

Dated: February 6, 2001.

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application No. D-10584, et al.]

#### Proposed Exemptions; New York Life Insurance Company (NYLIC)

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction 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 request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and 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-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. \_\_\_\_\_, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 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.

#### **New York Life Insurance Company (NYLIC), Located In New York, NY**

[Application No. D-10584]

#### *Proposed Exemption*

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).<sup>1</sup>

#### I. Transactions

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

<sup>1</sup>For purposes of this exemption, references to specific provisions of Title I of the Act unless otherwise specified, refer to the corresponding provisions of the Code.

(a) The receipt, directly or indirectly, by a sales agent (Sales Agent or Sales Agents), as defined in Section IV(l) below, of a sales commission from NYLIC in connection with the purchase, with plan assets, of an insurance contract (the Insurance Contract or Insurance Contracts), as defined in Section IV(h) below;

(b) The receipt of a sales commission by NYLIC, as principal underwriter for a mutual fund registered under the Investment Company Act of 1940, in connection with the purchase, with plan assets, of securities issued by such mutual fund (the NYLife Fund or NYLife Funds), as defined in Section IV(c) below;

(c) The effecting by NYLIC, as principal underwriter, of a transaction for the purchase, with plan assets, of securities issued by a NYLife Fund, and the effecting by a Sales Agent of a transaction for the purchase, with plan assets, of an Insurance Contract; and

(d) The purchase, with plan assets, of an Insurance Contract from NYLIC.

#### II. General Conditions

(a) The transactions are effected by NYLIC in the ordinary course of NYLIC's business as an insurance company, or as a principal underwriter to a NYLife Fund, or in the case of a Sales Agent, in the ordinary course of the Sales Agent's business as a Sales Agent.

(b) The transactions are on terms at least as favorable to the plan as an arm's length transaction with an unrelated party would be.

(c) The combined total of all fees, sales commissions, and other consideration received by NYLIC or a Sales Agent: (1) For the provision of services to the plan, and (2) in connection with a purchase of an Insurance Contract or securities issued by a NYLife Fund, is not in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code. If such total is in excess of "reasonable compensation" the "amount involved" for purposes of the civil penalties of section 502(i) of the Act and excise taxes imposed by section 4975(a) and (b) of the Code is the amount of compensation in excess of "reasonable compensation."

#### III. Specific Conditions

(a) NYLIC or the Sales Agent is not—

(1) A trustee of the plan (other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan or a trustee to a pooled trust (the Pooled Trust), as defined in Section IV(g)

below, which will not purchase Insurance Contracts or securities issued by a NYLife Fund pursuant to this exemption);

(2) A plan administrator (within the meaning of section 3(16)(A) of the Act and section 414(g) of the Code;

(3) A fiduciary who is expressly authorized in writing to manage, acquire, or dispose of, on a discretionary basis, those assets of the plan that are or could be invested in Insurance Contracts, securities issued by a NYLife Fund, or units of a Pooled Trust; or

(4) An employer any of whose employees are covered by the plan.

(b) (1) Prior to the execution of a transaction involving the receipt of sales commissions by a Sales Agent in connection with the plan's purchase of an Insurance Contract, NYLIC or the Sales Agent provides to an independent plan fiduciary (the Independent Plan Fiduciary), as defined in Section IV(f) below, disclosures of the following information concerning the Insurance Contract in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) An explanation of: (i) The nature of the affiliation or relationship between NYLIC and the Sales Agent recommending the Insurance Contract; and, (ii) the nature of any limitations that such affiliation or relationship, or any agreement between the Sales Agent and NYLIC places on the Sales Agent's ability to recommend Insurance Contracts;

(B) The sales commission, expressed as a percentage of gross annual premium payments for the first year and for each of the succeeding renewal years, that will be paid by NYLIC to the Sales Agent in connection with the purchase of the recommended Insurance Contract, together with a description of any factors that may affect the commission; and

(C) A full and detailed description of any charges, fees, discounts, penalties, or adjustments which may be paid by the plan under the recommended Insurance Contract in connection with the plan's purchase, holding, exchange, termination, or sale of the Insurance Contract, including a description of any factors that may affect the level of charges, fees, discounts, or penalties paid by the plan.

(2) Following receipt of the information required to be provided to the Independent Plan Fiduciary, as described in Section III(b)(1) above, and before execution of the transaction, the Independent Plan Fiduciary acknowledges in writing receipt of such information, and approves the

transaction on behalf of the plan. The Independent Plan Fiduciary may be an employer of employees covered by the plan but may not be a Sales Agent involved in the transaction. The Independent Plan Fiduciary may not receive, directly or indirectly (*e.g.* through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(3) With respect to additional purchases of Insurance Contracts, the written disclosure required under Section III(b)(1) need not be repeated, unless—

(A) More than three years have passed since such disclosure was made with respect to the same kind of Insurance Contract, or

(B) The Insurance Contract being recommended for purchase or the commission with respect thereto is materially different from that for which the approval described under Section III(b)(2) was obtained.

(c)(1) With respect to purchases with plan assets of securities issued by a NYLife Fund, or receipt of sales commissions by NYLIC in connection with such purchases, NYLIC provides to an Independent Plan Fiduciary, prior to the execution of the transaction, the following information concerning the recommended NYLife Fund in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) A description of: (i) The investment objectives and policies of the NYLife Fund, (ii) the principal investment strategies that the NYLife Fund may use to obtain its investment objectives, (iii) the principal risk factors associated with investing in the NYLife Fund, (iv) historical investment return information for the NYLife Fund, (v) fees and expenses of the NYLife Fund, including annual operating expenses (*e.g.*, management fees, distribution fees, service fees, and other expenses) and fees paid by shareholders (*e.g.*, sales charges and redemption fees), (vi) the identity of the NYLife Fund adviser, and (vii) the procedures for purchases of securities issued by the NYLife Fund (including any applicable minimum investment requirements and sales charges);

(B) A description of: (i) The expenses of the recommended NYLife Fund, including investment management, investment advisory, or similar services, any fees for secondary services (*e.g.*, for services other than investment management, investment advisory, or similar services, including but not

limited to custodial, administrative, or other services), and (ii) any charges, fees, discounts, penalties, or adjustments that may be paid by the plan in connection with the purchase, holding, exchange, termination, or sale of shares of the recommended NYLife Fund securities, together with a description of any factors that may affect the level of charges, fees, discounts, or penalties paid by the plan or the NYLife Fund;

(C) An explanation of (i) The nature of the affiliation or relationship between NYLIC, the NYLife Fund, and (ii) the limitation, if any, that such affiliation, relationship, or any agreement between NYLIC and the NYLife Fund places on NYLIC's ability to recommend securities issued by other investment companies;

(D) The sales commission, if any, that NYLIC will receive in connection with the purchase of securities of the recommended NYLife Fund, expressed either as: (i) A percentage of the dollar amount of the plan's gross payments and the amount actually invested, (ii) an annual percentage of average daily net asset value of securities issued by the NYLife Fund, or (iii) both if applicable, with a description of any factors that may affect the commission; and

(E) A description of the procedure or procedures for redeeming the NYLife Fund securities.

The disclosures required under section III(c)(1) above shall be deemed to be completed only if, with respect to fees and expenses of NYLife Fund, the type of each fee or expense (*e.g.*, management fees, administrative fees, fund operating expenses, and other fees, including but not limited to fees payable for marketing and distribution services pursuant to Rule 12b-1 under the Investment Company Act of 1940 (the 12b-1 Fees)) and the rate or amount charged for a specified period (*e.g.*, annually) is provided in a written document separate from the prospectus of such NYLife Fund.

(2) Following receipt of the information required to be provided to the Independent Plan Fiduciary, as described in Section III(c)(1) above, and before execution of the transaction, the Independent Plan Fiduciary approves the specific transaction on behalf of the plan. Unless facts and circumstances would indicate the contrary, such approval may be presumed if the Independent Plan Fiduciary directs the transaction to proceed after NYLIC has delivered the written disclosures to the Independent Plan Fiduciary. The Independent Plan Fiduciary may be an employer of employees covered by the plan but may not be NYLIC. The Independent Plan Fiduciary may not

receive, directly or indirectly (e.g. through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(3) With respect to additional purchases of NYLife Fund securities, NYLIC:

(A) Provides reasonable advance notice of any material change with respect to the NYLife Fund securities being purchased or the commission with respect thereto, and

(B) Repeats the written disclosure required under Section III(c)(1)(A), (C), (D), and (E) once every three years. (d)(1) NYLIC shall retain or cause to be retained for a period of six (6) years from the date of any transaction covered by this exemption the following:

(A) The information disclosed with respect to such transaction pursuant to Section III(b), and (c) above; and

(B) Any additional information or documents provided to the Independent Plan Fiduciary with respect to the transaction; and

(C) The written acknowledgments described in Section III(b)(2) above.

(2) A prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the control of NYLIC, such records are lost or destroyed before the end of such six-year period.

(3) Notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, such records shall be unconditionally available for examination during normal business hours by duly authorized employees or representatives of the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by the plan.

(e) Neither NYLIC nor a Sales Agent renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to the assets involved in the transaction in connection with a formal advice program under which specific/individualized asset allocation recommendations are made available to participants based on their responses to questionnaires.

#### IV. Definitions

For purposes of this exemption—

(a) “NYLTC” means the New York Life Trust Company, or any other financial institution supervised under state or federal laws and affiliated with NYLIC;

(b) “NYLIC” means the New York Life Insurance Company and any of its

affiliates, including but not limited to NYLTC, as defined in Section IV(a) above;

(c) “NYLife Fund or NYLife Funds” mean any investment company registered under the Investment Company Act of 1940 for which NYLIC serves as investment advisor and as principal underwriter (as that term is defined in section 2(a)(29) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(29));

(d) An “affiliate” of a person means: (1) Any person directly or indirectly controlling, controlled by, or under common control with such person, (2) any officer, director, employee, or relative of any such person, or any partner in such person, and (3) any corporation or partnership of which such person is an officer, director, or employee, or in which such person is a partner. For purposes of this definition, an “employee” includes: (A) any registered representative of NYLIC, where NYLIC or an affiliate is principal underwriter, and (B) any insurance agent or broker or pension consultant acting under a written agreement as NYLIC’s agent in connection with the sale of an Insurance Contract, whether or not such registered representative or insurance agent or broker or pension consultant is a common law employee of NYLIC;

(e) The term, “control,” means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(f) “Independent Plan Fiduciary” means a fiduciary with respect to a plan, which fiduciary has no relationship to or interest in NYLIC that might affect the exercise of such fiduciary’s best judgment as a fiduciary;

(g) “Pooled Trust” means any collective investment fund or group trust maintained by NYLTC, provided that, NYLTC its successor or affiliate does not have discretionary authority or responsibility with respect to the management and administration of or provide investment advice with respect to, any assets of the plan that are or could be invested in Insurance Contracts, securities issued by a NYLife Fund, or units of a Pooled Trust;

(h) “Insurance Contract or Insurance Contracts” mean an insurance or annuity contract issued by NYLIC;<sup>2</sup>

<sup>2</sup> The Department expresses no opinion as to whether any so-called “synthetic guaranteed insurance contracts” offered by NYLIC constitute an Insurance Contract within the meaning of this exemption. The Department further notes that this exemption provides relief from the self-dealing and conflict of interest provisions of the Act in connection with the sale of Insurance Contracts to

(i) A “nondiscretionary trustee” of a plan is a trustee whose powers and duties with respect to any assets of the plan are limited to: (1) The provision of nondiscretionary trust services, as defined in Section IV(j) below, to such plan, and (2) the duties imposed on the trustee by any provision or provisions of the Act or the Code;

(j) “Nondiscretionary trust services” mean custodial services and services ancillary to custodial services, none of which services are discretionary;

(k) A “relative” means a “relative” as that term is defined in section 3(15) of the Act (or a “member of the family” as that term is defined in Code section 4975(e)(6)), or a brother, a sister, or a spouse of a brother or a sister;

(l) “Sales Agent or Sales Agents” mean any insurance agent, broker, or pension consultant or any affiliate thereof that is affiliated with NYLIC; and

(m) “Principal underwriter” is defined in the same manner as that term is defined in section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 8a-2(a)(29)).

**EFFECTIVE DATE:** If granted, this proposed exemption will be effective, as of February 12, 1998, the date of the filing of the application for exemption.

#### Summary of Facts and Representations

1. The plans which are expected to participate in the proposed transactions are employee benefit plans, which are subject to the provisions of the Act and are tax-qualified under section 401(a) of the Code.<sup>3</sup> Due to the nature of the requested exemption, the applicants maintain that they are unable to provide any of the following specific identifying information about the plans that may engage in the proposed transactions: (1) The number of participants; (2) an estimate of the percentage of assets of each plan affected by the requested exemption or transactions; or (3) the approximate aggregate fair market value of the total assets of each affected plan.

It is represented that there is no minimum investment or minimum plan size required in order for a plan to participate in the proposed transactions. However, it is anticipated that such plans will primarily be participant-directed defined contribution pensions

plans by fiduciaries. It does not provide relief from any acts of self-dealing that do not arise directly in connection with the purchase of specific insurance products. Thus, for example, no relief is provided under this exemption for any act of self-dealing that may arise in connection with the ongoing operation or administration of an Insurance Contract.

<sup>3</sup> The applicants have not requested an exemption, and no relief is provided, herein, for any plan covering employees of NYLIC or its affiliates.

plans, and that, in particular, such plans will be too small to participate in single customer guaranteed interest contracts (GICs or GIC) or a synthetic GIC product. In this regard, plans covered by the exemption may include plans intended to satisfy the requirements of section 404(c) of the Act and the regulations thereunder (a Section 404(c) Plan).<sup>4</sup>

Because section 404(c) of the Act applies only to the provisions of Part 4 of Title I, there is no provision in the Code corresponding to section 404(c). Thus, there is no statutory exemption from the excise taxes imposed under section 4975 of the Code with respect to prohibited transactions involving a Section 404(c) Plan. In this regard, the Department notes that the authority to grant administrative exemptions for such prohibited transactions remains with the Treasury Department pursuant to the Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978). Accordingly, the Department has no authority to provide relief from section 4975 of the Code with respect to a transaction that results from a participant's or a beneficiary's exercise of control within the meaning of section 404(c) and applicable regulations. The applicants have represented that they are aware of the limitation on the jurisdiction of the Department under the Reorganization Plan. However, the applicants maintain that the transactions for which relief is requested, herein, should not be viewed as "participant-directed," because the fiduciaries of plans (not the participants of such plans) will be responsible for selecting and purchasing an Insurance Contract for a plan and selecting the NYLife Funds offered under a plan. Accordingly, the applicants have requested relief from the provisions of both the Act and the Code.

2. The application was filed on behalf of NYLIC and its direct or indirect wholly-owned subsidiaries, New York Life Trust Company (NYLTC), New York Life Benefit Services (NYLBS), NYLIFE Distributors Inc. (NYLIFE Distributors), MacKay-Shields Financial Corporation (MacKay-Shields), Monitor Capital Advisors, Inc. (Monitor Capital),

<sup>4</sup> In relevant part, section 404(c) of the Act and the regulations promulgated thereunder at 57 FR 46906 (October 13, 1992) provide that where a participant or beneficiary of a section 404(c) plan exercises control over the assets in his or her account, then: (i) the participant or beneficiary shall not be deemed to be a fiduciary by reason of his exercise of control; and (ii) no person who is otherwise a fiduciary shall be liable under the fiduciary responsibility provisions of the Act for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control.

and NYLIFE Securities Inc. (NYLIFE Securities).

3. NYLIC is an insurance company organized and operated under the laws of the State of New York. As of December 31, 1996, NYLIC had total consolidated assets of approximately \$78.8 billion and net policy reserves of \$74.8 billion. It is represented that NYLIC offers to employee benefit plans covered by Title I of the Act a variety of insurance products, including *e.g.*, group fixed and variable annuities and GICs. Group annuities serve primarily as funding vehicles for retirement plan benefits. It is represented that all insurance products offered by NYLIC are reviewed and approved by the New York Insurance Department under New York insurance laws and under the applicable insurance laws of any other state where such products are marketed and sold. It is represented that all such insurance contracts are sold by sales agents, which include licensed sales employees, agents, and brokers of NYLIC. In connection with sales of insurance contracts, such sales agents may receive commissions or other compensation.

4. NYLTC, an affiliate of NYLIC and a trust company chartered and operating under the banking laws of the State of New York, provides a variety of fiduciary services for individuals, institutions, and plan accounts covered by the Act. In this regard, it is represented that NYLTC already serves as a nondiscretionary trustee to employee benefit plans. Certain plans may also obtain directed trustee services provided by NYLTC.

5. NYLBS, another affiliate of NYLIC, provides administrative services to NYLIC, to NYLTC, and to plans covered by the Act. Such services include actuarial consulting, daily-valued record-keeping, and other plan administrative services. In this regard, it is represented that NYLBS offers "401 (k) Complete," a bundled services program to participant-directed defined contribution plans which combines plan administration, record-keeping services, and a selection of investment options, including insurance contracts and mutual funds, such as the NYLife Funds. Further, these services include providing participants with required plan information (*e.g.*, summary plan descriptions) and investment education, including asset allocation "tools." It is represented that investment education materials provided by NYLBS, including asset allocation tools, comply with the safe harbor for investment information and education, as described in Interpretive Bulletin 96-1. NYLBS does not charge a separate fee for the

asset allocation tools and does not provide any specific/individualized asset allocation recommendations to participants. In addition to materials provided by NYLBS to participants, it is represented that NYLBS may in the future enter an arrangement under which one or more third party assets allocation service providers would provide a formal asset allocation program to participants of plans receiving services from NYLBS. If such a program were made available to plans, the asset allocation services would be provided solely by a third party service provider that is a registered investment adviser and wholly independent of NYLIC and its affiliates. The asset allocation program would be available only if a plan fiduciary (independent of NYLIC) elects to offer the program to participants; and no employee or other person representing NYLIC or any of its affiliates (including NYLBS) would have any role in reviewing, approving, or providing asset allocations to participants in connection with the program.<sup>5</sup>

6. The NYLife Funds are open-end investment companies registered with the Securities and Exchange Commission (SEC) under the Investment Company Act of 1940. The NYLife Funds are offered to plans directly and through variable life and annuity contracts issued by NYLIC. Currently, the NYLife Funds include the MainStay Funds, which are available to retail and institutional investors (including defined contribution plans) and the MainStay Institutional Funds Inc., which are only available to institutional investors and to group individual retirement account customers. The MainStay Funds, organized as a Massachusetts business trust, currently include fourteen (14) separate funds, each of which has its own investment objectives and policies. MainStay Institutional Funds Inc. currently include eleven (11) separate funds.

NYLIC provides a broad range of services to NYLife Funds. Specifically, the NYLife Funds are managed by MacKay-Shields or Monitor Capital, both of which are registered investment advisers and indirect wholly-owned subsidiaries of NYLIC. NYLIC is the administrator to each of the NYLife Funds and provides various services,

<sup>5</sup> The applicants do not believe that the limited investment education and assets allocation tools that NYLIC may provide give rise to any transaction that would require exemptive relief, and NYLIC is not seeking any relief for these activities. The Department is offering no relief, herein, for transactions other than those proposed, nor is the Department expressing an opinion, herein, as to the applicability of Interpretive Bulletin 96-1 to the facts of this case.

including administration, accounting, and other similar services and shareholder administration and sub-accounting for which NYLIC and/or its affiliates may receive management fees, administrative fees, and/or shareholder services fees.

7. NYLIFE Distributors, the principal underwriter and distributor of the NYLife Funds, is responsible for distributing shares of NYLife Funds, as agent or as principal. NYLIFE Distributors receives sales commissions, including 12b-1 Fees for sales of some classes of shares issued by NYLife Funds paid under a plan of distribution, pursuant to Rule 12b-1 under the Investment Company Act of 1940.<sup>6</sup>

8. The NYLife Funds are sold to plans by NYLIFE Securities, an affiliate of NYLIC and a registered broker-dealer and a member of the National Association of Securities Dealers. Subject to applicable SEC regulations, NYLIFE Securities may act as broker for the NYLife Funds for which it receives fees for brokerage services. It is further represented that in connection with the sales of NYLife Funds to plans, certain sales agents that are registered representatives of NYLIFE Securities may receive sales commission. It is represented that these payments may be made by NYLIFE Distributors from amounts it receives as sales commissions, or by NYLIC from its general assets. It is represented that the prospectus materials for each of the NYLife Funds fully disclose the fees and expenses charged against the assets of each of the NYLife Funds, including fees paid to NYLIC.

9. The applicants have requested an exemption which would permit under certain conditions NYLIC and Sales Agents to receive sales commissions in connection with purchases by plans of Insurance Contracts issued by NYLIC and shares of NYLife Funds underwritten by NYLIC, in situations where such plans also participate in a collective or group trust maintained by NYLTC. In this regard, NYLIC intends to establish such a collective trust (the Collective Trust) to serve as an investment vehicle for contract holders under benefit responsive synthetic or traditional GICs.

The assets of the Collective Trust will be selected and actively managed by NYLTC. In this regard, it is represented

<sup>6</sup> The Department notes that the relief provided by this exemption does not preclude the receipt of 12b-1 Fees by NYLIC or its affiliates to the extent that the payment of such 12b-1 Fees cannot be functionally distinguished from the payment of a sales commission in connection with the purchase, with plan assets, of securities issued by a NYLife Fund.

that NYLIC will advise NYLTC in connection with the management of the Collective Trust, although NYLTC will have final decision making authority. Subject to certain investment guidelines, the assets of the Collective Trust will consist of a portfolio of fixed income securities. It is represented that generally the value of the assets held in the Collective Trust will be based upon readily attainable market valuations published by independent sources. If no market value of an asset is readily available, NYLIC represents that it will obtain a fair value in accordance with commercially acceptable practices and applicable laws and regulations.

The investment guidelines of the Collective Trust also incorporate procedures for identifying and liquidating impaired securities and procedures for establishing priorities for the liquidation of portfolio securities. It is further represented that the guidelines of the Collective Trust prohibit the transfer, purchase, or sale of Collective Trust portfolio assets from or to NYLIC or any affiliate or to any account for which NYLIC or any affiliate has discretionary management authority.

All of the assets of the Collective Trust will be held in a custodial account (the Custodial Account) by a financial institution unrelated to NYLIC. The Custodial Account will be owned by NYLTC, as trustee for the participants in the Collective Trust. It is represented that the participants in the Collective Trust, not NYLIC, will be the beneficial owners of a *pro rata* share of the assets in the Custodial Account.

It is anticipated that initially there will only be two (2) investors in the Collective Trust.<sup>7</sup> In this regard, the Collective Trust will serve as a funding vehicle: (1) For contributions made under the Anchor Retirement Trust Synthetic GIC Participating Group Annuity Contract (the Anchor Synthetic GIC), a group annuity contract approved by the New York State Insurance Department;<sup>8</sup> and (2) For contributions made under certain other guaranteed investment contracts (the SA 25 GICs) which have also been approved by the New York State Insurance Department.

10. It is represented that the SA 25 GICs have already been issued by NYLIC to various employee benefit plans (the SA 25 Plans) which participate in a pooled separate account (Separate Account 25) and may in the

<sup>7</sup> NYLIC represents that it is possible certain tax-qualified plans or a trust or other entity holding qualified plan assets could participate in the Collective Trust sometime in the future.

<sup>8</sup> See footnote 2.

future be offered to other plans.<sup>9</sup> Separate Account 25 is a book value separate account established under Section 4240(a)(5)(ii) of the New York Insurance Law and valued on an amortized cost basis in accordance with Section 4240(a)(10) of the New York Insurance Law. NYLTC, as trustee for participating plans, is the group contract holder for the pooled group annuity contract issued in connection with Separate Account 25. In this regard, it is represented that NYLTC does not have any discretionary responsibility or authority with respect to the administration or management of the assets invested under such group contract.

NYLIC is the investment manager of Separate Account 25. As such, NYLIC decided to invest the Separate Account 25 assets in the Collective Trust, because Separate Account 25 had the same investment objectives as the Collective Trust and because NYLIC believes that increasing the size of the asset portfolio would provide a more stable, less volatile, daily interest rate on amounts contributed under the SA 25 GICs. In addition, no SA 25 Plan paid or will pay any additional management fees in connection with the investment of assets of Separate Account 25 into the Collective Trust.<sup>10</sup>

11. As mentioned above, the Collective Trust will also serve as a funding vehicle for contributions made under the Anchor Synthetic GIC. In this regard, NYLIC represents that it may offer the Anchor Synthetic GIC to any employee benefit plan subject to Title I of the Act (the Anchor Plans).<sup>11</sup> Specifically, NYLIC intends to market the Anchor Synthetic GIC primarily to participant-directed defined contribution plans that participate in the bundled services program offered by NYLBS.<sup>12</sup> It is represented that an

<sup>9</sup> The applicants believe that the initial purchase of a SA 25 GIC by an SA 25 Plan before Separate Account 25 begins participating in the Collective Trust should be exempted by Section III(d) of Class Exemption 84-24 (PTCE 84-24), because NYLTC will not at the time of the initial purchase be a trustee (other than a nondiscretionary trustee) with respect to the purchasing plans. The Department, herein, is offering no view as to the applicability of PTCE 84-24 under the circumstances described above.

<sup>10</sup> The Department, herein, is offering no view as to whether any of the relevant provisions of Part 4, subpart B, of Title I have been violated, regarding the investment of the assets of the Separate Account 25 in the Collective Trust.

<sup>11</sup> It is represented that plans sponsored by NYLIC or any of its affiliates will not invest in the Anchor Synthetic GIC.

<sup>12</sup> The applicants have not requested administrative exemptive relief for the initial purchase by plans of the Anchor Synthetic GIC in reliance on PTCE 84-24, because at the time of the initial purchase of such contract, NYLTC will not

Independent Plan Fiduciary will determine whether or not a plan will invest in the Anchor Synthetic GIC, including whether the Anchor Synthetic GIC is appropriate as an investment option under the plan.

The applicants maintain that the Anchor Synthetic GIC has features that will be advantageous to a plan and its participants. Such features include: (a) A fully benefit-responsive book value guarantee protecting participants against loss of the principal amount of contributions and accumulated interest, and (b) an opportunity to fully participate in the return on a portfolio of fixed income securities.

The Anchor Synthetic GIC does not prospectively guarantee the rate at which interest will be credited on balances held under the contract. In this regard, the credited interest rate is objectively determined under a formula that takes investment performance into account and is disclosed to plans. Under the terms of the Anchor Synthetic GIC, the interest rate will reflect the investment experience of the Anchor Trust and will be at variable rates, calculated daily by NYLIC as the weighted average of book yields<sup>13</sup> on the portfolio of assets held in the Collective Trust, adjusted for realized capital gains and losses, but not less than zero.

Under the contract terms, amounts credited as interest are subject to the guarantee as soon as the interest is actually credited on the contract balance. The daily crediting interest rate will be available to plan fiduciaries and participants through participant communication services provided by NYLBS. Plan participants will receive benefit distributions or may transfer amounts allocated to the Anchor Synthetic GIC investment option to another investment option at "book value" on any day (subject to certain limits on transfers to competing options and employer-initiated events). Plans will be able to withdraw their investment in the Anchor Synthetic GIC

yet be a trustee (other than a nondiscretionary trustee) with respect to the purchasing plans. The Department, herein, is offering no view as to the applicability of PTCE 84-24 under the circumstances described above.

<sup>13</sup> It is represented that the "weighted average of book yields" would be determined as the ratio of: (a) the aggregate interest income ("book value" times "book yield") for all securities in the Collective Trust; to (b) the aggregate "book value" for all such securities. For this purpose, "book yield" is the yield that equates the present value of future cash flows to the cost of the security, assuming that the security is held to maturity. "Book value" is the cost of a security plus interest accruals, plus or minus amortization of a discount or premium, minus repayment of principal and interest payments.

at "book value" on twelve (12) months" notice without any penalty, or on any business day without notice at the lesser of "book value" or market value. The investment guidelines for the Anchor Synthetic GIC specify: (a) The type and minimum standards for portfolio securities, (b) objective procedures for liquidating securities to fund withdrawals or in the case of impaired securities, and (c) procedures for valuing assets based on independent sources.

It is represented that contributions under the Anchor Synthetic GIC will be maintained separately from the assets of NYLIC through a two-layer structure. Specifically, contributions will be credited first to the Anchor Retirement Trust (the Anchor Trust), a bank collective trust that qualifies as a group trust under Revenue Ruling 81-100, maintained exclusively for the Anchor Plans by NYLTC. Thereafter, all of the assets of the Anchor Trust will be invested and held in the Collective Trust, in accordance with the provisions of the Anchor Synthetic GIC.<sup>14</sup> It is represented that all investments from Anchor Trust into the Collective Trust will be in cash.

NYLTC will be trustee with investment management responsibility for both the Anchor Trust and the Collective Trust. It is represented that an Independent Plan Fiduciary to each Anchor Plan will approve the investment of plan assets in the Anchor Trust and the Collective Trust by virtue of accepting the terms of the Anchor Synthetic GIC. The terms of the Anchor Synthetic GIC will specifically describe the Anchor Trust and the Collective Trust and all fees and other charges that would be paid from plan assets (including amounts payable to NYLIC and NYLTC) in connection with the two trusts.

12. NYLTC would be a party in interest and fiduciary with respect to the Anchor Plans and the SA 25 Plans

<sup>14</sup> The applicants believe that investments by the Anchor Plans in the Anchor Trust and in the Collective Trust do not appear to involve any non-exempt prohibited transactions, and accordingly have not requested individual administrative exemptive relief. In this regard, the applicants believe that the Anchor Trust should not be deemed to be a party in interest with respect to plans that purchase the Anchor Synthetic GIC. However, if the investments by Anchor Plans in the Anchor Trust are deemed to involve a prohibited transaction, the applicants believe that a statutory exemption would be available under section 408(b)(8) of the Act. The Department, herein, is offering no view as to whether any of the relevant provisions of Part 4, subpart B, of Title I have been violated regarding the investment by the Anchor Plan in the Anchor Trust and in the Collective Trust, nor is the Department expressing an opinion as to the applicability of statutory exemptive relief under section 408(b)(8) of the Act.

by virtue of being a discretionary trustee to the Collective Trust and the Anchor Trust in which the Anchor Plans invest. Similarly, NYLIC would be a fiduciary and a party in interest to the Anchor Plans and SA 25 Plans by virtue of providing investment advisory services to the Collective Trust. Further, NYLIC would be a fiduciary and a party in interest with respect to SA 25 Plans, as investment manager of Separate Account 25. Finally, in connection with one or more of the other products and services that NYLIC and its affiliates offer to employee benefit plans in the ordinary course of business, NYLIC or one of its affiliates, as a service provider to plans, may already be a fiduciary and/or party in interest to plans that may participate in the proposed transactions.

13. It is represented that where NYLIC and/or its affiliates are parties in interest with respect to a plan, the applicants generally rely on the class exemption provided under PTCE 84-24 in effecting such plan's purchases of insurance contracts and shares of NYLife Funds and for the receipt of commissions and other fees by NYLIC and its sales employees and agents in connection with such transactions. In this regard, PTCE 84-24, subject to certain conditions, provides relief from the prohibitions of sections 406(a)(1)(A) through (D) and 406(b) of the Act, and from the taxes imposed by section 4975 of the Code for certain classes of transactions involving purchases by plans of insurance or annuity contracts and purchases by plans of securities issued by registered investment companies, and the receipt of sales commissions in connection therewith by an insurance agent, broker, pension consultant, or investment company principal underwriter. However, PTCE 84-24 is not available, if an insurance agent, broker, pension consultant, or an investment company principal underwriter or its affiliate is a plan trustee, other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan.

According to the applicant, no exemptive relief is needed or requested for a plan's initial purchases of the Anchor Synthetic GIC or the SA 25 GICs, because at the time of such purchases, NYLTC is not yet a trustee (other than a non-discretionary trustee) with respect to the purchasing plans. In this regard, NYLIC represents that it has complied with the applicable disclosures and other conditions of

PTCE 84–24.<sup>15</sup> However, the applicants are uncertain as to whether PTCE 84–24 would be available for subsequent purchases by the Anchor Plans and/or the SA 25 Plans of Insurance Contracts or shares of NYLife Funds, where NYLTC is a discretionary trustee for plan assets in the Collective Trust, even though NYLTC would not provide investment advice (as described by section 3(21) of the Act), or exercise or have any discretionary authority or control over plans' purchases of such insurance products or shares of a NYLife Fund. Accordingly, the applicants have requested individual relief from section 406(a) and (b) of the Act for the proposed transactions under conditions similar to those provided by PTCE 84–24.

14. As of the filing of the application, NYLIC had not yet established the Collective Trust nor offered the Anchor Synthetic GIC to the Anchor Plans. However, it is represented that on or after the date of the filing of the application, NYLIC and NYLTC intend to establish the Collective Trust, to invest Separate Account 25 assets in the Collective Trust, and to offer the Anchor Synthetic GIC to plans. Accordingly, the applicants have requested retroactive relief, effective as of February 12, 1998, the date of the filing of the application for exemption.

15. In support of their request for individual exemption, the applicants represent that the transactions are on terms which are at least as favorable to each plan that participates, as those negotiated at arm's length with an unrelated party. It is further represented that such transactions are effected by NYLIC or a Sales Agent in the ordinary course of business. With respect to the receipt of sales commissions by NYLIC or a Sales Agent for the provision of services to a plan, and in connection with a purchase of an Insurance Contract or securities issued by an NYLife Fund, the combined total of all fees, sales commissions, and other consideration received by NYLIC or a Sales Agent will not be in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code.

16. The requested exemption is administratively feasible, because compliance with the terms of the exemption will be monitored by an Independent Plan Fiduciary of each plan that participates in the proposed

transactions, so that the level of oversight required by the Department is minimal. Further, NYLIC will maintain records necessary to verify compliance with the conditions of this exemption.

17. The applicants believe that the requested exemption provides adequate safeguards for the protection of plan participants in that the proposed transactions do not appear to involve the types of abuse that the Department intended to address by limiting the availability of PTCE 84–24 where a party in interest or its affiliate is a trustee to a plan. With regard to the terms of the proposed exemption, the influence of NYLTC will be limited by conditions comparable to those set forth in PTCE 84–24, such that NYLTC would not have an opportunity to use its position as trustee to the Anchor Trust or the Collective Trust to improperly influence or control a plan's purchase of Insurance Contracts or shares of NYLife Funds. Moreover, it is represented that NYLTC will not provide any investment advice or have or exercise any discretionary authority or control with respect to plan assets involved in the purchase of Insurance Contracts or NYLife Funds. In this regard, an Independent Plan Fiduciary of each Plan that purchases an Anchor Synthetic GIC or holds or participated in a SA 25 GIC will receive written disclosures before the plan purchases an Insurance Contract or purchases shares of the NYLife Funds. Further, prior to entering a transaction, the Independent Plan Fiduciary will review and approve such transactions on behalf of the plan.

18. The applicants maintain that the proposed exemption is in the interest of the plans which participate in the subject transactions, because such plans will be able to take advantage of the full range of insurance and investment products offered by NYLIC. Moreover, NYLIC anticipates that the investment of assets in the Collective Trust will benefit the plans participating in Separate Account 25, as well as those plans that participate under the Anchor Synthetic GIC, by obtaining economies and efficiencies of scale and, more importantly, by increasing the size of the asset portfolio. In this regard, a larger portfolio size should result in a more stable, less volatile, daily interest rate on amounts contributed under the SA 25 GICs and the Anchor Synthetic GIC, because of the lesser impact of a withdrawals on a larger pool of assets.

Further, the proposed investment structure will not involve any doubling of fees. In this regard, no additional management fees will be charged by NYLTC or NYLIC for managing the Collective Trust assets. Instead, the

plans will only pay the management and other fees specified by the Anchor Synthetic GIC and the SA 25 GICs, respectively. Management fees under all of the contracts will be determined based on the stable value account, not the market value of Collective Trust assets held in connection with the contracts.

19. In summary, the applicants represent that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act and 4975(c)(2) of the Code because:

(a) Plans can take advantage of the full range of insurance and investment products offered by NYLIC and its affiliates;

(b) The transactions are effected by NYLIC or by a Sales Agent in the ordinary course of business;

(c) The transactions are on terms at least as favorable to a plan as an arm's length transaction with an unrelated party;

(d) The combined total of all fees, sales commissions, and other consideration received by NYLIC or a Sales Agent for the provision of services to a plan, and in connection with the proposed transactions is not in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code;

(e) Neither NYLIC nor the Sales Agent is a trustee of a plan (other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan or a trustee to a Pooled Trust);

(f) With respect to the proposed transactions, NYLIC provides each Independent Plan Fiduciary with certain disclosures in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters; and provides disclosure in a written document separate from the prospectus of information regarding specific types of fees or expenses paid from the assets of a NYLife Fund and the rate or amount of each fee or expense charged for a specified period;

(g) Following receipt of the required disclosures and prior to entering the transaction, an Independent Plan Fiduciary approves the transaction on behalf of a plan; and

(h) NYLIC shall retain or cause to be retained certain records for a period of six (6) years from the date of any transaction covered by this exemption.

#### Notice to Interested Persons

Because of the large number of potentially interested persons, the applicants maintain that it is not

<sup>15</sup> The Department, herein, is offering no view as to: (a) The applicability of PTCE 84–24 under the circumstances described above, or (b) whether NYLIC has satisfied or will satisfy all of the terms and conditions, as set forth in PTCE 84–24.



possible to provide a separate copy of the Notice of Proposed Exemption (the Proposed Exemption) to each plan eligible to engage in the transactions covered by the requested exemption. In this regard however, NYLIC intends to provide notice in writing (by first-class mail or another method reasonably calculated to ensure that the notice is received) to an Independent Plan Fiduciary of each plan that participates in the Anchor Synthetic GIC or any of the SA 25 GICs within fifteen (15) days of the date of publication of the Notice in the **Federal Register**, a copy of the Proposed Exemption, as published in the **Federal Register**, and a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2). The notification will inform such interested persons of their right to comment and/or request a hearing within thirty (30) days of receipt of a copy of the Proposed Exemption.

Apart from the notification described in the paragraph above, the applicants represent that the only practical form of providing notice to interested persons is by means of publication of the Proposed Exemption in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

**Salomon Smith Barney Inc. (SSB), Citigroup Inc. (Citigroup) and Their Affiliates, (Collectively, the Applicants) Located in New York, New York**

[Application Number D-10760]

*Proposed Exemption*

Based on the facts and representations set forth in the application, 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).<sup>16</sup>

**Section I. Covered Transactions**

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The proposed purchase or sale by employee benefit plans (the Plans), other than Plans sponsored and maintained by the Applicants, of publicly-traded debt

securities (the Debt Securities) issued by the Applicants; and (2) the extension of credit by the Plans to the Applicants in connection with the holding of the Debt Securities.

This proposed exemption is subject to the general conditions that are set forth below in Section II.

**Section II. General Conditions**

(a) The Debt Securities are made available by the Applicants in the ordinary course of their business to Plans as well as to customers which are not Plans.

(b) The decision to invest in the Debt Securities is made by a Plan fiduciary (the Independent Plan Fiduciary) or a participant in a Plan that provides for participant-directed investments (the Plan Participant), which is independent of the Applicants.

(c) The Applicants do not have any discretionary authority or control or provide any investment advice, within the meaning of 29 CFR 2510.3-21(c), with respect to the Plan assets involved in the transactions.

(d) The Plans pay no fees or commissions to the Applicants in connection with the transactions covered by the requested exemption, other than the mark-up for a principal transaction permissible under Part II of Prohibited Transaction Class Exemption (PTCE) 75-1 (40 FR 50845, October 31, 1975).<sup>17</sup>

(e) Citigroup agrees to notify Plan investors in the prospectus (the Prospectus) for the Debt Securities that, at the time of acquisition, no more than 15 percent of a Plan's assets should be invested in any of the Debt Securities.

(f) The Debt Securities do not have a duration which exceeds 9 years from the date of issuance.

(g) Prior to a Plan's acquisition of any of the Debt Securities, the Applicants fully disclose, in the Prospectus, to the Independent Plan Fiduciary or Plan Participant, all of the terms and conditions of such Debt Securities, including, but not limited to, the following:

(1) A statement to the effect that the return calculated for the Debt Securities will be denominated in U.S. dollars;

(2) The specified index (the Index) or Indexes on which the rate of return on the Debt Securities is based;

(3) A numerical example, designed to be understood by the average investor, which explains the calculation of the

return on the Debt Securities at maturity and reflects, among other things, (i) a hypothetical initial value and closing value of the applicable Index, and (ii) the effect of any adjustment factor on the percentage change in the applicable Index;

(4) The date on which the Debt Securities are issued;

(5) The date on which the Debt Securities will mature and the conditions of such maturity;

(6) The initial date on which the value of the Index is calculated;

(7) Any adjustment factor or other numerical methodology that would affect the rate of return, if applicable;

(8) The ending date on which interest is determined, calculated and paid;

(9) Information relating to the calculation of payments of principal and interest, including a representation to the effect that, at maturity, the beneficial owner of the Debt Securities is entitled to receive the entire principal amount, plus an amount derived directly from the growth in the Index (but in no event less than zero);

(10) All details regarding the methodology for measuring performance;

(11) The terms under which the Debt Securities may be redeemed;

(12) The exchange or market where the Debt Securities are traded or maintained; and

(13) Copies of the proposed and final exemptions relating to the exemptive relief provided herein, upon request.

(h) The terms of a Plan's investment in the Debt Securities are at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's length transaction at the time of such acquisition.

(i) In the event the Debt Securities are delisted from any nationally-recognized securities exchange, Citigroup will apply for trading through the National Association of Securities Dealers Automated Quotations System (NASDAQ), which requires that there be independent market-makers establishing a market for such securities in addition to Citigroup. If there are no independent market-makers, the exemption will no longer be considered effective.

(j) The Debt Securities are rated in one of the three highest generic rating categories by at least one nationally-recognized statistical rating service at the time of their acquisition.

(k) The rate of return for the Debt Securities is objectively determined and, following issuance, the Applicants retain no authority to affect the determination of the return for such security, other than in connection with a "market disruption event" (the Market

<sup>16</sup> For purposes of this proposed exemption, references to Title I of the Act, unless otherwise noted herein, refer also to corresponding provisions of the Code.

<sup>17</sup> The Department is providing no opinion herein as to whether any principal transactions involving debt securities would be covered by PTCE 75-1, or whether any particular mark-up by a broker-dealer for such transaction would be permissible under Part II of PTCE 75-1.



Disruption Event) that is described in the Prospectus for the Debt Securities.

(l) The Debt Securities are based on an Index that is—

(1) Created and maintained<sup>18</sup> by an entity that is unrelated to the Applicants and is a standardized and generally-accepted Index of securities; or

(2) Created by the Applicants, but maintained by an entity that is unrelated to the Applicants,

(i) Consists either of standardized and generally-accepted Indexes or an Index comprised of publicly-traded securities that are not issued by the Applicants, are designated in advance and listed in the Prospectus for the Debt Securities (Under either circumstance, the Applicants may not unilaterally modify the composition of the Index, including the methodology comprising the rate of return.);

(ii) Meets the requirements for an Index in Rule 19b-4 (Rule 19b-4) under the Securities Exchange Act of 1934 (the 1934 Securities Act), and

(iii) The index value (the Index Value) for the Index is publicly-disseminated through an independent pricing service, such as Reuters Group, PLC (Reuters) or Bloomberg L.P. (Bloomberg), or through a national securities exchange.

(m) The Applicants do not trade in any way intended to affect the value of the Debt Securities through holding or trading in the securities which comprise an Index.

(n) The Applicants maintain, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this section to determine whether the conditions of this proposed exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Applicants, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the Applicants shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (o) below.

(o)(1) Except as provided in section (o)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in

paragraph (n) are unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC);

(B) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any Plan Participant or beneficiary of any participating Plan, or any duly authorized representative of such Plan Participant or beneficiary.

(o)(2) None of the persons described above in subparagraphs (B)–(D) of paragraph (o)(1) are authorized to examine the trade secrets of the Applicants or commercial or financial information which is privileged or confidential.

#### *Summary of Facts and Representations*

1. Citigroup is a diversified holding company whose businesses provide a broad range of financial services to consumer and corporate customers around the world. Citigroup's activities are conducted through Global Consumer, Global Corporate and Investment Bank, Global Investment Management and Private Banking, and Investment Activities. As of December 31, 1999, Citigroup and its subsidiaries had total consolidated assets of approximately \$717 billion.

2. Citigroup's Global Consumer segment includes a global, full-service consumer franchise encompassing, among other things, branch and electronic banking, consumer lending services, investment services, credit and charge card services, and life, auto and homeowner insurance. The businesses included in Citigroup's Global Corporate and Investment Bank segment serve corporations, financial institutions, governments, and other participants in developed and emerging markets throughout the world. These businesses provide, among other things, investment banking retail brokerage, corporate banking, cash management products and services, and commercial insurance. Global Investment Management and Private Banking includes asset management services provided to mutual funds, institutional and individual investors, and personalized wealth management services for high net worth clients. The Investment Activities segment includes Citigroup's venture capital activities, the realized investment gains and losses

related to certain corporate- and insurance-related investments and the results of certain investments in countries that refinanced debt under the 1989 Brady Plan or plans of a similar nature.

3. Salomon Smith Barney Holdings Inc. (Holdings) operates through its subsidiaries in two business segments, Investment Services and Asset Management. It provides investment banking, securities and commodities trading, capital raising, asset management, advisory, research and brokerage services to its customers, and executes proprietary trading strategies on its own behalf. Holdings is a global, full-service investment banking and securities brokerage firm with more than 11,300 Financial Consultants in 476 offices across the United States. Holdings provides a full range of financial advisory, research and capital raising services to corporations, governments and individuals. Its Financial Consultants in the United States service approximately 6.6 million client accounts, representing approximately \$965 billion in assets. The primary broker-dealer subsidiaries of Holdings include SSB and The Robinson-Humphrey Company, LLC.

4. The Plans will consist of employee benefit plans that are covered under the provisions of Title I of the Act, as amended, and subject to section 4975 of the Code. For purposes of this proposed exemption, the Plans will not consist of plans that are sponsored and maintained by the Applicants for their own employees. In the case of the Applicants' in-house plans, Citigroup represents that the acquisition and holding of the Debt Securities by such plans would be covered under the statutory exemption that is provided under section 408(e) of the Act.<sup>19</sup>

5. The Applicants represent that broker-dealers routinely need additional capital in order to maintain inventories of securities for their market-making and other business activities. As a result, the Applicants maintain a continuous need to borrow funds from various institutional and individual investors for use in their business operations. In response to this need, certain of the Applicants may from time to time issue (the Issuers) various high-quality, publicly-offered debt securities

<sup>19</sup> The Department expresses no opinion herein on whether the acquisition and holding of the Debt Securities by the Applicants' in-house plans are covered under the provisions of section 408(e) of the Act. In this regard, interested persons should refer to the conditions contained in section 408(e), as well as the definitions of the terms "qualifying employer security" (see section 407(d)(5) of the Act) and "marketable obligations" (see section 407(e) of the Act).

<sup>18</sup> For purposes of this exemption, the term "maintain" means that all calculations relating to the securities in the Index, as well as the rate of return of the Index, are made by an entity that is unrelated to the Applicants.

(i.e., the Debt Securities), rated in one of the three highest generic rating categories by nationally recognized rating firms, offering varying levels of risk and potential return. Among the debt securities offered by the Applicants are publicly-offered, unsecured, SEC-registered Debt Securities, with terms that are no longer in duration than nine (9) years. The Debt Securities will be U.S. dollar-denominated so that no foreign currency conversions will be required in the calculation of the rate of return. Further, the Debt Securities will offer varying levels of risk and rates of return. The Debt Securities would be listed on at least one major stock exchange, and they would be issued in denominations of \$10 per principal unit, with the minimum purchase being one unit.

The Debt Securities may be offered on a variety of terms and formulas under which rates of return are objectively determined in accordance with certain Indexes by the calculation agent. A registered broker-dealer Applicant would act as calculation agent. The Applicants represent that since small Plans will likely invest in the Debt Securities, the formulas used to calculate the rates of return will be designed to be understood by the average investor and clearly described in the "plain English" summary of the Debt Securities in the Applicants' prospectus.

6. The Applicants represent that their activities are subject to various levels of oversight and regulation. In this regard, SSB represents that, as a registered broker-dealer and investment adviser, its activities are subject to the oversight and regulation of the Securities and Exchange Commission (SEC), the Commodities Futures Trading Commission (CFTC), and other federal and state regulatory agencies. The Applicants represent that their activities are also subject to the oversight of self-regulatory organizations (SROs) such as the New York Stock Exchange (NYSE), other principal United States securities exchanges, and the National Association of Securities Dealers, Inc. The Applicants represent that SSB, as a registered broker-dealer and member of the NYSE, is additionally subject to both the Net Capital Rule 15c3-1 of the 1934 Securities Act (which specifies the minimum net capital requirements of a broker-dealer), and the net capital requirements of the CFTC and other commodity exchanges.

7. Due to the affiliation between an Issuer and SSB or its Affiliates, as a service provider to the Plans, the Applicants represent that they are likely to be parties in interest, as defined in

section 3(14)(B) or (H) of the Act, with respect to a high percentage of Plans that purchase, sell, or hold these Debt Securities regardless of whether the Debt Securities are purchased directly from the Applicants.<sup>20</sup> Thus, the Applicants represent that an Issuer may be a party in interest to a Plan solely because of its affiliation with a service provider to the Plan, and as the counterparty to the Plan in a transaction where the Plan holds a Debt Security issued by an Affiliate. Further, other Affiliates may be service providers to Plans on account of their roles as trustees, custodians, investment advisors, or broker-dealers for such Plans. These relationships would make an Issuer a party in interest to those Plans and would create potential prohibited transactions in the event such Plans acquire and hold the Debt Securities.<sup>21</sup>

The Applicants are requesting an administrative exemption to enable Plans to invest in the Debt Securities, under the terms and conditions described herein, and to avoid liability for prohibited transactions resulting

<sup>20</sup> In this regard, the Applicants represent that PTCE 75-1 does not directly address transactions where, as here, there is a continuing extension of credit as a result of a sale to a plan by a broker-dealer of debt securities issued by the broker-dealer's affiliates.

<sup>21</sup> In ERISA Advisory Opinion 88-09A (April 15, 1988), a bank that sponsored self-directed master and prototype IRAs requested an opinion from the Department as to whether purchases of stock issued by the parent corporation of the bank directly from such parent by the self-directed IRAs would violate section 4975 of the Code.

Section 4975 of the Code prohibits, in part, the sale or exchange of property between a plan and a party in interest (4975(c)(1)(A)) and the use by or for the benefit of a disqualified person of the income or assets of a plan (4975(c)(1)(D)). Section 4975(e)(2) of the Code defines the term "disqualified person" to include a plan fiduciary and a person providing services to a plan.

ERISA Advisory Opinion 88-09A concluded that, although the bank is a disqualified person with respect to the IRAs by reason of the provision of services, the corporate parent of the bank is not a disqualified person with respect to the IRAs solely by reason of its ownership of the bank. In this regard, interested persons should contrast section 3(14)(H) of the Act with section 4975(e)(2)(H) of the Code. The question of whether the corporate parent is a disqualified person under any other provision of section 4975(e)(2) of the Code would require an examination of the particular facts and circumstances. The Advisory Opinion further concluded that, to the extent that the corporate parent is not a disqualified person with respect to the IRAs, purchases of stock from the parent by the bank on behalf of the IRAs, at the direction of the IRA participant, would not involve transactions described in section 4975(c)(1)(A) of the Code. However, while the corporate parent of such bank may not be a disqualified person with respect to the IRAs, purchases of parent stock by the IRAs would raise issues under section 4975(c)(1)(D) of the Code if a transaction was part of a broader overall agreement, arrangement or understanding designed to benefit disqualified persons.

from investment by Plans in the Debt Securities.

8. The Applicants believe that while Part II of PTCE 75-1 provides relief for principal transactions between a broker-dealer and a Plan, and would cover a purchase of the broker-dealer affiliates' securities by such Plans (if the conditions required therein were met), it is questionable whether that class exemption would cover the continuing extension of credit related to the holding of any Debt Securities by a Plan.<sup>22</sup>

The Applicants note that some independent Plan fiduciaries have expressed concern regarding the application of PTCE 75-1 to broker-dealer sales of broker-affiliated debt to Plans either as a part of an original issue of the securities or in the secondary market. Moreover, the Applicants represent that PTCE 96-23 (61 FR 15975, April 10, 1996)<sup>23</sup> is unavailable to participant-directed, defined contribution Plans and other small Plans because these Plans, due to their size, are unlikely to have INHAMs responsible for making investment decisions relating to the acquisition, holding and disposition of securities in which the Plans invest.

Similarly, the Applicants note that while PTCE 84-14<sup>24</sup> minimizes the risk of inadvertent prohibited transactions for Plans whose assets are managed by a QPAM, they believe it is unlikely that participant-directed, defined contribution Plans or small Plans would incur the expense of a QPAM for the purchase and continued holding of the Debt Securities. The Applicants also believe that the additional cost of a QPAM for a small Plan with a small investment would not be cost-effective.

<sup>22</sup> The Department is providing no opinion herein as to whether any principal transaction involving Debt Securities would be covered by PTCE 75-1, or whether any particular mark-up by a broker-dealer for such transaction would be permissible under Part II of PTCE 75-1.

<sup>23</sup> PTCE 96-23 permits various transactions involving employee benefit plans whose assets are managed by an in-house asset manager (the INHAM). An INHAM is an entity which is generally a subsidiary of an employer sponsoring the plan. It is also a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of \$50 million.

<sup>24</sup> PTCE 84-14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a qualified professional asset manager (the QPAM), provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of \$50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under the Act.

The Applicants further explain that this cost would be uneconomical here because the QPAM would be required to continue its services for the entire period during which the Debt Securities are held by the Plan since the potential prohibited transaction is not just a sale or exchange under section 406(a)(1)(A) of the Act, but is also an extension of credit under section 406(b) of the Act. Accordingly, the Applicants state that the absence of a QPAM would preclude small Plans from being able to purchase the Debt Securities without creating the risk of a prohibited transaction.

9. The Applicants propose to offer the Debt Securities to non-Plan investors and maintain that these investors will continue to constitute a substantial market for such securities. However, for each Plan investor, the Applicants represent that the terms of the Plan's investment in the Debt Securities will be at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's length transaction at the time the Debt Securities are acquired by the Plan. Additionally, the Applicants represent that no Plan will pay the Applicants any fees or commissions in connection with transactions involving the Debt Securities, except for the mark-up for a principal transaction permitted under PTCE 75-1.

In addition to the aforementioned requirements, the Applicants represent that a Plan's investment in the Debt Securities will be restricted to those Plans for which the Applicants have no discretionary authority and do not provide investment advice with respect to the investment in the Debt Securities. In this regard, the decision to invest in the Debt Securities will be made by an Independent Plan Fiduciary or a Plan Participant, which is independent of the Applicants. Moreover, the Applicants represent that the Prospectus for each of the Debt Securities that are offered to the Plans will contain a recommendation that no more than 15 percent of a Plan's assets should be invested in the Debt Securities at the time such security is acquired by a Plan.<sup>25</sup>

<sup>25</sup> In this regard, the Applicants propose to include substantially the following statement in the Prospectus for each of the Debt Securities, under a heading entitled "Employer-Sponsored Plan Considerations": "These [Debt Securities] Securities are being sold to Plans pursuant to an exemption issued by the Department of Labor. In accordance with the terms of that exemption, the Issuer is required to inform such Plans that no more than 15 percent of plan (or individual participant) assets, at the time of acquisition, should be invested in the Debt Securities. Please note, however, that it is the responsibility of the person making the investment decision to determine whether the purchase is a

10. The Debt Securities will be rated in one of the three highest generic rating categories by a nationally-recognized rating firm at the time of acquisition by a Plan. There will be no triggering events or early amortization events if the Applicants' credit rating drops below a certain level established by a rating agency. Throughout the term of any of the Debt Securities, the Plans will be able to access the latest bid and asked price quotations for all of the Applicants' Debt Securities by calling a broker or any electronic service with a recognized price quotation delivery system. If a Plan wishes to terminate any Debt Securities investment prior to maturity, such investor may do so by selling the Debt Security on the open market at the prevailing market price. However, the Issuer may not unilaterally terminate the Debt Securities prior to maturity unless the Debt Securities are callable at a specific price which will be disclosed in the Prospectus. Assuming the Debt Securities are callable, the Applicants represent that there will be no loss of principal.

11. The rate of return for the Debt Securities may be fixed or variable. The prospectus or prospectus supplement covering the Debt Securities would set forth the annual interest rate for fixed rate Securities, and, for variable rate Securities, the formula to be applied to determine the interest payable at maturity. The formula will include identification of the specified Index for the Debt Securities. Such Index may be either (a) created and maintained by an entity that is unrelated to the Applicants or (b) created by the Applicants, but maintained by an unrelated entity.

(a) *Index created and maintained by an entity unrelated to the applicants.* This Index, which will be created by an entity that is unrelated to the Applicants, will consist of a standardized and generally-accepted index of securities, such as the Nikkei 225 Index Tokyo Stock Exchange or the Standard & Poor's 500 Index. In addition, this Index will be maintained by such unrelated entity. In other words, all calculations relating to the securities in the Index, as well as the rate of return of the Index, will be made by an entity other than the Applicants.

(b) *Index created by the applicants, but maintained by an unrelated entity.* This Index will be created by the Applicants. However, it must be maintained by an entity that is unrelated to the Applicants, such as the stock exchange on which the Debt

Security is listed. In addition, the Index will consist either of standardized and generally-accepted Indexes or it will be an Index comprised of publicly-traded securities that are not issued by the Applicants, are designated in advance and listed in the Prospectus for the Debt Securities. Under either circumstance, the Applicants will not be permitted to make any modifications to the composition of the Index, including the methodology comprising the rate of return, unilaterally.

Further, the Index will meet the requirements for an Index in accordance with Rule 19b-4 of the 1934 Securities Act, which imposes regulatory standards on the entity maintaining the Index. Under Rule 19b-4, a self-regulatory organization, such as a securities exchange, is required to adopt trading rules, procedures and listing standards for the product classes relating to any security that the exchange proposes to list. In addition, the self-regulatory organization must maintain a surveillance program for a class of securities. If the SEC has not approved the self-regulatory organization's rules, procedures and standards, the self-regulatory organization must make a filing with the SEC prior to listing the security. According to the Applicants, this procedure provides adequate safeguards so that any Debt Securities that are created by the Applicants will meet the listing and trading standards approved by the self-regulatory organization.

Finally, the Index Value of the Index will be publicly-disseminated through an independent pricing service, such as Reuters or Bloomberg, or through a national securities exchange.

12. Price quotations with respect to the Debt Securities will be available on a daily basis from market reporting services, such as Bloomberg or Reuters, and the daily financial press, such as The Wall Street Journal. In the event the Debt Securities are delisted, the Issuer(s) will apply for trading through the NASDAQ, which requires that there be independent market-makers establishing a market for the securities in addition to the Issuer(s). In the event there are no independent market-makers, the Applicants represent that the exemption will no longer be considered effective.

13. The terms of each of the Debt Securities will be set forth with specificity. Therefore, in addition to the description of the formula for computing the rate of return, the Prospectus will include, but will not be limited to, the following information:

- A statement to the effect that the return calculated for the Debt Securities will be denominated in U.S. dollars;

prudent investment for the plan (or participant-directed account)."

- The specified Index or Indexes on which the rate of return on the Debt Securities is based;

- A numerical example, designed to be understood by the average investor, which explains the calculation of the return on the Debt Securities at maturity and reflects, among other things, (i) a hypothetical initial value and closing value of the applicable Index, and (ii) the effect of any adjustment factor on the percentage change in the applicable Index;

- The date on which the Debt Securities will be issued;

- The date on which the Debt Securities will mature and the conditions of such maturity;

- The initial date on which the value of the Index is calculated;

- Any adjustment factor or other numerical methodology that would affect the rate of return, if applicable;

- The ending date on which interest will be determined, calculated and paid;

- Information relating to the calculation of payments of principal and interest, including a representation to the effect that, at maturity, the beneficial owner of the Debt Securities will be entitled to receive the entire principal amount, plus an amount derived directly from the growth in the Index (but in no event less than zero);

- All details regarding the methodology for measuring performance;

- The terms under which the Debt Securities may be redeemed;

- The exchange or market where the Debt Securities are traded or maintained; and

- Copies of the proposed and final exemptions relating to the exemptive relief provided herein, upon request.

Aside from the Prospectus, the Applicants do not contemplate making any ongoing communications to the investors in the Debt Securities except to the extent required under applicable securities laws.

14. With respect to variable rate Debt Securities, the Applicants represent that the interest rate will be objectively determined. Where SSB or an Affiliate acts as "Calculation Agent" for determining applicable rates of return, such calculation will be made using a formula fully disclosed in the prospectus or prospectus supplement relating to the Debt Security. Following the issuance of such Debt Security, SSB will retain no authority to affect the determination of such interest rate absent a Market Disruption Event. The determination that a Market Disruption Event may have occurred can have the effect of eliminating the affected trading day from calculation of the value of the

underlying Index. The Calculation Agent is responsible for determining whether such Event has, in fact, occurred. Where the variable rate of a Debt Security is tied to a basket of equity securities, for example, a "Market Disruption Event" is typically defined as any of the following events, with certain exceptions:<sup>26</sup>

(a) the suspension or material limitation of trading in 20% or more of the underlying stocks which then comprise the Index, in each case, for more than two hours of trading or during the one-half hour period preceding the close of trading on the NYSE or any other applicable organized U.S. exchange. For purposes of this definition, limitations on trading during significant market fluctuations imposed pursuant to NYSE Rule 80B (or any applicable successor or similar rule or regulation promulgated by any self-regulatory organization or the SEC) shall be considered "material."

(b) the suspension or material limitation, in each case, for more than two hours of trading or during the one-half hour period preceding the close of trading (whether by reason of movements in price otherwise exceeding levels permitted by the relevant exchange or otherwise) in (A) futures contracts related to the Index which are traded on the Chicago Mercantile Exchange or any other major U.S. exchange, or (B) options contracts related to the Index which are traded on any major U.S. exchange.

(c) the unavailability, through a recognized system of public dissemination of transaction information, for more than two hours of trading or during the one-half hour period preceding the close of trading, of accurate price, volume or related information in respect of 20% or more of the underlying stocks which then comprise the Index or in respect of futures contracts related to the Index, options on such futures contracts or options contracts related to the Index, in each case traded on any major U.S. exchange.

15. The Applicants represent that the principal amount of the Debt Securities that are the subject of this exemption, if granted, will be protected regardless of the performance of the applicable Index. Although the return on a Debt Security may go up or down in the same direction as the performance of the applicable Index, the interest rate floor

<sup>26</sup> For purposes of determining whether a Market Disruption Event has occurred, a limitation on the hours in a trading day and/or number of days of trading will not constitute a Market Disruption Event if it results from an announced change in the regular business hours of the relevant exchange.

is set at zero. Thus, even where the value of the applicable Index decreases, there will be no invasion of principal if the Debt Securities are held until maturity.<sup>27</sup> However, if a Plan must sell the Debt Securities on the open market prior to their maturity, the market price will reflect the market's perception of the potential yield on such securities based on the current yield and interest rates for other debt securities of the same duration. This market price may result in a loss of principal value of the investment in the Debt Securities in the same fashion as would occur for other debt securities.

16. The Applicants represent that they will exercise no discretion with respect to the Indexes. Further, the Applicants represent that they will not trade in any way intended to affect the value of the Debt Securities through holding or trading in the securities which comprise these Indexes. The securities of the Applicants may comprise part of the Index (e.g., Citigroup's common stock is included in the S&P 500 Index, which is one of the Indexes that may be used in the Applicants' variable rate Debt Securities). In addition, the Applicants may reserve the right to purchase or sell positions in the Index, or in all or certain of the assets by reference to which the Index is calculated (Underlying Assets), or derivatives relating to the Index. The Applicants do not believe, however, that their hedging activity will have a material impact on the value of the Index, the Underlying Assets, or any derivative or synthetic

<sup>27</sup> The Applicants have provided the following example to illustrate this principle by describing the return at maturity on each \$10 principal investment in the Debt Securities that are the subject of this proposed exemption:

- Where the value of the applicable Index increases by 50 percent, the Plan is entitled to receive \$15 at maturity (\$10 principal plus \$5 interest) because the rate of return moves in the same direction as the growth in the applicable Index;
- Where the value of the applicable Index remains unchanged during the applicable period, the Plan is entitled to receive \$10 at maturity (\$10 principal plus \$0 interest) because the rate of return moves in the same direction as the growth in the applicable Index; and
- Where the value of the applicable Index decreases by 50 percent, the Plan is entitled to receive \$10 at maturity (\$10 principal and \$0 interest) because the rate of return moves in the same direction as the growth in the applicable Index but in no event drops below zero.

While the foregoing examples are simplistic, it should be noted that for some of the Debt Securities, such as those tied to the Standard & Poor's 500 Index, the interest payments shown above may be reduced on a daily basis by an adjustment factor (the Adjustment Factor), equal to a stated percent per year. On the maturity date of the Debt Securities, the annual application of the Adjustment Factor will reduce the Plan investor's overall interest payments. This information will be disclosed prominently in the Prospectus.

instrument relating to the Index. The Applicants will maintain written records of all of the Debt Securities transactions for a period of six years.

17. In summary, the Applicants represent that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) The Debt Securities will be made available by the Applicants in the ordinary course of their business to customers which are not Plans.

(b) The Applicants will not have any discretionary authority or control, or provide any "investment advice," within the meaning of 29 CFR 2510.3-21(c), with respect to the assets of Plans which are invested in the Debt Securities.

(c) The Plans will pay no fees or commissions to the Applicants in connection with the transactions covered by the requested exemption, other than the mark-up for a principal transaction permissible under PTCE 75-1.

(d) The decision to invest in the Debt Securities will be made by an Independent Plan Fiduciary or a Plan Participant, which is independent of the Applicants.

(e) In connection with a Plan's acquisition of any of the Debt Securities, the Applicants will disclose to the Independent Plan Fiduciary, or, if applicable, the Plan Participant, in the Prospectus, all of the material terms and conditions concerning the Debt Securities.

(f) A Plan will acquire the Debt Securities on terms that are at least as favorable to the Plan as those available to an unrelated non-Plan investor in a comparable arm's length transaction.

(g) The Debt Securities will be rated in one of the three highest generic rating categories by at least one nationally-recognized statistical rating service at the time of such security's acquisition by the Plan.

(h) The rate of return for the Debt Securities will be objectively determined and the Applicants will retain no authority to affect the determination of such return, other than in connection with a Market Disruption Event that is described in the Prospectus for the Debt Securities.

(i) The Index will be: (1) Created and maintained by an entity that is unrelated to the Applicants and consist of a standardized and generally-accepted Index; or (2) created by the Applicants, but maintained by an entity that is unrelated to the Applicants, and (i) will consist either of standardized and generally-accepted Indexes or will be an Index comprised of publicly-

traded securities that are not issued by the Applicants, are designated in advance, and listed in the Prospectus for the Debt Securities, (ii) will meet the requirements for an Index as set forth in SEC Rule 19b-4, and (iii) the Index Value for such Index will be publicly-disseminated through an independent pricing service or a national securities exchange.

#### Notice to Interested Persons

The Applicants represent that because those potentially interested Plans proposing to engage in the covered transactions cannot all be identified, the only practical means of notifying Independent Plan Fiduciaries or Plan Participants of such affected Plans is by publication of the proposed exemption in the **Federal Register**. Therefore, any comments from interested persons must be received by the Department no later than 30 days from the publication of this notice of proposed exemption in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### The Joliet Medical Group, Ltd. Employees Retirement Plan & Trust (the Plan), Located in Joliet, Illinois

[Application D-10888]

#### 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, will not apply effective November 1, 1999 to the past and continued leasing of a medical clinic (the Property) located at 2100 Glenwood Ave., Joliet, Illinois, from the Plan to Joliet Medical Group Investment Partnership (the Employer), provided that the following conditions have been and will be met:

(a) The independent fiduciary has determined that the transaction is feasible, in the interest of, and protective of the Plan;

(b) The fair market value of the Property has not exceeded and will not exceed twenty-five percent (25%) of the value of the total assets of the Plan;

(c) The independent fiduciary has negotiated, reviewed, and approved the

terms of the lease of the Property with the Employer;

(d) The terms and conditions of the lease of the Property with the Employer have been and will continue to be no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties;

(e) An independent qualified appraiser has determined the fair market rental value of the Property;

(f) The independent fiduciary has monitored and will continue to monitor compliance with the terms of the lease of the Property to the Employer throughout the duration of such lease and is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of the Employer under the terms of the lease on the Property; and

(g) The Plan has not incurred and will not incur any fees, costs, commissions, or other charges or expenses as a result of its participation in the proposed transaction, other than the fee payable to the independent fiduciary.

**EFFECTIVE DATE:** This exemption is effective as of November 1, 1999.

#### Summary of Facts and Representations

1. The Plan is a profit sharing plan which was created effective January 1, 1975. As of August 29, 2000, the Plan had net assets valued at approximately \$20,075,282 and 165 participants.

2. The Employer is a general partnership organized and operating under the laws of the State of Illinois, whose principal place of business is Joliet, Illinois. The Employer's principal place of business is the Property. The Employer is engaged in the general practice of medicine.

3. The Property consists of a two story medical building located at 2100 Glenwood Avenue, Joliet Illinois. The Property contains approximately 10,583 square feet on each floor for a total square footage (above ground) of approximately 21,166 square feet. In addition, there is a full basement which is finished and contains an additional approximately 10,583 square feet. The fair market value of the Property represents 15.94% of the total assets in the Plan.

The Plan initially leased the Property to the Employer for an initial term of 18 years, which ended November 1, 1999. In response to an exemption application filed by the Employer, the Department granted an exemption covering the initial lease (the Initial Lease): Prohibited Transaction Exemption 81-96 (PTE 81-96), 46 FR 53816 (October 30, 1981). It is represented that since the inception of the Initial Lease, the

Employer has always paid its rent on time and otherwise complied with all of the terms and conditions of the Initial Lease and PTE 81–96. Furthermore, the independent fiduciary has continued to monitor and oversee compliance with the conditions of the exemption after the expiration of the lease because the parties determined to continue the arrangement after November 1, 1999.

An independent party, the First Midwest Trust Company (the Bank) has served and continues to serve as the independent fiduciary. The Bank represents that since the inception of the Initial Lease, the Employer has complied with all of the terms and conditions of the Initial Lease and PTE 81–96. The Bank certifies that the transaction is appropriate and in the best interests of the Plan and that the terms and conditions of the proposed transactions are at least equal to what the Plan would receive from an unrelated party in similar transaction. In addition, the Bank will monitor the transaction and will have the responsibility for exercising the Plan's rights in the proposed transaction.

4. Joseph E. Batis, (Mr. Batis), an accredited appraiser with Edward J. Batis & Associates, Inc., located in Joliet, Illinois, appraised the Property on October 24, 2000. Mr. Batis states that he is a full time qualified, independent appraiser, as demonstrated by his status as a State Certified General Real Estate Appraiser licensed by the State of Illinois. In addition, Mr. Batis represents that both he and his firm are independent of the Employer.

In his appraisal, Mr. Batis relied primarily on the "Appraisal Process". Included within the steps of this process are three approaches to a value estimate: the Cost Approach, the Direct Sales Comparison Approach and the Income Approach. According to Mr. Batis, these methods best represent the actions of buyers and sellers in the market place. After Mr. Batis independently applies each approach to value, the three resultant value estimates are reconciled into an overall estimate of value. In the reconciliation process, the appraiser analyzes each approach with respect to its applicability to the property being appraised. Also considered in the reconciliation process is the strength and weakness of each approach with regards to supporting market data. After inspecting the Property and analyzing all relevant data, Mr. Batis determined that a fee simple interest in the Property had a fair market value of approximately \$3,200,000.

The Employer will enter into a five year, "triple net" lease with the Plan leasing the Property to the Employer for

a "floating" monthly rental of 1.5% of the current appraised value of the subject realty ( $\$3,200,000 \times 1.5\% = \$480,000$ ). A new appraisal by an independent, qualified appraiser would be performed every other year to update the rent. The minimum guaranteed rent (regardless of any possible decrease in the appraisal) is \$480,000. The terms of the lease provide for a primary term of five years with an option to renew and extend for two additional successive terms of five years each subject to the approval of the independent fiduciary. In the event of a default, the Employer is required to reimburse the Plan on demand for all costs reasonably incurred by the Plan in connection therewith, including attorney's fees, court costs and related costs plus a reasonable rate of return on the amount of accrued but unpaid rent due the Plan, as determined by an appropriate third party source.

Since the Initial Lease, the Employer has continued to pay rent to the Plan in a timely manner without default or rental delinquencies. However, the Employer is aware of the fact that a prohibited transaction occurred in violation of the Act subsequent to the expiration of the lease under PTE 81–96 (November 1, 1999). Therefore, the Employer has requested exemptive relief with respect to the past and continued leasing of the Property by the Plan to the Employer. If granted, the proposed exemption will be retroactive to November 1, 1999.

In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The independent fiduciary has determined that the transaction is feasible, in the interest of, and protective of the Plan;

(b) The fair market value of the Property has not exceeded and will not exceed twenty-five percent (25%) of the value of the total assets of the Plan;

(c) The independent fiduciary has negotiated, reviewed, and approved the terms of the lease with the Employer on the Property;

(d) The terms and conditions of the lease with the Employer on the Property have been and will continue to be no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties;

(e) An independent qualified appraiser has determined the fair market rental value of the Property;

(f) The independent fiduciary has monitored and will continue to monitor compliance with the terms of the lease of the Property to the Employer

throughout the duration of such lease and is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of the Employer under the terms of the lease; and

(g) The Plan has not incurred and will not incur any fees, costs, commissions, or other charges or expenses as a result of its participation in the proposed transactions, other than the fee payable to the independent fiduciary.

*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 and requests for a hearing 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) 219–8883 (this is not a toll-free number).

**Texas Instruments Employees Pension Plan (the Plan), Located in Dallas, Texas**

[Application No. D–10918]

*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 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale (the Sale) by the Plan to Texas Instruments, Inc. (the Employer) of a parcel of improved real property (the Property) located in Dallas, Texas. This exemption is conditioned upon adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) All terms and conditions of the Sale 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 Sales price is the greater of \$9,400,000 or the fair market value of the Property as of the date of the Sale;

(c) The fair market value of the Property has been determined by an independent, qualified appraiser;

(d) The Sale is a one-time transaction for cash; and

(e) The Plan does not pay any commissions, costs or other expenses in connection with the Sale.

#### *Summary of Facts and Representations*

1. The Employer, the sponsor of the Plan, is a Delaware corporation with offices at 13500 North Central Expressway, Dallas, Texas. The Employer is engaged in the manufacture and sale of a variety of products in the electrical and electronic industry for industrial, consumer, and government markets. It is represented that the Employer employs over 19,000 individuals and sponsors several employee benefit plans.

2. The Plan is a defined benefit pension plan which, as of January 1, 1999, had participants and beneficiaries totaling approximately 19,377. The administrator of the Plan is a retirement committee composed of three members who are officers of the Employer. As of July 21, 2000, the Plan's assets had an aggregate fair market value of \$637,999,647.

All the assets of the Plan are held in a single trust (the Trust) for which the Northern Trust Company, an Illinois corporation, serves as trustee (the Trustee). The assets of the Plan held in the Trust consist of various securities and real property. Pursuant to a Subtrust Agreement, dated November 1, 1990, Bank of America, N.A., was appointed as subtrustee (the Subtrustee) to manage the Property and certain other real property held by the Plan. The Subtrustee, who is the applicant for the proposed transaction, has complete and full investment discretion and authority with respect to the Sale of the Property in the subtrust. Hence, the Trustee makes no representations in connection with this proposed exemption transaction.

3. The Plan's real property holdings in the Trust include the Property. The Property has an estimated value of \$9,400,000 and constitutes approximately 1.5% of the total value of the Plan's assets.

The lease of the Property was executed pursuant to an exemption ((Prohibited Transaction Exemption (PTE) 93-83 (58 FR 68964, December 29, 1993)) which granted relief for the lease of two parcels (the Dallas Parcels) of improved real property to the Employer by the Plan and the lease to the Employer by the Plan of another parcel located in a suburb of Detroit, Michigan (the Michigan Parcel). The Michigan Parcel, comprising a 16.5 acres of commercial property located in Farmington Hills, a suburb of Detroit, contained a single building used as an office facility. The Michigan parcel was

sold on March 1, 1994 to Wayne State University, a unrelated third party.

The Dallas Parcels consist of the Property and another parcel (the Second Parcel). The Second Parcel is located on Lemmon Avenue in Dallas, Texas, and consists of two adjacent tracts aggregating approximately 14.4 acres with an office and industrial building. The Second Parcel was assigned by the Employer to the Raytheon Company, a unrelated third party, on July 11, 1997.<sup>28</sup>

4. The Property consists of a tract of approximately 13.2 acres of land which is improved by an office/industrial facility, situated at the intersection of Walnut Lane and Floyd Road in the northern portion of Dallas, Texas. The Plan acquired the Property on July 23, 1979, from the Royal Gorge Company, an unrelated third party, and completed construction of the office/industrial facility on March 18, 1981, at a total cost for the land and building of approximately \$6 million.<sup>29</sup>

The Property was appraised (the Appraisal) on January 14, 2000, by Jan Whatley (Ms. Whatley), a Certified Residential Real Estate Appraiser. Ms. Whatley is independent of the Employer and is an appraiser with the Pyles Whatley Corporation located in Dallas, Texas.

Ms. Whatley determined the best use and highest value of the Property was associated with valuing the Property with the so-called direct sales comparison method. In this method, sales of similar use land in the market area are compared to the subject to arrive at an indication of value. In arriving at value conclusions the tracts are compared as to the rights conveyed, financing terms, sale conditions, market conditions, location, and physical characteristics. Therefore, based on the valuation procedure, Ms. Whatley concluded that the fair market value of the Property is \$9,400,000 as of August 22, 2000.

The Property is leased to the Employer, pursuant to a lease agreement which provided for an initial lease term of ten (10) years, commencing on March 18, 1981, and expiring on March 17, 1991. During the initial ten year term of the lease, the monthly lease rentals of \$61,904.32 provided the Plan with an annual return equal to approximately 12.25% of the Plan's total investment in

<sup>28</sup> The Department expresses no opinion herein regarding the application of Title I of the Act as to the assignment of the Second Parcel to the Raytheon Company.

<sup>29</sup> The Department expresses no opinion herein as to whether the acquisition and holding of the Property by the Plan violated any of the provisions of Part 4 of Title I of the Act.

the Property. Pursuant to the lease agreement, the lease has been renewed for two of the three additional five year terms, the second of which will expire on March 17, 2001, and the third of which will commence on March 18, 2001 and expire on March 17, 2006. At the commencement of each additional five (5) year extended term, rent was determined by reference to prevailing market rates at the beginning of each subsequent five (5) year term, but such reference in no instance caused a decrease in rent. During the first extended five year term, beginning on March 18, 1991, the monthly lease rental of \$61,904.32 provided the Plan with an annual net return equal to approximately 12.25% of the Plan's total investment in the Property. During the second extended five year term, beginning on March 18, 1996, the monthly lease rental of \$68,186.05 provided the Plan with an annual net return equal to approximately 13.49% of the Plan's total investment in the Property.

5. The applicant represents that the proposed exemption is in the interest of the Plan, and its participants and beneficiaries. The proposed exemption is designed to allow the Plan, and thus its participants and their beneficiaries, to receive maximum value for the Property due to the current favorable real estate market in the locale of the Property. The Plan fiduciaries, other than the Subtrustee, also recently have established new investment guidelines for the Plan under which the Plan's real property holdings will be sold and the resulting proceeds re-invested in other more liquid forms of investment. These guidelines were formulated, in part, because the Property and the remaining real property in the Plan are now in one geographic locale, in or near Dallas, Texas. The sale of the Property will promote diversification, maximize investment return for the Plan and improve the Plan's liquidity. The resulting diversification and improved liquidity will benefit and protect the Plan participants and their beneficiaries. Furthermore, the Plan will not pay any commissions, costs or other expenses in connection with the Sale.

6. In summary, the applicant represents that the subject transaction satisfies the statutory criteria contained in section 408(a) of the Act and section 4975(c)(2) of the Code for the following reasons:

(a) All terms and conditions of the Sale will be at least as favorable to the Plan as those which the Plan could obtain in an arms-length transaction with an unrelated party;



(b) The fair market value for the Property has been determined by an independent, qualified appraiser;

(c) The Sale will be a one-time transaction for cash;

(d) The Plan will not pay any commissions, costs or other expenses in connection with the Sale;

(e) The Plan will receive an amount equal to the greater of:

(i) \$9,400,000; or

(ii) The fair market value of the Property, as of the date of the Sale.

*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 and requests for a hearing 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) 219-8883 (this is not a toll-free number).

**UAM Fund Services, Inc., Located in Boston, MA**

[Application No. D-10938]

*Proposed Exemption*

Based on the facts and representations set forth in the application, 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, August 10, 1990).

Section I. Transactions

If the exemption is granted, the restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to (i) the acquisition of shares of one or more of the UAM Funds (Shares) by a Plan for which a Fund Adviser serves as investment manager, through the in-kind exchange of the Plan's assets held in one or more separate accounts (each, an Account) maintained by a Fund Adviser, and (ii) the redemption of Shares by a Plan for which a Fund Adviser serves as investment manager, through the in-kind exchange of assets from one or more UAM Funds to one or more Account(s), provided that the conditions set forth in Section II below are met.

Section II. Conditions

(a) The Fund Adviser is not an employer of employees covered by the Plan.

(b) The Plan does not pay sales commissions, redemption fees, or other fees in connection with such acquisition or redemption.

(c) The assets transferred pursuant to such acquisition or redemption consist entirely of cash and Transferable Securities.

(d) In the case of an acquisition, the Plan receives Shares of the Funds that have a total Net Asset Value equal to the value of the Plan's assets exchanged for such Shares on the date of the transfer, as determined (with respect to Transferable Securities) in a single valuation performed in the same manner, at the close of the same business day, in accordance with the procedures set forth in Rule 17a-7 under the Investment Company Act of 1940 (the 1940 Act), as amended from time to time, or any successor rule, regulation, or similar pronouncement (Rule 17a-7) (using sources independent of the UAM Funds and the Fund Adviser) and the procedures established by the UAM Funds pursuant to Rule 17a-7.

(e) In the case of a redemption, with respect to Transferable Securities, the Plan receives a pro rata portion of the securities of the UAM Fund that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner, at the close of the same business day, in accordance with the procedures set forth in Rule 17a-7 (using sources independent of the UAM Funds and the Fund Adviser). With respect to all other assets, the Plan receives cash equal to its pro rata share of the fair market value of such assets, determined in accordance with Rule 17a-7 of the 1940 Act and the valuation policies and procedures of the UAM Fund.

(f) The price that is paid or received by the Plan for Shares is the Net Asset Value per Share at the time of the transaction and is the same price for the Shares that would have been paid or received by any other investor for Shares of the same class at such time.

(g) Prior to the in-kind acquisition or redemption, an Independent Fiduciary with respect to the Plan receives full and detailed written disclosure of information regarding the in-kind acquisition or redemption, including, without limitation, the following:

(i) A current prospectus for each UAM Fund to or from which Plan assets may be transferred (updated as necessary to reflect the investment mix of the UAM Fund at the time of the in-kind acquisition or redemption);

(ii) A statement describing the rate of fees for investment advisory and other

services to be charged to and paid by the Plan (and by the UAM Funds in which the Plan invests) to the Fund Adviser, including the nature and extent of any differential between the rates of the fees paid by the UAM Funds and the rates of the fees otherwise payable by the Plan to the Fund Adviser;

(iii) A statement of the reasons why the Fund Adviser may consider the in-kind acquisition or redemption to be appropriate for the Plan;

(iv) A statement as to whether there are any limitations on the Fund Adviser with respect to which Plan assets may be invested in Shares of the UAM Funds and, if so, the nature of such limitations;

(v) The identity of all securities that are deemed suitable by the Fund Adviser for transfer to the UAM Funds (in the case of an acquisition) or from the UAM Funds (in the case of a redemption);

(vi) The identity of all such securities that will be valued in accordance with the procedures set forth in Rule 17a-7(b)(4) under the 1940 Act; and

(vii) Copies of the proposed and final exemptions pertaining to the exemptive relief provided herein for in-kind acquisitions and redemptions.

(h) On the basis of such disclosures, the Independent Fiduciary, consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Subtitle B of Title I of the Act, (i) makes a determination as to whether the terms of the in-kind acquisition or redemption are fair to the participants of the Plan and are comparable to and no less favorable than terms that would be reached at arms' length between unaffiliated parties, and that the in-kind acquisition or redemption (as opposed to an acquisition or redemption for cash) is in the best interest of the Plan and its participants and beneficiaries, and (ii) gives prior written approval for the in-kind acquisition or redemption, including agreement as to the date on which the in-kind acquisition or redemption will take place.

(i) The authorization by the Independent Fiduciary is terminable at will without penalty to the Plan at any time prior to the date of acquisition or redemption, and any such termination will be effected by the close of the business day following the date of receipt by the Fund Adviser, either by mail, hand delivery, facsimile, or other available means of written or electronic communication at the option of the Independent Fiduciary, of any written notice of termination.

(j) In the case of an acquisition, all of the Plan's assets held in an Account (other than Shares already held in the Account) are transferred in-kind to one

or more UAM Funds in exchange for Shares, except that any Plan assets in the Account which are not suitable for acquisition by the UAM Fund shall be liquidated as soon as reasonably practicable, and the cash proceeds shall be invested directly in Shares.

(k) The Fund Adviser sends to the Independent Fiduciary, by regular mail or personal delivery, the following information:

(i) No later than 30 days after the completion of the in-kind transfer, a written confirmation which contains:

(A) The identity of each Transferable Security that was valued for purposes of the in-kind transfer in accordance with Rule 17a-7;

(B) The current market price, as of the date of the in-kind transfer, of each such Transferable Security; and

(C) The identity of each pricing service or market-maker consulted in determining the current market price of such Transferable Securities.

(ii) No later than 105 days after each in-kind transfer, a written confirmation which contains:

(A) In the case of an in-kind acquisition, the number of Shares in the UAM Funds that are held by the Plan immediately following the acquisition, the related per-Share Net Asset Value, and the total dollar value of such Shares.

(B) In the case of an in-kind redemption, the number of Shares in the UAM Funds that were held by the Plan immediately prior to the redemption, the related per-Share Net Asset Value, and the total dollar value of such Shares.

(l) With respect to each of the UAM Funds in which a Plan continues to hold Shares acquired in connection with an in-kind acquisition, the Fund Adviser provides the Independent Fiduciary with:

(i) A copy of an updated prospectus of such UAM Fund, at least annually; and

(ii) Upon request of the Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other statement) containing a description of all fees paid by the UAM Fund to the Fund Adviser.

(m) The combined total of all fees received by the Fund Adviser for the provision of services to the Plan, and in connection with the provision of services to the UAM Funds in which the Plan holds shares purchased in connection with an in-kind exchange, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(n) The Fund Adviser does not receive any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with the acquisition or redemption.

(o) All other dealings between the Plan and the UAM Funds are on a basis no less favorable to the Plan than dealings between the UAM Funds and other shareholders holding the same Shares of the same class as the Plan.

(p) The Fund Adviser maintains for a period of six years the records necessary to enable the persons described in paragraph (q) below to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Fund Adviser, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than the Fund Adviser shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (q) below.

(q)(1) Notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (p) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service; (ii) any fiduciary of the Plan who has authority to acquire or dispose of Shares of the UAM Funds owned by the Plan, or any duly authorized employee or representative of such fiduciary; and (iii) any participant or beneficiary of the Plan or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (q)(1)(ii) and (iii) above shall be authorized to examine trade secrets of the UAM Funds or the Fund Adviser, or commercial or financial information which is privileged or confidential.

#### Section III. Availability of Prohibited Transaction Exemption 77-4 (PTE 77-4)

Any in-kind acquisition of Shares of the UAM Funds that complies with the conditions of Section II of this exemption shall be treated as a "purchase or sale" of shares of a registered, open-end investment company for purposes of PTE 77-4, 42 FR 18732 (April 8, 1977), and shall be deemed to have satisfied paragraphs (a), (d) and (e) of section II of that exemption.

#### Section IV. Definitions

For purposes of this proposed exemption:

(a) The term "UAM" means United Asset Management Corporation, a Delaware corporation with headquarters in Boston, Massachusetts, and any affiliate thereof;

(b) The term "UAM Funds" means UAM Funds Inc., UAM Funds, Inc. II, and UAM Funds Trust, each of which is an open-end investment company registered under the 1940 Act, or any portfolio or group of portfolios thereof, for which UAM or a Fund Adviser serves as investment advisor and may provide other services.

(c) The term "Fund Adviser" means (i) any affiliate of UAM which serves as an investment adviser to a UAM Fund, and (ii) any former affiliate of UAM which was divested within 12 months of the acquisition of UAM by Old Mutual, and which serves as an investment adviser to a UAM Fund pursuant to a contractual relationship with UAM, and (iii) any affiliate of an investment adviser identified in subsections (i) or (ii).

(d) An "affiliate" of a person includes:

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

(ii) Any officer, director, employee, relative, or partner in any such person;

(iii) Any corporation or partnership of which such person is an officer, director, partner, or employee.

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

(f) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or spouse of a brother or a sister.

(g) The term "Plan" includes any pension, profit sharing or stock bonus plan qualified under section 401(a) of the Code, individual retirement account, simplified employee pension plan, custodial account plans as described in section 403(b) of the Code, or savings incentive match plans for employees.

(h) The term "Independent Fiduciary" means the Plan sponsor or other fiduciary of a Plan who is independent of and unrelated to UAM or the Fund Adviser. For purposes of this exemption, the Independent Fiduciary will not be deemed to be independent of and unrelated to UAM or the Fund Adviser if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with UAM or the Fund Adviser;

(ii) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner, or employee of UAM or the Fund Adviser (or is a relative of such persons); or

(iii) Such fiduciary directly or indirectly receives compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

(i) The term "Transferable Securities" shall mean securities (1) for which market quotations are readily available; and (2) which are not in any of the following categories: (i) Securities which may not be publicly offered or sold without registration under the Securities Act of 1933 (the 1933 Act); (ii) securities issued by entities in foreign countries which (A) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the UAM Funds, or (B) permit transfers of ownership or securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities, or can only be traded with the counterparty to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements); and (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable).

(j) The term "Net Asset Value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the UAM Fund's prospectus and statement of additional information, and other assets belonging to the UAM Fund less the liabilities charged to such UAM Fund, by the number of outstanding Shares.

#### *Summary of Facts and Representations*

1. UAM Fund Services, Inc. (FSI) is a wholly-owned subsidiary of United Asset Management Corporation (UAM), a Delaware corporation which is one of the largest investment management

organizations in the world, providing a broad range of investment management services through a diverse group of affiliated firms. As of June 30, 2000, UAM, through its affiliates, had approximately \$195 billion in assets under management, including approximately \$119 billion in institutional accounts (primarily corporate and governmental accounts), \$53 billion in mutual funds, and \$23 billion in private accounts. Old Mutual plc (Old Mutual), a public limited company based in the United Kingdom, recently acquired UAM, so that UAM is now a wholly-owned subsidiary of Old Mutual.

FSI serves as administrator to UAM Funds Inc., UAM Funds Inc. II, and UAM Funds Trust, each of which is an open-end investment company registered under the 1940 Act (the UAM Funds). As administrator, FSI provides a wide variety of services to the UAM Funds and their shareholders (including employee benefit plans). For example, FSI is responsible for: Coordinating and performing legal reviews prior to the commencement of various operations by the UAM Funds; handling regulatory filings and registrations on behalf of the UAM Funds; overseeing compliance with regulatory requirements; preparing financial statements and tax reporting; handling trade processing and settlements; processing advisory fees; and providing various shareholder services to shareholders of the UAM Funds.

2. The investment advisers to the UAM Funds are comprised of directly or indirectly wholly-owned subsidiaries of UAM, as well as entities that formerly were affiliated with UAM but which have been divested as part of the acquisition by Old Mutual (Fund Advisers). All of the Fund Advisers are registered investment advisers under the Investment Advisers Act of 1940, as amended (the Advisers Act), with the exception of the Pell Rudman Trust Company N.A. (a nationally chartered trust company which is exempt from registration under the Advisers Act).

The Fund Advisers also serve as investment managers to pension, profit sharing, and stock bonus plans qualified under section 401(a) of the Code, individual retirement accounts; simplified employee pension plans; custodial account plans as described in section 403(b) of the Code; and savings incentive match plans for employees (Plans). None of the Fund Advisers serves as plan administrator to any of the Plans, nor are any of the Fund Advisers employers of employees covered by a Plan.

3. In certain cases, Plans will receive investment management services directly from a Fund Adviser on a "separate account" basis; in other cases, Plans will avail themselves of the Fund Adviser's expertise through investment in a UAM Fund. Depending on facts and circumstances which may change over time, it may be more cost-effective for an individual Plan to receive investment management services on a separate account basis, or through investment in a UAM Fund. Thus, for example, a Plan with a large amount of assets invested in a UAM Fund may save investment costs by withdrawing from the UAM Fund and negotiating a separate investment agreement with the Fund Adviser. Conversely, a smaller Plan that is advised by a Fund Adviser may realize cost savings by investing in a UAM Fund. Assuming that the Fund Adviser will follow a similar investment strategy whether it is investing assets of the Plan directly or is investing assets of the UAM Fund in which the Plan invests, the underlying assets are likely to be substantially the same in many cases both before and after the transaction.

4. Currently, all acquisition and redemption transactions between Plans and the UAM Funds are handled on a cash basis. Thus, if a Plan desires to invest assets currently invested in particular securities in a UAM Fund which also invests in such securities, the Plan first liquidates its securities for cash, uses the cash to purchase UAM Fund shares (Shares); the UAM Fund then uses the cash to purchase additional securities. Similarly, if a Plan which invests in a UAM Fund wishes to withdraw from the UAM Fund but to invest in the same securities as the UAM Fund, the UAM Fund liquidates the Plan's pro rata share of the underlying securities of the UAM Fund for cash and distributes the cash to the Plan in exchange for the redeemed Shares, and the Plan then reinvests the cash in the securities. In such situations, both the Plan and the UAM Fund could save transaction costs to the extent the transaction is handled on an in-kind basis.

5. The proposed exemption relates to two types of in-kind transactions between UAM Funds and Plans: in-kind acquisitions of Shares (Acquisition Transactions)<sup>30</sup> and in-kind redemption

<sup>30</sup>The applicant states that this exemption is being requested because Prohibited Transaction Exemption (PTE) 77-4 (42 FR 18732, April 8, 1977) would be unavailable for the purchase of shares in the UAM Funds other than for cash (see ERISA Adv. Op. 94-35A, n.3 (Nov. 3, 1994)). In pertinent part, PTE 77-4 permits the cash purchase or sale

of Shares (Redemption Transactions). Acquisition and Redemption Transactions will be performed in accordance with pre-established objective procedures. The types of securities that may be transferred on an in-kind basis in an Acquisition or Redemption Transaction (Transferable Securities) include securities (1) for which market quotations are readily available, and (2) which are not in any of the following categories: (i) Securities which may not be publicly offered or sold without registration under the Securities Act of 1933, as amended (the 1933 Act); (ii) securities issued by entities in foreign countries which (A) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as UAM Funds, or (B) permit transfers of ownership or securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities, or can only be traded with the counterparty to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements); and (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable).

In an Acquisition Transaction, a Plan that is advised by a Fund Adviser will acquire Shares of a UAM Fund on an in-kind basis by transferring Plan assets to the UAM Fund in exchange for the Shares. All of the Plan assets held in a separate account (other than Shares already held in the account) will be transferred to the UAM Fund in exchange for Shares, except that any

by an employee benefit plan of shares of an open-end investment company registered under the 1940 Act (i.e., a mutual fund) when a fiduciary with respect to the plan is also the investment adviser of the investment company but is not an employer of employees covered by the plan.

The Department notes that PTE 97-41 (62 FR 42830, August 8, 1997) also permits an employee benefit plan to purchase shares of a registered open-end management investment company, the investment adviser for which is a bank (as defined therein) or plan adviser (as defined therein) registered under the Advisers Act, that also serves as a fiduciary of the plan, in exchange for plan assets transferred in-kind to the investment company from a collective investment fund (CIF) maintained by the bank or plan adviser, in connection with a complete withdrawal of a plan's assets from the CIF.

Plan assets in the Account which are not suitable for acquisition by the UAM Fund will be liquidated and the cash proceeds invested directly in Shares. The Plan will receive Shares that have a total net asset value equal to the value of the Plan's transferred assets on the date of the transfer, as determined (with respect to Transferable Securities) in a single valuation for each asset, with all valuations performed in the same manner, at the close on the same business day, in accordance with Securities and Exchange Commission Rule 17a-7, as amended from time to time, or any successor rule, regulation, or similar pronouncement (Rule 17a-7) (using sources independent of the UAM Funds and the Fund Adviser) and the procedures established by the UAM Funds pursuant to Rule 17a-7.<sup>31</sup>

In a Redemption Transaction, a Plan that invests in Shares of a UAM Fund will redeem all or a portion of such Shares on an in-kind basis by receiving assets from the UAM Fund in exchange for the redeemed Shares. With respect to Transferable Securities, the Plan will receive a pro rata portion of the securities of the UAM Fund equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner, at the close of the same business day, in accordance with Rule 17a-7 (using sources independent of the UAM Funds and the Fund Adviser). With respect to all other assets, the Plan will receive cash equal to its pro rata share of the fair market value of such assets, determined in accordance with Section 17a-7 of the 1940 Act and the valuation policies and procedures of the UAM Fund.

6. The in-kind acquisition or redemption will be approved in advance by FSI and by an Independent Fiduciary of the Plan. The Independent Fiduciary may be the Plan sponsor or may be another Plan fiduciary, but in any event will be independent of and unrelated to UAM and the Fund Adviser. If the Independent Fiduciary does not approve the transaction, then the Shares

<sup>31</sup> Rule 17a-7 is an exemption from the prohibited transaction provisions of section 17(a) of the 1940 Act (15 U.S.C. 80a-17(a)), which prohibit, among other things, transactions between an investment company and its investment adviser or affiliates of its investment adviser. Thus, Rule 17a-7 permits transactions between mutual funds and other accounts that use the same or affiliated investment advisers, subject to certain conditions that are designed to assure fair valuation of the assets involved in the transaction and fair treatment of both parties to the transaction. Among the conditions of Rule 17a-7 is the requirement that the transaction be effected at the "independent current market price" as defined therein (see Rule 17a-7(b)(1)-(4)) for the security involved.

will not be purchased or redeemed on an in-kind basis.

Before approving any Acquisition or Redemption Transaction, the Independent Fiduciary will receive full and detailed written disclosure of information regarding the in-kind acquisition or redemption. On the basis of such disclosure, the Independent Fiduciary will (i) make a determination as to whether the terms of the in-kind acquisition or redemption are fair to the participants of the Plan and are comparable to and no less favorable than terms that would be reached at arm's length between unaffiliated parties, and that the in-kind acquisition or redemption (as opposed to an acquisition or redemption for cash) is in the best interest of the Plan and its participants and beneficiaries, and (ii) give prior written approval to the in-kind acquisition or redemption, including agreement as to the date on which the in-kind acquisition or redemption will take place. The authorization by the Independent Fiduciary will be terminable at will without penalty to the Plan at any time prior to the date of acquisition or redemption, and any such termination will be effected by the close of the business day following the date of receipt by the Fund Adviser, either by mail, hand delivery, facsimile, or other available means of written or electronic communication at the option of the Independent Fiduciary, of any written notice of termination.

7. Plan assets transferred pursuant to an Acquisition or Redemption Transaction will consist entirely of cash and Transferable Securities. The price that is paid or received by the Plan for Shares will be the net asset value per Share at the time of the transaction and will be the same price for the Shares that would have been paid or received by any other investor for Shares of the same class at such time. Plans will not pay sales commissions, redemption fees, or other fees in connection with the Acquisition and Redemption Transactions.

8. FSI will review all proposed Acquisition and Redemption Transactions for compliance with applicable requirements, including the requirements of the proposed exemption. If the Acquisition or Redemption Transaction is approved, FSI will coordinate the transaction and will ensure that all aspects of the transaction are properly documented and that all applicable requirements are satisfied.

9. Following an Acquisition Transaction, either (i) any Fund-level investment management, investment

advisory or similar fees received by a Fund Adviser as a result of a Plan's investment in the UAM Funds will be credited against the Plan-level fee charged by the Fund Adviser for investment advisory services, or (ii) the Plan will not pay a Plan-level investment advisory fee with respect to those assets invested in the UAM Funds. In either case, the Fund Adviser will comply with the requirements regarding such fees set forth in PTE 77-4.<sup>32</sup> The Fund Adviser will not receive any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with the acquisition or redemption. The combined total of all fees received by the Fund Adviser for the provision of services to the Plan, and in connection with the provision of services to the UAM Funds in which the Plan holds shares purchased in connection with an in-kind transfer, will not exceed "reasonable compensation" within the meaning of section 408(b)(2) of the Act.<sup>33</sup>

10. Not later than 30 days after completion of the Acquisition or Redemption Transaction, the Fund Adviser will provide a written confirmation to the Independent Fiduciary that will contain: (i) The identity of each Transferable Security that was valued in accordance with Rule 17a-7, as described above; (ii) the current market price, as of the date of the in-kind transfer, of each such Transferable Security; and (iii) the identity of each pricing service or market-maker consulted in determining the current market price of such Transferable Securities.

<sup>32</sup> As noted previously, PTE 77-4 permits the cash purchase or sale by an employee benefit plan of shares of a registered, open-end investment company where a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that, among other things, the plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77-4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the 1940 Act. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

<sup>33</sup> The Department is providing no opinion in this proposed exemption as to whether the total fees to be paid by any Plan would be considered "reasonable" under section 408(b)(2) of the Act. Such a determination must be made by the appropriate plan fiduciaries who are independent of UAM and the Fund Adviser (i.e., the Independent Fiduciaries of the Plans) upon review of the information concerning such fees which must be disclosed to such fiduciaries.

11. Not later than 105 days after each Acquisition or Redemption Transaction, the Fund Adviser will provide a written confirmation to the Independent Fiduciary that will contain: (i) In the case of an Acquisition Transaction, the number of Shares in the UAM Funds that are held by the Plan immediately following the acquisition, the related per-Share net asset value, and the total dollar value of such Shares; and (ii) in the case of a Redemption Transaction, the number of Shares in the UAM Funds that were held by the Plan immediately prior to the redemption, the related per-Share net asset value, and the total dollar value of such Shares.

12. With respect to each of the UAM Funds in which a Plan continues to hold Shares in connection with an in-kind acquisition, the Fund Adviser will provide the Independent Fiduciary with: (i) A copy of an updated prospectus of such UAM Fund, at least annually; and (ii) upon request of the Independent Fiduciary, a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other statement) containing a description of all fees paid by the UAM Fund to the Investment Adviser.

13. All other dealings between the Plan and the UAM Funds will be on a basis no less favorable to the Plan than dealings between the UAM Funds and other shareholders holding the same Shares of the same class as the Plan.

14. In summary, it is represented that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The proposed exemption is administratively feasible because it establishes objective criteria for its application, and compliance with such criteria may be readily determined and audited.

(b) The proposed exemption is in the interests of the Plans and their participants and beneficiaries because it will reduce the amount of brokerage commissions and other transaction costs paid by the Plans. Additionally, the in-kind transactions will eliminate the market risks associated with having Plan assets uninvested, even if for only a short time.

(c) The proposed exemption will be protective of Plan participants and beneficiaries because (i) an Independent Fiduciary will retain ultimate discretion as to whether an in-kind acquisition or redemption occurs; (ii) the affiliation among the UAM Funds, the Fund Advisers, and FSI, and the fees received from the UAM Funds by the Fund Advisers and FSI, will be fully disclosed

to the Independent Fiduciary; (iii) the in-kind acquisition or redemption of Shares will not result in any Plan paying multiple fees for the same or similar services because either (A) any investment advisory Fund-level fees received by a Fund Adviser as a result of a Plan's investment in the UAM Funds will be credited against the Plan-level fee charged by the Fund Adviser for investment advisory services, or (B) the Plan will not pay a Plan-level investment advisory fee with respect to assets invested in the UAM Funds, in either case in accordance with the requirements of PTE 77-4; (iv) the UAM Funds are subject to the protections offered investors under the 1940 Act, including the 1940 Act's regulation of fees paid to investment advisers; and (v) no Plan will pay sales loads or commissions or redemption fees in connection with the acquisition or redemption of Shares.

**FOR FURTHER INFORMATION CONTACT:** Karen Lloyd 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 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 8th day of February, 2001.

**Ivan Strasfeld,**

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

[FR Doc. 01-3688 Filed 2-14-01; 8:45 am]

**BILLING CODE 4510-29-P**

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## NATIONAL EDUCATION GOALS PANEL

### Meeting

**AGENCY:** National Education Goals Panel.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel (NEGP). This notice also describes the functions of the Panel.

**DATE AND TIME:** Saturday, February 24, 2001 from 9:30 a.m. to 11 a.m.

**ADDRESSES:** National Press Club, 529 14th Street, NW., Holeman Lounge, 13th Floor, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Emily Wurtz, Acting Executive Director, 1255 22nd Street, NW., Suite 502, Washington, DC 20037, Telephone: (202) 724-0015.

**SUMMARY:** The National Education Goals Panel was established to monitor, measure and report state and national progress toward achieving the eight National Education Goals, and report to the states and the Nation on the progress.

*Agenda Items:* The agenda items will focus upon recommendations made by NEGP's Measuring Success Task Force. Governor John R. McKernan, Task Force Chair, will report recommendations of new data in student academic achievement, adult literacy, teacher education and professional development, and early childhood education. In addition, the incoming NEGP Chair, Governor Frank O'Bannon,

will announce upcoming Panel initiatives for 2001.

Dated: February 9, 2001.

**Emily Wurtz,**

*Acting Executive Director, National  
Education Goals Panel.*

[FR Doc. 01-3798 Filed 2-14-01; 8:45 am]

**BILLING CODE 4010-01-M**

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## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 25—Access Authorization for Licensee Personnel.
2. *Current OMB approval number:* 3150-0046.
3. *How often the collection is required:* On occasion.
4. *Who is required or asked to report:* NRC-regulated facilities and other organizations requiring access to NRC-classified information.
5. *The number of annual respondents:* 20.

6. *The number of hours needed annually to complete the requirement or request:* 257 hours (197 hours reporting and 60 hours recordkeeping) or approximately .5 hours per response.

7. *Abstract:* NRC-regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided NRC-classified information and material.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site <http://www.nrc.gov/NRC/Public/OMB/index.html>. The document will be available on the NRC home page site for 60 days after the signature date to this notice.

Comments and questions should be directed to the OMB reviewer listed below by March 19, 2001. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Amy Farrell, Office of Information and Regulatory Affairs (3150-0046), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-7318.

The NRC Clearance Officer is Brenda Jo. Shelton, 301-415-7233.

Dated at Rockville, Maryland, this 7th day of February, 2001.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief  
Information Officer.*

[FR Doc. 01-3828 Filed 2-14-01; 8:45 am]

**BILLING CODE 7590-01-P**

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-305]

### Nuclear Management Company, LLC; Kewaunee Nuclear Power Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR-43, issued to Nuclear Management Company, LLC (NMC or the licensee) for operation of the Kewaunee Nuclear Power Plant (KNPP), located in Kewaunee County, Wisconsin.

#### Environmental Assessment

##### Identification of the Proposed Action

The proposed action would revise Technical Specification (TS) Section 1.0, "Definitions," to incorporate a line item improvement to provide additional clarification on channel calibration; TS Section 6.4, "Training," to remove the title of director for the KNPP training program and relocate the title reference to the Operational Quality Assurance Program Description (OQAPD); TS Section 6.10, "Record Retention," to revise the off-site review committee title; and correct typographical errors in the TS Table of Contents.

The proposed action is in accordance with the licensee's application for amendment dated November 10, 2000.

##### The Need for the Proposed Action

The proposed action would provide clarity to the TSs and remove an