

Notice to Interested Persons

Wachovia Bank, N.A and its affiliates (Wachovia) filed a request for final authorization under Prohibited Transaction Exemption (PTE) 96-62 (as published in 61 Fed. Reg. 39988 (July 31, 1996), as amended by 67 Fed. Reg. 44,622 (July 3, 2002)) with the United States Department of Labor (Department) to permit Wachovia to engage in certain transactions with employee benefit plans subject to the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and/or section 4975 of the Internal Revenue Code of 1986, as amended (Code) (each, a Plan), in connection with Wachovia's arranging and syndicating revolving lines of credit to certain investment funds, secured by the capital commitments of investors in those funds.

The proposed transactions have met the requirements for tentative authorization under PTE 96-62. You are hereby notified that the Department is considering whether to provide final authorization for the above-described transactions pursuant to PTE 96-62. Upon final authorization by the Department, the restrictions of section 406(a) of ERISA and/or 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 transactions. The proposed transactions, proposed conditions for final authorization and the summary of facts and representations are explained in the enclosed appendix entitled *Request for Final Authorization*.

As a person who may be affected by this request for final authorization, you have the right to comment by January 2, 2006.

Any transactions described above will only take place following final authorization by the Department, which is expected to occur on or after January 7, 2006.

All written comments by interested persons can be made to:

U.S. Department of Labor
Employee Benefits Security Administration
Office of Exemption Determinations
Division of Individual Exemptions
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Attention: Janet Schmidt, Room N-5649
Application Number: E-00502

Alternatively, interested persons may furnish their comments to the Department either via facsimile to (202) 219-0204 or via e-mail to schmidt.janet@dol.gov, in each case to the attention of Janet Schmidt.

The citations for a substantially similar individual exemption and a substantially similar case receiving final authorization under PTE 96-62 upon which the request for final authorization is based are as follows:

PTE 2004-02: Bank of America

Final Exemption: 69 Fed. Reg. 7,506 (Feb. 17, 2004)

Proposed Exemption: 68 Fed. Reg. 56,008 (Sept. 29, 2003)

Final Authorization Number 05-19E (FAN 2005-19E): Deutsche Bank (Final Authorization granted July 22, 2005)

PTE 2004-02 and FAN 2005-19E describe certain transactions between one or more lenders, who may be parties in interest with respect to ERISA-covered plans, and investment funds in which such plans invest. PTE 2004-02 and FAN 2005-19E provide relief from certain prohibited transaction provisions and allow the investment funds to borrow against the capital committed for investment by the ERISA-covered plans. PTE 2004-02 and FAN 2005-19E also permit the lenders to receive certain acknowledgments and consents from the ERISA-covered plans in connection with the establishment of the loans.

For the convenience of interested persons, an appendix setting forth both the conditions that would be applicable upon final authorization by the Department under PTE 96-62 and the facts and representations that support final authorization is attached. Wachovia strongly urges interested persons to read the attached appendix.

Appendix -- Request for Final Authorization

Based on the facts and representations made by Wachovia Bank, N.A. (Wachovia), the Department of Labor (Department) is considering whether to provide final authorization pursuant to PTCE 96-62 to Wachovia and its current and future affiliates to engage in the covered transactions described below.

Section I--Covered Transactions

The restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974, as amended (Act) and the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986, as amended (Code), by reasons of section 4975(c)(1)(A) through (D) of the Code, shall not apply, after January 7, 2006 to:

- (A) The granting to Wachovia Bank, N.A. and its affiliates (Wachovia), either as an agent (the Agent) for a group of financial institutions (Lender(s)), or as a sole Lender that will fund a "credit facility" (Credit Facility) providing credit to certain investment funds (Fund(s)), by the Fund(s) of a security interest in and lien on the capital commitments (Capital Commitments), reserve amounts, and capital contributions (Capital Contributions) of certain investors, including employee benefit plans (a Covered Plan, as defined in Section III (A)), investing in the Fund;
- (B) Any collateral assignment and pledge by the Fund to the Agent or to Wachovia as sole Lender, of its security interest in each Investor's equity interest, including a Covered Plan's equity interest, in the Fund;
- (C) The granting by the Fund to the Agent, or to Wachovia as sole Lender, of a security interest in a Collateral Account to which all Capital Contributions in the Fund will be deposited when paid (except in certain limited circumstances);¹
- (D) The granting by the Fund to the Agent, or to Wachovia as sole Lender, of its right to make calls on Investors for Capital Contributions (Capital Call), which shall be in cash, under the operative Fund Agreements (as defined in Section III (C)), enforce the Capital Calls, collect the Capital Contributions, and apply them to any amount due under the Credit Facility;
- (E) The execution by a Covered Plan of an agreement (Investor Consent) consenting to the Fund's assignment to the Agent or to Wachovia as sole Lender, of the Fund's right to make Capital Calls, which may contain: (i) an acknowledgment by the Covered Plan of the Fund's assignment to the Agent, or to Wachovia as sole Lender, of the right to make Capital Calls upon the Covered Plan, enforce the Capital Calls, collect the Capital Contributions, and apply them to any amount due under the Credit Facility; (ii) a consent

¹ In most cases, all Investors will make Capital Contributions into the Collateral Account. However, in some cases, investors that are not plans may be directed to make Capital Contributions to the Agent, for the benefit of the Lenders, after an event of default, in some other manner.

(as either part of the Fund Agreements or as a separate agreement) by the Covered Plan to make Capital Contributions to the Fund without counterclaim, setoff, or defense, for the purpose of repayment of the Credit Facility; (iii) a representation that the Covered Plan has no knowledge of claims, offsets or defenses that would adversely affect its obligation to fund Capital Contributions under the Fund Agreements; and (iv) an agreement that the Covered Plan will fund Capital Contributions only into the Collateral Account; provided that with respect to all transactions described above, the conditions set forth below in Section II are met.

Section II--Conditions

- (A) The transaction is on terms that are no less favorable to the Covered Plans than those which the Covered Plans could obtain in arm's-length transactions with unrelated parties;
- (B) The decision to invest in the Fund on behalf of each Covered Plan and to execute an Investor Consent in favor of Wachovia (either as sole Lender or Agent), is made by fiduciaries of the Covered Plan that are not included among, are independent of, and are unaffiliated with, the Lenders (including Wachovia) and the Fund. For purposes of this authorization request, a fiduciary of a Covered Plan is not included among, is independent of, and unaffiliated with, a Lender (including Wachovia) or a Fund, as applicable, if (i) the fiduciary is not, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Lender or Fund,² (ii) the fiduciary is not an officer, director, employee or relative of, or partner in, such Lender or Fund; and (iii) no officer, director, highly-compensated employee (within the meaning of section 4975(e)(2)(H) of the Code), or partner of the Fund, or any officer, director or highly-compensated employee, or partner of the Lender who is involved in the transactions described in Section I of the authorization request, is also an officer, director, highly-compensated employee, or partner of the fiduciary. However, if such individual is a director of the Lender, and if he or she abstains from participation in, and is not otherwise involved with, the decision made by the Covered Plan to invest in the Fund, then this condition shall be deemed satisfied;
- (C) At the time of the execution of an Investor Consent, the Covered Plan has assets of not less than \$100 million. In the case of multiple plans maintained by the same employer, or by members of a controlled group of corporations (within the meaning of Code section 414(b)) or members of a group of trades or businesses under common control (within the meaning of Code section 414(c)) (hereafter, referred to as "members of a controlled group"), whose assets are invested on a commingled basis (e.g., through a master trust), this \$100 million threshold applies to the aggregate assets of the commingled entity;

² For purposes of determining whether a fiduciary is not included among, is independent of, and unaffiliated with, a Fund, the term "Fund" shall be deemed, as appropriate, to include the governing entity of the Fund or a member of the governing body of the Fund, as appropriate, e.g., a general partner of a partnership, a manager of a limited liability company, a member of a member-managed limited liability company, or a member of the board of directors of a corporation.

- (D) Not more than five (5) percent of the assets of any Covered Plan, measured at the time of the execution of an Investor Consent, is invested in the Fund. In the case of multiple plans maintained by the same employer, or by members of a controlled group, whose assets are invested on a commingled basis (*e.g.*, through a master trust), the five (5) percent limit applies to the aggregate assets of the commingled entity;
- (E) Neither Wachovia nor any Lender has discretionary authority or control with respect to a Covered Plan's investment in the Fund nor renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to such investment;
- (F) If the Department issues final authorization for the Covered Transactions, Wachovia will notify Covered Plans of such authorization, including the final authorization number, to engage in these transaction under PTE 96-62 in the Investor Consent or other Fund Agreement. Upon request, the Covered Plan fiduciaries must receive from Wachovia a copy of this description of the Covered Transactions, Condition, Definitions, and Summary of Facts and Representations submitted to the Department pursuant to Wachovia's submission under PTE 96-62.
- (G) Wachovia receives from the Covered Plan fiduciaries a written representation, or a written authorization that permits Wachovia to rely on a written representation made to the Fund, that the conditions set forth above in Section II (B), (C), and (D) are satisfied for such transaction with respect to the Covered Plan for which they are fiduciaries; and
- (H) None of the Covered Transactions are part of an arrangement, agreement or understanding, designed to benefit a party in interest with respect to a Covered Plan.

Section III--Definitions

- (A) The term "Covered Plan" means an investor in a Fund (as defined below) that is an employee benefit plan, as defined in section 3(3) of the Act and that is covered by Title I, Part 4 of the Act, or section 4975 of the Code, that satisfies the conditions set forth herein in Section II;
- (B) The term "Fund" means an investment or venture capital fund (organized as a corporation, limited partnership, limited liability company, or another business entity authorized by applicable law) in which one or more investors invest, including employee benefit plans or special purpose entities holding "plan assets" subject to the Act, as described herein, by making capital contributions in cash to such Fund, pursuant to specific Capital Commitments as established by the Fund Agreement(s) and other operative documents executed by the parties, for purposes of making certain real estate investments (including real estate-related investments, such as venture capital investments) or non-real estate investments. The term "Fund" includes an entity created by the Fund that may borrow or receive funds from the Credit Facility, provided that such entity is considered an affiliate of the Fund as a subsidiary or other controlled entity;

- (C) The terms “Fund Agreement” or “Fund Agreements” mean the written agreements under which a Fund (as defined above) is formed (such as a limited partnership agreement, a limited liability company agreement or articles of incorporation, together with ancillary related agreements, such as subscription agreements) that obligate each investor to make cash contributions of capital with respect to Capital Commitments, upon receipt of a call for Capital Contributions;
- (D) The terms “Covered Transaction” or “Covered Transactions” mean any combination of transactions described in Section I(A)-(D), in conjunction with the Investor Consent described in Section I(E); and
- (E) The term “officer” means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

Section IV--Summary of Facts and Representations

1. Administrative Necessity for Authorization under PTE 96-62. Wachovia arranges and syndicates revolving lines of credit each a “Credit Facility” for certain investment funds (“Funds”). These credit facilities are secured by the capital commitments of the investors (the “Investors”) in the Funds. Wachovia anticipates that it will continue to enter into such credit facility transactions. However, rather than submitting individual exemption requests for transactions on a case by case basis, Wachovia requests a more general authorization under PTE 96-62 which would permit Wachovia to engage in a series of transactions without the need for recurring, administrative approvals.
2. Parties to Credit Facilities. Wachovia represents that each transaction will consist at a minimum of: (i) one or more Funds; (ii) one or more investors (i.e., the Investors) in the Fund that may be an employee benefit plan subject to the Act; and (iii) a Lender or group of Lenders. In each instance involving a group of Lenders, the Credit Facility will be arranged by Wachovia, which will also be the Agent under the Credit Facility.
3. Funds. The borrower under the Credit Facility will be a Fund. A Fund may be a corporation, a limited partnership, a limited liability company, or another business entity authorized by applicable law.

The Fund’s underlying assets will not consist of plan assets, and Wachovia requests no determination with respect thereto.³

³ Wachovia acknowledges that 29 CFR 2510.3-101, et seq. describes what constitutes assets of a plan with respect to a plan’s investment in another entity for purposes of subtitle A, and Parts 1 and 4 of subtitle B, of Title I of the Act, and section 4975 of the Code. Wachovia further acknowledges that should the Department authorize the transactions, such authorization would not constitute an opinion regarding whether the underlying assets of any Fund, as described herein, would be considered the assets of a plan under such regulations. In this regard, Wachovia understands that if this submission receives final Department authorization, there will be no relief provided for either internal transactions involving the operation of the Fund or for transactions involving the Fund and third parties other than the specific relief proposed herein. Plan investors and their independent fiduciaries should examine carefully all aspects of

Each Fund will be organized and operated through the Fund's organizing and governing documents (i.e., Fund Agreements, as defined in Section III(c) above) such as a partnership agreement, subscription agreements, and other agreements or documents that govern the rights and responsibilities of each party in the Fund. The Fund will generally target equity or debt real estate investments or non-real estate investments. The investments may include, but will not be limited to, the following:

- (i) operating company ventures, both public and private;
- (ii) the acquisition and development of office, retail, industrial, multi-family, single family, parking garage, corporate real estate assets, and other types of real estate assets;
- (iii) the acquisition of interests in real estate or the acquisition of interests in public or private real estate investment trusts and corporations, limited partnerships and limited liability companies whose primary assets will be commercial real estate; or
- (iv) the acquisition of publicly-traded or privately-traded debt or equity securities of issuers whose primary assets are real estate.

Although it is contemplated that the Funds will generally target real estate investments exclusively or in combination with non-real estate investments, some Funds may not target any real estate-related investments.⁴

4. Investors; Covered Plans. The investors in the Fund (Investor(s)) may generally include, but not be limited to, private or public corporations, educational institutions, charitable trusts or foundations, tax-exempt trusts or other tax-exempt organizations, governmental employee benefit plans, insurance company general accounts, private individuals or trusts, and other private or public persons, entities, or associations. Such Investors will include "plans" subject to the provisions of the Act and the Code, including Covered Plans. The term "Covered Plan" means a "plan" that meets the requirements of section

the Fund's organization, operation and investment programs in order to determine whether the requirements of the Department's regulations will be met.

⁴ Wachovia acknowledges that should these transactions be authorized by the Department, it should not be interpreted as an endorsement by the Department of the transactions described herein. The fiduciary responsibility provisions of Part 4 of Title I of the Act apply to a Covered Plan fiduciary's decision to invest in a Fund. Specifically, section 404(a)(1) of the Act requires, among other things, that a plan fiduciary 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 the plan. Such an authorization would not constitute an opinion as to whether a particular investment strategy or arrangement would be considered prudent or in the best interests of a plan, as required by section 404 of the Act. The determination of the prudence of a particular investment 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 involved, including the plan's potential exposure to losses and the role a particular investment plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties and responsibilities (see 29 CFR 2550.404a-1).

II(C) and (D). Any reference to a Covered Plan should be deemed, where appropriate, to include a reference to the Covered Plan's fiduciary, representative, agent or investment vehicle, such as a trust, through which the plan's assets are invested in the Fund. An Investor may invest directly in a Fund or indirectly, such as an investment through a special purpose vehicle, an intermediate limited partnership, an insurance company separate account, or otherwise. In some instances, these entities may contain "plan assets" subject to the Act as a result of investments made by Covered Plans. For purposes of this submission under PTE 96-62, a fiduciary of a Covered Plan is not included among, is independent of, and unaffiliated with, a Lender (including Wachovia) or a Fund, as applicable, if: (i) the fiduciary is not, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Lender or Fund,⁵ (ii) the fiduciary is not an officer, director, employee or relative of, or partner in, such Lender or Fund; and (iii) the fiduciary is not a corporation or partnership in which a person affiliated with the Fund or a Lender, as appropriate, is an officer, director, partner, or employee.

5. Lenders; Agent. In each transaction, Wachovia will arrange the Credit Facility. For each Credit Facility, there will be one or more Lenders. Wachovia will either be the sole Lender for the Credit Facility or will serve as the administrative agent (i.e., the Agent) under the Credit Facility, acting for the benefit of a group of Lenders that participate in the Credit Facility. In any event, one or more of the Lenders, including Wachovia, may be a party in interest with respect to one or more of the Covered Plans invested in the Fund.
6. Credit Facility. The "Credit Facility" refers to an arrangement entered into by and among: (i) a Fund or Funds, as borrower(s); (ii) Wachovia, as Agent or the sole Lender; and/or (iii) the Lenders. Under this arrangement, the Fund may be provided credit through direct or indirect borrowings, letters of credit and similar forms of credit arrangements. Generally, the Fund Agreements will permit the Fund to incur indebtedness (typically, for a term of three to seven years) for the acquisition of investments and for working capital purposes. For purposes of the transactions described herein, such indebtedness will include the Credit Facility. The Credit Facility will allow the Fund to consummate investments quickly without having to finalize the debt/equity structure for an investment or arrange for interim or permanent financing prior to making an investment, and will have additional advantages to the Investors and the Fund.

The Fund will be able to use its credit under the Credit Facility by direct or indirect borrowings, by requesting that letters of credit be issued, by other similar forms of credit arrangements, or a combination of any of the foregoing. All Lenders will participate on a pro rata basis with respect to all loans, letters of credit, or other credit arrangements. All loans, letters of credit, and other credit arrangements will be issued to the Fund or an

⁵ For purposes of determining whether a fiduciary is not included among, is independent of, and unaffiliated with, a Fund, the term "Fund" shall be deemed, as appropriate, to include the governing entity of the Fund or a member of the governing body of the Fund, as appropriate, e.g. a general partner of a partnership, a manager of a limited liability company, a member of a member-managed limited liability company, or a member of the board of directors of a corporation.

entity in which the Fund owns a direct or indirect interest (Qualified Borrower),⁶ and not to any individual Investor. All payments of principal and interest made by the Fund or a Qualified Borrower will be allocated pro rata among all Lenders.

The Credit Facility will have a stated maturity date and, until such time, only interest will be payable on the facility. Generally, at the maturity date, the entire unpaid principal balance of, plus any accrued but unpaid interest on, the debt under the Credit Facility will be due and payable, unless the facility is extended. Whether or not an extension of the facility is requested, the manner of repayment of the debt will be generally a combination of Capital Calls on the Investors, proceeds from mortgage financings, and proceeds from liquidation of investments. The Fund will not typically make a lump-sum Capital Call on the day the debt is due. Generally, no Fund will attempt to liquidate all of its properties to pay the Credit Facility without making any Capital Calls.

In most instances, the Credit Facility will be a recourse obligation of the Fund. The recourse obligation of a Covered Plan to the Fund will not exceed the Covered Plan's initial capital commitment. Repayment of the Credit Facility may be secured by, among other things, a security interest in and lien on the Capital Commitments, the right to make Capital Calls, the right to collect and enforce the same, and a collateral account in the name of the Fund, into which Capital Contributions are funded (i.e., the Collateral Account), or any combination of the foregoing. In the event of a default under the Credit Facility, the Agent will have the right to make Capital Calls on the Investors to the extent of unfunded Capital Commitments and will apply Capital Contributions received from such Capital Calls to any amount due to any Lender under the Credit Facility.

7. Investor Consent. In connection with the Credit Facility, each of the Investors will be required to execute an agreement which may contain:
- (i) an acknowledgment by the Investor of the Fund's assignment to Wachovia, acting as Agent for the benefit of Lenders or as sole Lender, of the right to make Capital Calls upon the Investors, and to collect and enforce the same;
 - (ii) an agreement by the Investor to make Capital Contributions to the Fund without counterclaim, setoff, or defense, for the purpose of repayment of the Credit Facility;
 - (iii) a representation that the Investor has no knowledge of claims, offsets or defenses that would adversely affect its obligation to fund Capital Contributions under the Fund Agreement; and
 - (iv) an agreement that the Investor will fund Capital Contributions only into the Collateral Account.

Prior to obtaining Capital Commitments from the Investors, the Fund may negotiate with Wachovia to provide the Credit Facility. With respect to the Fund and its activities, the only direct relationship between an Investor and Wachovia or any Lender in connection

⁶ Wachovia represents that Qualified Borrowers will be entities the indebtedness of which may be guaranteed by the Fund. When extensions of credit are made to a Qualified Borrower, the Fund will provide a guaranty agreement to the Lenders, under the terms of the Credit Facility.

with a Covered Transaction will be the execution of an Investor Consent. In this regard, the only provision in the Investor Consent which is not merely an acknowledgment of already-existing rights and obligations is the Investor's separate agreement that, in the event of default under the Credit Facility, the Investor will make its Capital Contribution to the Borrower Collateral Account in response to a Capital Call for repayment of the Credit Facility without counterclaim, setoff, or defense. However, the Investor does retain its right to assert any such claim or defense in a separate action. Some Funds may not include such a waiver of defenses to the funding of Capital Contributions by the Investors within the Fund Agreements, in which case the Investor will provide the Agent, or Wachovia as sole Lender, with a separate document that will simply contain an acknowledgment of such agreement. All other aspects of the transaction, including the negotiation of all terms of the Credit Facility, will be exclusively between the Agent (for the benefit of the Lenders) or Wachovia (as a sole Lender) and the Fund.

8. Investor Consent Integral to Credit Facility. Wachovia represents that the delivery by each Investor of an Investor Consent is integral to the Credit Facility, and the Credit Facility will be an integral part of the Fund's investment program. Prior to, or at the time of, the decision by the fiduciaries of a plan to invest in the Fund, such fiduciaries will be aware that the Fund will have the power to borrow money and enter into a loan agreement under which the Fund may pledge its assets, including the Capital Commitments of the Investors and the right to make Capital Calls (giving the secured party the right, under certain circumstances, to make Capital Calls directly). In addition, the Fund Agreements will provide, or each fiduciary of a plan that becomes a Covered Plan will be notified prior to its decision to invest in the Fund, that each Investor may be required to execute documents that are customary for the type of financing involved in the class of transactions described herein. These documents will include an Investor Consent, pursuant to which the Investor agrees to make Capital Contributions to the Fund without counterclaim, setoff, or defense, for the purpose of repayment of the Credit Facility. If a fiduciary of a plan that may become a Covered Plan considers these provisions overly-restrictive, it may decline to invest in the Fund. If the Investors refuse to execute the Investor Consent, the terms of the Credit Facility will be less favorable to the Fund. The result will be an increase in the cost of credit to a Fund. In addition, the Credit Facility may no longer be made available to the Fund by the Lender. Thus, the Credit Facility structure without Investor Consent could result in an increase in the cost of financing the operations of the Fund and reduce the Investors' overall rate of return on their investments.

9. Credit Facility and Investor Consent Do Not Alter Plans' Risks. Wachovia represents that the Investor Consent does not alter the Covered Plans' risk of investment in the Fund. If the Credit Facility were not provided, the Investor's Capital Contributions would be required for the Fund to make investments. The Covered Plan's Capital Commitment to the Fund is an unconditional obligation to make Capital Contributions to the Fund upon receipt of a Capital Call. Absent any malfeasance on the part of the Fund that would give rise to a defense in favor of the Covered Plan, the Covered Plan will be required unconditionally to honor a Capital Call from the Fund. The Covered Plan's payment of Capital Contributions upon receipt of a Capital Call alters the Covered Plan's

risk of the Fund's malfeasance. Any malfeasance occurring prior to the Capital Call will allow the Covered Plan to raise any defenses arising from the malfeasance and refuse to honor the Capital Call. The payment of Capital Contributions upon receipt of a Capital Call subjects the Covered Plan to greater risk. If the Covered Plan later had a claim based on mismanagement or fraud by the Fund, it could not limit its risk by withholding the Capital Contributions for such investment because they would have already been made in response to earlier Capital Calls. The Covered Plan's recourse would be to sue for damages, for recovery of Capital Contributions, or other remedies.

In lieu of making Capital Calls, the Fund will enter into a Credit Facility with Wachovia to obtain financing for its investments and operations. With the liquidity from the Credit Facility, the Fund can defer or forego issuing Capital Calls. Absent the Investor Consent, this reduces the Covered Plan's risk of the Fund's wrongful actions. At the time it executes the Investor Consent, the Plan has committed its capital to the Fund. Although the Covered Plan agrees in the Investor Consent to pay its Capital Commitment in the event of a Capital Call by the Agent, without counterclaim, setoff, or defense, the only circumstances under which a Capital Call to repay the Credit Facility could be required is when advances were made thereunder to the Fund, to make investments which, absent the Credit Facility, would otherwise have been made with Capital Contributions of the Investors. Therefore, the Covered Plan would not otherwise have the opportunity to refuse to honor a Capital Call based on any counterclaim, setoff, or defense, but would have to pursue available remedies to recover against the Fund. The Covered Plan retains the right to assert any such claim or defense in a separate action. The later repayment of the Credit Facility by making Capital Calls on the Investors permits the Fund to replace the Credit Facility with Capital Contributions. Thus, Wachovia states that the Plan is exposed to the same risk whether or not the Fund enters into the Credit Facility.

10. Credit Facility Will Not Generally Affect Right of Plan to Withdraw From Fund.

Wachovia states that the Fund's provisions concerning assignment of Capital Commitments and covenants to unconditionally honor Capital Calls will not affect the ability of an Investor to withdraw from the Fund. Under the Fund Agreements, Investors will not be able to withdraw except in limited circumstances.⁷ Such circumstances would relate to changes that would cause adverse outcomes to the Investors under applicable law.⁸ Although the Credit Facility will typically require notice of any intent to withdraw, it will not prohibit withdrawals. The Credit Facility will be structured so that, in most cases, an allocable portion (*i.e.*, the withdrawing Covered Plan's pro rata portion of the outstanding balance) of the facility will be repaid at the time of any withdrawal. The Credit Facility may also allow a withdrawing Investor's interest in the Fund to be

⁷ See n.4., *supra*.

⁸ In this regard, the Fund Agreements may allow Fund Investors subject to ERISA, including Covered Plans, to withdraw from the Fund if the Investor would be in violation of ERISA, the Code or applicable regulations by continuing its investment in the Fund. While it is expected that such circumstances would be rare, if a future amendment to ERISA or interpretation of an existing ERISA requirement would be violated by a particular plan's continued investment in a Fund, that plan would be allowed to withdraw from the Fund.

transferred to an entity that meets the financial or legal requirements the Agent and Lenders have established for Investors whose committed capital secures the credit .

Under the Fund Agreements, transfers of interests in the Fund by Investors are usually also restricted. Generally, Investors will have the right to transfer their interests only with the consent of the Fund, or only to entities that meet certain financial or legal requirements that will be specified in the Fund Agreements. The Credit Facility typically requires the Fund to agree that no transfer of an Investor's interest will be made without prior written consent of the Agent, except for transfers permitted by the Fund Agreements. This provision is put in place so that the Agent will know the identity of the transferee, and is typically coupled with a requirement that repayment of an allocable portion of the Credit Facility be made in connection with the effectiveness of any transfer.

11. Benefits of Credit Facility and Investor Consent. Wachovia represents that, absent the requested authorization under PTE 96-62, the economic loss resulting to the Covered Plans and their participants and beneficiaries results from the more onerous and expensive financing terms and conditions that would be required, absent the Investor Consent, for those plans to invest in these types of investment ventures. Wachovia states that the types of Funds involved in the covered transactions are an important element of a large diversified investment portfolio of a qualified plan. The advantages of investments in real estate and other investments provided through such Funds are numerous, including long-term appreciation, hedges against inflation, and cash flow from operations. However, Wachovia states that to minimize the risks involved in real estate investments, investment in a large diversified limited partnership or similar entity has many advantages over direct ownership of real estate properties and other securities, including limited liability with respect to such property. Most diversified real estate and other investment programs are carried out through partnerships or limited liability companies that are substantially similar to the Funds. The \$100 million minimum net asset value of a Covered Plan makes it likely the Covered Plans will be sponsored by large businesses and will have relationships with an extensive number of service providers, investment managers, and other entities that are related to financial institutions.

Although the Agent, for the benefit of the Lenders, may receive a pledge of the Capital Commitments of the Investors, the right to make Capital Calls, and the right to collect and enforce the same, in the event of default, the Agent may be required, without the Investor Consent, to foreclose on the collateral in order to effect a Capital Call for repayment of the Credit Facility. The Investor Consent permits the Agent to avoid the delay and expense of foreclosure proceedings, and to make a Capital Call immediately on the Investors for repayment. In addition, when the Fund Agreements themselves do not contain the agreement of the Investors to make Capital Commitments without counterclaim, setoff or defense, the Investor Consent contains such agreement, and permits Lenders to be repaid for amounts that were extended to the Fund prior to the time Capital Contributions are called, without the risk of repayment being challenged or delayed by claims the Investors may have against the Fund. Wachovia states that this

arrangement keeps the risk of the Fund's investment transactions between the Fund and the Investors.

Thus, if the Credit Facility were not provided, the Investor's Capital Contributions would be required for the Fund to make investments. In such instances, the Investor's capital would be used to make investments, and would be immediately at risk. If the Investor later had a claim based on mismanagement or fraud by the Fund, it could not limit its risk by withholding the Capital Contributions for such investment, since those contributions would have already been made in response to earlier Capital Calls. The Investors' recourse would be to sue for damages, for recovery of Capital Contributions, or other remedies.

The Fund will draw on the Credit Facility in lieu of making Capital Calls to fund investments. The later repayment of the Credit Facility by making Capital Calls on the Investors permits the Fund to replace the Credit Facility with Capital Contributions. Therefore, Wachovia represents that the agreement in the Investor Consent to repay the Lenders without counterclaim, setoff or defense keeps the risk of Fund mismanagement or fraud between the Fund and the Investors, where it would be were the Credit Facility not in place.

Wachovia represents further that no more than five (5) percent of the assets of any Covered Plan, measured at the time of the execution of an Investor Consent, may be invested in the Fund. In the case of multiple plans maintained by the same employer, or by members of a controlled group, whose assets are invested on a commingled basis (e.g., through a master trust), this five (5) percent limit will be applied to the aggregate assets of the commingled entity.

12. Lender Will Not Be a Fiduciary of the Plan With Respect to Investment in the Fund.

Wachovia represents that, with respect to each Credit Facility covered by this submission under PTE 96-62, no Lender which will participate, including Wachovia, will be a fiduciary for any of the Covered Plans in connection with their investment in the Fund. The fiduciaries for Investors that may become Covered Plans will have to satisfy the conditions set forth in Section II(B), (C), and (D), above. In this regard, this submission under PTE 96-62 requires that the applicable fiduciaries provide a representation to Wachovia that includes a statement that the fiduciary responsible for making the investment decision on behalf of the Covered Plan to invest in the Fund will be independent of the Lenders (including Wachovia) and their affiliates. Wachovia may also rely on a written authorization that permits it to rely on a written representation regarding the independence of the fiduciary responsible for making such decision (and representations regarding Sections II(B), (C) and (D), above, if such representations are made to the Fund. In addition, neither the Lenders (including Wachovia) nor any of their affiliates will have any influence, authority or control over such Investor's investment in the Fund. Such letter will demonstrate that the fiduciaries responsible for investment decisions are completely independent of any Lender (including Wachovia). Moreover, Wachovia states that the independent decision of the fiduciaries of those plans that may become Covered Plans to enter into the transaction, with full knowledge of the Credit

Facility and the Investor Consent, will be protective of the rights of participants and beneficiaries of Covered Plans.

Wachovia represents that because the Lenders (including Wachovia) will be generally large, national and international financial institutions, it is likely that, in any given Credit Facility, one or more Lenders (including Wachovia) will have a relationship with a Covered Plan making it a party in interest with respect to the Plan. A Lender's status as a party in interest to a Covered Plan may cause a transaction proposed herein to be a prohibited transaction under the Act, even though all relationships between the Covered Plan and the Lender (including Wachovia) will be unrelated to the transaction and do not involve any conflict of interest or opportunity for improper benefit for the Lender (including Wachovia). Wachovia states that the affected Covered Plans' fiduciaries will be sophisticated investors represented by sophisticated investment advisors. Thus, all participants and beneficiaries of the affected Covered Plans will be adequately protected with respect to the transactions described herein. Finally, Wachovia states that none of the Covered Transactions will be part of an overall arrangement, agreement or understanding designed to benefit a party in interest with respect to a Covered Plan.

13. Summary. In summary, Wachovia represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act for the following reasons:
- (i) Each transaction will be on terms that are no less favorable to the Covered Plans than those which the Covered Plans could obtain in arm's-length transactions with unrelated parties;
 - (ii) The decision to invest on behalf of each Covered Plan, and the decision to execute an agreement for consent to the Fund's assignment to Wachovia of the Fund's right to make Capital Calls, will be made by fiduciaries of the Covered Plan that are independent of, and unaffiliated with, the Lenders, including Wachovia, and the Fund;
 - (iii) At the time of the execution of an Investor Consent, a Covered Plan must have assets of not less than \$100 million (other than situations involving multiple plans maintained by the same employer or by members of a controlled group, whose assets are invested on a commingled basis, where this \$100 million threshold can be met by aggregating assets of the commingled entity);
 - (iv) Not more than five (5) percent of the assets of any Covered Plan, measured at the time of the execution of an Investor Consent, will be invested in the Fund (other than in the case of multiple plans maintained by the same employer, or by members of a controlled group, whose assets are invested on a commingled basis, wherein this five (5) percent limit will be applied to the aggregate assets of all such commingled entities);
 - (v) Neither Wachovia nor any Lender has any fiduciary authority or control with respect to a Covered Plan's investment in a Fund nor renders investment advice within the meaning of 29 CFR 2510.3-21(c);
 - (vi) The Covered Plan fiduciaries will receive from Wachovia the final authorization number under PTE 96-62 if the transactions are authorized by the Department. In addition, all appropriate fiduciaries of Covered Plans will receive, upon request, a

copy of the submission made under Prohibited Transaction Exemption 96-62 which is comprised of a description of Covered Transactions, Conditions, Definitions, and a Summary of Facts and Representations; and

- (vii) Wachovia will receive from the Covered Plan Fiduciaries a written representation that the Conditions set forth in Section II(B), (C), and (D) above are satisfied for each transaction with respect to the Covered Plan for which they are fiduciaries. Wachovia may also rely on a written authorization that permits it to rely on a written representation regarding the independence of the fiduciary responsible for making such decision, if such representation is made to the Fund and/or its manager.