

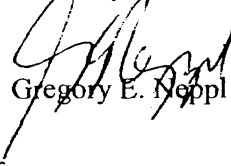
FOLEY LARDNER
ATTORNEYS AT LAW

Ms. Stacy R. Procter
October 9, 2003
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As you have advised, the language quoted above became effective as of June 27, 2003. At that time, Waste Management became immediately obligated not to enforce any contract provision(s) inconsistent with the five contract prohibitions listed above, although other contract terms may remain enforceable by Waste Management. As a result, contracts in place as of June 27, 2003 must conform to these five contract prohibitions. Moreover, Waste Management is also obligated to offer new contracts to new and existing customers in accordance with these five contract prohibitions, subject to the deadlines set forth in Section XIII the Final Judgment.

In short, the obligation upon Waste Management not to enforce any contract provision(s) inconsistent with the five contract prohibitions currently applies, whether or not the contracts in place physically incorporate the language in question. On that basis, we have no objection to or other comment on the proposed Final Judgment pending before Judge Gladys Kessler.

Sincerely,



Gregory E. Neppel

[FR Doc. 03-31054 Filed 12-16-03; 8:45 am]
BILLING CODE 4410-11-C

DEPARTMENT OF JUSTICE

Parole Commission

**Record of Vote of Meeting Closure
(Public Law 94-409) (5 U.S.C. Sec.
552b)**

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 10:45 a.m. on Thursday, December 11, 2003, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide one petition for reconsideration pursuant to 28 CFR 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners

prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., John R. Simpson, and Cranston J. Mitchell.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: December 11, 2003.

Edward F. Reilly, Jr.,
Chairman, U.S. Parole Commission.

[FR Doc. 03-31188 Filed 12-15-03; 9:58 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

**Employee Benefits Security
Administration**

[Application No. D-11198, et al.]

**Proposed Exemptions; Bangs,
McCullen, Butler, Foye & Simmons,
L.L.P. Employees Profit Sharing Plan
(the Plan)**

AGENCY: Employee Benefits Security Administration, Labor

ACTION: Notice of Proposed Exemptions.

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

**Written Comments and Hearing
Requests**

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

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

Notice to Interested Persons

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

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

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

Bangs, McCullen, Butler, Foye & Simmons, L.L.P. Employees Profit Sharing Plan (the Plan) Located in Rapid City, South Dakota

[Application No. D-11198]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) 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, effective January 1, 2004, to the proposed lease by the Plan (the New Lease) of certain improved real property (the Property) located in Rapid City, South Dakota, to Bangs, McCullen, Butler, Foye & Simmons, L.L.P. (the Employer), the sponsor of the Plan, and a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(A) All terms and conditions of the New Lease are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The New Lease is a triple net lease under which the Employer is obligated to pay for all costs of maintenance, repair, and taxes related to the Property;

(C) The interests of the Plan for all purposes under the New Lease are represented by an independent fiduciary, Wells Fargo Bank, N.A., Rapid City, South Dakota (the Trustee);

(D) The rent paid by the Employer under the New Lease is no less than the fair market rental value of the Property; and

(E) If the summary appraisal of the Property (the Summary Appraisal), due in mid-December 2003, contains a fair market rental value that is higher than the current fair market rental value set forth in the New Lease, the Employer will amend the New Lease to pay the Plan the higher amount, retroactive to January 1, 2004.

Effective Date: This exemption, if granted, will be effective as of January 1, 2004.

Summary of Facts and Representations

1. The Plan is a profit sharing retirement plan which was established December 31, 1964. As of July 31, 2003, the Plan had 42 participants and \$9,693,762.89 in assets. The Plan is maintained by the Employer, which is a

South Dakota general partnership engaged in the practice of law. Investment discretion over the Plan's assets is exercised by Thomas H. Foye, Charles Riter and John H. Raford. Mr. Riter and Mr. Raford are partners of the Employer, and Mr. Foye is an employee of the Employer. The Plan's assets are held in trust by Wells Fargo Bank, N.A., Rapid City, South Dakota (*i.e.*, the Trustee), which will also be serving as the independent fiduciary for purposes of the New Lease. The Trustee was formerly named Norwest Bank South Dakota, N.A. (Norwest Bank). Norwest Bank was acquired by Wells Fargo Bank, N.A., effective November 2, 1998. The Trustee represents that it is independent of the Employer and its affiliates. In this regard, the applicant represents that while the Employer has deposits with the Trustee, those deposits constitute less than one percent (1%) of the Trustee's total deposits. It is represented that the Trustee does not have common officers or directors with the Employer. While the Employer may have occasional loans with the Trustee, such loans would be less than 1% of the Trustee's total outstanding loans. The Trustee and its predecessors have served as trustees for the Plan since the time it was adopted in 1964.

2. Among the assets of the Plan is the Property, a parcel of improved real estate which constitutes the Employer's principal place of business. The Property is located in downtown Rapid City, South Dakota, and is a two-story brick office building containing approximately 9,600 square feet of office space. The Employer has leased the Property from the Plan under a triple net lease (the Prior Lease) with a ten year term commencing January 1, 1994 and ending December 31, 2003. The Prior Lease was exempt from the prohibitions of section 406 of the Act and section 4975(c) of the Code by virtue of an individual administrative exemption, Prohibited Transaction Exemption 94-25 (PTE 94-25, 59 FR 12355, March 16, 1994), granted by the Department. The interests of the Plan under the Prior Lease were represented by the Trustee's predecessor, Norwest Bank.

Under PTE 94-25, Norwest Bank monitored the Employer's performance and represented the Plan in enforcing the terms and the conditions of the Prior Lease. The Trustee represents that the Employer occupied the Property in compliance with all terms and conditions of the Prior Lease for its duration. The Prior Lease expires on December 31, 2003.

3. The Trustee states that the Plan's lease of the Property to the Employer

continues to be a favorable Plan investment because, among other things, it provides the Plan with an annual rate of return which is better than annual returns produced by other Plan investments at this time.

Therefore, the Trustee concludes that, effective January 1, 2004, the continued leasing of the Property by the Plan to the Employer for approximately a three (3) year period would be in the best interest of the Plan. The Trustee is attempting to sell the Property and has listed the Property for sale with the real estate firm of Coldwell Banker Kirkeby-Hall. The Property has been listed for sale since May 20, 2003. However, no offers have been received to date. The Trustee states that a shorter term lease is preferable because a long-term lease may dissuade a potential buyer from purchasing the Property, especially if the buyer desires to occupy the Property. Therefore, the Trustee and the Employer have agreed to a new leasing arrangement (*i.e.*, the New Lease), effective January 1, 2004, which will provide for the Plan's continued leasing of the Property to the Employer for at least three (3) years (as discussed below). Accordingly, the Employer and the Trustee are requesting an exemption for the New Lease under the terms and conditions described herein.

4. The New lease is a triple net lease for a term of three (3) years commencing January 1, 2004 and terminating December 31, 2006, both dates inclusive. The New Lease may be renewed by the Employer as the tenant for an additional period of one (1) year (the Option). The Option may be exercised upon giving sixty (60) days written notice to the Plan, as the landlord.

The interests of the Plan under the New Lease will be represented by the Trustee. In this regard, the Trustee states that it knows of no capital repairs or improvements that are required to the Property at this time, and does not anticipate any such repairs in the foreseeable future. The annual rental under the New Lease is payable in equal monthly installments. Initial rental under the New Lease will be \$7,200 per month, or \$86,400 annually.

5. The fair market rental value of the Property has been established periodically (pursuant to the terms of the Prior Lease and PTE 94-25) by Richard S. Kahler, CCIM, GAA, CFP (Mr. K), a professional real estate appraiser with Kahler Appraisal Services, located in Rapid City, South Dakota. Mr. K discusses the current fair market rental value of the Property in letters dated March 31, 2003 and August 6, 2003 (the Updates). In the Updates,

Mr. K refers to an appraisal prepared during the Prior Lease, as required under PTE 94-25. Mr. K states, among other things, that in 2002, the fair market rent for the Property was increased to \$9.00 per square foot. Furthermore, Mr. K also states that his market review prepared in March, 2003, did not evidence an additional increase in the fair market rental value for the Property at that time.

In anticipation of the New Lease or a possible sale of the Property to a third-party buyer, the applicant had Mr. K prepare an immediate restricted appraisal report (the Report) of the Property on October 15, 2003. In the Report, Mr. K relied on the sales comparison approach (SC Approach) and the income approach (Inc. Approach) in appraising the fair market value of the Property. Mr. K states that the current fair market value of the Property under the SC Approach is between \$748,000 and \$770,000. Under the Inc. Approach, Mr. K used an appropriate capitalization rate (*i.e.*, 9.0%),¹ to determine an estimated market value of between \$760,000 and \$785,000 for the Property. Therefore, as of October 15, 2003, Mr. K determined that the fair market value of a fee simple interest in the Property would be in the range of \$750,000 to \$800,000.

6. Furthermore, Mr. K has represented to the applicant and the Department that he will provide a full updated summary appraisal (Summary Appraisal) of the fair market value and fair rental value of the Property by middle of December, 2003. The New Lease has a provision stating that if the Summary Appraisal contains a fair market rental value for the Property that is higher than the current fair market rental value set forth in the New Lease (*i.e.*, \$7,200 per month, or \$86,400 annually), the Employer will amend the New Lease to pay the Plan the higher amount. Any new rental amount will be adjusted retroactive to January 1, 2004, to provide for the higher rental value as of that date. In addition, commencing January 1, 2004, any appropriate higher amount of rent will be paid to the Plan by the Employer within 30 days of the receipt of the Summary Appraisal.

Furthermore, the Trustee states that it will monitor the New Lease and its fair market rent provisions annually. The Trustee will obtain annual independent determinations of the fair market rental value of the Property. The Trustee will ensure that the Plan receives annual

increases in rents that reflect the fair market rental value of the Property.

Under the New Lease, the Employer will indemnify and hold the Plan harmless from all penalties, claims, demands, liabilities, expenses and losses of any nature arising from the Employer's use of the Property.

7. The Trustee will monitor the Employer's performance under the New Lease, on behalf of the Plan, and will enforce its terms and conditions. As the Plan's independent fiduciary, the Trustee will take whatever actions are necessary to protect the interests of the Plan and its participants and beneficiaries.

The Trustee has reviewed and evaluated the Plan's continued leasing of the Property to the Employer under the New Lease and has determined that the transaction would be in the best interests of the Plan's participants and beneficiaries. Specifically, the Trustee states that the Employer has proven to be a successful, reliable tenant of the Property, and that the Property constitutes a productive Plan asset.

8. In summary, the applicant represents that the subject transaction satisfies the criteria of section 408(a) of the Act because:

(A) The New Lease is a triple net lease requiring the Employer to pay all costs for repair, maintenance, taxes and insurance on the Property;

(B) The interests of the Plan under the New Lease are represented by the Trustee, an independent fiduciary which will monitor and enforce the Employer's performance under the terms and conditions of the New Lease;

(C) The New Lease ensures that the rental payments will remain no less than the fair market rental value of the Property for the duration of the transaction;

(D) The New Lease contains a provision stating that if the Summary Appraisal, due in mid-December 2003, contains a fair market rental value for the Property that is higher than the current fair market rental value set forth in the New Lease, the Employer will amend the New Lease to pay the Plan the higher amount, retroactive to January 1, 2004; and

(E) The Trustee has reviewed the Plan's continued leasing of the Property under the New Lease and has determined that the transaction would be in the best interests of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 693-8540. (This is not a toll-free number.)

¹ A capitalization rate is a rate of interest used to convert a series of future payments into a single present value.

**Painters District Council No. 4
Apprenticeship, Upgrading &
Retraining Trust Fund (the Plan)
Located in Cheektowaga, New York**

[Application No. L-11190]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply to a lease (the Lease) of certain space (the Leased Premises) in a building (the Building) owned by the Plan to Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria, LLP (the Applicant), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) All terms and conditions of the Lease are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The decision by the Plan to enter into the Lease will be made by the trustees of the Plan (the Trustees); and

(c) The fair market rental amount for the Lease will be determined by an independent, qualified appraiser as of the date of the commencement of the Lease; and

(d) After commencement of the Lease, an additional fair market rental appraisal of the Leased Premises will be performed by an independent, qualified appraiser every thirty months with the rental rate being adjusted accordingly.

Summary of Facts and Representations

1. The Plan is a defined contribution plan, covering members of the Painters District Council No. 4 whose employers contribute to the Plan under the terms of Collective Bargaining Agreements with the Painters District Council. The Plan is subject to the provisions of ERISA, and became effective on September 25, 1966. The Plan provides apprenticeship training and journeyman upgrading to participants. In addition, the Plan offers training and certification in the following Health and Safety Disciplines: OSHA Hazard Awareness, Scaffolding, Welding, Fall Protection, Ergonomics, Confined Space, Respirator Fit Testing, Hazwoper, Lead Abatement, Asbestos and CPR-First Aid for the Painting and Glazing Industry. The Plan currently has approximately 500 active participants. The Applicant provides legal services to the Plan and to other multi-employer pension and welfare plans.

The Applicant is a law firm that practices in a broad range of legal concentrations. The Applicant has an employment law practice that represents a number of jointly administered employee benefit funds. One of the Applicant's clients is the Plan.

2. The Leased Premises and the Building are located at 585 Aero Drive, Cheektowaga, New York. The Building is a one-story office and warehouse facility containing 11,922 square feet. The Leased Premises has 1,500 square feet of office area. On December 11, 2002, the Plan purchased the Building for \$450,000 from the Niagara Frontier Transportation Authority, an unrelated third party. The Plan continues to lease the other office space to the same parties to whom it was previously subleased including multi-employer funds (the Funds) who are parties in interest to the Plan. The Applicant represents that the lease agreements with the Funds operate pursuant to the guidelines established by Prohibited Transaction Exemption 76-1 (41 FR 12740, 12744, March 26, 1976) (PTE 76-1).²

Due to the Applicant's hiring of a new attorney who now seeks to rent the Leased Premises, the Applicants will become parties in interest with respect to the Plan upon the inception of the Lease. The Applicants seek to enter into a five-year lease agreement for the Leased Premises. The decision by the Plan to enter into the Lease will be made by the Trustees who are independent of the Applicant. The fair market rental amount for the Lease will be determined by an independent, qualified appraiser. Additionally, fair market rental appraisals will be performed at the commencement of the Lease and at thirty month intervals thereafter by an independent, qualified appraiser. Rental rates will be adjusted in accordance with each subsequent appraisal.

3. The fair market rent of the Leased Premises has been established by an appraisal dated February 25, 2003 and will be updated prior to the commencement of the Lease. The appraisal was prepared by Howard P. Schultz & Associates. The appraisal relied on the market sales comparison approach to determine the fair market rental value of the Leased Premises. The appraisal states that the fair market rent for the Leased Premises is \$15/square foot, which equates to \$22,500 annually. The rental rate includes real estate taxes, insurance, utilities, cleaning and

janitorial service all of which will be paid by the Applicant. The Lease will be on the terms no less favorable to the Applicant than an arm's length transaction with an unrelated party.

4. The Applicant states that the Lease will be protective of the Plan and consistent with the Plan's investment needs and objectives. The exemption would be protective of the rights of the Plan participants and their beneficiaries because the Lease will provide rental income to the Plan as owners of the Building. Moreover, the Applicant will pay rent in an amount determined to be commercially identical to an arm's length business transaction. Not only would the Lease constitute an arm's length business transaction, but having legal counsel close to the Plan would be beneficial for the Plan fiduciaries. Legal issues typically arise with some of the Plan participants that require immediate legal attention or advice. Having the Applicant located next to the office for the Plan's employees would reduce telephone costs and the time needed to get answers for legal questions that require immediate assistance.

The location of the office is also extremely beneficial for trustee meetings, and meetings with other Plan officials who normally would have to assume the cost for travel for the Applicant's employees. In addition, many of the apprenticeship standards and procedures for Plan operations are changed on a regular basis. These changes are not made effective until legal counsel has reviewed the changes to all of the corresponding documents. Having the Applicant within the same Building as the Plan's employees would decrease the expenses and time associated with multiple mailings. Documents can be reviewed instantly without redlined copies having to be mailed back and forth.

5. In summary, the Applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act because:

(a) All terms and conditions of the Lease are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The decision by the Plan to enter into the Lease will be made by the Trustees;

(c) The fair market rental value for the Lease will be determined by an independent, qualified appraiser as of the date of the commencement of the Lease; and

(d) Thirty months after commencement of the five year lease an additional fair market rental appraisal of the Leased Premises will be performed

² The Department expresses no opinion herein as to whether the lease agreements between the Funds and the Plan satisfy the provisions of PTE 76-1.

by an independent, qualified appraiser every thirty months with the rental rate being adjusted accordingly.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693-8540 (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately

describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of December, 2003.

Ivan Strasfeld,

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

[FR Doc. 03-31102 Filed 12-16-03; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003-36; Exemption Application No. D-11086 et al.]

Grant of Individual Exemptions; Deutsche Bank AG

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) 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).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary

of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Deutsche Bank AG

[Prohibited Transaction Exemption No. 2003-36; Application Nos. D-11086; D-11087; D-11088; D-11089; and D-11090]

Exemption

Section I: Basic Exemption

The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of 4975(c)(1)(A) through (D) of the Code, shall not apply to a transaction between a party in interest with respect to a plan (as defined in section (v)(h)) and such plan, provided that the Deutsche Bank In-house Manager (DBIM) (as defined in section IV(a)) has discretionary authority or control with respect to the plan assets involved in the transaction and the following conditions are satisfied:

(a) The terms of the transaction are negotiated on behalf of the plan by, or under the authority and general direction of, the DBIM, and either the DBIM, or (so long as the DBIM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the DBIM, makes the decision on behalf of the plan to enter into the transaction.

Notwithstanding the foregoing, a transaction involving an amount of \$5,000,000 or more, which has been negotiated on behalf of the plan by the DBIM will not fail to meet the requirements of this section I(a) solely because the plan sponsor or its designee retains the right to veto or approve such transaction;

(b) The transaction is not described in—