

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 7, 1996. Copies of these petitions are available for inspection at that address.

Dated: August 30, 1996.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 96-22759 Filed 9-5-96; 8:45 am]

BILLING CODE 4510-43-P

Occupational Safety and Health Administration**Vermont State Standards; Notice of Approval****1. Background**

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On October 16, 1973, notice was published in the Federal Register (38 FR 28658) of the approval of the Vermont State Plan and the adoption of Subpart U to Part 1952 containing the decision. The Vermont State Plan provides for the adoption of Federal standards as State standards after:

a. Publishing for two (2) successive weeks, in three (3) newspapers having general circulation in the center, northern and southern parts of the State, an intent to amend the State Plan by adopting the standard(s).

b. Review of standards by the Interagency Committee on Administrative Rules, State of Vermont.

c. Approval by the Legislative Committee on Administrative Rules, State of Vermont.

d. Filing in the Office of the Secretary of State, State of Vermont.

e. The Secretary of State publishing, not less than quarterly, a bulletin of all standard(s) adopted by the State.

The Vermont State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. By letters dated July 26, 1995, August 7, 1995, and September 5, 1995, from Mary S. Hooper, Commissioner, Vermont Department of Labor and Industry, and by letters dated January 22, 1996, and June 4, 1996, from Paul Harrington, Deputy Commissioner, Vermont Department of Labor and Industry, to Mr. John T. Phillips, Regional Administrator, and incorporated as part of the plan, the State submitted an updated State standard standards identical to 29 CFR parts 1910, 1915, 1917, 1918, 1926 and 1928, and subsequent amendments thereto, as described below:

(1) Addition to 29 CFR parts 1910, 1915, 1917, 1918, 1926 and 1928, Retention of DOT Markings, Placards, and Labels, Final Rule, (59 FR 36695, July 19, 1994).

(2) Revision to 29 CFR parts 1910, 1915 and 1926, Occupational Exposure to Asbestos, Final Rule, (59 FR 41057, August 10, 1994, and 59 FR 9624, February 21, 1994).

(3) Revision to 29 CFR parts 1910 and 1926, Hazardous Waste Operations and Emergency Response; Final Rule, (59 FR 43268, August 22, 1994).

(4) Addition to 29 CFR parts 1915 and 1926, Standard for Cadmium in Shipyard Employment and in Construction Work; Reprint With Corrections and Technical Amendments; Final Rule, (59 FR 146, January 3, 1994).

(5) Revision to 29 CFR parts 1910, 1915, 1917, 1918, 1926 and 1928, Hazard Communication; Final Rule, (59 FR 6169, February 9, 1994).

(6) Addition to 29 CFR parts 1910 and 1928, Logging Operations; Final Rule (59 FR 51741, October 12, 1994); and Corrections and Technical Amendments (59 FR 47022, September 8, 1995).

(7) Amendment to 29 CFR Parts 1910, 1915 and 1926, Occupational Exposure to Asbestos; Corrections; Final Rule (60 FR 33974, June 29, 1995).

These standards became effective on July 11, 1995, July 10, 1995, March 13, 1995, September 23, 1995, February 3, 1996, and February 19, 1996, respectively, pursuant to Section 224 of Vermont State Law.

2. Decision

Having reviewed the State's submissions in comparison with the Federal standards, it has been

determined that the State's standards are identical to the Federal standards and, accordingly, are approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, John F. Kennedy Federal Building, Room E-340, Boston, Massachusetts 02203; Office of the Commissioner, State of Vermont, Department of Labor and Industry, 120 State Street, Montpelier, Vermont, 05602; and the Office of State Programs, 200 Constitution Avenue, NW., Room N-3700, Washington, D.C. 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Vermont State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards were adopted in accordance with the procedural requirements of the State Law which included public comment, and further public participation would be repetitious.

This decision is effective September 6, 1996.

Authority: Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at Boston, Massachusetts, this 19th day of July 1996.

John T. Phillips,

Regional Administrator.

[FR Doc. 96-22826 Filed 9-5-96; 8:45 am]

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Pension and Welfare Benefits Administration

[Application No. D-10200, et al.]

Proposed Exemptions; Chase Manhattan Bank

AGENCY: Pension and Welfare Benefits 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 restriction of the Employee Retirement Income Security

Act of 1974 (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 request 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 request 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. 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 request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 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 (43 FR 47713, October 17, 1978) 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.

The Chase Manhattan Bank (National Association) Located in New York, New York

Exemption Application No. D-10200

Proposed Exemption

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

Section I—Transactions

If the exemption is granted, the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions, provided that the conditions set forth in Section II below are met:

(a) Any acquisition or sale of "emerging market" securities (the Securities), and any repurchase agreement involving such Securities, which occurs between The Chase Manhattan Bank, N.A. (Chase) or its Affiliates and the IBM Retirement Plan (the IBM Plan), to which Chase or an Affiliate is a party in interest under the Act at the time of the transaction; and

(b) Certain repurchase agreements involving the Securities which occurred between the IBM Plan and Chemical Bank, N.A. (Chemical) that were outstanding as of March 31, 1996, the date of the merger between Chemical and Chase (the Merger). (All references herein to Chase which refer to the period of time after March 31, 1996 shall include Chemical.)

Section II—Conditions

(a) The assets of the IBM Plan involved in the transactions described in Section I(a) and I(b) above are managed by Wasserstein Perella Emerging Markets Asset Management L.P. (W-P), as the independent qualified fiduciary for the IBM Plan;

(b) W-P, as the IBM Plan's independent fiduciary and investment manager for the assets invested in the Securities, negotiates the terms of such transactions on behalf of the IBM Plan and makes the decision to have the IBM Plan enter into any such transactions with Chase;

(c) W-P, as the IBM Plan's independent fiduciary and investment manager for the assets invested in the Securities, monitors the investments made by the IBM Plan in such Securities and takes whatever actions are necessary to protect the interests of the IBM Plan;

(d) Neither Chase nor an Affiliate has discretionary authority or control with respect to the investment of the IBM Plan's assets involved in the transactions or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets;

(e) In any transaction where the IBM Plan acquires a Security from Chase, the IBM Plan pays a price which is no greater than the fair market value of such Security, as determined by W-P in accordance with either W-P's internal valuation process or independent third party sources (such as independent broker-dealers and market-makers dealing in such Securities);

(f) In any transaction where the IBM Plan sells a Security to Chase, the IBM Plan receives a price which is no less than the fair market value of such Security, as determined by W-P in accordance with either W-P's internal valuation process or independent third party sources (such as independent broker-dealers and market-makers dealing in such Securities);

(g) The repurchase agreements between the IBM Plan and Chase are entered into pursuant to a written agreement between the parties which describes all of the material terms and conditions for such transactions, including the rights and obligations of each party, and is consistent with the specific guidelines established by the IBM Plan's named fiduciary for transactions involving the Securities;

(h) All repurchase agreements between the IBM Plan and Chase, including those agreements which were in place at the time of the Merger with Chemical, have terms and conditions which are at least as favorable to the IBM Plan as terms and conditions which would exist in a similar transaction with an unrelated party;

(i) All other terms of each transaction described above in Section I(a) are not less favorable to the IBM Plan than the terms available in an arm's-length transaction between unrelated parties;

(j) W-P does not engage in, or commit to sell, any uncovered put or call options (including, but not exclusive to, "straddles" and "strangles") in transactions with Chase on behalf of the IBM Plan;

(k) Any transactions involving the use of leverage by W-P, on behalf of the IBM Plan, do not exceed the specific guidelines established by the IBM Plan's named fiduciary under its investment management agreement with W-P;

(l) No brokerage commission, sales commission, or similar compensation other than the particular dealer mark-up for the Security, is paid to Chase by the IBM Plan with regard to such transactions; and

(m) The amount of the IBM Plan's assets involved in the transactions described in Section I(a) and I(b) represents no more than two (2) percent of the total assets of the IBM Plan.

Section III—Definitions

(a) The term "Chase" refers to The Chase Manhattan Bank (National Association) and its Affiliates, as defined below, including Chemical Bank, N.A., effective as of March 31, 1996, pursuant to the terms of the Merger which occurred on such date.

(b) The term "Chemical" refers to Chemical Bank, N.A., as it existed as an independent entity prior to March 31, 1996;

(c) The term "Affiliate" refers to affiliates of Chase, including entities controlling, controlled by, or under common control with Chase as well as successors to such entities.

(d) The term "control" for purposes of the above definition of "Affiliate" means the power to exercise a controlling influence over the management or policies of an entity.

(e) The term "emerging market" or "emerging markets" refers to capital markets in developing or less developed countries that are, with the exception of Mexico, not member countries of the Organization for Economic Cooperation and Development.

(f) The term "Security" refers to certain "emerging market" securities and instruments issued in, or on behalf of, an "emerging market" (including both corporate and sovereign issuers of debt securities as well as corporate issuers of equity securities). For purposes of the proposed exemption, such "Securities" would include publicly traded or privately placed debt, equity, or convertible securities, certain put and call options (as described herein), collateralized bonds, Brady Bonds and Eurobonds.

(g) The term "IBM Plan" refers to the IBM Retirement Plan, a defined benefit

pension plan covering employees of the International Business Machines Corporation and its affiliates (IBM), which is an employee benefit plan covered by the Act.

(h) The term "W-P" refers to Wasserstein Perella Emerging Markets Asset Management L.P. and its affiliates, including the Emerging Capital Markets Division of Wasserstein Perella Securities, Inc.

EFFECTIVE DATE: The exemption, if granted, will be effective as of the date that this notice of proposed exemption is published in the Federal Register for all transactions described in Section I(a), and as of March 31, 1996, for the transactions described in Section I(b).

Summary of Facts and Representations

1. The subject exemption request is made on behalf of Chase and its Affiliates (referred to hereafter as "the Applicant") for certain transactions with the IBM Plan involving securities and instruments issued in, or on behalf of, various emerging capital markets in developing or less developed countries throughout the world.

2. Chase is a national banking association and acts as a non-discretionary trustee of the IBM Retirement Plan Trust (the IBM Trust), a trust that holds the assets of the IBM Plan.¹ Chase's subsidiary, Chase Investment Bank Limited (CIBL) is an underwriter of, and a dealer and market-maker in, various securities and instruments, including securities of emerging market issuers (i.e. Securities). CIBL is hereafter not referred to separately but is one of Chase's Affiliates included within the definition of the term "Affiliate" in Section III(c) above.

3. The Applicant states that "emerging markets" are defined to include, for purposes of the proposed exemption, capital markets in developing or less developed countries that are, with the exception of Mexico, not member countries of the Organization for Economic Cooperation and Development (OECD). The Securities are securities and instruments issued in, or on behalf of, an "emerging market" (including both corporate and sovereign issuers of debt securities as

¹ With respect to all Securities acquired by the IBM Plan pursuant to this proposed exemption, the applicant represents that the requirements of section 404(b) of the Act and the regulations thereunder will be met (see 29 CFR 2550.404b-1). In this regard, section 404(b) of the Act states that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, except as authorized by regulation by the Secretary of Labor. The Department is providing no opinion herein as to whether such requirements will be met.

well as corporate issuers of equity securities). These "Securities" would include publicly traded or privately placed debt, equity, or convertible securities, certain put and call options, collateralized bonds, Brady Bonds and Eurobonds (as described in greater detail below).

4. The Applicant states that as a major bank with branches in 58 countries, Chase has a physical presence in most of the principal emerging market countries and has access to local market information through such means as review of local press and access to local business and government officials. The Applicant represents that it engages in extensive corporate and sovereign research relevant to emerging markets. As a result the Applicant states that it is a major market-maker in the Securities and is a source of premier research and market reports to its customers that are interested in such markets.

The Applicant represents that it is also a major underwriter of new issues in emerging market securities and a prominent secondary market-maker for all issuers of emerging market securities and instruments. The Applicant states that because trading in these Securities is not done primarily on an exchange and there are few definitive industry reports, it is difficult to quantify the exact amount of the Applicant's share of various markets. However, the Applicant estimates that prior to the Merger between Chase and Chemical, it accounted for as much as 30 percent of the trading volume in the Eurobond market and as much as 15 to 20 percent of the trading volume in the sovereign debt market. The Applicant notes that according to figures made public by major sovereign bond dealers for 1994, Chase's trading volume of \$268.4 billion ranked it second in that market. After the Merger, Chase became even more of a presence in emerging markets and an even larger dealer/underwriter of the Securities because Chemical had also been a major dealer/underwriter for such Securities.

5. Wasserstein Perella Emerging Markets Asset Management L.P. (i.e. W-P) is an investment advisor registered with the Securities and Exchange Commission (SEC) under the Investment Advisors Act of 1940 and provides discretionary asset management services for various institutional clients, including employee benefit plans. W-P is managed by the Emerging Capital Markets Division of Wasserstein Perella Securities, Inc. (WPS). WPS is a broker-dealer registered with the SEC. The Grantchester Securities Division of WPS

is one of the leading dealers in the high yield debt securities market. In addition, WPS, through its equities division, has been increasing its underwriting and market-making in emerging market equity securities as well as adding to its equity research and trading presence in this market. For example, W-P states that WPS's equities division has been a manager on a number of significant syndicate transactions involving emerging market securities. The WPS Emerging Capital Markets Division also has a presence in the sales and trading of pre-Brady loans, Brady Bonds, other debt instruments of less developed countries, local currency products and equities issued by businesses in such markets. W-P states that the principal officials of W-P have extensive experience in structuring transactions involving emerging market securities and in managing investments in, and trading, such securities.

6. W-P currently serves as an investment manager for certain assets of the IBM Plan. Pursuant to its reserved powers as named fiduciary under a trust indenture between IBM Plan and Chase, as trustee, the International Business Machines Corporation (IBM) has appointed W-P as an investment manager with respect to a portion of the IBM Trust (the W-P Account). The terms of the investment management agreement (the Agreement) governing the W-P Account provide W-P with full discretion to manage the IBM Plan's assets held in the Account, including the power to give investment directions to Chase as the trustee of such assets. The Agreement also requires W-P to manage the W-P Account in accordance with investment guidelines established by IBM, as the named fiduciary for the IBM Plan. These investment guidelines (the Guidelines) call for W-P to invest all of the assets in the W-P Account in emerging market securities of the type described herein (i.e. the Securities).²

² The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of any of the Securities by the IBM Plan would violate the fiduciary responsibility provisions of Part 4 of Title I of the Act.

The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

Nor is the Department providing any views herein as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The

The Guidelines also prescribe that no more than 10 percent of the W-P Account's assets may be invested in such Securities which are equity securities. Thus, W-P must invest at least 90 percent of the IBM Plan's assets managed in the W-P Account in Securities which are either corporate or sovereign debt securities.

The Guidelines state that the Securities that are debt securities may be either dollar-denominated or non dollar denominated, and equity securities may be either listed or unlisted. The Guidelines also contain geographic restrictions and restrictions requiring diversification of issuers with respect to such Securities held in the W-P Account's portfolio. The Guidelines have specific provisions regarding the use by the portfolio of, and exposure of the portfolio to, certain instruments known as "derivatives" (as discussed in greater detail below).³

In addition, the Guidelines expressly permit the use of leverage. Thus, when managing the IBM Plan's assets in the W-P Account, W-P may use portfolio Securities as collateral for a "loan" (i.e. repurchase agreement) the proceeds of which will be used to acquire more Securities. In this regard, the Guidelines require that borrowings against the portfolio may not exceed 150 percent of the portfolio's net asset value, but are usually only 75-80 percent of such

determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties. The Department also notes that in order to act prudently in making such investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than comparable investments offering a similar return or result.

³The term "derivatives", as used in the Guidelines, includes: (i) Futures contracts; (ii) options on futures contracts; (iii) over-the-counter options on eligible Securities; (iv) interest rate caps, floors, and swaps; and (v) currency forwards, futures and options. However, as discussed herein, W-P's use of derivatives for assets of the IBM Plan is generally limited to the purchase of put and call options, and the sale of covered put and call options, and does not involve futures contracts, options on futures contracts, or swap transactions. Accordingly, the Department is providing no relief under this proposed exemption for transactions involving "derivatives" other than the purchase of put and call options and the sale of covered put and call options described herein.

value. Such transactions are entered into by the IBM Plan with large banks, such as Chase and Chemical. These "loans" are structured as repurchase agreements (REPOs). As discussed further below, W-P entered into certain REPOs relating to the Securities with Chemical, on behalf of the IBM Plan, which were outstanding as of March 31, 1996, the date of the Merger.

Finally, the Guidelines require that the investment performance of the W-P Account be measured by investment objectives which call for returns of the Account to exceed certain specified benchmarks, such as the Lehman Brothers Aggregate Bond Index and the Salomon Brothers Brady Bond Index, with lower than normal volatility of returns.⁴

7. The Applicant states that, as of December 1993, the IBM Plan had approximately 289,829 participants and beneficiaries. The total assets of the IBM Plan at that time were approximately \$28.2 billion. The assets of the IBM Plan currently managed in the W-P Account are approximately \$400 million, an amount which represents less than 1.5 percent of the IBM Plan's total assets. Thus, the amount of the IBM Plan's assets involved in the transactions described herein with Chase will not represent more than two (2) percent of the total assets of the IBM Plan.

The Applicant represents that the IBM Plan's assets under management by W-P exceed 20 percent of W-P's total assets under management. Therefore, W-P is unable to rely on Prohibited Transaction Exemption (PTE) 84-14 (49 FR 9494, March 13, 1984), a class exemption for certain "plan asset" transactions which are determined by an independent qualified professional asset manager ("QPAM").⁵ W-P represents that it is a QPAM, as defined under Section V(a) of PTE 84-14, and would otherwise be able to use that

⁴ As a general rule, W-P states that its investment objectives are to target a 15 percent to 20 percent annualized rate of return for investors and to strive to produce steady returns with a focus on reduction of volatility.

⁵ The Department is expressing no opinion in this proposed exemption as to whether the subject transactions between these parties would meet all of the conditions required for an exemption under either PTE 84-14 or any other class exemption, such as PTE 75-1 (40 FR 50845, October 31, 1975). The Department notes that the exemptive relief provided in PTE 84-14 for transactions engaged in on behalf of a plan by a QPAM, acting as the plan's fiduciary, is not available if the plan's assets (combined with any other assets of plans maintained by the same employer or employee organization which are managed by the QPAM) represent more than 20 percent of the total client assets managed by the QPAM at the time of the transaction (see Part I(e) of PTE 84-14).

class exemption for the transactions described herein involving Chase.

The Applicant maintains that W-P is entirely independent of Chase and its Affiliates. Specifically, the Applicant states that there is no ownership or management relationship between W-P and Chase or its Affiliates. The Applicant and W-P engage in arm's-length trading of emerging market securities involving accounts other than the W-P Account for the IBM Plan. However, the Applicant represents that they have no contractual or other arrangements that would cause them to be viewed other than as acting entirely independent of one another. In particular, the Applicant states that Chase, as a non-discretionary trustee of the IBM Trust, lacks any discretionary authority over investment or management of the IBM Plan's assets, including the assets in the W-P Account. Neither Chase nor an Affiliate has, or has exercised, any authority to appoint or terminate W-P as an investment manager for the IBM Plan.

8. The Applicant seeks an exemption to permit W-P, as an investment manager and independent fiduciary for the IBM Plan, to engage in transactions involving emerging market securities and instruments (i.e. the Securities) with Chase, a party in interest with respect to the IBM Plan as a result of being a non-discretionary trustee of the Plan's assets. Such transactions could include purchases, sales and exchanges of the Securities between Chase and the IBM Plan, as well as REPOs that may be entered into between the parties in connection with the IBM Plan's acquisition and holding of the Securities. In addition, the Applicant seeks a retroactive exemption for certain REPOs involving the Securities which occurred between the IBM Plan and Chemical that were not prohibited transactions at the time such transactions were entered into, but which became prohibited transactions as of March 31, 1996, the date of the Merger with Chase. As noted above, Chase was and continues to be a party in interest (i.e. a non-discretionary trustee) with respect to the IBM Plan and Chemical, as a result of the Merger, became a party in interest to the IBM Plan on March 31, 1996.

Retroactive Relief for Certain REPOs

9. With respect to the retroactive relief necessary as a result of the Merger, the Applicant states that the IBM Plan had engaged in several REPOs with Chemical whereby the Plan's acquisition of new Securities was being financed in part by a REPO with Chemical. The Applicant represents that

a number of the REPOs were terminated prior to the Merger to avoid additional prohibited transactions with respect to the IBM Plan. However, as of March 31, 1996, there were five (5) open positions with Chemical involving the IBM Plan's acquisition of Securities.

These open positions involved the following Securities: (i) A \$3.5 million issue of Bulgarian IABs (Interest Arrears Bonds), paying a floating interest rate based on LIBOR⁶ with maturity scheduled for July 28, 2011, issued under the terms of Bulgaria's Brady Bond Plan (as discussed further below) completed in July 1994; (ii) a \$4 million issue of Certificates of Deposit (CDs) issued by Argentina Banco de la Nacion, which matured on May 15, 1996; (iii) a \$2.8 million issue of Brazil Bamerindus Eurobonds issued by a private Brazilian bank, which matured on July 15, 1996; (iv) a \$605,000 issue of Brazil Bamerindus Euro Medium Term Notes, which matured on June 5, 1996; and (v) a \$1.5 million issue of Morocco Tranche A Loans, which are bank loans made to the Kingdom of Morocco as part of a debt restructuring and are due to mature in January 2009. In this regard, the Securities described above in (ii)-(iv) have matured and were paid in full.

10. With respect to the terms of the REPOs with Chemical, the Applicant states that the REPO value⁷ vis a vis the Face Amount of the Securities was determined based on the market value of the underlying Securities and the advance rate extended by the REPO counterparty (i.e. Chemical). For example, at the time that the terms of the REPO on the Bulgaria IAB Bonds were set (i.e. the Latest REPO Date),⁸ the market value of the Bonds (including any accrued interest) was equal to approximately 48.3 percent of the Face Amount (i.e. \$1,690,238 of the \$3,500,000 Face Amount), and the advance rate given by Chemical was 80

⁶"LIBOR" is a widely used interest rate index and refers to the London Interbank Offered Rate. LIBOR is derived from current market quotations offered by major European banks for short-term (i.e. one-month, six-month, etc.) Eurodollar deposits.

⁷The term "REPO value" refers to that amount of money, expressed as a percentage of the market value of the Securities involved, which a bank, as a REPO counterparty, would be willing to "loan" or "advance" to the owner of the Securities (i.e. a plan investor) under a particular REPO.

⁸The initial REPO date was the date that the repurchase contract was initially settled—i.e. the date on which Chemical received the Securities and, in exchange for the Securities, extended cash to the IBM Trust. The Applicant explains that REPOs are often set for a specified term, such as one month, three months, etc. At the end of that term, the REPO counterparty (Chemical) will often give the other party (IBM Plan) the option of renewing the REPO for another term (i.e. "rolling it over"). Thus, the "latest rollover date" refers to the last time a REPO transaction was rolled over.

percent (i.e. Chemical was willing to lend the IBM Trust 80 percent of the market value of the Bonds that were given to Chemical as collateral). Therefore, the REPO value of the Securities on this transaction was calculated as follows:

$$\text{Advance Rate (80\%)} \times \text{Market Value} \\ (\$1,690,238.17) = \$1,352,190.97.$$

Thus, the IBM Trust was able to receive \$1,352,190.97 in cash under this REPO in exchange for the Bonds for a stated period. The IBM Trust was committed to "repurchase" the Bonds at the end of the REPO's term (i.e. by paying Chemical back the money advanced plus interest at a certain agreed upon rate), unless the REPO was "rolled over". W-P states that the other REPOs with Chemical involving the Securities mentioned above operated under similar terms.

W-P represents that it attempts to obtain the cheapest REPO financing available consistent with the creditworthiness of the counterparty, since the cheaper the cost of borrowing through REPOs, the higher the returns will be to the IBM Trust. W-P states that it contacts potential counterparties to bid on REPOs and negotiates the best available terms with each counterparty. Because the credit-standing of the IBM Trust is excellent, W-P is able to negotiate very favorable terms for these REPOs, including low interest rates. W-P represents that all REPO interest rates negotiated with Chemical, as with other counterparties, were rates that were at least as favorable to the IBM Trust as rates available from other counterparties of similar credit standing.

The Mechanics and Concept Behind REPOs

11. With respect to W-P's philosophy and purpose for using leverage, W-P explains that assets purchased for the IBM Trust are often pledged to a creditworthy counterparty (typically a single A rated institution or better), who in turn provides financing against the asset they hold as collateral. W-P uses the standard Public Securities Association (PSA) REPO agreement, which is used not only for emerging market securities but for other securities. W-P generally utilizes leverage for the IBM Trust in order to increase the portfolio's exposure to low duration/low volatility assets (with maturities typically less than one (1) year and high credit quality—most often from sovereign issuers). W-P states that its long-term performance demonstrates that exposure to such low duration assets provides a cushion of stable returns. Thus, W-P states that while leverage is traditionally used as a means

of gaining access to a greater overall exposure (i.e. risk) for a portfolio via borrowed funds, W-P utilizes the leverage vehicle to mitigate, rather than magnify, the portfolio's volatility.⁹

With respect to the selection of assets for a REPO, W-P represents that it seeks leverage on assets on which it receives the most attractive terms—the lowest interest rates, highest advance rates and most flexible terms. W-P states that generally it is able to receive the best REPO terms on Brady Bonds (see discussion below), because they are the most liquid assets in the market for emerging market securities. However, W-P states that because it has a general strategy for building a portfolio with a foundation in low duration/low volatility assets, capital preservation is the main goal. In this regard, W-P targets a specific degree of leverage based on the cash needs of the portfolio at particular times.

With respect to choosing the counterparties, W-P states that REPO transactions are entered into only with high-quality institutions that actively trade in emerging market instruments. Selection of these REPO counterparties depends on a variety of factors, including the rates charged on financing, the percentage of leverage advanced, the flexibility of terms, and operational ease. After credit is determined to be suitable, pricing (i.e. the rate charged on the leverage) is generally the most important variable in selecting a REPO counterparty.

With respect to the mechanics of the REPO agreement, W-P states that the agreement: (i) Basically outlines the procedures for transferring Securities to and from the REPO counterparty; (ii) defines terms contained in the REPO confirmations, such as the interest rate charged; (iii) sets the maturity date for the REPO; (iv) covers the terms and conditions for margin calls and substitution of assets; and (v) covers each party's remedies under any events of default. W-P states that the only real risk to the IBM Trust that stems specifically from the REPO agreement is that the REPO counterparty, who holds the Securities as collateral, could renege on its obligations under the agreement (i.e. the counterparty could fail to return the collateral to the IBM Trust when the REPO matures). W-P notes that it is for this reason that it is careful in selecting the REPO counterparty and chooses only reliable, creditworthy counterparties for these transactions.

⁹ The Department is providing no opinion or views herein on the use of such leveraging as a means to mitigate portfolio risk or volatility.

Types of Securities Involved in Transactions Between the IBM Plan and Chase

12. The Applicant has provided the following general descriptions of each type of Security or instrument involved in the emerging market transactions that would be covered by the proposed exemption.

(i) Brady Bonds. The most liquid asset class in fixed income emerging market securities, these Bonds were issued in exchange for outstanding sovereign bank loans in a number of developing countries as part of the debt reduction/restructuring plans named after former Treasury Secretary Nicholas Brady. Brady Bond plans have been implemented since 1989 in over a dozen countries in Latin America, Eastern Europe, Asia and Africa. The current outstanding market for Brady Bonds equals approximately \$140 billion, and annual turnover exceeds \$2 trillion, according to the Emerging Markets Trader's Association. Brady Bonds have maturities ranging from 6 years to 30 years, and many (including all par and discount bonds) carry principal and interest collateral guarantees in the form of U.S. Treasury securities. W-P states that a large secondary market exists for these Bonds, and financing can be obtained on virtually all Brady Bond assets.

(ii) Eurobonds/144A. Bonds denominated in U.S. dollars or other currencies issued by sovereign or corporate entities in many countries. These bonds usually mature within 2 to 5 years and are issued in sizes ranging from \$50 million to \$1 billion. The Eurobond market is an important source of capital for multinational corporations and foreign governments, particularly in emerging market countries. These bonds are Euroclearable—i.e. transferable to U.S. investors via the Depository Trust Company. Eurobonds are not registered with the SEC, but are available for purchase by U.S. persons that meet certain SEC requirements under SEC Rule 144A.¹⁰ W-P states that leverage is

¹⁰ SEC Rule 144A requires that investors have available to them offering memoranda. Transactions covered under a Rule 144A offering are limited to "qualified institutional buyers" (i.e. large institutional investors, such as pension plans) that are considered to be sophisticated investors capable of insisting that they be furnished with adequate disclosure.

In this regard, the Department notes that a plan fiduciary in meeting its obligations to act prudently, as required under section 404(a) of the Act, should seek to obtain any relevant information that it believes necessary in order to determine whether a particular investment in emerging market securities, such as Eurobonds, would be appropriate for and in the best interests of the plan.

available on larger issues and there is a growing REPO market.

(iii) Commercial Bank Loans. These assets are direct or syndicated bank loans, usually to governments or quasi-governmental entities, that are transferred between buyer and seller via assignment or participation agreements. Some loans (e.g. Jamaica, Morocco) are current, though most are in default on interest and principal payments (e.g. Russian Vnesh loans, Yugoslavia, Vietnam). Defaulted loans are purchased in the secondary market at a deep discount to the face value of the loan and are purchased with the expectation of a "Brady plan" type restructuring that will convert the loans into new, current securities. The loans are accounted for in the same way as other Securities in the portfolio and they are marked-to-market daily. Liquidity varies from loan to loan, but prices are quoted daily. W-P states that leverage is available on the more liquid loans (Morocco), so that they can be used in REPO transactions as described above.

(iv) Commercial Paper/Certificates of Deposit. Short-term (30–160 day) debt obligations of banks or corporations in emerging market countries with interest and principal typically paid in U.S. dollars. The interest rates on these debt obligations are usually pegged to LIBOR. W-P states that leverage is available at times from counterparties that sell the assets.

(v) Short-term Sovereign Debt.

(A) Local Currency: Local treasury debt issued on an ongoing basis by foreign governments with interest rates often based on LIBOR. Maturities generally range from 30 days to 2 years.

(B) Dollar-denominated or dollar-hedged: Some countries (e.g. Argentina) have outstanding debt denominated in U.S. dollars (issued in exchange for frozen US dollar bank deposits), with remaining maturities ranging from 2 months to 12 years. Other countries (e.g. Ecuador, Brazil) offer dollar-hedged structures that guarantee specific foreign exchange exit levels. These latter instruments are new issues, and have maturities ranging from 3 months to 1 year.

(vi) Equities. Exchange-traded stocks of companies in emerging market countries, denominated (for the most part) in that country's local currency.

(vii) Convertibles. Debt instruments issued by companies (usually with maturities of 3 to 10 years) that contain provisions whereby the bondholder can exchange their bonds for a set number of shares of the issuer's stock.

Processes Used in Determining Which Securities To Acquire for the IBM Trust

13. W-P represents that in addition to following the Guidelines set forth for the IBM Trust, its overall goal as an investment manager for emerging market securities is to obtain superior absolute and risk-adjusted returns for the IBM Plan relative to certain key fixed income indices. As noted earlier, in addition to investing in directional assets, such as those included in the Salomon Brothers Brady Bond Index,¹¹ W-P builds a low duration portfolio (i.e. by investing in securities with short maturities issued by high-quality borrowers) upon which it adds moderate leverage.¹² This low duration portfolio insulates the overall portfolio from a portion of the volatility often experienced in emerging market securities. W-P's approach to managing risk is to focus primarily on the duration of the Securities in the portfolio. W-P states that in times of high volatility, it does not exit the market for the Securities but instead lowers the portfolio's average maturity profile because lower duration assets will generally exhibit lower volatility. Thus, W-P's strategies place particular emphasis on the liquidity needs of each portfolio.

14. With respect to the use of derivatives, W-P represents that it engages in the trading of certain instruments that would be considered derivatives when it determines that it is prudent to do so to achieve its goals. These derivatives include: (i) The sale of covered call options to enhance the return on portfolio Securities; (ii) the purchase of call options to obtain exposure to particular assets without the necessity of using large sums of money; and (iii) the purchase of put options to mitigate market value deterioration for portfolio Securities. W-P also engages in two strategies that provide incremental income while exposing the IBM Trust, as the option writer, to additional market exposure. These strategies involve: (i) The purchase and sale of "straddles"—the simultaneous purchase or sale of a put and call option with identical strike prices on the same Security; and (ii) the purchase and sale of "strangles"—the simultaneous purchase or sale of a put and call option with strike prices set at a specific amount which is "out-of-the-money".¹³

¹¹ Such Securities are generally Brady Bonds, Pre-Brady loans and some equities relating to companies in these emerging markets.

¹² The low duration Securities are generally short-term sovereign debt, Eurobonds, Bank CDs and Commercial Paper.

¹³ For example, W-P states that if the market price of the underlying Security is 85 percent of a certain

However, W-P represents that it rarely enters into trades of uncovered options (puts or calls) for any client accounts.¹⁴ Therefore, as a condition of the proposed exemption, W-P has committed not to sell any uncovered put or call options, including (but not exclusive to) "straddles" and "strangles", in transactions with Chase for assets of the IBM Plan.

W-P represents that the use of derivatives in the W-P Account for the IBM Trust is generally limited to the purchase and sale of put and call options on Brady Bonds and Commercial Bank Loans. These are over-the-counter (OTC) options. W-P states that the counterparties involved are always large, creditworthy emerging markets' broker-dealers, similar to those used for REPO transactions. W-P typically uses such options for one of three purposes:

- (i) To hedge long positions, through the sale of covered call options, or the purchase of put options;
- (ii) To earn incremental income through the sale of covered calls and covered puts when W-P judges that the market will move little, or at least less than the premium available from the sale of such options; and
- (iii) To obtain a leveraged exposure to an asset through the purchase of call options, without downside risk beyond the cost of the option.

15. With respect to the process for buying and selling Securities, W-P states that it has real time access through electronic media to data which provides pricing for assets traded in the emerging markets. W-P also deals routinely with other market-makers that provide bid/offer quotations on demand. When buying or selling a Security, W-P typically obtains prices from three different counterparties and chooses the best price. In instances where a less actively traded Security is purchased, W-P looks at assets of the same credit quality, size and duration to verify its relative value. W-P represents that its central mandate as an IBM Plan

designated price, then a "2-point out-of-the-money strangle" on that asset would include a put option with a strike price of 83 percent and a call option with a strike price of 87 percent.

¹⁴ To the extent that W-P chooses to enter into any uncovered options or other "derivatives" with the assets of the IBM Plan managed in the W-P Account with counterparties other than Chase, the Department is providing no opinion in this proposed exemption as to whether such transactions would be consistent with the prudence requirements of section 404(a) of the Act and the regulations thereunder. For a current statement of the Department's views on the use of "derivatives" by pension plans, see DOL Letter from Olena Berg, Assistant Secretary for Pension and Welfare Benefits, to The Honorable Eugene A. Ludwig, Comptroller of the Currency, dated March 21, 1996.

fiduciary is to secure the "best" price available on any trade. In this regard, W-P states that it is not compelled to deal with any particular party, including Chase, should that party not provide competitive pricing for the Securities involved. Under the conditions of the proposed exemption, when the IBM Plan acquires a Security from Chase, the IBM Plan must not pay a price which is greater than the fair market value of such Security, as determined by W-P in accordance with either W-P's internal valuation process or independent third party sources (such as independent broker-dealers and market-makers dealing in such Securities). In addition, in any transaction where the IBM Plan sells a Security to Chase, the IBM Plan must receive a price which is no less than the fair market value of such Security, as determined by W-P in accordance with such valuation processes or sources. W-P notes that no brokerage commission, sales commission, or similar compensation other than the particular dealer mark-up for the Security, will be paid to Chase by the IBM Plan with regard to such transactions. W-P will endeavor to achieve the best possible prices for the Securities involved in transactions with Chase and will use its expertise in emerging markets to ensure that the particular mark-ups paid to Chase are reasonable based on W-P's valuations of the Securities.

16. W-P acknowledges its duties, responsibilities and liabilities in acting as a fiduciary under the Act for the IBM Trust in connection with its investments and represents that it will ensure that the conditions of this exemption, if granted, are met.

W-P represents that it will ensure that the terms of each transaction with Chase are at least as favorable to the IBM Plan as the terms which would exist in a similar transaction with an unrelated party. W-P states that it will determine, prior to each transaction, that the acquisition and holding of the particular Securities is in the best interests of the IBM Plan, and will ensure that each transaction is consistent with the IBM Plan's investment guidelines, objectives, and liquidity needs. W-P states further that there will be proper diversification of the investments in the IBM Plan portfolio to prevent unnecessary exposure to the risks involved in a particular market sector. W-P notes that its use of leverage (i.e. REPOs) for the IBM Plan assets will be moderate and is usually about half of the maximum allowable under the Guidelines. As a condition of the proposed exemption, W-P represents that it will not exceed the maximum amount of leverage

allowable under the Guidelines (i.e. 150 percent of the net asset value of the Securities involved in the particular REPO). Finally, W-P states that while it may utilize certain derivatives for the IBM Plan's account under the Guidelines, such use does not normally involve selling uncovered put or call options and will not involve any such transactions with Chase. W-P states that it does not use futures contracts or other derivatives, other than those previously discussed, to hedge risks as part of its investment management strategies.

W-P represents that it will monitor all of the investments made by the IBM Plan in the Securities or other instruments and will take whatever actions are necessary to protect the interests of the IBM Plan.

17. In summary, the Applicant represents that the transactions described herein have met and will continue to meet the statutory criteria under section 408(a) of the Act because, among other things: (a) The assets of the IBM Plan involved in the transactions are managed by W-P, an independent qualified fiduciary for the IBM Plan; (b) W-P, as the IBM Plan's independent fiduciary and investment manager for the assets invested in the Securities, negotiates the terms of such transactions on behalf of the IBM Plan and makes the decision to have the IBM Plan enter into any such transactions with Chase; (c) W-P monitors the investments made by the IBM Plan in such Securities and takes whatever actions are necessary to protect the interests of the IBM Plan; (d) neither Chase nor an Affiliate has discretionary authority or control with respect to the investment of the IBM Plan's assets involved in the transactions or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets; (e) all terms and conditions of the transactions between the parties on behalf of the IBM Plan, including the prices paid or received by the IBM Plan for any Securities and the interest rates paid by the IBM Plan for any REPOs, are at least as favorable to the IBM Plan as the terms and conditions that would exist in an arm's-length transaction between unrelated parties; (f) the REPOs between the IBM Plan and Chase are entered into pursuant to a written agreement between the parties which describes all of the material terms and conditions for such transactions, including the rights and obligations of each party, and is consistent with the specific guidelines established by the IBM Plan's named fiduciary for transactions involving the Securities; (g) W-P does not engage in, or commit to sell, any uncovered put or call options

in transactions with Chase on behalf of the IBM Plan and adheres to all of the investment guidelines established for the IBM Plan by the Plan's named fiduciary; (h) no brokerage commission, sales commission, or similar compensation other than the particular dealer mark-up for the Security, is paid to Chase by the IBM Plan with regard to such transactions; and (i) the amount of the IBM Plan's assets involved in the transactions represents no more than two (2) percent of the total assets of the IBM Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng or Mr. E. F. Williams of the Department, telephone (202) 219-8881 or 219-8194, respectively. (These are not toll-free numbers.)

International Brotherhood of Electrical Workers Local Union 613 (IBEW), Local 613 Defined Contribution Pension Fund (the Fund), Located in Atlanta, Georgia [Application No. D-10225]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b) (1) and (2) and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale (the Sale) of a certain parcel of improved real property (the Property) from the Fund to Mr. Charles W. Eason, Sr., a party in interest with respect to the Fund provided that the following conditions are met: (1) The fair market value of the Property is established by an independent and qualified real estate appraiser; (2) Mr. Eason will pay the greater of: the fair market value of the Property at the time of the transaction or \$123,000; (3) The Sale will be a one-time transaction for cash; and (4) The Fund will pay no fees or commissions associated with the Sale.

Summary of Facts and Representations

1. The Fund is a multi-employer defined contribution plan. As of December 31, 1994, the Fund had approximately 2,592 participants and assets of \$72,773,801. The Fund is maintained pursuant to collective bargaining agreements between the IBEW and employers of members of the IBEW. The Fund trustees are comprised of a Board of Trustees consisting of three representatives of the IBEW and

three representatives of the employers. Mr. Eason is a member of the Board of Trustees of the Fund.

2. The Property is located at 1249 Jennie Lane, Lilburn, Georgia and consists of a single-family dwelling that has been converted to office use and a detached garage. The Fund acquired the Property from Bowman Electric, Inc. (Bowman). Bowman originally purchased the Property in 1986 from James and Alice Yancey subject to a promissory note issued to the Yanceys secured by a deed to secure debt dated February 4, 1986.

Bowman was required to pay benefit contributions to the Fund and other multi-employer funds (the Other Funds) and dues to the IBEW pursuant to a collective bargaining agreement. Bowman became delinquent with respect to the contributions and dues owed to the Fund, the Other Funds, and the IBEW. The Fund, the Other Funds and the IBEW took steps to collect the money owed by Bowman. Specifically, Bowman owed the Fund contributions in the amount of \$5,529.07. As a result, Bowman executed a promissory note dated August 10, 1993 payable to the Fund, the Other Funds and the IBEW.¹⁵ This promissory note was secured by a second-in-priority deed to secure debt and security agreement dated August 10, 1993 on the Property. Bowman defaulted on the promissory note increasing the money owed to the Fund by \$3,987 (This amount reflects the contributions Bowman failed to pay from August 10, 1993, the date Bowman executed a promissory note and gave the Fund, the Other Funds and the IBEW a second mortgage as security for the debt through the date of foreclosure.) The Fund, the Other Funds and the IBEW began non-judicial foreclosure proceedings.

During these proceedings, the Fund, the Other Funds and the Union discovered that Bowman had also defaulted on the Yancey's promissory note, and that the Yancey's began foreclosure proceedings. The applicants represent that if the Yanceys were to foreclose on the first mortgage on the Property, the second mortgage held by the Fund, the Other Funds and the

¹⁵ The applicant has not requested and the Department has not provided exemptive relief for the promissory note issued by Bowman to the Fund, the Other Funds and the IBEW. In this regard, the applicant represents that the actions taken to collect outstanding fringe benefit contributions, including the execution of the promissory note, are covered by Part A of Prohibited Transaction Exemption (PTE) 76-1 (41 FR 12740, March 26, 1976) which pertains to Delinquent Employer Contributions. However, the Department expresses no opinion herein on whether such transactions are covered by Part A of PTE 76-1.

Union would have been extinguished and they would have lost their interest in the Property. In order to protect their interest in the Property, the Fund, the Other Funds and the Union could have attempted to purchase the Property at the Yancey's foreclosure proceedings. However, to avoid the uncertainties of such a purchase, the Fund negotiated an agreement in which the Fund paid the Yanceys approximately \$74,035 to acquire the Yancey's first-in-priority interest in the Property. The Fund, the Other Funds and the IBEW completed foreclosure proceedings on the second mortgage and acquired title to the Property subject to the first mortgage, owned by the Fund. Percentage ownership interests in the Property were assigned in accordance with the amounts Bowman owed to the respective entities. Upon the sale of the Property, once the Fund's first mortgage is paid off, the remaining sale proceeds will be divided among the Fund, the Other Funds and the IBEW in accordance with their respective percentage ownership interests in the Property. The Fund's ownership interest in the Property equals 31.8%.

3. The Property was appraised by Mr. Glenn Keaton, Jr., MIA of Keaton and Company, an independent real estate appraisal firm located in Atlanta, Georgia. Mr. Keaton determined that the market value of the Property as of December 1995 is \$110,000. In his appraisal report, Mr. Keaton defined market value as the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

4. The Fund has proposed to sell the Property to Mr. Eason for \$123,000 in a one-time cash transactions. Assuming the Property is sold for that amount, the Fund will receive \$74,035.38 (the amount paid by the Fund to acquire the first mortgage from the Yanceys) plus approximately \$15,585.44 (this amount represents 31.8% of the remaining \$48,964.62 sales proceeds and will provide the Fund with enough money to recover the delinquent contributions owed by Bowman which currently total \$9,516.48 and the Fund's share of property taxes and assessments on the Property totaling \$1,399.04.) The applicant represents that the Fund no longer wishes to be in the business of owning and/or managing rental income properties. Further, the applicant believes that the Sale will provide the Fund with the opportunity to divest itself of a non-liquid asset and to replace it with a liquid asset.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act because: (a) The fair market value of the Property is established by an independent and qualified real estate appraiser; (b) Mr. Eason will pay the greater of the fair market value of the Property at the time of the transaction or \$123,000; (c) The Sale will be a one-time transaction for cash; and (d) The Fund will pay no fees or commissions associated with the Sale.

FOR FURTHER INFORMATION CONTACT: Allison Padams of the Department, telephone (202) 219-8971. (This is not a toll-free number.)

Huggler & Silverang Profit Sharing Plan (the Plan) Located in Philadelphia, Pennsylvania

[Application No. D-10238]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (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 Code shall not apply to the proposed cash sale (the Sale) by the Plan of two 5 percent limited partnership interest interests (collectively, the Interests) in Rosemont Square Associates, L.P. (the Partnership), one to Mr. David H. Huggler and the second to Mr. Kevin J. Silverang, respectively, parties in interest with respect to the Plan; provided (1) the Sale is a one-time transaction for cash, (2) the Plan pays no commissions nor incurs any expenses in connection with the proposed transaction, and (3) the Plan receives as consideration for the Sale no less than the fair market value of the Interests as of the date of the Sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with individual accounts which are self-directed by the respective participants as to the investment of the assets. The sponsoring employer of the Plan is Huggler & Silverang, P.C., a Pennsylvania professional corporation, a law firm that discontinued operations effective April 30, 1995. After the sponsoring employer discontinued operations it disbanded, and the Plan distributed all assets of the Plan to

terminated participants except for the Interests held in the individual accounts of Messrs. Huggler and Silverang, respectively. Each account of the two remaining participants in the Plan holds a 5 percent limited partnership interest in the Partnership that the applicants represent has a fair market value of \$186,010, respectively.

2. The applicants, Messrs. Huggler and Silverang, represent that on October 17, 1991, each of their respective individual accounts in the Plan acquired a 5 percent Interest in the Partnership by each tendering to the Partnership as consideration a 40 percent limited partnership interest, each valued at \$125,000, in another limited partnership, Saber Associates, a Pennsylvania limited partnership.

The applicants request an administrative exemption from the prohibited transaction provisions of the Act to enable each of them to purchase for \$186,010 in cash the Interests from their respective individual accounts in the Plan. The applicants intend to terminate the Plan and roll over the cash assets remaining in their individual accounts in the Plan to Individual Retirement Accounts (IRAs). The applicants represent that they have not been able to find and engage a trustee-custodian willing to accept and hold their respective Interests for a reasonable annual fee.

The applicants represent that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries because the Plan will be able to terminate and roll-over its remaining cash assets into IRAs for the last two participants. Also, they represent that their rights as participants will be protected by the objective determination of the fair market value of the Interests by the president of the general partner of the Partnership.

3. The Interests have been appraised, as of August 1, 1996, and determined to have a fair market value of \$186,010, respectively. The appraisal was done by Mr. Stephen W. Bajus, who is the president of Rosemont Associates, Ltd., a Pennsylvania corporation and general partner of the Partnership.

Mr. Bajus represents that he is independent of the Plan and its sponsoring employer, and although he has been a client of the sponsor of the Plan and the current law firm of Messrs. Huggler and Silverang, his relationships never generated revenues that exceeded 2 percent of the total yearly revenues of either law firm. He further represents that his relationships never enabled the parties to control or influence his actions as an independent appraiser of the Interests. Mr. Bajus further

represents that there is no market for trading activity in the Interests and never has been since the initial establishment of the Partnership. Mr. Bajus represents that the actual value of the Interests should be determined by reference to the only asset possessed by the Partnership, which is the Rosemont Square Mall located in Lower Merion Township, Montgomery County, Pennsylvania.

The Rose Square Mall was appraised on September 28, 1994, by H. Bruce Thompson, Jr. and Associates, Inc. of Bryn Mawr, Pennsylvania and determined to have a fair market value of \$10,300,000.

Mr. Bajus represents that the methodology that he employed in his appraisal of the fair market value of the Interests involved subtracting the mortgaged indebtedness of \$6,579,798, as of July 31, 1996, from the fair market value of \$10,300,000 of the Rosemont Square Mall to determine the total equity interests of \$3,720,202 that the Partnership possessed on August 1, 1996. Mr. Bajus then represents that he determined that each 5 percent ownership in the Partnership has a fair market value equal to \$186,010, respectively.

4. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because (a) the Sale of the Interests involves a one-time transaction for cash; (b) the Plan will not incur the payment of any commissions nor incur any expenses from the Sale; (c) the Plan will be able to terminate and roll-over its remaining cash assets into two IRAs for the benefit of the two remaining participants; (d) the Interests in the Partnership have been appraised by the president of the general partner of the Partnership; and (e) the Plan will receive as consideration for the Sale no less than the fair market value of the Interests as of the date of the Sale.

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

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Acme 401(k) Retirement Savings Plan (the Plan) Located in Scottsdale, Arizona

[Application No. D-10270]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by the Plan of a 2.86% interest (the Interest) in the Arizona Equities V Real Estate Investment Trust (the REIT) to RSC Holdings, Inc. (RSC), sponsor of the Plan and a party in interest with respect to the Plan; provided the following conditions are satisfied: (1) The Sale is a one-time transaction for cash; (2) the Plan does not incur any expenses in connection with the Sale; and (3) the Plan receives as consideration from the Sale the greater of: (a) the fair market value of the REIT Interest as determined by a qualified independent appraiser at the time of the Sale or, (b) the Plan's total investment in the Interest in the amount of \$50,572.

Summary of Facts and Representations

1. The Plan is a defined contribution 401(k) plan, and has approximately 850 participants; 335 participant accounts contain a share of the REIT Interest. As of December 31, 1995 the fair market value of total assets in the Plan was \$3,163,741. RSC is a Delaware corporation engaged in the business of rental services. U.S. Bank of Idaho currently serves as the Plan's trustee and has investment discretion over all the assets held in the Plan.

2. The Plan acquired the Interest in the REIT in October 1989, subsequent to a merger with the C & W Action Rentals, Inc. Profit Sharing Plan. The merger of the two plans occurred after RSC's predecessor, Acme Holdings, Inc. acquired the sponsor of the C & W Plan. The C & W Plan had originally purchased the Interest in the REIT in 1984, in the principal amount of \$50,572; the Plan owns a 2.86% Interest in the REIT.

On November 6, 1984, the REIT made a \$1,770,020 loan to an independent third party. The loan was secured by a deed of trust on real estate located in

Tucson, Arizona (the Tucson Property). The Plan participated in the loan through the REIT. In March of 1989, the Plan was notified that the borrower was in default; subsequently the borrower never repaid the loan¹⁶. After the default, Citibank (Arizona), formerly known as United Bank of Arizona, as Trustee of the REIT, foreclosed on the Tucson Property securing the loan and took possession of it.

3. RSC, the applicant, represents that the Tucson Property is currently the REIT's sole asset and that because the Interest is a minority interest and it is not publicly traded, there is not an established market for the Interest.

4. The trustee of the Plan has attempted to sell the Plan's Interest in the REIT, but has not been successful. West One Bank, former Plan trustee, made arrangements with Pepper Viner Co., the REIT's successor trustee to Citibank (Arizona), in 1993, for Pepper Viner to circulate a letter from West One Bank, to the REIT's other unit holders to determine if any of them might have an interest in purchasing the Plan's Interest. However, no one responded. Subsequently West One Bank contacted several brokers and as a result, received one offer to purchase the REIT Interest, for a total price of \$4,000. West One Bank declined the offer because they felt that the Plan's interest in the underlying property had a value much higher than the \$4,000.

RSC, the sponsor, requests an exemption to permit the cash Sale by the Plan of the Interest to RSC. The Plan will receive the greater of: (1) The fair market value of the Interest as determined by an independent appraiser at the time of the Sale, or (2) the Plan's total investment in the Interest of \$50,572. The applicant represents that this Sale is in the best interest of Plan participants and beneficiaries because the asset provides no income to the Plan, and is illiquid. The Sale will facilitate full implementation of participant-directed investing of accounts, which was adopted by the Plan in January, 1994. The Sale will allow the Plan to convert the Interest into cash, so that participants whose account balances are partially invested in the Interest may direct the investment of that portion of their accounts into assets generating greater returns.

¹⁶The Department notes that the decision to acquire and hold the Interest are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department herein is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the interest by the Plan.

5. The Interest, the sole value of which is the Plan's undivided 2.86% interest in the Tucson Property, was appraised as of July 19, 1996 by Mr. Thomas A. Baker, MAI, SRA, a State of Arizona Certified General Real Estate Appraiser who is independent of the Plan and RSC. Mr. Baker applied the direct sales comparison approach to determine both the market value and fee simple interest of the total property and of the Plan's 2.86% interest in the subject property.

In addition, the appraiser used comparable sale information of partial interest sales in order to determine the fair market value of the Plan's 2.86% Interest in the REIT. Mr. Baker concluded that the fair market value of the Plan's 2.86% interest in the REIT, as of July 19, 1996 was \$10,900.

6. RSC represents that the plan would incur no expenses nor commissions with respect to the Sale. The applicant also represents that the proposed transaction is administratively feasible and protective of the Plan's participants and beneficiaries. Furthermore, the applicant represents that any amounts received by the Plan as a result of the Sale, which are in excess of the fair market value of the Interest, will be treated as contributions to the Plan, but that these contributions will not exceed limitations of section 415 of the Internal Revenue Code.

7. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (1) The Sale will be a one-time transaction for cash; (2) no commissions or fees will be paid by the Plan as a result of the Sale; (3) the Sale will facilitate full implementation of participant-directed investing of accounts, which was adopted by the Plan in January, 1994; and (4) the Sale price will be the higher of: (a) The fair market value of the Interest on the date of the Sale, or (b) the Plan's total investment in the Interest, in the amount of \$50,572.

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

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of 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 30th day of August, 1996.

Ivan Strasfeld,

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

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BILLING CODE 4510-29-P

[Application No. D-10011]

Notice of Proposed Individual Exemption to Make Permanent as Modified Prohibited Transaction Exemption (PTE) 91-8 Involving Equitable Life Assurance Society of the United States and Its Affiliates (Equitable) and Its Wholly-Owned Subsidiary, Equitable Real Estate Management, Inc. (ERE), Located in New York, New York

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed individual exemption to make permanent as modified PTE 91-8, which involves Equitable and ERE.

SUMMARY: This document contains a notice of pendency before the Department of Labor of a proposed individual exemption to make permanent as modified the temporary relief provided by PTE 91-8 (56 FR 1411/1419, January 14, 1991). PTE 91-8 is a temporary exemption which expired January 13, 1996. This proposed exemption, if granted, will make permanent as modified PTE 91-8 and will provide relief for the provision of property management and/or leasing services by ERE¹, Equitable's wholly-owned subsidiary to an Account (as defined in Section IV below), provided that the conditions set forth in Section II are met.

EFFECTIVE DATE: The Department has determined to extend the temporary exemptive relief provided under PTE 91-8 effective January 13, 1996, until the date the final grant for this proposed exemption is published in the Federal Register.

Also, if granted, this proposed exemption to make permanent PTE 91-8 will be effective on the date the final grant is published in the Federal Register. However, the modification in the annual reporting requirement whereby Equitable will furnish the annual report to each authorizing plan fiduciary and the Independent Fiduciary no later than 90 days following the end of the period to which the annual report relates, as set forth in Section II(4)(a) in this proposed exemption, will be effective, as of January 13, 1996.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor by no later than October 21, 1996.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Application No. D-10011. The application for exemption

¹ In this regard, ERE represents that during the course of PTE 91-8 ERE changed its acronym from EREIM. This was solely a matter of preference and does not reflect a change in ownership or management of ERE. The description of Equitable Real Estate Investment Management, Inc., as set forth in the original notice of proposed exemption published on February 28, 1990 at 55 FR 7057/7069 and in the exemption application for permanent exemption and modification of PTE 91-8, dated April 24, 1995, continues to accurately reflect the ownership and management of ERE.