

Dated: May 26, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10747]

Proposed Exemption; Bankers Trust Company, BT Alex Brown Incorporated, and Deutsche Bank AG

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions 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 Request

All interested persons are invited to submit written comments or request for a hearing on the pending exemption, within 33 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 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. *D-10747*. The application 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 exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 3 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.

SUPPLEMENTARY INFORMATION: The proposed exemption was requested in an application 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, this notice of proposed exemption is issued solely by the Department.

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

Bankers Trust Company, New York, New York; BT Alex. Brown Incorporated; Deutsche Bank AG

[Application No. D-10747]

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

Section I. Bankers Trust Company

If the exemption is granted, Bankers Trust Company shall not be precluded from functioning as a "qualified professional asset manager" pursuant to Prohibited Transaction Exemption 84-14 (49 FR 9494, March 13, 1984) (PTE 84-14) for the period beginning on the date of sentencing with respect to the charges to which Bankers Trust Company pled guilty on March 11, 1999 and ending five years¹ from the date of publication of the final exemption in the **Federal Register**, solely because of a

¹ If granted, this exemption will extend for a period of approximately five years. However, Bankers Trust Company may, prior to its expiration, apply for an extension of the exemption.

failure to satisfy section I(g) of PTE 84-14 as a result of the conviction of Bankers Trust Company for felonies described in the March 11, 1999 felony information (the Information) entered in the U.S. District Court for the Southern District of New York, provided that:

(a) this exemption is not applicable if Bankers Trust Company becomes affiliated with any person or entity convicted of any of the crimes described in section I(g) of PTE 84-14; and

(b) this exemption is not applicable if Bankers Trust Company is convicted of any of the crimes described in section I(g) of PTE 84-14, other than those felonies discussed in the Information;

(c) the custody operations that were part of Bankers Trust Company at the time of the March 11, 1999 information, and which have subsequently been reorganized as part of Global Institutional Services (GIS), are subject to an annual examination of its abandoned property and escheatment policies, procedures and practices by an independent public accounting firm. The examination required by this condition shall determine whether the written procedures adopted by Bankers Trust Company are properly designed to assure compliance with the requirements of ERISA. The annual examination shall specifically require a determination by the auditor as to whether the Bank has developed and adopted internal policies and procedures that achieve appropriate control objectives and shall include a test of a representative sample of transactions, fifty percent of which must involve ERISA covered plans, to determine operational compliance with such policies and procedures. The auditor shall issue a written report describing the steps performed by the auditor during the course of its examination. The report shall include the auditor's specific findings and recommendations. This requirement shall continue to be applicable to the custody operations that were part of Bankers Trust Company as of March 11, 1999, notwithstanding any subsequent reorganization of the custody operation function during the term of the exemption.

(d) With respect to the independent audit report described in section I(c) above:

(1) Bankers Trust Company shall provide notice to the Department of any instances of the Bank's noncompliance with the written policies and procedures reviewed by the auditor within 10 business days after such noncompliance is determined by the auditor notwithstanding the fact that the examination may not have been

completed as of that date. Upon request, the auditor shall provide the Department with all of the relevant workpapers reflecting the instances of noncompliance. The workpapers should identify whether and to what extent the assets of ERISA plans were involved in the instances of noncompliance, and

(2) Any information relating to the Bank's noncompliance with the written policies and procedures that is required by Federal and/or state banking authorities to be reported to the state and/or Federal banking agencies shall also be reported by Bankers Trust Company to the Department within the same time frames that such information is otherwise required to be reported to those agencies.

(e) The annual examination described in section I(c) above will be provided to the Department not later than 90 days following the 12 month period to which it relates, and will be unconditionally available for examination by any duly authorized employee or representative of the Department, Internal Revenue Service, Securities and Exchange Commission or Department of Justice or other relevant regulators and any fiduciary of a plan for which Bankers Trust Company performs services.

Section II

If the exemption is granted, BT Alex. Brown Incorporated and its subsidiaries and Deutsche Bank AG shall not be precluded from functioning as a "qualified professional asset manager" pursuant to PTE 84-14 for the period beginning on the date of sentencing with respect to the charges to which Bankers Trust Company pled guilty on March 11, 1999 and ending ten years from the date of publication of the final exemption in the **Federal Register**, solely because of a failure to satisfy section I(g) of PTE 84-14 as a result of an affiliation with Bankers Trust Company, provided that:

(a) this exemption is not applicable if BT Alex. Brown Incorporated, its subsidiaries or Deutsche Bank AG becomes affiliated with any person or entity convicted of any of the crimes described in section I(g) of PTE 84-14; and

(b) this exemption is not applicable if BT Alex. Brown Incorporated, its subsidiaries or Deutsche Bank AG is convicted of any of the crimes described in section I(g) of PTE 84-14.

Section III. Definitions

(a) For purposes of this exemption, the term "Bankers Trust Company" includes Bankers Trust Company and any entity that was affiliated with Bankers Trust Company prior to the

date of the acquisition of Bankers Trust Corporation by Deutsche Bank AG, other than BT Alex. Brown Incorporated and its subsidiaries.

(b) For purposes of this exemption, "Deutsche Bank AG" includes Deutsche Bank AG and any entity that was affiliated with Deutsche Bank AG prior to the date of the acquisition of Bankers Trust Corporation by Deutsche Bank AG, and any future affiliates, other than Bankers Trust Company, as defined in subsection (a).

(c) The term "affiliate" of a person means—

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

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and,

(4) Any employee or officer of the person who—

(A) is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person) or,

(B) has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.

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

Summary of Facts and Representations

1. Bankers Trust Company is a New York banking corporation and a commercial bank which provides a wide range of banking, fiduciary, recordkeeping, custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors worldwide. Bankers Trust Company is wholly owned by Bankers Trust Corporation, a bank holding company established in 1965 under the laws of the State of New York. As of December 31, 1997, Bankers Trust Corporation and its affiliates had consolidated assets of \$140,102,000,000 and total stockholders' equity of \$5,708,000,000.

2. The corporate entity known as BT Alex. Brown Incorporated resulted from the September 1, 1997 merger of Alex. Brown Incorporated with a Bankers Trust Corporation subsidiary (the new entity was renamed BT Alex. Brown Holdings Incorporated). Alex. Brown & Sons Incorporated, a U.S. registered

broker-dealer subsidiary of Alex. Brown Incorporated, was merged into BT Securities Corporation (the new entity was renamed BT Alex. Brown Incorporated). The merged broker-dealer, BT Alex. Brown Incorporated, is a wholly-owned subsidiary of Bankers Trust Corporation. Its predecessor, Alex. Brown & Sons Incorporated was not affiliated with Bankers Trust Corporation when the conduct which resulted in the Plea Agreement took place. BT Securities Corporation has never been a subsidiary of Bankers Trust Company.

3. In the second quarter of 1999, Bankers Trust Company expects that Bankers Trust Corporation will be acquired by Deutsche Bank AG, a bank organized under the laws of Germany.

4. On March 11, 1999, the United States Attorney for the Southern District of New York filed a three-count felony information (the "Information") in the United States District Court for the Southern District of New York (the "Court") alleging violations of 18 U.S.C. § 1005. The Information charges Bankers Trust Company with making false entries on its books and records as a result of the conduct of certain employees in 1994-6 in Bankers Trust's processing services businesses. The conduct involved the transfer to reserve accounts and to income of aged credit items that should have been paid to customers or other third parties, or paid to state abandoned property authorities. Some of these aged credit items represented assets of ERISA covered employee benefit plans. On the same day, Bankers Trust Company entered a plea of guilty to the charges in the Information pursuant to a written plea agreement (the "Plea Agreement"). In the Plea Agreement, Bankers Trust Company agreed to pay a fine of \$60 million and placed that amount in escrow pending sentencing. The Plea Agreement provides that sentencing will be postponed to a date on or before June 21, 1999. Bankers Trust Company has cooperated with the appropriate authorities in the investigation.

5. Bankers Trust Company represents that although none of the unlawful conduct involved its (or its affiliates) investment management activities, the criminal conduct described above would preclude each component of Bankers Trust Company, BT Alex. Brown, Bankers Trust Australia Funds Limited, and other affiliated investment managers from serving as a "qualified professional asset manager" (QPAM) pursuant to PTE 84-14. PTE 84-14 provides broad relief from the prohibited transaction provisions of ERISA and the Code for transactions

between parties in interest with respect to a plan and an investment fund in which the plan has an interest when such fund is managed by a QPAM, the QPAM makes the decision to enter into the transaction, and the other conditions of the exemption are met. Section I(g) of PTE 84-14 precludes a person who otherwise qualifies as a QPAM from serving as a QPAM if such person or an affiliate² thereof has, within the ten years immediately preceding the transaction been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity.

6. Bankers Trust Company represents that the clientele it serves includes large employee benefit plans subject to the Act. They maintain that, given the size and number of the plans which Bankers Trust Company represents, the large number of financial service providers engaged by such plans, the breadth of the definition of party in interest under the Act, and the array of services offered by Bankers Trust Company, it would not be uncommon for a plan for which Bankers Trust Company currently serves as a QPAM to engage in a transaction which may involve a party in interest.

7. Bankers Trust Company states that other statutory and class exemptions exist which cover purchases and sales of securities from U.S. banks or broker-dealers; securities lending to U.S. banks or broker-dealers; mortgage pool investment trusts; investment in short-term instruments such as repurchase agreements (with a bank supervised by a State or by the United States or a broker-dealer registered under the Securities Exchange Act of 1934 or a dealer in government securities who reports daily to the Federal Reserve Bank of New York), bankers' acceptances in banks supervised by a State or by the United States, commercial paper or deposits of a bank supervised by a State or by the United States. Bankers Trust notes, however, that without the relief provided by PTE 84-14, a plan advised by Bankers Trust Company or its affiliates would be unable to invest in real estate, mortgages, or commodities, to engage in purchases and sales of securities from

and to foreign banks or broker-dealers, to lend securities to foreign banks and broker-dealers, or to invest in deposits of foreign banks, if such transactions involve a party in interest.

8. Bankers Trust Company requests an exemption to enable it and its current and future affiliates, to function as QPAMs despite their failure to satisfy section I(g) of PTE 84-14 as a result of the judgment of conviction to be entered against Bankers Trust Company.³ The proposed exemption is requested on behalf of Bankers Trust Company and its affiliates. The proposed exemption is also requested on behalf of such entities that may become affiliated with Bankers Trust Company or its corporate successor(s), including but not limited to Deutsche Bank AG and its affiliates. The transactions covered by the proposed exemption would include the full range of transactions that can be executed by investment managers who qualify as QPAMs pursuant to PTE 84-14 and satisfy the conditions contained therein. Deutsche Bank AG represents that, subsequent to the acquisition of Bankers Trust Corporation, it will assume responsibility on behalf of Bankers Trust Company for compliance with all of the conditions of the proposed exemption and all of the commitments contained in the Bankers Trust Company exemption application, notwithstanding any subsequent reorganization of Bankers Trust Company or Bankers Trust Corporation. Thus, for example, Deutsche Bank AG has agreed to ongoing responsibility for the annual examination of the custody operations that were part of Bankers Trust Company at the time of the March 11, 1999 information and for any reporting to the Department in connection with that examination.

9. According to Bankers Trust Company, the conduct relating to the Plea Agreement was discovered by the Bank itself and brought to the attention of the U.S. Attorney and the banking regulators. Bankers Trust Company, on its own initiative, engaged Arthur Andersen & Co., one of the largest independent accounting firms in the world, with substantial experience and expertise with banking and financial institutions, to undertake a review of the Client Processing Services unit, which has been now reorganized as part of

Global Institutional Services ("GIS"). Arthur Andersen spent over 100,000 hours on the investigation. Arthur Andersen identified transactions which had been recorded to income. These transactions have since been reversed. Bankers Trust has substantially completed the process of compensating any clients or third parties affected by these transactions or escheating unidentified funds to the appropriate state as abandoned property.

10. In addition, Bankers Trust Company represents that the law firm of Sullivan & Cromwell was engaged to aid in the investigation. The Senior Control Officer Group (SCOG)⁴ in consultation with Sullivan & Cromwell determined the individuals that would be evaluated for potential discipline. This determination was made as a result of a review of hundreds of thousands of e-mail messages and transaction records and interviews of dozens of Bankers Trust Company employees. SCOG and Sullivan and Cromwell met to discuss the issues raised by the interviews and documents for each employee and jointly reached a recommendation regarding the appropriate discipline for each employee.

11. Bankers Trust Company represents that by the end of the investigation, 13 employees who were in various ways related to the events that were the subject of the Information had resigned and 27 other employees received other forms of disciplinary action. None of the individuals responsible for the action upon which the Information is based are currently employed by Bankers Trust Company. In addition to asking employees to resign, the disciplinary actions taken were, reassignment out of the fiduciary business, compensation penalties, reprimand or mandatory retraining. Bankers Trust Company determined the level of discipline that was appropriate based on the following criteria: the employee's position during the relevant conduct; the employee's relevant educational and professional background; the employee's degree of involvement with the transaction, and the nature of the transaction. Bankers Trust Company believes that it has identified and considered all individuals who should have been disciplined in this matter.

Bankers Trust Company represents that it has undertaken to appropriately identify and discipline all individuals involved in the conduct which gave rise

² For purposes of section I(g) of PTE 84-14, an "affiliate" of a person is defined, in relevant part, as "any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person . . ." (PTE 84-14, section V(d)). Bankers Trust Corporation, Bankers Trust Company, its sister companies, and its subsidiaries would be treated as affiliates under this definition. Deutsche Bank AG, and its affiliates, will be treated as affiliates under this definition as of the effective date of its acquisition of Bankers Trust Corporation, the parent of Bankers Trust Company.

³ Section I(g) provides that for purposes of that subsection, "a person shall be deemed to have been 'convicted' from the date of the judgement of the trial court, regardless of whether that judgement remains under appeal." Until an appealable order is entered, there is no judgement of conviction under section I(g). Bankers Trust represents that an appealable order will be entered at sentencing, which is scheduled for June 21, 1999.

⁴ Bankers Trust Company states that SCOG is comprised of individuals who operate completely independent of any business line, including CPS, and had no involvement with the transactions under investigation.

to the guilty plea by Bankers Trust Company, and similar conduct not covered by the plea, all of which was investigated by Bankers Trust Company in 1996 and 1997. This conduct was found by Bankers Trust Company to involve taking unclaimed funds into income of Bankers Trust Company without adequate documentation that such funds belonged to Bankers Trust Company, as well as other accounting practices designed to misstate revenue or expenses of Bankers Trust Company for a particular time period. In addition to steps already taken, Bankers Trust Company agrees that it will, upon request of the Pension and Welfare Benefits Administration (PWBA), appoint and compensate a Special Master acceptable to PWBA to review the behavior of those individuals (and any discipline which has already been imposed on them) who remain at the Bankers Trust Company (its successors or assigns), when the proceeding by the Special Master commences who fall into any of the following categories:

(1) Persons with respect to whom a presentation was made to a disciplinary review committee of Bankers Trust Company based on any allegation that an individual was, directly or indirectly, involved in claiming funds for Bankers Trust Company without adequate documentation that such funds belonged to Bankers Trust Company;

(2) Persons selected by PWBA who were involved, directly or indirectly, in any of the above described misconduct, whether or not specifically investigated by Bankers Trust Company;

(3) Persons selected by PWBA who were involved in conducting, implementing, supervising, or overseeing the investigative and disciplinary process on behalf of Bankers Trust Company designed: (a) to assure that all improper accounting was appropriately corrected; and (b) to discipline individuals involved in claiming funds for Bankers Trust Company without adequate documentation that such funds belonged to Bankers Trust Company or misstating income or expenses of Bankers Trust Company; and

(4) Persons selected by PWBA who were involved in responding to inquiries from any governmental agency regarding allegations that Bankers Trust Company claimed funds without adequate documentation that such funds belonged to Bankers Trust Company, failed to appropriately escheat abandoned funds, or misstated income or expenses of Bankers Trust Company.

If a Special Master is requested by PWBA, the Bankers Trust Company will

submit to PWBA for its approval a proposed engagement letter relating to the scope of the review which shall include, at a minimum, the following requirements:

(a) The Special Master shall determine conclusively on behalf of Bankers Trust Company, what discipline for each such individual would be appropriate, up to and including dismissal to assure that their discipline was adequate to deter future misconduct by the individual and others in similar positions, and to assure that no such individual, found by the Special Master to be untrustworthy, would be involved, directly or indirectly, in handling assets subject to the Employee Retirement Income Security Act;

(b) The Special Master shall report to PWBA regarding any information that comes to the attention of the Special Master, in the course of performing his other duties, which suggests that the continued presence of any person as an employee or contractor of Bankers Trust Company might imperil the safekeeping or appropriate investment of employee benefit plan assets covered by the Act, or any other such information which the Special Master, in his discretion, believes would be useful to PWBA in performing its mission;

(c) The Special Master shall, in addition, provide to PWBA, upon request, any materials submitted by or on behalf of Bankers Trust Company to the Special Master or by the Special Master to Bankers Trust Company;

(d) To the extent permitted by law, Bankers Trust Company shall provide the Special Master with all documents concerning the behavior of such individuals as the Special Master, in his sole discretion, shall deem relevant, and shall require all employees and contractors to respond fully and completely to all inquiries by the Special Master as a condition of their employment by Bankers Trust Company;

(e) Bankers Trust Company further will promptly impose any discipline found appropriate by the Special Master; and

(f) The Special Master will use best efforts to complete his assignment within a specified period of time, but his failure to do so may not be grounds for dismissal or failure by Bankers Trust Company to honor all terms of the engagement letter, unless PWBA agrees in writing to such dismissal or failure to comply. Bankers Trust Company further agrees that any individual who has resigned, been dismissed, or transferred following involvement in claiming funds for Bankers Trust Company

without adequate documentation that such funds belonged to Bankers Trust Company or misstating income or expenses of Bankers Trust Company, so that they are not presently involved in the handling of ERISA covered employee benefit plan assets on behalf of Bankers Trust Company, will not in the future be permitted by Bankers Trust Company to handle such assets on its behalf as an employee or contractor. Similarly, Bankers Trust Company agrees that any individual who was disciplined in connection with the conduct described above, but who was not, at the time of their discipline, involved in handling employee benefit plan assets subject to the Act, will not in the future be permitted to handle such assets on behalf of Bankers Trust Company. Notwithstanding the agreements in this paragraph, Bankers Trust Company may, within 60 days of retaining the Special Master, with notice to PWBA, request that the Special Master review the conduct of any individual whose involvement with employee benefit plan assets is proscribed by this paragraph. Upon request for such review, the Special Master shall determine whether the limitations imposed by this paragraph should be modified, using the same standards which he would use in determining appropriate discipline for an individual described in numbered paragraphs (1)–(4). In performing this duty, the Special Master shall be given the same cooperation as he would receive in reviewing the discipline of an individual described in numbered paragraphs (1)–(4).

12. Bankers Trust Company further represents that substantial training has been provided to 2000 employees thus far. The training is in the process of being provided to the remainder of GIS employees and will be given monthly thereafter for new employees. As part of its enhanced process to establish and maintain a proper control environment, Bankers Trust represents that it developed a training plan to ensure that employees are aware of the important responsibilities for the proper handling of client funds. The "Business Practices" course was developed with Arthur Andersen and taught jointly with them. The full day's course presents the legal and regulatory issues and responsible business practices for everyday operations, including fiduciary requirements of ERISA and the appropriate method for dealing with suspected misconduct.

13. Bankers Trust Company represents that various corrective measures have been taken by it to help ensure that conduct such as that

involved in the Plea Agreement will not recur. New controls have been implemented, and a risk management infrastructure has been developed with risk managers assigned to each business area reporting directly to the Corporate Controller.

14. Arthur Andersen provided recommendations to the Bank for its consideration in augmenting the controls applicable to its processing business. In the area of organization, Arthur Andersen recommended that controllers for each product line in GIS report to a corporate controller, who reports directly to the Chief Financial Officer of the Bank. In Arthur Andersen's view, segregation of the accounting control function from operations is paramount to a strong control environment. Bankers Trust Company agreed, creating controllers for each business in GIS, who report to the CFO.

15. Arthur Andersen also recommended that the Bank adopt a centralized escheatment process. In response to this recommendation, a separate unit of Arthur Andersen with expertise in abandoned property was engaged to assist in assessing the existing control processes affecting abandoned property and escheatment. Bankers Trust Company represents that as a result of this assessment, controls over aged credit items and escheatment procedures have been enhanced. Specifically, Bankers Trust Company has created an Abandoned Property Officer, who is responsible for the Bank's escheatment filings. The Abandoned Property Officer coordinates with the Legal and Compliance Department of the Bank to provide guidance to the business lines and to provide clear guidelines for administering the escheatment process. Arthur Andersen also recommended that each business unit assign an individual to be responsible for the escheatment process in their respective areas and detail their responsibilities and reporting lines with formal procedures established for escheating aged items. Arthur Andersen further recommended that enhanced standards be established for documenting escheated items and that managers and operations employees be trained on internal policy and procedures. Finally, in the area of organization, Arthur Andersen recommended that procedures providing for proper accounting and disposition of credits be established and that training be provided in the accounting for those items. Bankers Trust Company represents that it has created an entire manual on escheatment policies and

procedures, and all employees responsible for making decisions on accounting and escheatment have been trained in these procedures and will continue to be trained periodically in these areas.

16. In the area of internal audit, Arthur Andersen recommended that audit procedures be revised to ensure that aged items will be formally tracked and followed until any of the issues concerning the items are resolved properly. Arthur Andersen recommended that internal audit employees be formally trained regarding escheatment laws and regulations and that internal audit personnel focus on the operational controls and proper procedures relating to abandoned property. Bankers Trust Company represents that it has created new audit procedures for internal audit staff in these areas. Internal audit staff have received Certified Trust Audit training from an outside organization and will be trained in Bankers Trust Company's abandoned property procedures.

17. In the area of in-house legal services, Arthur Andersen recommended that there be a corporate policy for the escheatment of abandoned property which is approved by business operations, corporate controllers and the Legal Department before adoption, with procedures to provide clear guidance on referral of issues to the Legal Department respecting proper treatment and escheatment of aged items. Since these recommendations were made, an official "Abandoned Property Policy" has been adopted, and procedures have been developed on escheatment which focus on proper referrals to the Legal Department.

18. Arthur Andersen also made recommendations regarding the function of the controllers group, including the development of a reporting mechanism for the aging of debits and credits; the prompt return of property to the rightful owners, once identified; and the development of more formal procedures for researching debits and credits. Bankers Trust Company represents that management information systems have been developed in response to these recommendations, which allow both the controllers and the business line operations management to track the research and identification of debits and credits and evaluate the process in terms of age, size and other relevant factors. Also in the controllers' area, Arthur Andersen recommended that the level of suspense items be reduced and procedures developed to research outstanding items. In this connection, Arthur Andersen recommended that the Bank

improve its tracking and promptness of reconciling items, with better descriptions of such items and clear responsibility for reconciling these items. In response to this recommendation, Bankers Trust Company represents that it has significantly upgraded the level and review of operational control indicators. Specifically, key control indicators have been defined and developed across all business areas. Monthly control management information systems (MIS) packages have been developed in each business unit which are reviewed at a monthly control meeting chaired by the GIS Business head and attended by business unit heads, controllers, compliance and legal personnel and internal audit staff.

19. With respect to ERISA plans, Arthur Andersen recommended that procedures and policies be developed concerning checks paid to plan participants that have not been cashed by the participant and that an independent group, such as compliance, be established to monitor all customer complaints on a centralized basis, with a follow-up audit to determine whether various aspects of client agreements in connection with billing, return of excess funds, etc. are being complied with. Bankers Trust Company represents that it has instituted policies to insure that assets belonging to employee benefit plans do not reach the point of being treated as abandoned property to be escheated. In this connection, Bankers Trust Company has promulgated policies and procedures for the Retirement Services Group within GIS which, among other things, require that plan sponsors receive a monthly list of uncashed checks older than 45 days; that plan sponsors are reminded that it is the plan sponsor's obligation and responsibility to find missing participants, and that plan sponsors are specifically requested to provide directions on amounts outstanding for more than one year. Check ledgers and class action records are retained by the Bank for 15 years. Plans which terminate their relationship with Bankers Trust Company will have any amounts still outstanding after six months forwarded to their successor trustees. With respect to terminated plans, Bankers Trust Company will forward any amounts still outstanding after six months to the responsible plan fiduciary. In addition, Bankers Trust Company represents that it has established policies which require complaints to be brought to the attention of a supervisor immediately and tracked in an MIS system so that

management can evaluate the aging and resolution of complaints. The policies further require that, if not resolved promptly, the complaint must be elevated to a more senior manager, or to Compliance and the Legal Department if the issue is out of the ordinary course of daily operations.

20. In the area of ownership and accountability of customer accounts, Arthur Andersen recommended that each business area develop a chart of accounts, identifying the responsible officer, the proof schedule, approval levels for account openings, closings and changes, with procedures for maintenance of proper documentation for customer and beneficiary amounts and controls on unclaimed amounts. Bankers Trust Company represents that it has undergone a comprehensive account review. Over 25,000 general ledger accounts have been closed, and new procedures and control reports were developed to identify inactive, obsolete and erroneous accounts. In addition, a chart of accounts was established through the use of a centralized account database. All accounts have clear ownership, purpose, and account descriptions. With respect to each account, an administrator is responsible for verifying on a monthly basis that the account is being used according to its official purpose, is being reconciled on a regular basis and is still active. On a going-forward basis, senior management receives regular MIS reports regarding account activity. In addition, Bankers Trust Company represents that procedures are in place to close inactive or dormant accounts on a regular basis.

21. Arthur Andersen recommended better procedures for handling class actions and tax refunds, and Bankers Trust Company represents that it is enhancing its current policies to establish additional procedures for preservation of the names of beneficial holders of securities that may result in class action payments, both for existing plans and for terminated plan relationships. In addition, Bankers Trust Company has revised its procedures to maintain canceled check reports and ledgers for 15 years. Bankers Trust Company further represents that escheatment records are kept indefinitely.

22. In addition to the review conducted by Arthur Anderson, Bankers Trust Company engaged KPMG, an international accounting firm, who are the Bank's auditors, to perform an independent risk assessment and controls review across GIS. Bankers Trust Company represents that this review had several objectives: (1) to

provide an examination of the various control enhancement initiatives that were underway (e.g. account usage); (2) to provide an assessment of the risk identification and control mechanisms across GIS business with, as necessary, control improvement recommendations; and to evaluate the control environment and risk management strategies including recommendations on risk management, legal and compliance structure.

23. Following this review, several control improvements were recommended throughout the various business units. Bankers Trust Company represents that detailed plans were established to implement the improvements with critical/mandatory improvements implemented by year-end 1998. In addition, recommendations to establish a GIS risk management function were implemented by the appointment of a GIS risk manager. In order to provide for an ongoing self-assessment of the control environment, Bankers Trust Company notes that a GIS-wide risk database was created. This database houses all key GIS operational processes and control points and is maintained and updated by the business unit risk managers as operational processes and control points are altered or changed.

24. KPMG has confirmed that based on its involvement over the past two years with respect to the GIS business, Bankers Trust Company has implemented policies and procedures to address the mandatory gaps identified in the risk assessment review performed by KPMG, as well as the recommendations made by Arthur Anderson at the conclusion of their forensic investigation. KPMG also represents that Bankers Trust Company continues to make substantial progress working toward a "best practices" control environment and that progress regarding remaining control enhancement initiatives continues to be closely monitored at the monthly control review meetings conducted since October, 1997 which all senior management in the GIS business.

25. Bankers Trust Company is subject to the continuing supervision of both the New York State Banking Department and the Federal Reserve Bank of New York. The Federal Reserve Bank of New York (FRBNY) and the New York Banking Department conduct joint annual examinations of the Bank, including its fiduciary operations. As part of its supervision, the New York State Department of Banking entered into a settlement agreement with Bankers Trust Company, pursuant to which Bankers Trust Company agreed to

pay \$3.5 million to the State of New York. It reached this agreement based on the fact that Bankers Trust Company had retained outside counsel and an independent accounting firm to assist the Bank in performing a comprehensive forensic and diagnostic review of the activities of its custody and processing businesses during the relevant period and based on that review, had taken the following remedial steps: (1) the Bank adopted improved policies and procedures relating to accounting practices, risk assessment, compliance and internal control procedures, and management information reporting; (2) the Bank adopted new training programs for its personnel in this area with respect to business practices and responsible decision making; (3) the Bank replaced and supplemented personnel in this area, including the replacement of the head of the business group and the head of the areas specifically involved in the offending behavior; (4) the Bank created an independent risk management and control function that reports outside the business line to the senior management in charge of corporate risk management and control; (5) the Bank enhanced its internal audit functions including expansion of the audit scope and increasing the size of the audit staff; (6) the annual external audit of the business was extended to include a review of the improved policies and procedures detailed in paragraph one above; and (7) the Bank commenced and substantially completed appropriate restitution of the amounts involved. In addition to the payment to the State of New York, Bankers Trust Company committed to maintaining the new policies, procedures and internal audit scope and frequency described above and to make no material changes therein without the prior approval of the New York State Banking Superintendent and to provide such periodic reports to the Superintendent and to the Bank's Board of Directors as they may request regarding compliance with the new policies and procedures. The New York State Banking Department concluded, in a letter dated March 11, 1999 to Frank Newman, Chairman of Board of Bankers Trust Company, that based on the actions taken by the Bank to date, "Bankers Trust has put into place the appropriate controls with respect to the management of the affected businesses".

26. The Federal Reserve Bank of New York also provided information in a written submission to assist the Department in its review of Bankers Trust Company exemption application. The FRBNY has a statutory obligation to

inspect the books and records of Bankers Trust Company and monitor its internal controls to ensure that adequate policies and procedures are in place with respect to fiduciary obligations. See 12 U.S.C. 248(a), 325 and 1831m. The FRBNY carries out its responsibility to examine Bankers Trust Company pursuant to delegated authority from the Board, and shall continue to do so. Under the Plea Agreement entered in the matter of *United States v. Bankers Trust Company*, 99 Cr. 250 (S.D.N.Y. Mar 11, 1999), the Bank has submitted to the FRBNY for review and approval "the written internal compliance procedures which the Bank has already implemented for the strengthening and maintenance of its records, systems and internal audit and controls, in order to ensure that such misconduct will not recur in the future."

27. As a condition of the proposed exemption, Bankers Trust Company has agreed to an annual examination of its custody operations as it relates to abandoned property and escheatment matters. The examination is to be undertaken by an independent public accounting firm⁵ and will be designed to assist in determining whether the written procedures adopted by the Bank are properly designed to assure compliance with the requirements of ERISA. The examination will specifically require a determination by the auditor as to whether or not the Bank has developed adequate internal policies and procedures relating to abandoned property and escheatment matters and would include a test of a representative sample of transactions to determine operational compliance with such policies and procedures, with a written report describing the steps performed by the auditor during the course of its examination and the auditor's specific findings and recommendations. The auditor's report will be delivered to the Department within 90 days of the close of the 12 month period to which it relates and will be unconditionally available to other government regulators and the plan fiduciaries upon request.⁶ KPMG,

⁵In the Department's view, whether an auditor is independent for purposes of the proposed exemption would depend on the particular facts and circumstances of each case. However, the Department would not view an auditor as independent under circumstances where the auditor has a financial interest, including an ownership interest, in Bankers Trust Company or Deutsche Bank, or any affiliates thereof, or otherwise receives more than a de minimis amount of its compensation from any of those persons.

⁶Bankers Trust Company represents that because its future affiliates will have had no affiliation with Bankers Trust Company during the period that the conduct that was the subject of the Plea Agreement

an international accounting firm, who is the Banks auditor, or other successor independent auditors, will perform this annual audit.

28. Bankers Trust Company asserts that failure to grant the requested exemption will prohibit employee benefit plans for which Bankers Trust Company affiliates act as investment managers from engaging in transactions with parties in interest that would otherwise be permitted under PTE 84-14, and will cause the plans to forego attractive investment opportunities. Bankers Trust Company notes that many of its current and future affiliates, as well as the Bank itself, would be deprived of their abilities to offer and render the full panoply of specialized investment advisory services demanded by employee benefit plans covered by the Act. Bankers Trust Company represents that the conduct referenced in the Plea Agreement did not involve the investment management functions of the Bank or its investment management affiliates. Bankers Trust Company further represents that sufficient changes have been made in the Bank's custody and processing business management, procedures and supervision to prevent in the future the conduct which gave rise to the Plea Agreement, supporting the inclusion of Bankers Trust Company as an entity permitted to function as a QPAM.

29. In summary, Bankers Trust Company represents that the proposed exemption satisfies the criteria of section 408(a) of the Act for the following reasons: (A) Bankers Trust Company has undertaken substantial reforms and adopted procedures designed to prevent any recurrence of the criminal activity and escheatment of ERISA funds.; (B) an independent audit requirement will further protect plans and help assure plan participants that the conduct that was the subject of the Plea Agreement will not recur; (C) instances of noncompliance discovered during the audit will be reported by Bankers Trust Corporation to the Department within ten days of determination by the independent auditor; (D) the investment management units that oversee the transactions covered by QPAM were not the subject of the Plea Agreement; and (E) the other conditions of PTE 84-14, combined with the procedures adopted by Bankers Trust Company, afford ample protection

took place, the audit will focus solely on the operations that are currently part of the custody operations of Bankers Trust Company. Similarly, Alex. Brown Incorporated was not affiliated with Banker's Trust Corporation when the conduct identified in the Plea Agreement occurred and thus will not be subject to the annual audit examination.

of the interests of participants and beneficiaries of employee benefit plans.

Section 411 Proceeding

The Department notes that, as a result of Bankers Trust Company's conviction for violating 18 U.S.C. § 1005, the Pension and Welfare Benefits Administration's (PWBA) Office of Enforcement has undertaken an inquiry to determine whether, pursuant to ERISA § 411(a), 29 U.S.C. § 1111(a), a judicial proceeding should be instituted to bar Bankers Trust Company from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan or from acting as a consultant to any employee benefit plan. Information obtained in this inquiry will not be used by the Department in its consideration of Bankers Trust Company's exemption request unless the Director of the Office of Enforcement submits such information, or any portion thereof, in writing, to PWBA's Office of Exemption Determinations for inclusion in the public record. Neither the Department's consideration of Bankers Trust Company's exemption request nor any final decision on such request shall foreclose completion of the Department's ERISA § 411 inquiry nor preclude any proceeding which may result therefrom seeking to bar Bankers Trust Company from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan or from acting as a consultant to any employee benefit plan.

Notice to Interested Persons

With respect to notification of interested persons, the applicant will distribute this notice of proposed exemption by first class mail to an independent plan fiduciary for all ERISA pension plans for which Bankers Trust Company and its subsidiaries provide fiduciary services, including trustee services and/or the provision of investment advice and the owner of all IRA accounts to which Bankers Trust Company and its subsidiaries provide investment advisory services. The applicant will distribute the notice to all participants in its own ERISA pension plans, either by return receipt electronic mail or by first class mail. All notification will be mailed or electronically mailed within three business days after publication of the proposed exemption in the **Federal Register**. The applicant will also use its best efforts to notify an independent fiduciary for each former ERISA pension plan client of Bankers Trust Company

and its subsidiaries that has received or may receive additional funds stemming from either the CPS inquiry or the Bank's additional efforts to find participants with uncashed benefit checks.

FOR FURTHER INFORMATION CONTACT: Ms. Allison Padams LaVigne or James S. Frazier of the Department, telephone (202) 219-8194. (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 exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

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

Signed at Washington, DC, this 2nd day of June, 1999.

Ivan Strasfeld,

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

[FR Doc. 99-14369 Filed 6-4-99; 8:45 am]

BILLING CODE 4510-29-P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on June 12, 1999. The meeting will begin at 1:00 p.m. and continue until conclusion of the Board's agenda.

LOCATION: The Westin Hotel, 1672 Lawrence Street, Denver, CO 80202-2010.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Public Speakers:
 - a. Hon. Gregory J. Hobbes, Associate Justice, Supreme Court of Colorado
 - b. Bennett S. Aisenberg, President of The Colorado Bar Association
3. Approval of minutes of the Board's meeting of February 22, 1999.
4. Approval of minutes of the executive session of the Board's meeting of February 22, 1999.
5. Approval of minutes of the Board's meeting of April 17, 1999.
6. Approval of minutes of the executive session of the Board's meeting of April 17, 1999.
7. Chairman's Report.
8. Members' Report.
9. President's Report
10. Inspector General's Report.
11. Consider and act on the Board's meeting schedule, including designation of locations, for year 2000.

12. Consider and act on the report of the Board's Operations and Regulations Committee.

- Consider and act on the Committee's recommendation regarding proposed final rule, 45 CFR Part 1641, Debarment, Suspension and Removal of Recipient Auditors.
 - Consider and act on the Committee's recommendation regarding final rule, 45 CFR Part 1628, Recipient Fund Balances.
 - Consider and act on the Committee's recommendation regarding proposed amendment(s) to the Corporation's 403(b) Thrift Plan that are intended to increase the Corporation's employer contribution level to match the Civil Service Retirement System.
13. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
 14. Report on the status of the work of the special panel established to study and report to the board on issues relating to LSC grantees' representation of legal alien workers and the requirement that they be "present in the United States."
 15. Appointment of Acting Vice President of Programs.
 16. Consider and act on proposed resolution adopting new corporate logo for LSC's 25th Anniversary.

Closed Session

16. Briefing¹ by the Inspector General on the activities of the OIG.
17. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.

Open Session

18. Consider and act on other business.
19. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336-8810.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336-8810.

¹ Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 C.F.R. § 1622.2 & 1622.3.