Applicants, as “Applicants” are defined, below, in Section III(p), that meets the requirements of this 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 DB 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(q) and Master Trusts, as defined below, in Section III(o).

(f) The term, “Pooled Fund(s),” means a common or collective trust fund(s) or a pooled investment fund(s): (i) In which employee benefit plan(s) subject to the Act and/or Code invest, (ii) which is maintained by an asset management affiliate of DB, (as the term, “affiliate” is defined, above, in Section III(c)), and (iii) for which such asset management affiliate of DB 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 DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, and the Affiliated Trustee. For purposes of this exemption, a fiduciary of a plan will be deemed to be unrelated to, and independent of DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, and the Affiliated Trustee, 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 exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, or the Affiliated Trustee, and represents that such fiduciary shall



advise the asset management affiliate of DB, and if applicable, the Appointing Fiduciary, as defined, below, in Section III(m), 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 DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, or the Affiliated Trustee;

(ii) If such fiduciary directly or indirectly receives any compensation or other consideration from DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, or the Affiliated Trustee for his or her own personal account in connection with any transaction described in this 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 DB responsible for the transactions described, above, in Section I of this 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 DB 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 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, "Affiliated Trustee," means any bank or trust company affiliate, as defined, above, in Section III(c)(1), of the Applicants, as defined, below, in Section III(p), that serves as trustee of a trust that issues Securities, as defined, above, in Section III(h), which are asset-backed securities or as indenture trustee of Securities which are either asset-backed securities or other debt securities that meet the requirements of this exemption. For purposes of this exemption, other than Section II(t), performing services as custodian, paying agent, registrar, or in similar ministerial capacities is also considered serving as trustee or indenture trustee.

(m)(1) The term, "Appointing Fiduciary," means the fiduciary that establishes and maintains an "Advised Fund," as defined, above, in Section III(a), that is directly responsible for the selection and termination of an asset management affiliate of DB to exercise discretionary authority or discretionary control over the management or disposition of some or all of the assets of employee benefit plan(s) subject to the Act and/or Code which are invested in such Advised Fund, or to render investment advice, as described in section 3(21)(A)(ii) of the Act with respect to some or all of the assets of such Advised Fund, and which fiduciary is unrelated to and independent of DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, and the Affiliated Trustee. For purposes of this exemption, an Appointing Fiduciary of an Advised Fund will be deemed to be unrelated to, and independent of DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, and the Affiliated Trustee, if such Appointing Fiduciary represents that it is not an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, or the Affiliated Trustee, and represents that such Appointing Fiduciary shall advise the asset management affiliate of DB within a reasonable period of time after any change in such facts occur.

(2) Notwithstanding anything to the contrary in Section III(m), an Appointing Fiduciary is not independent:

(i) If any provision, as set forth, above, in Section III(g)(2)(i)-(ii), in the definition of an Independent Fiduciary, is applicable to such Appointing Fiduciary, if the term, "Appointing Fiduciary," were substituted for the term, "fiduciary" in such provision; or

(ii) If any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, or the Affiliated Trustee is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of such Appointing Fiduciary.

(3) The term, "officer," is defined as in Section III(g)(3), above.

(4) An Appointing Fiduciary:

(i) Must have been in continuous operation for not less than three years, including the operation of any predecessors;

(ii) Must qualify 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 Appointing Fiduciary satisfies the requirements, as set forth in Part V(a) of PTE 84-14, such Appointing Fiduciary 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 Appointing Fiduciary must have total client asset 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(m), applies whether such Appointing Fiduciary qualifies as a QPAM, pursuant to Part V(a)(1), V(a)(2), V(a)(3) or V(a)(4) of PTE 84-14.

(n)(1) the term, "Master Trustee," means a fiduciary with respect to a group of Client Plans maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, which Client Plans are pooled for investment purposes in a single Master Trust, (as the term, "Master Trust," is defined, below, in Section III(o)), and which fiduciary is unrelated to, and independent of DB, the asset management affiliate of DB, the Affiliated Broker-Dealer, and the Affiliated Trustee. For purposes of this exemption, a Master Trustee will be deemed to be unrelated to, and independent of DB, the asset

management affiliate of DB, the Affiliated Broker-Dealer, and the Affiliated Trustee, if such Master Trustee satisfies the requirements set forth, above, in Section III(g)(1) of this exemption in the definition of an Independent Fiduciary, if the term, "Master Trustee," were substituted for the term, "fiduciary," in such provision.

(2) Notwithstanding anything to the contrary in this Section III(n), the Master Trustee is not independent, if any provision, as set forth, above, in Section III(g)(2)(i) through (iii), in the definition of an Independent Fiduciary, is applicable to such Master Trustee, if the term, "Master Trustee," were substituted for the term, "fiduciary," in such provision.

(3) The term, "officer," is defined as in Section III(g)(3), above.

(4) The Master Trustee: (i) Must be any officer, director, partner, or employee of an employer or controlled group of employers, as defined in section 407(d)(7) of the Act which sponsor a group of Client Plans the assets of which are commingled for investment purposes in the Master Trust, (as the term, "Master Trust," is defined, below, in Section III(o)); or an affiliate, as defined, above, in Section III(c)(1) of such employer or controlled group of employers which has been in continuous operation for not less than three (3) years, including the operation of any predecessor; and

(ii) in the case of an affiliate of such employer or controlled group of employers, must have, as of the last day of its most recent fiscal year total assets under its management and control in excess of \$50 million, exclusive of the \$50 Million Net Asset Requirement, (or, in the case of an Eligible Rule 144A Offering, the \$100 Million Net Asset Requirement), as set forth in Section II(o), above, attributable to the aggregate assets of the Client Plans which are commingled in such Master Trust;

(o) The term, "Master Trust," means a trust in which the assets of a group of Client Plans maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act are commingled for investment purposes, and which trust satisfies the net asset requirements, as set forth, above, in Section II(o).

(p) The term, "the Applicants," means DB and its affiliates, as defined, above, in Section III(c).

(q) 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 Applicants, as defined, above, in Section III(p) for their own employees.

*Effective Date:* If granted, this proposed exemption will be effective as of the date the final exemption is published in the **Federal Register**.

#### *Preamble*

This document contains a Notice of pendency (the Notice) before the Department of a proposed individual exemption filed on behalf of DB and its affiliates (the Applicants), which, if granted, would supersede Prohibited Transaction Exemption 2003-24 (PTE 2003-24) (68 FR 48637, August 14, 2003, *as amended*, 68 FR 55993, September 29, 2003) with respect to the Applicants. Accordingly, the entire text of this proposed exemption is set forth in this Notice.

PTE 2003-24 permits purchases of securities by an asset manager on behalf of employee benefit plans (or entities that hold plan assets) for which such asset manager acts as a fiduciary: (i) From any person other than the asset manager or an affiliate during the existence of an underwriting or selling syndicate where a broker-dealer affiliated with the asset manager participates as a manager or a member of such syndicate (affiliated underwriter transactions); and/or (ii) from a trust that issues asset-backed securities where a trustee affiliated with the asset manager serves as trustee of the trust (affiliated trustee transactions).

The Department notes that on June 23, 2001, an authorization (FAN 2001-19E) was issued, pursuant to PTE 96-62 (61 FR 39988, July 31, 1996), to DB and its affiliates with regard to affiliated underwriter transactions. FAN 2001-19E was based on five (5) individual exemptions, granted by the Department in June 2000, which permitted the following entities to engage in affiliated underwriter transactions: (a) PTE 2000-25 issued to Morgan Guaranty Trust Company of New York, and to J.P. Morgan Investment Management, Inc., (65 FR 35129, June 1, 2000); (b) PTE 2000-26 issued to Goldman, Sachs & Co., and its Affiliates, (65 FR 35129, June 1, 2000); (c) PTE 2000-27 issued to the Chase Manhattan Bank, (65 FR 35129, June 1, 2000); (d) PTE 2000-28 issued to Citigroup Inc., (65 FR 35129, June 1, 2000); and (e) PTE 2000-29 issued to Morgan Stanley Dean Witter & Co. and its Affiliates, (65 FR 35129, June 1, 2000).

The Department notes that in 2002, DB and its affiliates and JPMorgan Chase Bank (formerly, Morgan Guaranty Trust Company of New York and the Chase Manhattan Bank) each submitted an application for exemption (D-11004 and D-11106, respectively) requesting additional relief for affiliated trustee

transactions. The relief requested by both financial institutions was encompassed in one exemption, PTE 2003-24, which provided relief for affiliated underwriter transactions and for affiliated trustee transactions. In this regard, PTE 2003-24 amended and replaced PTE 2000-27, PTE 2000-25, and FAN 2001-19E that had previously been issued to Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management, Inc., to the Chase Manhattan Bank, and to DB and its affiliates, respectively.

In June 2005, DB and its affiliates submitted to the Department the subject application for exemption (D-11324) proposing to amend PTE 2003-24. The Department will separately consider exemptions requesting similar relief from the following entities or from any other applicant: (a) JPMorgan Chase Bank, relating to PTE 2003-24, (b) Goldman, Sachs & Co. and its affiliates, relating to PTE 2000-26; (c) Citigroup Inc., relating to PTE 2000-28; (d) Morgan Stanley Dean Witter, & Co., relating to PTE 2000-29; (e) Barclays Global Investors N.A., Barclays Capital, Inc. and their Affiliates, relating to FAN 2001-24E issued October 6, 2001; (f) TCW Group, Inc., and its Affiliates, relating to FAN 2002-09E issued September 14, 2002; (g) Rothchild Asset Management, Inc., relating to FAN 2005-09E issued May 7, 2005; and (h) Lehman Brothers Holding Inc., and Lehman Brothers Inc., *et al.*, relating to PTE 2003-22 (68 FR 40694, July 8, 2003).

The proposed exemption would provide relief similar to the relief provided by PTE 2003-24. In addition, the proposed exemption also: (a) Would permit covered transactions by certain plans invested in common or collective trust funds or pooled investment funds which are not established and maintained by DB or an affiliate but for which an asset management affiliate of DB exercises discretionary control or discretionary authority over the management or disposition of some or all of the plan assets in a fund or renders investment advice, as described in section 3(21)(A)(ii) of the Act with respect to some or all of the assets of such fund, provided certain conditions are satisfied; (b) would permit a master trustee of a master trust, as the terms, "master trustee," and "master trust," are defined herein, to receive disclosures and to consent to covered transactions on behalf of certain employee benefit plans invested in such master trust; and (c) would permit, for purposes of satisfying the net asset requirement of PTE 2003-24 in the case of certain funds, as defined herein, the inclusion

of government plans within the meaning of section 3(32) of the Act. If adopted, this proposed exemption would affect the participants and beneficiaries of the plans involved in such transactions and the fiduciaries with respect to such plans.

#### *Summary of Facts and Representations*

The facts and representations contained in the application are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the Applicants.

1. DB is a German banking corporation and a leading commercial bank. DB provides a wide range of banking, fiduciary, record keeping, custodial, brokerage, and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans, and private investors worldwide. As of December 31, 2004, DB had total assets of over 840 billion euros and shareholders' equity equaling 25.9 billion euros. Deutsche Bank's Institutional Asset Management Division had 3,722 customers in 2004 and was ranked among the top five asset managers in the world. DB is regulated by the Bundesanstalt fuer inanzdienstleistungsaufsicht in Germany.

2. The Applicants seek a new exemption which would amend an existing individual exemption, PTE 2003-24. PTE 2003-24 deals with the situation where an asset manager purchases securities acting as a fiduciary on behalf of employee benefit plans, including plans invested in pooled funds maintained by the asset manager or an affiliate, from any person other than the asset manager or an affiliate during the existence of an underwriting or selling syndicate with respect to such securities: (i) Where the asset manager's affiliate is a manager or a member of the underwriting syndicate for such securities; and/or (ii) where a trustee affiliated with the asset manager serves as trustee of a trust that issues asset-backed securities.

3. DB and its affiliates initially requested an effective date of August 14, 2003, for the proposed exemption. In this regard, August 14, 2003, is the date that the Department published in the **Federal Register** the final exemption for PTE 2003-24. Subsequently, DB notified the Department that it does not require retroactive relief and withdrew the request. Accordingly, if this proposed exemption is granted, the final exemption, will be effective as of the date such final exemption is published in the **Federal Register**.

4. The proposed exemption, if granted, will supersede PTE 2003-24 with regard to DB and its affiliates and will apply to DB and its affiliates only. It is the Department's position that the relief provided by PTE 2003-24 will remain available to JPMorgan Chase Bank, provided the conditions set forth therein are satisfied by JPMorgan Chase Bank.

5. The Applicants have requested that the proposed exemption be applicable only to DB, its current and future branches, and its current and future affiliates and subsidiaries, throughout the world.

With regard to current and future branches of DB, it is the Department's opinion that any reference to DB in the proposed exemption would include a reference to the current and future branches of DB. With regard to the current and future affiliates of DB, it is the Department's position that the proposed exemption would include any current or future affiliate of DB that satisfies the definition of the term, "affiliate," as set forth in Section III(c) of the proposed exemption.

6. The description of covered transactions, as set forth in PTE 2003-24, rather than refer individually to DB and its affiliates, and/or to JPMorgan Chase Bank, refers instead to an Asset Manager. The term, "Asset Manager," as defined in Section II(a) of PTE 2003-24, means "any asset management affiliate of the Applicants (as "affiliate" is defined in paragraph (c)) that meets the requirements of this exemption." To make clear that the proposed exemption applies only to DB and its affiliates, the Department has throughout the proposed exemption substituted the phrase, "an asset management affiliate of DB," instead of the words, "Asset Manager," which appeared in PTE 2003-24. In addition, in this proposed exemption the Department has deleted the definition of the term, "Asset Manager," as set forth in Section II(a) of PTE 2003-24, and has substituted instead in Section III(a) of the proposed exemption a definition of the term, "Advised Fund(s)."

7. The Applicants request relief for situations where DB or an affiliate has discretionary authority over the assets of a common or collective trust fund or a pooled investment fund as an advisor or as a sub-advisor.

The Department has determined to provide additional exemptive relief and to require additional safeguards with respect to the transactions described herein. In this regard, the proposed exemption provides relief for AUT and/or ATT transactions engaged in by common or collective funds or pooled

investment funds maintained by an asset management affiliate of DB. The proposed exemption also provides relief for AUT and ATT transactions engaged in by common or collective funds or pooled investment funds which are established and maintained by an Appointing Fiduciary, as defined in Section III(m). Such Appointing Fiduciary must have the power to appoint and terminate an asset management affiliate of DB to exercise discretionary control or discretionary authority over the management or disposition of some or all of the assets of plans in such fund, or to render investment advice, as described in section 3(21)(A)(ii) of the Act with respect to some or all of the assets of such fund. However, the Department did not propose relief for AUT and/or ATT transactions in situations engaged in by a common or collective trust fund or pooled investment fund in which employee benefit plan(s) subject to the Act and/or Code invest, which is established and maintained by an Appointing Fiduciary but for which an entity, other than the Appointing Fiduciary, has selected an asset management affiliate of DB to exercise discretionary control or discretionary authority over the management or disposition of plan assets or to render investment advice, as described in section 3(21)(A)(ii) of the Act with respect to some or all of the assets of such fund and for which such entity serves as a fiduciary. In addition to the foregoing, the proposed exemption does not apply to any AUT and ATT transactions involving plan assets which are invested in certain multi-tiered pooled arrangements. In this regard, if a common or collective trust fund or other pooled investment fund (except for a Master Trust, as defined, below, in Section III(o)) containing the assets of employee benefit plans(s) subject to the Act and/or the Code, invests, directly or indirectly, some or all such plan assets in another Pooled Fund, as defined, below, in Section III(f), or in an Advised Fund, as defined, in this Section III(a), then the exemption does not apply to any AUT or ATT transactions engaged in by such Pooled Fund or such Advised Fund.

8. The Applicants request that the definition of "Pooled Fund," be expanded in the proposed exemption. Specifically, the Applicants request that Section III(f) of the proposed exemption should read as follows:

The term, "Pooled Fund," means a common or collective trust fund or pooled investment fund maintained, advised or sub-advised by the Asset Manager.

The Department has decided not to accept the Applicants' suggestion to expand the definition of the term, "Pooled Fund" to include funds advised or sub-advised by DB or its affiliate. Instead, the Department has adopted the definition of "Pooled Fund," as set forth in Section III(f) of the proposed exemption.

9. As discussed above, the Department has determined to propose relief for situations where DB or an affiliate exercises discretionary control or discretionary authority over the management or disposition of some or all of the assets of employee benefit plans subject to the Act and/or Code invested in a common or collective trust funds or pooled investment funds or renders investment advice, as described in section 3(21)(A)(ii) of the Act with respect to some or all of the assets of such fund which is established and maintained by an entity other than DB or its affiliates. In this regard, the Department has introduced the term, "Advised Fund," and has adopted the definition of the term, "Advised Fund," as set forth in Section III(a) of the proposed exemption.

10. In the view of the Department, the definition of the term, "Appointing Fiduciary," applies to the individual or entity that selects DB or an affiliate as an advisor but does not apply to the individual or entity that selects DB or an affiliate to serve as a sub-advisor. Accordingly, the Department has adopted the language, as set forth in Section III(m) of the proposed exemption which defines the term, "Appointing Fiduciary." The definition also describes the independence of the Appointing Fiduciary. With regard to the qualifications of the Appointing Fiduciary, the Department believes that the Appointing Fiduciary must have been in continuous operation for not less than three years, including the operation of any predecessors. Further, the Department has determined that the Appointing Fiduciary must qualify as a "qualified professional asset manager" (QPAM), as that term is defined under Part V(a) of PTE 84-14. In addition, the Appointing Fiduciary must have total client asset 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 Section II(m), whether such Appointing Fiduciary, qualifies as a QPAM, pursuant to Part V(a)(1), V(a)(2), V(a)(3) or V(a)(4) of PTE 84-14.

11. The Applicants request that the Appointing Fiduciary be permitted to receive disclosures and to consent to the covered transactions on behalf of a fund

that is not maintained by DB or an affiliate.

The Department has limited the definition of Advised Funds to funds established and maintained by the Appointing Fiduciary for which DB or an affiliate exercises discretionary authority or discretionary control over the management or disposition of some or all of the assets of plans invested in such fund, or renders investment advice, as described in section 3(21)(A)(ii) of the Act with respect to some or all of the assets of such fund. Further, the Department has decided that consent for an Advised Fund to engage in any covered transaction may not be obtained from the Appointing Fiduciary that establishes and maintains such Advised Fund. Instead, in the case of existing plan investors or Master Trust investors or In-House Plan investors in an Advised Fund, Section II(k) of the proposed exemption provides that an Advised Fund may not engage in any covered transactions pursuant to this proposed exemption, unless the independent fiduciary of such existing plan investors, the Master Trustee of such Master Trust investors, or the fiduciary of such In-House Plan investors, as the case may be, receive certain disclosures and are given the opportunity to withdraw from such fund prior to such fund engaging in the covered transactions. Existing plan investors, Master Trust investors, or In-House investors that do not withdraw within a certain period of time will be deemed to have authorized the covered transactions. Further, in the case of plan investors, or the Master Trust investors, or In-House Plan investors whose assets are proposed to be invested in an Advised Fund after such fund has begun to engage in the covered transactions, Section II(l) of the proposed exemption provides that the Appointing Fiduciary must obtain written authorization from the independent fiduciary of each such prospective plan investor, from the Master Trustee of each such prospective Master Trust investor, and from the fiduciary of each such prospective In-House Plan investor after providing such independent fiduciary, Master Trustee, or fiduciary of such In-House Plan, as the case may be, with certain disclosures prior to investment in such fund by such plan, Master Trust, or In-House Plan.

12. The Department has not provided relief in this proposed exemption for funds sub-advised by DB or its affiliates to engage in affiliated underwriter transactions or affiliated trustee transactions, nor has the Department provided relief in this proposed exemption for certain multi-tiered

pooled arrangements, as discussed above. The Department has determined that the Appointing Fiduciary who establishes and maintains the Advised Fund and who selects DB or an affiliate to exercise discretionary control or discretionary authority over the management or disposition of the assets of plans in such fund or to render investment advice, as described in section 3(21)(A)(ii) of the Act with respect to some or all of the assets of such fund, must contractually obligate itself to distribute the written disclosures and reports required by the proposed exemption. In this regard, the Department believes that the contractual agreement must bind the Appointing Fiduciary to provide not only the disclosures, required by Section II(k), but also the disclosures, required by Section II(l).

Further, the Appointing Fiduciary must be contractually obligated to provide the report, required by Section II(n), and must also be subject to the requirement of Section II(m) to provide reasonably available information regarding the covered transactions upon request. Accordingly, the Department has included Section II(u), as set forth in the proposed exemption.

13. The Department has altered the definition of the term, "Client Plan," in the proposed exemption. In this regard, in Section II(e) of PTE 2003-24, the definition of the term, "Client Plan," reads as follows:

The term "Client Plan" means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act and whose assets [*sic.*] under the management of the Asset Manager, including a plan investing in a Pooled Fund (as "Pooled Fund" is defined in paragraph (f) below).

The Department has deleted from the definition above, the phrase, "including a plan investing in a Pooled Fund (as "Pooled Fund" is defined in paragraph (f) below)." In this regard, the Department has determined to clarify that the term, "Client Plan," refers only to the singular or the plural for such plan(s). With regard to Client Plans investing in a Pooled Fund or investing in an Advised Fund, the Department has separately made reference to such funds, as appropriate in the proposed exemption. The Department has also decided to clarify that, in addition to plans subject to the fiduciary responsibility provisions of the Act, the term, "Client Plans," includes plans which are subject to 4975 of the Code. Accordingly, the Department has defined the term, "Client Plan," as set forth in Section III(e) of the proposed exemption.

14. The Department agrees with the Applicant's request that a master trustee may consent on behalf of plans whose assets are pooled in a master trust. Specifically, a master trustee may engage in the covered transactions on behalf of a master trust or may consent to such master trust investing in Pooled Funds and in Advised Funds which engage in the covered transactions, provided that such master trustee and such master trust satisfy certain definitional requirements. The Department has included a definition for the term, "Master Trust," in Section III(o) of this proposed exemption.

Further, the Department has also included a definition of the term, "Master Trustee," in Section III(n) of this proposed exemption. Specifically, among other requirements, this definition of the term, "Master Trustee," states: (i) that the Master Trustee must be an officer, director, partner, employee of an employer or controlled group of employers that sponsor such Client Plans or an affiliate of such employer or controlled group of employers, and (ii) that the Master Trustee must satisfy certain independence, sophistication, and experience requirements.

15. The Department, as discussed more fully below, has made certain changes to the net asset requirements, as set forth in Section II(o) of the proposed exemption, which will apply to single Client Plans and Master Trusts and will apply to Client Plans, Master Trusts, and In-House Plan whether participating in a Pooled Fund maintained by DB or an affiliate or participating in an Advised Fund, as defined herein, which is established and maintained by an Appointing Fiduciary, as defined herein.

Under Section I(o) of PTE 2003-24, in order to engage in covered transactions, a Client Plan must have total net assets with a value of at least \$50 million (or in the case of an Eligible Rule 144A Offering, total net assets of at least \$100 million in securities, as determined pursuant to SEC Rule 144A (17 CFR 230.144A)). For Pooled Funds, PTE 2003-24 contains an exception to the \$50 million net asset requirement, described above, which, in part, reads, as follows,

In the case of a Pooled Fund, the \$50 million requirement will be met, if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund as [*sic.*] held by plans having total net assets with a value of at least \$50 million, or if each such Client Plan in the Pooled Fund has total assets of at least \$50 million.

Further, the language in PTE 2003-24 indicates that for purchases involving

an Eligible Rule 144A Offering on behalf of a Pooled Fund, the \$100 million requirement is met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having at least \$100 million in assets, or if each such Client Plan in the Pooled Fund has total assets of at least \$100 million, and the Pooled Fund itself qualifies as a "QIB," as determined pursuant to SEC Rule 144A.

In the proposed exemption, the Department has made clear that the 50 percent (50%) exception to the net asset requirement is applicable to an Advised Fund, as well as to a Pooled Fund, and also has clarified the language of the net asset requirements in the proposed exemption. Specifically, the Department has adopted the language, as set forth in Section II(o) in the proposed exemption.

Further, the Department has determined that for purposes of the 50 percent (50%) exception to the net asset requirement, that government plans be considered "Client Plans" under the proposed exemption; provided that each such government plan has net assets with a value of at least \$50 million (or in the case of an Eligible Rule 144A Offering, \$100 million in securities of issuers that are not affiliated with such government plan). Accordingly, the Department has adopted the language in Section II(o), as set forth in this proposed exemption.

16. The Department believes that the net asset requirements set forth in Section II(o) of this proposed exemption provide an important safeguard for the protection of plans which engage in AUT and/or ATT transactions, either individually or through a Master Trust, a Pooled Fund, or an Advised Fund.

With regard to an Advised Fund which is established and maintained by an entity other than DB, the Department believes that the Appointing Fiduciary of such Advised Fund should be contractually obligated, pursuant to a written agreement with the asset management affiliate of DB, to ensure compliance with Section II(o) of this proposed exemption, to maintain records thereto, and to provide written confirmation of compliance with the net asset requirements, as set forth in Section II(o) of this exemption, upon request from the asset management affiliate of DB. In this regard, the Department has modified Section II(o) of the proposed exemption accordingly.

17. The proposed exemption is in the interest of participants and beneficiaries of plans that engage in the covered transactions. In this regard, it is represented that the proposed exemption will increase investment

opportunities and will reduce administrative costs for such plans.

18. The proposed exemption will expand the ability of Pooled Funds and Advised Funds to participate in the covered transactions. With respect to the authorization requirements for Master Trusts, the proposed exemption will allow a Master Trustee who acts on behalf of the individual plans invested in a Master Trust to approve the covered transactions.

19. The proposed exemption is protective of the rights of the participants and beneficiaries of affected plans. In this regard, the proposed exemption contains sufficient safeguards that apply to the covered transactions engaged in by plan investors under the proposed exemption.

20. In summary, the Applicants represent that the proposed exemption satisfies the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The proposed exemption will increase investment opportunities and will reduce administrative costs for plans that engage in the covered transactions;

(b) The proposed exemption will expand the ability of Pooled Funds and Advised Funds to participate in the covered transactions;

(c) The proposed exemption recognizes the practical aspects of a Master Trustee acting on behalf on each of the plans invested in a Master Trust that engages in the covered transactions;

(d) Prior to engaging in any of the covered transactions, an Independent Fiduciary of each plan, (or Master Trustee of each Master Trust or fiduciary of each In-House Plan) will receive certain disclosures and will be given an opportunity to consent to the covered transactions, either through affirmative or negative consent;

(e) The Independent Fiduciary of each Client Plan (or the Master Trustee of each Master Trust or the fiduciary of each In-House Plan) will receive periodic reports with respect to all Securities purchased pursuant to the proposed exemption;

(f) Each Client Plan, In-House Plan, Master Trust, Pooled Fund, or Advised Fund participating in the covered transactions will be subject to certain net asset requirements;

(g) The asset management affiliate of DB and the Appointing Fiduciary must each qualify as a QPAM, in addition to satisfying certain additional requirements; and

(h) The proposed exemption contains sufficient safeguards for the protection

of the rights of the participants and beneficiaries of affected plans.

Interested persons are referred to application number D-11324 on file with the Department for the complete discussion of the facts and representations of the Applicants relating to this proposed exemption.

Copies of all documents with respect to this proposed exemption and all documents relating to PTE 2003-24 are available for public inspection and may be obtained by interested persons from the Public Documents Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

#### *Notice to Interested Persons*

The Applicants believe that the number of potentially affected plans is so large that notice by mailing is impracticable and inadequate. Accordingly, the only practical means of notifying such plans of this proposed exemption is by the publication of this Notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this Notice in the **Federal Register**.

#### **FOR FURTHER INFORMATION CONTACT:**

Angelena C. Le Blanc of the Department, telephone (202) 693-8540. (This is not a toll-free number).

**Kern County Electrical Pension Trust (the Pension Plan); Kern County Electrical Joint Apprenticeship and Training Trust (the Apprenticeship Plan); Kern County Electrical Health and Welfare Plan (the Welfare Plan)<sup>4</sup> and The International Brotherhood of Electrical Workers Local Union 428 (the Local Union), Located in Bakersfield, California**

[Exemption Application Nos: D-11383; L-11384; and D-11385]

#### *Proposed Exemption*

The Department of Labor 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 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)(1) (A) through (D), 406(b)(1), and

406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E)<sup>5</sup> shall not apply to the sale by the Pension Plan of a parcel of unimproved real property (Parcel #1) to the Local Union, a party in interest with respect to the Pension Plan; provided that the conditions in Section II (a), (d), (f), (h), and (i), as set forth below, are satisfied;

(b) the restrictions of sections 406(a)(1) (A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) shall not apply to the sale to the Apprenticeship Plan by the Pension Plan of a parcel of unimproved real property (Parcel #2) which is adjacent to Parcel #1; provided that the conditions in Section II (b), (c), (e), (g), (h), (i), and (j), as set forth below, are satisfied; and

(c) the restrictions of sections 406(a)(1) (A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Act shall not apply to the lease (the Lease) by the Apprenticeship Plan of office space (the Premises) in a training facility (the Training Center) to be constructed by the Apprenticeship Plan on (Parcel #2) to Construction Benefits Administration, Inc. (CBA), a party in interest with respect to the Plans, as service provider, whose directors are also trustees of the Plans and officers of the Local Union; provided that the conditions in Section II (i), (k), (l), (m), (n), and (o), as set forth below, are satisfied.

#### Section II: Conditions

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

(a) The sale by the Pension Plan of Parcel #1 to the Local Union is a one-time transaction for cash;

(b) The sale by the Pension Plan of Parcel #2 to the Apprenticeship Plan is a one-time transaction for cash;

(c) An independent, qualified fiduciary (the I/F), acting on behalf of the Apprenticeship Plan:

(1) after negotiating, reviewing, and analyzing the terms of the purchase of Parcel #2, approves such purchase by the Apprenticeship Plan;

(2) after negotiating, reviewing, and analyzing the construction of the Training Center on Parcel #2, approves the construction of the Training Center by the Apprenticeship Plan;

(3) determines that the acquisition of Parcel #2 and the construction of the Training Center by the Apprenticeship Plan would be feasible, in the interest of, and protective of the Apprenticeship Plan and its participants and beneficiaries; and

(4) is responsible for monitoring compliance with the terms and condition of this exemption and the terms and conditions of the acquisition of Parcel #2 and the construction of the Training Center by the Apprenticeship Plan;

(d) The purchase price paid by the Local Union for Parcel #1 is equal to the fair market value of such parcel, as determined by an independent, qualified appraiser, as of the date of the sale;

(e) The purchase price paid by the Apprenticeship Plan for Parcel #2 is equal to the fair market value of such parcel, as determined by an independent, qualified appraiser, as of the date of the sale;

(f) The terms of the sale by the Pension Plan of Parcel #1 to the Local Union are no less favorable to the Pension Plan than terms negotiated under similar circumstances at arm's length with unrelated third parties;

(g) The terms of the sale by the Pension Plan of Parcel #2 to the Apprenticeship Plan are no less favorable to the Pension Plan and no less favorable to the Apprenticeship Plan than terms negotiated under similar circumstances at arm's length with unrelated third parties;

(h) The Plans will not provide any construction financing or permanent financing to the Local Union in connection with the acquisition by the Local Union of Parcel #1 and the construction of a building on Parcel #1 (the Union Building) by the Local Union, nor will the Pension Plan, the Welfare Plan, or the Local Union provide any construction financing or permanent financing to the

Apprenticeship Plan in connection with the acquisition by the Apprenticeship Plan of Parcel #2 and the construction of the Training Center on Parcel #2 by the Apprenticeship Plan;

(i) The Plans will not pay any commissions, fees, or other similar payments to any party in connection with any of the subject transactions;

(j) The terms of any loan from an unrelated third party obtained by the Apprenticeship Plan for the purpose of acquiring Parcel #2 or constructing the

<sup>4</sup> The Apprenticeship Plan, the Pension Plan, and the Welfare Plan are, herein, collectively referred to as the Plans.

<sup>5</sup> For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Training Center provides recourse to such unrelated third party lender only against the Apprenticeship Plan's interest in Parcel #2 and not against the general assets of the Apprenticeship Plan;

(k) Prior to entering into the Lease, the I/F, acting on behalf of the Apprenticeship Plan, determines that the leasing transaction is feasible, in the interest of, and protective of the Apprenticeship Plan and its participants and beneficiaries; and approves the leasing transaction in accordance with the fiduciary provisions of the Act;

(l) Throughout the duration of the Lease, the I/F, acting on behalf of the Apprenticeship Plan, monitors compliance with the terms and conditions of the Lease, ensures that such terms and conditions are at all times satisfied, and is responsible for legally enforcing the payment of the rent and the proper performance by CBA under the terms of the Lease and for taking any and all steps necessary to ensure that the Apprenticeship Plan is protected, including but not limited to reviewing, negotiating, and approving the initial Lease and any amendment, renewal, or extension of such Lease;

(m) Under the provisions of the Lease, the leasing transaction is at all times on terms that are at least as favorable to the Apprenticeship Plan and to CBA, as terms that would have been negotiated under similar circumstances at arm's length with unrelated third parties;

(n) The rental rate under the terms of the initial Lease and under the terms of any amendment, renewal, or extension of the Lease, is adjusted at least every three (3) years in which such Lease is in effect, and the rental rate reflects the fair market rental value of the Premises, as determined by an independent, qualified appraiser; and

(o) Notwithstanding anything to the contrary in the Lease, the Apprenticeship Plan may at any time upon ninety (90) days prior written notice given to CBA, terminate the Lease and CBA's occupancy of the Premises, effective as of the date specified in such written notice, which date shall be at least ninety (90) days after the date such written notice is given to CBA.

#### *Summary of Facts and Representations*

1. The Pension Plan, the Apprenticeship Plan, and the Welfare Plan are Taft-Hartley governed multi-employer plans established and maintained under a collective bargaining agreement between the Local Union and various electrical contractors who are members of the National Electrical Contractors Association, Bakersfield Chapter, Inc. (NECA).

2. The Pension Plan is a defined benefit pension plan located in Bakersfield, California. The Pension Plan was established in 1964. The Pension Plan has approximately 849 plan participants, both active and retired. As of April 2006, the Pension Plan had assets with a value of \$75,445,820. The fair market value of the Property which is the subject of this exemption constitutes 1.4 percent (1.4%) of the assets of the Pension Plan.

3. The Apprenticeship Plan is an employee welfare benefit plan located in Bakersfield, California. The Apprenticeship Plan was established in 1962. The Apprenticeship Plan is designed to provide programs to recruit and train electrical workers and to provide continuing education for journeymen.

It is represented that currently, the Apprenticeship Plan offers training to between 80 to 105 apprentices on an annual basis. The Apprenticeship Plan operates a five-year program for inside wiremen apprentices which is approved and regulated by the Division of Industrial Relations in the State of California. In addition, the Apprenticeship Plan also provides a three-year training program to apprentices in voice-data-video.

The Apprenticeship Plan also offers training to between 50 to 100 journeymen on an annual basis. In this regard, journeymen receive training in instrumentation, PLC, advanced motor controls, advanced conduit bending, National Electrical Code, certification prep classes, as well as OSHA training and welding from the Apprenticeship Plan.

As of April 30, 2006, the Apprenticeship Plan had assets with a value of \$2,762,025. The fair market value of Parcel #2, if acquired by the Apprenticeship Plan, would constitute approximately 9.29 percent (9.29%) of the assets of such plan. It is represented that the preliminary budget, including the cost of acquiring Parcel #2 and the cost of constructing the Training Center is \$2,143,400 dollars which amount would constitute approximately 77.6 percent (77.6%) of the assets of the Apprenticeship Plan.

4. The Welfare Plan is an employee welfare benefit plan located in Bakersfield, California. The Welfare Plan is designed to provide health and welfare benefits to participants. The Welfare Plan has approximately 406 plan participants. As of September 30, 2006, the Welfare Plan had assets with a value of \$2,452,435.

5. The Pension Plan is managed by a Board of Trustees (the Pension Board). The members of the Pension Board are

parties in interest and fiduciaries with respect to the Pension Plan, pursuant to section 3(14)(A) of the Act. The Pension Board consists of six (6) individuals with three (3) members selected by the Local Union and three (3) members selected by NECA.

The Apprenticeship Plan is managed by a Board of Trustees (the Apprenticeship Board). The members of the Apprenticeship Board are parties in interest and fiduciaries with respect to the Apprenticeship Plan, pursuant to section 3(14)(A) of the Act. The Apprenticeship Board consists of six (6) individuals with three (3) members selected by the Local Union and three (3) members selected by NECA.

The Welfare Plan is managed by a Board of Trustees (the Welfare Board). The members of the Welfare Board are parties in interest and fiduciaries with respect to the Welfare Plan, pursuant to section 3(14)(A) of the Act. The Welfare Board consists of six (6) individuals with three (3) members selected by the Local Union and three (3) members selected by NECA.

It is represented that the same six (6) individuals serve on the Pension Board, the Apprenticeship Board, and the Welfare Board. The members of the Pension Board, the Apprenticeship Board, and the Welfare Board that have been selected by NECA are James A. Chilko, Carl Jarrett, and Rodney Bailey. Mr. Chilko is employed by NECA and is the business director of the Pension Fund. Mr. Jarrett is a self-employed electrical contractor. Mr. Bailey is a non-bargaining participant in the Pension Plan and a self-employed electrical contractor.

The members of the Pension Board, the Apprenticeship Board, and the Welfare Board that have been selected by the Local Union are Don Rush, Danny Kane, and Jim S. Elrod. Mr. Kane, Mr. Elrod, and Mr. Rush are members of the Local Union and also participants in both the Pension Plan and the Apprenticeship Plan. Mr. Kane is an elected, paid official of the Local Union and serves in the capacity as business director. Mr. Elrod is the training director of the Apprenticeship Plan, President of the Local Union, and is employed by the Local Union as business agent. Mr. Rush is employed by various electrical contractors who are signatory to a collective bargaining agreement with the Local Union and works for an hourly wage in the trade.

6. The Local Union was chartered in 1903. It is represented that the Local Union currently has approximately 515 members. The members of the Local Union are covered by the Pension Plan, the Apprenticeship Plan, and the



Welfare Plan. As an employee organization any of whose members are covered by the Pension Plan, the Apprenticeship Plan, and the Welfare Plan, the Local Union is a party in interest with respect each of these Plans, pursuant to section 3(14)(D) of the Act.

The organizational structure of the Local Union is typical of most electrical unions. The business manager is elected by the general membership and functions as the CEO. The business manager appoints business agents to assist him in his duties. The President, Vice President, Recording Secretary, and Treasurer of the Local Union are also elected by the general membership along with an Executive Board. The Executive Board is composed of members of the Local Union. The Executive Board handles disciplinary matters, operations, and finances of the Local Union.

7. The Pension Plan owns real estate (the Property) located at the corner of Sillect Avenue and Arrow Street in an incorporated area of central Bakersfield, California, within the Rio Mirada Industrial Park (the Industrial Park). The Industrial Park totals approximately 120 acres. It is represented that the Industrial Park is approximately 80 percent (80%) to 85 percent (85%) built out. The size of the remaining parcels in the Industrial Park typically range from two (2) to fifteen (15) acres and are held by individual investors. Existing uses within the Industrial Park consist of light manufacturing, office-warehouse, and commercial office uses.

The Property which is the subject of this proposed exemption is vacant and unimproved. The Property is zoned for light manufacturing, professional office, and neighborhood commercial and general commercial uses in conformity with surrounding development.

The Property comprises an area of 7.95 acres. The Property originally comprised 29.04 acres and was purchased by the Pension Plan in August of 1988, at a price of \$1,581,772 from an unrelated third party. It is represented that since 1988 a majority of the Property has been sold to various unrelated third parties. It is represented that the Pension Plan now retains title to only 7.95 acres of the original 29.04 acres. It is represented that although the remaining portion of the Property has been actively marketed over the years, no dispositions have resulted.

8. The Pension Plan and the Local Union have requested an administrative exemption which would permit the Pension Plan to sell a portion of the Property (Parcel #1), consisting of 6.05 acres to the Local Union. It is anticipated that the Local Union will

construct the Union Building, consisting of a 10,000 square foot office building and meeting hall, on approximately 1.5 acres of the 6.05 acres of Parcel #1 to be acquired by the Local Union from the Pension Plan. The Local Union intends to hold the remaining 4.55 acres of Parcel #1 for investment purposes.

9. The Pension Plan and the Apprenticeship Plan have also requested an administrative exemption which would permit the Pension Plan to sell to the Apprenticeship Plan a portion of the Property (Parcel #2), consisting of 1.9 acres, of the remaining 7.95 acres of the Property owned by the Pension Plan. It is anticipated that the Apprenticeship Plan will build a new 15,000 square foot Training Center on Parcel #2.

As discussed more fully below, the aggregate fair market value of the entire 7.9 acre Property has been determined to be \$1,074,000. The Local Union will pay a purchase price for Parcel #1 of \$816,968 or \$3.10 per square foot. The Apprenticeship Plan will pay a purchase price for Parcel #2 of \$256,568 or \$3.10 per square foot. Based on these figures, it is represented that the Local Union and the Apprenticeship Plan will pay 76.2 percent (76.2%) and 23.8 percent (23.8%), respectively of the fair market value of the Property.

10. It is represented that the purchase price to be paid for Parcel #1 by the Local Union to the Pension Plan and the purchase price to be paid for Parcel #2 by the Apprenticeship Plan to the Pension Plan will be the fair market value of each such parcel, as determined by an independent, qualified appraiser, as of the date each of the proposed sale transactions is entered.

The application files contain an appraisal report, dated February 23, 2005, of the fair market value of a fee simple interest in the Property in "as is" condition. This appraisal report was prepared by Michael C. Burger (Mr. Burger), MAI, of Michael Burger & Associates in Bakersfield, California. Mr. Burger is qualified to appraise the Property in that since 1987 he has engaged in appraising all types of real estate, including single family homes, apartments, agricultural, commercial and industrial properties, and right-of-way properties. Mr. Burger holds an MAI designation from the Appraisal Institute. Mr. Burger is registered with the State of California, as a Certified General Real Estate Appraiser.

Mr. Burger is independent in that he has no present or prospective interest in the Property and no personal interest or bias with respect to the parties involved in the subject transactions. In addition, Mr. Burger's assignment and

compensation were not contingent upon developing or reporting a predetermined value or direction in value. Less than one percent (1%) of Mr. Burger's gross income is from business with the Union and the Plans.

In his February 23, 2005, appraisal report, Mr. Burger represents that he previously appraised the Property on December 31, 2001, for the Pension Plan. In narrating the marketing history of the Property, Mr. Burger states that the Property has been on and off the market within the last several years. In this regard, according to Mr. Burger, the Property was listed in January 28, 1998, for \$949,000 and was taken off the market in January 4, 1999. The Property was re-listed in October 14, 2000, for \$948,000. As of February 23, 2005, the Property was listed for \$1,250,000 or \$3.61 per square foot, which in the opinion of Mr. Burger was excessive.

After inspecting the Property, and based only on the sales comparison approach to value, Mr. Burger determined that, as of February 23, 2005, the fair market value of the Property was \$952,000 or \$2.75 per square foot. Subsequently, in a letter dated June 15, 2005, Mr. Burger updated the February 23, 2005, appraisal report of the fair market value of the Property, based on two (2) new comparable sales in the area. In this regard, as of June 15, 2005, Mr. Burger estimated that the fair market value of the Property was \$1,040,000 or \$3.00 per square foot.

11. It is represented that the proposed purchase of Parcel #1 by the Local Union and the proposed purchase of Parcel #2 by the Apprenticeship Plan are feasible in that each purchase will be a one-time transaction for cash. Further, neither the Pension Plan nor the Apprenticeship Plan will pay any commissions, sales fees, or other similar payments to any party in connection with the subject transactions.

12. It is represented that the proposed sale of the Property is in the interest of the participants and beneficiaries of the Pension Plan. In this regard, it is represented that the Pension Plan will benefit from additional cash proceeds from the sale of Parcel #1 to the Local Union and the sale of Parcel #2 to the Apprenticeship Plan. Further, the Pension Plan will be divesting itself of the Property which will reduce the percentage of the Pension Plan's portfolio dedicated to illiquid, undeveloped real estate. It is represented that such divestiture will help the Pension Plan meet its investment goals.

13. It is represented that the proposed purchase of Parcel #2 by the Apprenticeship Plan, the construction

of the Training Center, and the leasing of the Premises in the Training Center to CBA is protective of the Apprenticeship Plan, because American Realty Advisors (ARA) has been retained to serve as the I/F to act on behalf of the Apprenticeship Plan. In general, ARA, acting as the I/F, has acknowledged that it is acting as a fiduciary under the Act with regard to all decision making responsibility for the Apprenticeship Plan, including the purchase of Parcel #2, the development of Parcel #2, the construction of the Training Center on Parcel #2, and any leasing arrangements of space in such Training Center.

It is represented that ARA is qualified to serve as the I/F, in that since 1988 when it was founded, ARA has developed significant expertise in property acquisition and disposition, acting as an independent fiduciary on behalf of Taft-Hartley clients. Specifically, ARA represents that it has acted on behalf of more than 200 multi-employer clients and has been involved as the fiduciary investment manager under the Act in real estate transactions worth over \$3 billion. ARA assumes and acknowledges its status as a fiduciary for its plan clients, as defined in section 3(21)(A) of the Act. ARA has completed numerous assignments as a QPAM and satisfies all of the requirements of a QPAM, as defined in PTCE 84-14. In addition, ARA is a registered investment advisor with the Securities and Exchange Commission.

It is represented that ARA is independent in that it has no business or personal relationship with any of the parties to the subject transactions. In addition ARA is independent in that amounts paid or to be paid to ARA by the Apprenticeship Plan constitute less than one percent (1%) of ARA's gross annual revenues in the year that the subject transactions are entered.

With regard to the purchase of Parcel #2 by the Apprenticeship Plan, ARA evaluated the appraisal reports submitted by Mr. Burger, dated February 23, 2005, and June 15, 2005. In the opinion of ARA, given the fact that the Property is vacant land, Mr. Burger's use of only the sales comparable approach in arriving at the value of the Property in both appraisals is appropriate, as the cost and income approaches to value are not warranted for this type of real estate. It is represented by ARA that although Mr. Burger considered the entire site in the valuation, as opposed to only the portion of the Property to be purchased by the Apprenticeship Plan, uniform conditions exist throughout the site.

However, with regard to the February 23, 2005 appraisal report prepared by Mr. Burger, in the opinion of ARA, the sales price per square foot appears to be overstated in three of the five comparables, while in two of the five comparables the sales price per square foot appears to be understated. With regard to the updated appraisal report of June 15, 2005, prepared by Mr. Burger, ARA states that it is difficult to tell whether the comparable sales had closed at the prices stated in such report. In conclusion, ARA has determined that the fair market value of the Property, as of March 10, 2006, was \$1,074,000 or \$3.10 per square foot.

Included in its duties as the I/F, ARA is responsible for providing a written report to the Department. In preparing the written report for the Department, ARA represents that it: (a) Collected all available information from the Apprenticeship Plan, including financial information; (b) visited the Property, as well as visited the Apprenticeship Plan's existing training facility; (c) interviewed various individuals, including the training director of the Apprenticeship Plan, the business director of the Pension Fund, the business director of the Local Union, CBA, the Pension Plan's real estate broker, several other real estate brokers, and an attorney; (d) evaluated both of the appraisals reports prepared by Mr. Burger of the fair market value of the Property; (e) evaluated the real estate market to determine land values, rents, and values for comparable properties in the market; (f) evaluated the Property in terms of zoning, setback requirements, site coverage, covenants, conditions, and restrictions, access, and location for the purpose of assessing the value of the Property in relation to the needs of the Apprenticeship Plan; (g) reviewed all development drawings and documented discussions pertaining to the development of the Property; (h) derived a value for the Property on a per square foot basis; (i) evaluated the potential development costs of Parcel #2; (j) evaluated the development feasibility of Parcel #2; (k) evaluated the financial capacity of the Apprenticeship Plan to potentially acquire and proceed with the development of Parcel #2; (l) determined whether the proposed acquisition and development of Parcel #2 is in the best interests of the beneficiaries of the Apprenticeship Plan; (m) determined whether the proposed acquisition and development of Parcel #2 is feasible and protective of the Apprenticeship Plan; and (n) provided an opinion on whether the

Apprenticeship Plan should acquire and develop Parcel #2.

Further, ARA represents that it will perform the following tasks if the proposed exemption is granted: (a) Monitor the acquisition of Parcel #2 through completion; (b) engage, if necessary, a Phase I Environmental Site Assessment of Parcel #2; (c) engage, if necessary, a survey of Parcel #2; (d) obtain a preliminary title report for Parcel #2 with copies of all title exceptions; (e) evaluate any legal or title issues relating to Parcel #2; (f) review and evaluate any and all architectural drawings; and (g) review and evaluate all the financial statements of the Apprenticeship Plan on an ongoing basis through the development of Parcel #2. In addition, ARA represents that the sales contract will be made contingent upon obtaining a satisfactory Geotechnical Analysis of Parcel #2 which confirms the suitability of the soil for development.

14. In fulfilling its duties as the I/F, ARA evaluated the existing Apprenticeship Plan training facility to help ascertain the amount and type of space needed for the new Training Center. In this regard, ARA represents that the existing facility of the Apprenticeship Plan consists of two (2) buildings (Building A and Building B; collectively the Existing Buildings) located, respectively, at 401 and 325 19th Street in Bakersfield, California. Building A, constructed in 1967, contains approximately 4,500 square feet. Building B, constructed in 1962, contains approximately 4,300 square feet, for a combined total of 8,800 square feet.

ARA represents that the Existing Buildings are inadequate for the following reasons: (a) The Existing Buildings are functionally inadequate due to small classroom size and layout, given that training needs have changed over time; (b) the Existing Buildings are over 30 years old and exhibit major wear; (c) upgrading the Existing Buildings is not feasible due to the small size of the underlying land area and the functional obsolescence of the Existing Buildings; (d) the Existing Buildings have 28 parking spaces which are inadequate for the number of apprentices using such buildings, especially during times of outdoor training where a portion of the parking lot is occupied by a trailer that accommodates the training activities; (e) the classroom space in the Existing Buildings enables only a small number of students per class and also requires significant "clean-up" time to reorganize class materials at the end of every class; (f) there is limited shop

space in the Existing Buildings, requiring daily that equipment used in certain activities must be moved to accommodate training with other equipment; (g) the Existing Buildings have inadequate ventilation and lack of air conditioning in the shop areas; (h) the Existing Buildings lack storage areas which results in equipment and learning materials being placed in any available open area, only to be moved to accommodate training; and (i) the location of the Existing Buildings is no longer as close to the pool of potential apprentices as such buildings once were.

The architectural firm of Ordiz Melby Architects Inc. has provided preliminary drawings containing options for the layout and design of the new Training Center to be constructed for the Apprenticeship Plan on Parcel #2. It is represented that no detailed drawings of such Training Center have been finalized due to the fact that ARA believes it is not in the best interest of the Apprenticeship Plan to expend significant additional costs prior to obtaining a final exemption.

ARA has also prepared a preliminary development budget for the new Training Center. ARA considered the cost of acquiring Parcel #2, as well as construction costs for the Training Center. In this regard, ARA has as a preliminary matter budgeted a total project cost of \$2,143,400 for the acquisition of Parcel #2 and the construction of the Training Center.

ARA has reviewed income statements for the Apprenticeship Plan for the past five years, as well as the most recent balance sheet, dated July 31, 2006. In the opinion of ARA the Apprenticeship Plan has sufficient assets to acquire Parcel #2 and to construct the new Training Center. In this regard, ARA represents that approximately \$2,500,000 of the total assets of the Apprenticeship Plan are being held in cash. ARA notes that the Apprenticeship Plan will obtain a cash inflow when the Existing Buildings are sold. In the opinion of ARA, a reasonable value estimate for both of the Existing Buildings ranges from \$300,000 to \$400,000 or \$35 to \$45 per square foot based on approximately 8,800 square feet.

ARA represents that net income of the Apprenticeship Plan for July 31, 2006, totaled approximately \$53,000 with year-to-date income of approximately \$133,000. Further, ARA represents that operating expenses for the Apprenticeship Plan totaled approximately \$33,000 for July 31, 2006, and \$241,000 year-to-date.

It is represented that labor and management agreed several years ago to an increased hourly assessment for the Apprenticeship Plan so that funds could be accumulated for the construction of the new Training Center. For this reason, a significant cash balance is being held by the Apprenticeship Plan. In the opinion of ARA, this balance is more than adequate to construct the new Training Center without the Apprenticeship Plan incurring any debt. Further, in the opinion of ARA, the hourly contributions are now far more than adequate to operate the Apprenticeship Plan. Further, according to ARA, the Apprenticeship Plan is expected to be in a solid financial footing even after investing the majority of its cash reserves in the new Training Center.

In summary, ARA collected, reviewed, and evaluated all available information on Parcel #2, financial information from the Apprenticeship Plan, market information pertaining to land and building values, as well as evaluated the Apprenticeship Plan's Existing Buildings and need for space. ARA also evaluated the potential development costs and feasibility of acquiring Parcel #2. ARA believes the purchase price of Parcel #2 is reflective of current market conditions and represents a fair market price. To maintain efficient operations while accommodating the growth of the Apprenticeship Plan, it is ARA's opinion that it is in the best interest of the Apprenticeship Plan and its participants and beneficiaries, to develop Parcel #2, since the transaction is reflective of the market and it is unlikely that a less costly and equally beneficial solution can be found. It is ARA's judgment that the acquisition of Parcel #2 and the construction of a Training Center would be beneficial to the participants and beneficiaries of the Apprenticeship Plan. ARA has determined that the development of Parcel #2 is within the financial capacity of the Apprenticeship Plan and would be protective of the Apprenticeship Plan in this regard. Accordingly, ARA recommends the acquisition and development of Parcel #2 and will oversee and monitor all aspects of the sale of Parcel #2 and the construction of the new Training Center.

15. It is represented that the proposed purchase of Parcel #2 and the development of Parcel #2 are in the interest of the Apprenticeship Plan. In this regard, it is represented that the Apprenticeship Plan will obtain additional space in the new Training Center for classroom and training facilities and will obtain room for

expansion in the future. In this regard, it is represented that the increase in population in the Bakersfield area of California and the need to train new technologies require an increased capacity in the Existing Buildings to accommodate the programs offered by the Apprenticeship Plan.

It is further represented that the Apprenticeship Plan will exercise control over the improvements, costs of operation, and maintenance of the Training Center to be constructed on Parcel #2. In this regard, it is represented that the new Training Center will incorporate underground conduit systems in shop areas to teach wire pulling. The new Training Center will have solar generating panels which will be used to teach solar installations. Car swipe access systems will be added in the new Training Center to teach new security technologies. In addition, various HVAC and lighting controls will be offered in order to teach new energy saving systems. Mock-ups of actual electrical installations and new shop space will be constructed in the Training Center and used for instructional purposes.

16. The applicants have requested an administrative exemption which would permit the Lease between the Apprenticeship Plan and CBA upon completion of construction of the Training Center. CBA (formerly, known as Kern County Electrical Workers Benefits Administration, Inc.) was established in 1977 from seed money from all three Plans, in the amount of \$5,000 from each of the Plans. It is represented that CBA is qualified under California law as a non-profit mutual benefit corporation, and as such has no shareholders. It is represented that CBA's only asset is office equipment.

The Board of Directors of CBA (the CBA Board) is composed of the same individuals who serve as trustees of the Pension Board, the Apprenticeship Board, and the Welfare Board. It is represented that the members of the CBA Board receive no compensation for their services.

CBA provides third party administrator services to each of the Plans, pursuant to separate written agreements containing identical provisions between each such plan and CBA.<sup>6</sup> As a service provider to the

<sup>6</sup>The applicants rely on the relief provided by the statutory exemption, pursuant to section 408(b)(2) of the Act for the provision of services by CBA to the Plans. The Department, herein, is offering no view, as to whether the provisions of services rendered to the Plans by CBA is covered by the statutory exemption provided in section 408(b)(2) of the Act and the Department's regulations, thereunder, pursuant to 29 CFR 2550.408b-2. Further, the

Plans, CBA is a party in interest with respect to each of the Plans, pursuant to section 3(14)(B) of the Act.

CBA employs three (3) individuals to provide record keeping services and administrative services to each of the Plans. The wages of such employees are paid weekly from CBA's bank account. It is represented that the only source of income to CBA is through billing each of the Plans for services provided to each such plan. It is represented that CBA bills only actual expenses for operation and employee wages. The expenses are allocated to and paid by each of the Plans. It is represented that CBA performs cost accounting time studies quarterly to determine the percentage of the expenses to be charged to each of the Plans, based upon how much time is spent in any one quarter by the employees of CBA in providing services to each such plan. It is represented that currently the allocation of expenses is 41 percent (41%) to the Pension Plan, 19 percent (19%) to the Apprenticeship Plan, 40 percent (40%) to the Welfare Plan. The allocation of expenses to each of the Plans is reviewed by and must be approved by the auditor of such plan.

17. Although CBA presently leases office space from an unrelated third party, CBA desires to lease certain Premises in the new Training Center to facilitate the provision of services to the Plans in the new location.

It is represented that the Premises to be occupied by CBA will constitute approximately 350 to 450 rentable square feet of office space out of a total of 15,000 square feet of space in the Training Center. The Lease provisions include a three (3) year initial term that can be renewed for an additional term of three (3) years by both parties upon a ninety (90) days written notice. Under the provisions of the Lease, the leasing transaction will be on terms and at all times will remain on terms that are at least as favorable to the Apprenticeship Plan and to CBA, as terms that would have been negotiated under similar circumstances at arm's length with unrelated third parties. The rental rate under the terms of the Lease and under the terms of any amendment, renewal, or extension of the Lease will be adjusted at least every three (3) years in which the Lease is in effect. Further, the rental rate will reflect the fair market rental value of the Premises, as determined by an independent, qualified appraiser. Notwithstanding anything to the contrary in the Lease,

the Apprenticeship Plan may without penalty at any time upon ninety (90) days prior written notice given to CBA terminate the Lease and CBA's occupancy of the Premises, effective as of the date specified in such written notice, which date shall be at least ninety (90) days after the date such written notice is given to CBA.

It is represented that the Lease will be protective in that ARA, the I/F acting on behalf of the Apprenticeship Plan, will represent the interests of the Apprenticeship Plan, and will in accordance with the fiduciary provisions of the Act determine that the Lease is feasible, in the interest of, and protective of the Apprenticeship Plan. Specifically, prior to entering into the Lease, the terms of such Lease will be reviewed, negotiated, and approved by ARA. Further, ARA will monitor compliance with the terms of the Lease throughout the duration of the Lease and will be responsible for legally enforcing the proper performance under the terms of such Lease. Further, ARA will be responsible for reviewing, negotiating, approving, and monitoring the initial lease and any amendment, renewal, or extension of the Lease.

18. The applicants maintain that the proposed transactions are in the interest of the Plans. In this regard, it is represented that acquisition of Parcel #1 and construction by the Local Union the Union Building, the acquisition of Parcel #2 and construction of the Training Center by the Apprenticeship Plan on an adjacent site, and the leasing of the Premises in the Training Center to CBA will lend continuity of operation and training and consolidation of administration to the participants of the Apprenticeship Plan, as well as participants in the Pension Plan and the Welfare Plan. Specifically, the offices of the Local Union, the Pension Plan, the Apprenticeship Plan, CBA, and the Training Center will be consolidated in one location.

19. In summary, the applicants represent that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The sale by the Pension Plan of Parcel #1 to the Local Union and the sale of Parcel #2 by the Pension Plan to the Apprenticeship Plan will be one-time transactions for cash;

(b) ARA, acting as the I/F on behalf of the Apprenticeship Plan, will negotiate, review, analyze, and approve the terms of the purchase of Parcel #2; the construction of the Training Center; and the Lease of the Premises to CBA.

(c) ARA will determine whether the acquisition of Parcel #2, the

construction of the Training Center, and the Lease of the Premises to CBA will be feasible, in the interest of, and protective of the participants and beneficiaries of the Apprenticeship Plan;

(d) ARA will be responsible for monitoring compliance with the terms and condition of this exemption and the terms and conditions of the acquisition of Parcel #2 by the Apprenticeship Plan, the construction of the Training Center, and the Lease of the Premises to CBA;

(e) The purchase price paid by the Local Union for Parcel #1 and the purchase price paid by the Apprenticeship Plan for Parcel #2 will be equal to the fair market value of each such parcel, as determined by an independent, qualified appraiser, as of the date of each sale;

(f) The terms of the sale by the Pension Plan of Parcel #1 to the Local Union and the sale by the Pension Plan of Parcel #2 to the Apprenticeship Plan will be no less favorable to the Pension Plan and the Apprenticeship Plan, respectively, than terms negotiated under similar circumstances at arm's length with unrelated third parties;

(g) The Plans will not provide any construction financing or permanent financing to the Local Union in connection with the acquisition by the Local Union of Parcel #1 and the construction of the Union Building, nor will the Pension Plan, the Welfare Plan, or the Local Union provide any construction financing or permanent financing to the Apprenticeship Plan in connection with the acquisition by the Apprenticeship Plan of Parcel #2 and the construction of the Training Center;

(h) The Plans will not pay any commissions, fees, or other similar payments to any party in connection with any of the subject transactions;

(i) The terms of any loan from an unrelated third party obtained by the Apprenticeship Plan for the purpose of acquiring Parcel #2 or constructing the Training Center will provide recourse to such unrelated third party lender only against the Apprenticeship Plan's interest in Parcel #2 and not against the general assets of the Apprenticeship Plan;

(j) the leasing transaction will be on terms and at all times remains on terms that are at least as favorable to the Apprenticeship Plan and to CBA, as terms that would have been negotiated under similar circumstances at arm's length with unrelated third parties;

(k) The rental rate under the terms of the Lease and under the terms of any amendment, renewal, or extension of the Lease will be adjusted at least every three (3) years in which the Lease is in

Department is not providing, herein, any relief with respect to the provision of services to the Plans by CBA.

effect and the rental rate will reflect the fair market rental value of the Premises, as determined by an independent, qualified appraiser; and

(m) Notwithstanding anything to the contrary in the Lease, the Apprenticeship Plan may without penalty at any time upon ninety (90) days prior written notice given to CBA terminate the Lease and CBA's occupancy of the Premises.

#### *Notice to Interested Persons*

Those persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include all contributing employers to the Pension Plan, the Apprenticeship Plan, and the Welfare Plan and all participants and beneficiaries of the Pension Plan, the Apprenticeship Plan, and the Welfare Plan.

It is represented that these several classes of interested persons will be notified of the publication of the Notice through different methods. In this regard, notification will be provided within 15 (15) calendar days of the date of publication of the Notice in the **Federal Register**, by posting at locations customarily used for notices regarding labor-management matters for review at the hiring hall and at the business office of the Local Union, at the office of the Apprenticeship Plan and at the Existing Buildings of the Apprenticeship Plan; at the administrative offices for the Pension Plan, Apprenticeship Plan, and the Welfare Plan, and at the offices of NECA. Such postings 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 interested persons of their right to comment and to request a hearing.

It is represented that notification will also be provided to all participants and beneficiaries of the Pension Plan, the Apprenticeship Plan, and the Welfare Plan 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, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all participants and beneficiaries of the Pension Plan, the Apprenticeship Plan, and the Welfare Plan of their right to comment and to request a hearing.

It is represented that notification will also be provided to all contributing

employers to the Pension Plan, the Apprenticeship Plan, and the Welfare Plan by first class mail. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), and a letter to such contributing employers requesting that the Notice and Supplemental Statement be posted immediately upon receipt in the locations within the principal places of employment of such contributing employers which are customarily used for notices regarding labor-management matters for review.

The Department must receive all written comments and requests for a hearing no later than thirty (30) days from the *later of*: (1) The date a copy of the Notice and a copy of the Supplemental Statement are posted; or (2) the date of the mailing of a copy of the Notice and a copy of the Supplemental Statement to all contributing employers of the Pension Plan, the Apprenticeship Plan, and the Welfare Plan; or (3) the date of the mailing of a copy of the Notice and a copy of the Supplemental Statement to all participants and beneficiaries of the Pension Plan, the Apprenticeship Plan, and the Welfare Plan.

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

#### **OPET Health Care and Life Insurance Plans RM3A and RM5A (Together, the H&L Plans); and OPET Prescription Drug Plan RRx (Plan RRx; All Three Together, the Plans), Located in Portland, Oregon**

[Application Nos. L-11302 and L-11303]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act 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 section 406(a) of the Act shall not apply to the purchase by the Plans' participants and beneficiaries of prescription drugs from the Labor Center Pharmacy (LCP), a party in interest with respect to the Plans, provided the following conditions are satisfied:

(a) The terms of the transactions are at least as favorable to the Plans as those the Plans could obtain in similar transactions with an unrelated party;

(b) any decisions by the Plans to enter into agreements governing the subject

purchases have been and will be made by Plan fiduciaries independent of LCP;

(c) at least 50% of the preferred providers participating in the Preferred Provider Network (PPN) involving LCP are unrelated to LCP or any other party in interest with respect to the Plans;

(d) LCP will be treated no differently than any other pharmacy participating in the PPN (e.g., subject to the same reimbursement rates and oversight as the other participating pharmacies); and

(e) the transactions are not part of an agreement, arrangement or understanding designed to benefit LCP or any other party in interest with respect to the Plans.

*Effective Date:* The proposed exemption, if granted, will be effective as of January 1, 2001.

#### *Summary of Facts and Representations*

1. The Plans are multi-employer welfare benefit plans. The H&L Plans have been in existence since July 1, 1982. Plan RRx has been in existence since May 1, 1978. The Plans provide health and welfare benefits, including prescription drug coverage, to eligible employees and their dependents. The Plans are directed by an eight person Board of Trustees. The four trustees representing labor are appointed by the participating unions, which are: (a) Teamsters Food Processors, Drivers, Warehousemen, and Helpers Local Union No. 670 (Teamsters Local 670); (b) Teamsters Dairy, Bakery and Food Processors, Industrial, Technical, and Automotive Local Union No. 305; (c) General Teamsters, Warehousemen, and Cannery Workers Local Union No. 556; and (d) Chauffeurs, Teamsters and Helpers Union No. 58. The four employer trustees are appointed by participating employers in the food processing industry. The Plans currently have approximately 2,700 participants and \$9.1 million in total assets.

2. Teamsters Local 670 Health Division Cannery Distributors Co., Inc. (the Health Division) is a taxable corporation that is wholly owned by Teamsters Local 670. The applicant represents that Teamsters Local 670 is a party in interest because it is an employee organization whose members participate in the Plans. The applicant represents that the Health Division is a party in interest with respect to the Plans because it is wholly owned by an employee organization whose members participate in the Plans. The Health Division operates the LCP.

3. Under the Plans, participants have three alternative ways to receive a prescription drug benefit. *One*, a participant may have a prescription filled at a non-participating pharmacy,

pay the pharmacy the full charge at the time of dispensing, and then submit a claim to the claims administrator. The Plans would then reimburse the participant the lesser of: (a) 80% of the average wholesale price (AWP); or (b) the actual cost of the drug. *Two*, a participant in Tillamook, Oregon, may have a prescription filled at the local pharmacy, pay an amount up to the Plan's annual deductible to the pharmacy, and have any balance submitted to the claims administrator by the pharmacy for payment directly to the pharmacy. This special arrangement is designed to serve a group of participants who work at a local creamery in Tillamook, which is approximately 74 miles from the nearest preferred provider pharmacy. *Three*, a participant may have a prescription filled at any of the preferred provider pharmacies and pay a co-pay of \$16 for brand name drugs and \$6 for generic drugs.

4. Effective September 1, 1992, the trustees of the Plans implemented the Plans' first preferred provider network (PPN) for prescription drugs to manage prescription drug prices and costs, provide ready participant access to reliable pharmacy services and professional advice, and to minimize eligibility policing problems. The trustees had obtained opinion of ERISA counsel dated November 25, 1991 that such an arrangement would be permissible under the Act if, among other things, all amounts paid by the Plans to a union-sponsored pharmacy were reasonable, and all decisions made by the Plans to enter into agreements with party in interest pharmacies were made by fiduciaries independent of the party in interest. Despite the reliance by the trustees on the advice of ERISA counsel, the Department's San Francisco Regional Office determined that the subject transactions constituted prohibited transactions. Accordingly, the applicant has requested retroactive relief for the transactions described herein.

5. The trustees entered into agreements with four preferred provider pharmacies: The LCP in Salem, Oregon; Baker City Pill Box in Baker City, Oregon; Hi-School Pharmacy in Hood River, Oregon; and Safeway Pharmacy in The Dalles, Oregon. Each of the preferred provider pharmacies is located in an agricultural area where a significant number of the Plans' participants live and work. The LCP is operated by the Health Division, which is a party in interest with respect to the Plans. The other three pharmacies are not parties in interest, and the agreements were negotiated at arm's-

length. All four agreements are identical. The applicant represents that as of January 1, 2007, the Safeway Pharmacy in the Dalles, Oregon, has withdrawn from the PPN. The other three pharmacies, including the LCP, remain in the PPN.

6. The preferred provider pharmacies agree to provide prescription drugs to participants and beneficiaries in the Plans at a lower cost than they charge other purchasers in exchange for the potential to realize an expanded customer base due to their status as preferred provider pharmacies with respect to the Plans. The material terms of the agreements are:

(a) Participants and beneficiaries pay a \$6 co-payment for generic drugs and a \$16 co-payment for brand name drugs;

(b) The Pharmacy does not (and cannot) charge the participants and beneficiaries any amount in excess of the co-payment;

(c) The pharmacy must use its best efforts to provide generic drugs whenever legally possible, and must, when filling prescriptions, achieve a generic frequency rate of 20% or higher;

(d) OPET pays the pharmacy the lesser of:

(i) the actual dispensing cost to the pharmacy for the drug; or

(ii) a \$2 dispensing fee plus the following amount based on the AWP for the specified type of drug:

(A) for a generic drug, AWP minus 20%;

(B) for a brand name drug, AWP minus 12%.

(e) The pharmacy's billings to OPET must provide adequate information to enable OPET to monitor payments and generic frequency rates;

(f) The pharmacy must submit to an audit at the request of the OPET trustees; and

(g) The agreement may be terminated by either party without cause with 30 days advance written notice.

7. The applicant represents that OPET's reimbursement rates for the preferred pharmacies are reasonable and are consistent with the reimbursement rates that other similar plans are negotiating with their preferred provider pharmacies. OPET's consultant, Mr. Jackson A. Loos, Chief Consulting Officer—Health and Welfare, with the firm of Rael & Letson in Edmonds, Washington, has confirmed this representation.

8. The Plans seek to maximize the benefits that can be provided to participants and their beneficiaries. Reducing the costs paid by the Plans for prescription drugs assists the Plans in meeting this goal. In addition, the applicant represents that including the

LCP in the PPN provides substantial benefits to participants and beneficiaries, including:

(a) The claims administrator for the Plans maintains a claims processing office in the same office as the LCP, which means the LCP can immediately confirm the eligibility of participants and beneficiaries. Because the on-site claims analysts are familiar with the Plans, the LCP can direct the participant or beneficiary to the claims processing office for assistance in resolving any eligibility or coverage questions;

(b) The access mentioned in Paragraph (a), immediately above, is especially important because many participants speak Spanish as their first language and do not understand English. The on-site claims processing office is staffed with claims analysts who are familiar with the Plans, giving people ready access to people who are fluent in Spanish; and

(c) The LCP, like the other preferred provider pharmacies, agrees to process participants' prescriptions upon receiving from the individual a brief form setting forth information necessary to verify eligibility and the amount of co-payment prescribed by the Plans. Participants are required to pay only the co-payment in order to fill a prescription. Therefore, participants (most of whom have low incomes) do not have to pay the full cost of the prescriptions at the pharmacy and wait for later reimbursement from the Plans.

9. The applicant represents that at least 50% of the pharmacies in the PPN will be pharmacies that are not parties in interest with respect to the Plans. Currently, only one of the three preferred provider pharmacies is operated by a party in interest with respect to the Plans. All decisions made by the Plans with respect to the LCP have been made, and in the future will be made, only by trustees unrelated to the LCP, the Health Division, and Teamsters Local 670. In this regard, any trustee affiliated with the LCP, the Health Division, or Teamsters Local 670 will remove himself or herself from all consideration by the Plans whether or not to engage in any transaction with the Health Division and/or the LCP. Lastly, the applicant represents that the transactions between the Plans and the Health Division are not part of an agreement, arrangement or understanding designed to benefit a party in interest with respect to the Plans.

10. In summary, the applicant represents that the subject transactions satisfy the criteria contained in section 408(a) of the Act because: (a) The terms of the transactions are at least as

favorable to the Plans as those the Plans could obtain in similar transactions with an unrelated party; (b) any decision by the Plan to enter into the agreements governing the subject purchases have been and will be made by fiduciaries of the Plans who are not related to LCP, the Health Division, or Teamsters Local 670; (c) at least 50% of the preferred provider pharmacies participating in the PPN are and will be unrelated to LCP, the Health Division and any other party in interest with respect to the Plans; (d) the LCP will provide prescription drugs to eligible participants under the identical conditions and for the identical prices as will be the case for any pharmacy participating in the PPN; and (e) the transactions are not part of an agreement, arrangement or understanding designed to benefit a party in interest.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 693-8546. (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 6th day of February, 2007.

**Ivan Strasfel,**

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

[FR Doc. E7-2243 Filed 2-12-07; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Solicitation for Grant Applications (SGA), Grants for Program Year 2006

*Announcement Type:* New.

Notice of availability of funds and solicitation for grant applications for Women in Apprenticeship and Nontraditional Occupations (WANTO) grants.

*Funding Opportunity Number:* SGA/DFA-PY-06-01.

*Catalog of Federal Domestic Assistance Number:* 17.201.

*Key Dates:* The closing date for receipt of applications is April 16, 2007.

**SUMMARY:** The Women's Bureau and the Employment and Training Administration's (ETA) Office of Apprenticeship, U.S. Department of Labor (DOL), announce the availability of \$972,180 to establish a grant program for the purpose of assisting employers and labor unions in the placement and retention of women in apprenticeship and nontraditional occupations. This program year 2006 SGA is authorized under the Women in Apprenticeship and Nontraditional Occupations (WANTO) Act of 1992, Pub. L. 102-530, 29 U.S.C. 2501 *et seq.* To that end, the OA and the WB plan to disburse 2006 WANTO grant funds to three community-based organizations (CBOs) including faith-based organizations (FBOs)/registered apprenticeship program (RAP) consortia to conduct innovative projects to improve the recruitment, selection, training, employment, and retention of women in apprenticeships in the construction

industry. Each CBO/RAP consortium must consist of a minimum of: (1) a construction industry Registered Apprenticeship Program sponsor, and (2) a CBO (which may be faith based) with demonstrated experience in securing job training services from established training institutions such as community colleges, and providing placement and support services to women in construction industry jobs.

It is anticipated that awards will be in the amount of approximately \$300,000.

**SUPPLEMENTARY INFORMATION:** This SGA consists of eleven (11) sections:

- Section I provides the funding opportunity description.
- Section II describes the size and nature of the anticipated awards.
- Section III describes applicant eligibility criteria.
- Section IV outlines the application submission and withdrawal requirements.
- Section V describes the application review information.
- Section VI outlines additional award administration information.
- Section VII lists the Agency Contact.
- Section VIII provides other information, including acronyms and definitions.

#### I. Funding Opportunity Description

##### A. Background

The Women in Apprenticeship and Nontraditional Occupations (WANTO) Act of 1992, Pub. L. 102-530 29 U.S.C. 2501 *et seq.* authorizes the U.S. Department of Labor (DOL) to disburse technical assistance grants to promote the recruitment, training, and retention of women in apprenticeship and nontraditional occupations. The Women's Bureau (WB) co-administers the WANTO program with the DOL ETA Office of Apprenticeship (OA). The OA and the WB have the responsibility for implementing this grant process.

##### B. Purpose

The WANTO Act's purpose is to provide technical assistance to employers and labor unions (E/LU) to encourage employment of women in apprenticeships and nontraditional occupations (A/NTO). One of the means of providing technical assistance is through competitive grants which focus on conducting innovative projects to improve the recruitment, selection, training, employment, and retention of women in apprenticeships in the construction industry. WANTO grants are awarded to community-based organizations (CBOs), which may include faith-based, union-related