FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone 202–205–3105.

SUPPLEMENTARY INFORMATION: The Commission instituted this formal enforcement proceeding on January 10, 1994. 59 Fed. Reg. 3123–27 (Jan. 20, 1994). The enforcement proceeding complaint was filed by the Commission's Office of Unfair Import Investigations (OUII), and alleges violations of the Commission cease and desist order and modified cease and desist order issued in the underlying investigation against respondent Analog Devices, Inc. (Analog). The complaint sought appropriate sanctions for these alleged violations. The parties to the enforcement proceeding were OUII, represented by its investigative attorneys (IAs); enforcement proceeding respondent Analog; and Texas Instruments, Inc. (TI), the complainant in the underlying investigation.

On April 24, 1995, Analog filed a motion with the ALJ to terminate the enforcement proceedings based upon a settlement it had reached with TI. The IAs filed a response opposing the motion to terminate. The ALJ issued a recommended determination (RD) granted the motion to terminate, and the IAs petitioned the Commission for review of the RD. Analog opposed the petition.

On April 26, 1995, TI moved to terminate itself as a party to the enforcement proceeding in light of the settlement it had reached with Analog. Neither Analog nor the IAs opposed TI's motion. The ALJ issued an RD granting TI's motion. No party sought review of that RD.

The Commission adopted both Rds. However, it will refer to the Department of Justice the allegations by the IAs that Analog willfully submitted false and misleading reporting violations. See 18 U.S.C. § 1001.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and section 210.53 of the Commission's Interim Rules of Practice and Procedure, 19 C.F.R. § 211.56 (1994).

Copies of the Commission Order and nonconfidential versions of the RDs and all other nonconfidential documents filed in connection with this enforcement proceeding are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: September 11, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–23909 Filed 9–17–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Public Announcement

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice.

DATE AND TIME: 9:30 a.m., Monday September 23, 1996.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting: Appeal to the Commission involving approximately one case decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. This case was originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: September 13, 1996.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 96–24011 Filed 9–16–96; 10:43 am]

BILLING CODE 4410–01–M

Sunshine Act Meeting

Public Announcement

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice.

TIME AND DATE: 1:30 p.m., Monday, September 23, 1996.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Proposal for Modification of Transfer Treaty Regulation at 28 C.F.R. § 2.62(e) for short term offenders.
4. Proposal for Continuation of Expedited Revocation Project.
5. Proposal for Special Parole Condition Regarding Computer Use.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: September 13, 1996.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 96–24012 Filed 9–16–96; 10:43 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10034, et al.]

Proposed Exemptions; Dimensional Fund Advisors Inc. (DFA)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

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

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

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

Notice to Interested Persons

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

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

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

Dimensional Fund Advisors Inc. (DFA) Located in Santa Monica, California

Application No. D–10034]

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 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed in-kind transfers of the assets of employee benefit plans (the Client Plans) for which DFA or an affiliate act as a fiduciary [1] and which are held in DFA sponsored group trusts (the Group Trusts) to the DFA Investment Trust Company (the Master Fund), in exchange for the shares of the Master Fund, an open-end investment company registered under the Investment Company Act of 1940 (the 1940 Act), for which DFA acts as investment advisor; provided that the following conditions are satisfied:

(a) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected Client Plan and who is independent of and unrelated to DFA, as defined in paragraph (g) of Section III below, will receive advance written notice of the in-kind transfer of the Client Plan's assets held in a subtrust of a Group Trust to a corresponding series of the Master Fund in exchange for the shares of the Master Fund, and the investment of such assets in the corresponding series of the Master Fund, and will receive full written disclosures concerning the Master Fund described in paragraph (c) of Section II below;

(b) On the basis of such information described in paragraph (c) of Section II below, the Second Fiduciary will authorize in writing the in-kind transfer of the Client Plan's assets from a subtrust of a Group Trust to the corresponding series of the Master Fund in exchange for the shares of the Master Fund, and the investment of such assets in the corresponding series of the Master Fund. Such authorization is to be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(c) No sales commissions, redemption fees or other fees are paid by the Client Plans in connection with the in-kind transfer of the Group Trust's assets, in exchange for the shares of the Master Fund;

(d) The transfers will be one-time transactions for each subtrust of a Group Trust for which a comparable series of the Master Fund exists;

(e) Each Group Trust receives shares of the Master Fund which have a total net asset value that is equal to the value of the Client Plans' all or pro rata share of the Group Trust's assets on the date of the transfer;

(f) The current market value of the Group Trust's assets to be transferred in-kind in exchange for the shares of the Master Fund, is determined in a single valuation performed in the same manner at the close of the same business day with respect to any such transfer, using independent sources in accordance with the procedures set forth in Rule 17a–7 (Rule 17a–7) under the 1940 Act, as amended from time to time or any successor rule, regulation, or similar pronouncement and the procedures established by DFA pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sales price for transactions reported on a recognized securities exchange or NASDAQ, be valued based on the average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day preceding the day of the Group Trust transfer, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of DFA;

(g) No later than 30 days after completion of each in-kind transfer of Group Trust's assets to the Master Fund, DFA will send by regular mail to each Second Fiduciary, who is acting on behalf of each affected Client Plan and who is independent of and unrelated to DFA, as defined in paragraph (g) of Section III below, written confirmation containing the following information:

1. the identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) under the 1940 Act;

2. the price of each such security involved in the transaction; and

3. the identity of each pricing service or market maker consulted in determining the value of such securities;

(h) No later than 90 days after completion of each in-kind transfer of

[1] The applicant states that no retirement plan established by DFA is invested in any of the Group Trusts, and no relief is being requested herein on behalf of any of DFA's own plans. Accordingly, the Department is not proposing relief for in-kind transfers involving any plan established and maintained by DFA or its affiliates or subsidiaries.

the Group Trust's assets to the Master Fund, DFA will send by regular mail to the Second Fiduciary, who is acting on behalf of each affected Client Plan and who is independent of and unrelated to DFA, as defined in paragraph (g) of Section III below, written confirmation that contains the following information:

1. the number of Group Trust's units held by the Client Plan immediately before the transfer (and the related per unit value and the total dollar amount of such Group Trust's units transferred); and

2. the number of shares in the Master Fund that are held by the Client Plan following the transfer (and the related per share net asset value and the total dollar amount of such shares received);

(i) The transferred securities will be valued using the same methodology in the Group Trusts and in the Master Fund;

(j) DFA will not execute an in-kind transfer of the Client Plan's assets unless the Second Fiduciary of each affected Client Plan affirmatively consents to the in-kind transfer in writing; and

(k) There will be no penalty to a Client Plan for not participating in the in-kind transfer.

Section II—General Conditions

(a) DFA maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) to determine whether the conditions of this 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 DFA, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than DFA 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 (b) below.

(b) (1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1)(ii) and (iii) of Section II shall be authorized to examine trade secrets of DFA, or commercial or financial information which is privileged or confidential; and

(c) A Second Fiduciary who is acting on behalf of a Client Plan and who is independent and unrelated to DFA, as defined in paragraph (g) of Section III below, will receive in advance of the investment by a Client Plan in the Master Fund full written disclosure of information concerning the Master Fund which shall include, but not be limited to the following:

(1) A current copy of SEC Form N–1A (regarding the registration of an open end investment company under the 1940 Act)[2] with respect to the Master Fund, plus certain additional information as specified in the Advisory Opinion 94–35A[3];

(2) A table listing management fees for the most recent completed fiscal period, all other expenses broken down by category and total portfolio operating expenses;

(3) A chart showing the effect of such fees on an investment in the Master Fund over one, three, five and ten years; and

(4) A list of per share income and capital changes for shares outstanding throughout the year, including investment income, expenses, net investment income, dividends from net investment income, net realized and unrealized gains (losses) on securities; distributions from net realized gains (losses) on securities; net increase (decrease) in net asset value, net asset value at the beginning of the period, net asset value at the end of the period, expenses to average net assets, portfolio turnover rate, and number of shares outstanding at the end of the period.

[2] Form N–1A requires the registrant to answer a series of questions regarding financial information, management of the fund, risk factors and expenses.

[3] In the Advisory Opinion 94–35A (AO 94–35A) issued by the Department to DFA, DFA requested an advisory opinion with regard to certain disclosures required by the Securities Act of 1933 (the 1933 Act), and which are provided by DFA to independent plan fiduciaries in connection with the plans' investment in a certain open-end investment company to which DFA serves as an investment advisor (the Core Fund), and which is registered under the 1940 Act, but not under the 1933 Act. Specifically, DFA requested an advisory opinion that a receipt by the independent plan fiduciary of the Core Fund's Form N–1A and the additional information as specified in AO 94–35A complies with the prospectus disclosure requirement of paragraph (d) of section II of PTCE 77–4. In AO 94–35A, the Department stated that the disclosure of the Core Fund's Form N–1A information and the additional information as specified in AO 94–35A to an independent plan fiduciary, in lieu of a prospectus, will satisfy the prospectus disclosure requirement of paragraph (d) of section II of PTCE 77–4, provided that the additional information as specified in AO 94–35A contains all the information, otherwise included in a prospectus, that is relevant to the independent fiduciary's decision as to whether to approve the purchase and sale of shares in the Core Fund.

Section III—Definitions

For purposes of this proposed exemption:

(a) The term ''DFA'' means Dimensional Fund Advisors Inc., and any affiliate thereof as defined below in paragraph (b) of this section.

(b) An ''affiliate'' of a person includes:

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

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

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

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

(d) The term ''Fund'' or ''Funds'' shall include the DFA Investment Trust Company, such additional series as may be added to the DFA Investment Trust Company, or any other diversified open-end investment company or companies registered under the 1940 Act for which DFA serves as an investment advisor and may also serve as a custodian, shareholder servicing agent, or transfer agent.

(e) 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 Fund's SEC Form N–1A and statement of additional information, and other assets belonging to each of the portfolios in the Fund or the Fund, less the liabilities charged to each such portfolio or the Fund, by the number of outstanding shares.

(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, a sister, or a spouse of a brother or a sister.

(g) The term ''Second Fiduciary'' means a fiduciary of a Client Plan who is independent of and unrelated to DFA. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to DFA if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with DFA;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner or employee of DFA (or is a relative of such persons);

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

If an officer, director, partner or employee of DFA (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan's investment manager advisor, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Section I above, then paragraph (g)(2) of this Section III shall not apply.

Summary of Facts and Representations

1. DFA is a registered investment advisor under the Investment Advisors Act of 1940. DFA was organized in May 1981, and is engaged in the business of providing investment management services to institutional investors (including pension and profit sharing plans, endowment funds and governmental agencies). As of February 1, 1995, DFA had approximately $10.5 billion in assets under management, of which approximately $4.969 billion were held in the Group Trusts. DFA currently sponsors three tax-exempt Group Trusts qualified under Revenue Ruling 81–100. The Group Trusts hold assets of the Client Plans for which DFA serves as a fiduciary and an investment manager as defined in section 3(38) of the Act. Approximately $3.7 billion, or 74 percent of the Group Trusts assets are ERISA Client Plan assets.

2. DFA has full investment authority for the Group Trusts, which are divided into various subtrusts, each with a distinct investment objective and strategy. DFA represents that it does not receive any fees from the Group Trusts. The initial decision and authorization to participate in a subtrust of a Group Trust is made by the Second Fiduciary of each Client Plan. A Client Plan which invests in the Group Trust then negotiates an investment management agreement with DFA, which specifies the types and amounts of services performed for such Client Plan, under which the Client Plan pays DFA an investment management fee.[4]

3. As of January 31, 1995, the Group Trusts held investments of thirty-eight (38) Client Plans. Of these Client Plans, 2 have invested more than $500 million; 7 have invested between $100 million and $500 million; 10 have invested between $50 million and $100 million; 7 have invested between $25 million and $50 million; and 12 have invested between $1.113 million and $25 million. It is represented that the investor Client Plans range in size from $57 million to $45 billion.

4. DFA also serves as the investment advisor to the DFA Investment Trust Company (the DFA Investment Trust Company), a diversified, open-end management investment company organized as a Delaware business trust on October 27, 1992, and registered under the 1940 Act. The DFA Investment Trust Company is currently comprised of seven series, each of which operates as a diversified investment company and represents a separate class of the DFA Investment Trust Company shares of beneficial interest. Each of the series has specific investment objectives, policies and investment limitations. DFA represents that in the future it may add additional series to the DFA Investment Trust Company, or create similar open-end management investment companies (collectively; the Master Fund).

Currently, these series are: the U.S. 6–10 Small Company Series, the U.S. Large Company Series, the DFA One-Year Fixed Income Series, U.S. Small Cap Value Series, the U.S. Large Cap Value Series, the DFA International Value Series and the Emerging Market Series. DFA serves as investment advisor to each of the series, and it manages the investment and reinvestment of the series' assets.

5. The shares of the Master Fund are sold only to the DFA sponsored investment companies, to DFA sponsored group trusts, to separately managed accounts forming a part of qualified plans, and to other large institutional investors. The Master Fund is valued in accordance with regulations issued by the Securities and Exchange Commission (SEC) for valuing mutual capital under the 1940 Act. The applicant represents that, as required under the 1940 Act, the fees for the Master Fund are set at the series level, and must be charged with respect to all assets invested in such series. The Master Fund, however, does not impose a fee under the SEC Rule 12b–1.

6. It is represented that the Master Fund is the master of the master-and-feeder arrangement. The master is an open-end management investment company registered under the 1940 Act in which the feeders purchase shares. The feeders include other open-end investment companies, collective investment vehicles (such as the Group Trusts), and/or other large institutional investors. A master-and-feeder arrangement exists where multiple investment vehicles and institutional investors with identical investment objectives pool their assets by investing in a single investment company having the same investment objective. This arrangement enables the feeder funds which invest in the Master Fund to spread the fixed costs of portfolio management and fund administration over a greater number of investment dollars and to achieve economies of scale. DFA represents that it is in the interest of the Client Plans to utilize the master-and-feeder arrangement.

The investment management fees at the master level reflect only the costs of investing the assets in the Master Fund. Other fees are paid at the feeder level. At the feeder level a client enters into an investment management agreement (IMA) with DFA. Pursuant to the terms of IMA, the types and amounts of services performed for each client are individually negotiated with such client. Once the assets are invested in the Master Fund, the net fee at the feeder level will be determined by subtracting from each client's gross fee under the IMA that client's pro rata share of the investment advisory fee paid by the Master Fund.[5] DFA states that this fee arrangement would be covered by the Prohibited Transaction Class Exemption 77–4 (42 FR 18732, April 8, 1977) (PTCE 77–4).[6]

[4] The Department expresses no opinion as to whether the provision of services by DFA or its affiliates to the Client Plans satisfies the requirements for statutory exemption, as set forth in section 408(b)(2) of the Act and 29 CFR 2550.408(b)(2) of the Department's regulation. To the extent that such provision of services to the Client Plans by DFA or its affiliates does not satisfy the requirements of section 408(b)(2) of the Act, the Department, herein, is offering no relief.

[5] In this regard, DFA submitted the following example. XYZ company pension plan signs an IMA under which it agrees to pay DFA 60 basis points for all services provided under the IMA. DFA invests the XYZ pension plan assets in the Master Fund, which has an investment advisory fee of 40 basis points. In accordance with PTCE 77–4, DFA will offset the 40 basis point investment advisory fee at the Master Fund level from the 60 basis point fee at the group trust or feeder level. The XYZ pension plan will pay DFA 20 basis points under the IMA with respect to the assets invested in the Master Fund.

[6] PTCE 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment

7. Accordingly, DFA is requesting an exemption to permit the in-kind transfer of the Client Plans' assets held in the subtrusts of the Group Trusts to the corresponding series of the Master Fund in exchange for the shares of the Master Fund. DFA represents that these transfers would otherwise comply with the PTCE 77–4 as interpreted by the advisory opinions issued by the Department, except for the fact that the transfers will be in-kind.[7] In accordance with PTCE 77–4, the investment management, investment advisory or similar fees generated at the Master Fund level will directly offset the plan level fees with respect to the Client Plans' assets invested in the Master Fund.

8. A Second Fiduciary who is independent of DFA will be provided with advance written notice of the transfer and full written disclosure concerning the Master Fund, including a current copy of SEC Form N–1A (regarding the registration of an open end investment company under the 1940 Act) with respect to the Master Fund, plus the additional information as specified in AO 94–35A which shall include but not be limited to the following: (1) A table listing management fees for the most recent completed fiscal period, all other expenses broken down by category and total portfolio operating expenses; (2) a chart showing the effect of such fees on an investment in the Fund over one, three, five and ten years; and (3) a list of per share income and capital changes for a share outstanding throughout the year, including investment income, expenses, net investment income, dividends from net investment income, net realized and unrealized gains (losses) on securities; distributions from net realized gains (losses) on securities; increase (decrease) in net asset value, net asset value at the beginning of the period, net asset value at the end of the period, expenses to average net assets, portfolio turnover rate, and number of shares outstanding at the end of the period. On the basis of such information, the Second Fiduciary will authorize in writing the in-kind transfer of the Client Plan's assets in the Group Trust to the Master Fund in exchange for the shares of the Master Fund.

9. DFA will not execute an in-kind transfer of the Client Plan's assets unless the Second Fiduciary affirmatively consents to the transfer. Also, no sales commissions or other fees will be paid by the Client Plans in connection with the purchase of the Master Fund's shares through an in-kind transfer of the Group Trust's assets. The transfers will be one-time transactions between subtrusts of the Group Trusts and series of the Master Fund that have the same investment objectives. Furthermore, the transferred securities will be valued at the time of the transfer using the same methodology in the subtrust of the Group Trust as in the Master Fund's corresponding series.

10. DFA represents that valuation of assets transferred in-kind to the Master Fund will be established by reference to independent sources. All assets transferred in-kind will be valued in accordance with Rule 17a–7[8] under the 1940 Act, as amended from time to time or any successor rule, regulation or similar pronouncement, and the procedures established by DFA pursuant to Rule 17a–7 for the valuation of such assets. Such procedures require that all securities for which a current market price cannot be obtained by reference to the last sale price on a recognized securities exchange or NASDAQ, will be valued on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the business day preceding the transfer, determined on the basis of reasonable inquiry from at least three sources that are broker dealers or pricing services independent of DFA.

Further, DFA represents that not later than 30 days after completion of the in-kind transfers it will send by regular mail to each affected Client Plan, written confirmation of the identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4), the price of each such security involved in the transaction; and the identity of each pricing service or market maker consulted in determining the value of such securities. The securities subject to valuation under Rule 17(a)–7(b)(4) include all securities other than ''reported securities'', as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934, or those quoted on the NASDAQ system or for which the principal market is an exchange.

Each Group Trust will receive shares of the Master Fund that have a total net asset value equal to the value of the Client Plans' all or pro rata share of the Group Trust's assets on the date of the transfer, based on the current market value of the Group Trust's assets as determined in a single valuation also performed in the same manner at the close of the same business day.

In addition, no later than 90 days after completion of each in-kind transfer, DFA will send by regular mail to the Second Fiduciary written confirmation of the number of Group Trust's units held by the Client Plan immediately before the transfer (and the related per unit value and the total dollar amount of such Group Trust's units transferred), and the number of shares in the Master Fund that are held by the Client Plan following the transfer (and the related per share net asset value and the total dollar amount of such shares received).

11. With respect to ongoing disclosure, DFA will, as necessary, and in accordance with requirements of the 1940 Act, provide Client Plans with updated copies of SEC Form N1–A with respect to the Master Fund. DFA will also update, as necessary, additional information identified in AO 94–35A, which is provided by DFA to its Client Plans.

12. DFA represents that the proposed transfers are in the interest and protective of the Client Plans. No sales commissions or other fees will be paid by the Client Plans in connection with the purchase of the Master Fund's shares through an in-kind transfer of the Group Trust's assets. Furthermore, to the extent that it is not possible for DFA to determine a price for a particular security pursuant to Rule 17(a)–7, such security will remain in the Group Trust. In structuring the transactions as described herein, DFA will eliminate

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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 PTCE 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 Investment Company Act of 1940. 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.

The Department notes that fees for services other than investment advisory services (i.e., secondary services such as administrative services) may be received by an investment advisor or its affiliate, provided that the conditions of PTCE 77–4 are met. (See the Advisory Opinions 93–12A and 93–13A issued by the Department).

[7] In this regard, the Department is of the view that the relief provided by PTCE 77–4 is unavailable for the purchase and sale of shares in mutual funds other than for cash. (See Advisory Opinion 94–35A issued by the Department).

[8] Rule 17a–7 permits transactions between investment funds that use the same investment advisor, subject to certain conditions. Rule 17a–7(b) requires, among other things, that such transactions be effected at the ''independent current market price'' for each security, involve only securities for which market quotations are readily available, involve no brokerage commissions or other renumeration, and comply with valuation procedures adopted by the board of directors of the investment company to ensure that all requirements of the Rule are satisfied.

commission costs, market maker's spread and any potential for adverse market impact. The savings from in-kind purchases would directly benefit the Group Trusts and the Client Plans that participate in them. DFA also maintains that there will be no penalty to a Client Plan for not participating in the in-kind transfer. If a Client Plan chooses not to participate in the transfer, DFA has the option of not transferring any assets from a particular subtrust of the Group Trust as long as that Client Plan remains in that subtrust. DFA may also segregate the Client Plan's proportionate share of Group Trust's assets into a separate subtrust, and then transfer the remaining assets to the Master Fund.

13. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) No sales commissions, redemption fees or other fees are paid by the Client Plans in connection with the in-kind transfer of Group Trust's assets in exchange for the shares of the Master Fund;

(b) A Second Fiduciary who is acting on behalf of each affected Client Plan and who is independent of and unrelated to DFA, as defined in paragraph (g) of Section III, receives advance written notice of the in-kind transfer of the Group Trust's assets and the disclosures described in paragraph (c) of Section II;

(c) No later than 30 days after completion of each in-kind transfer of Group Trust's assets to the Master Fund, the Second Fiduciaries for affected Client Plans will receive written confirmation of the identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4), the price of each such security, and the identity of the pricing service or market maker consulted;

(d) No later than 90 days after completion of each in-kind transfer of the Group Trust's assets to the Master Fund, DFA will mail to the Second Fiduciary a written confirmation of the number of Group Trust's units held by each affected Client Plan immediately before the transfer (and the related per unit value and the aggregate dollar value of such Group Trust's units transferred), and the number of shares in the Master Fund that are held by each affected Client Plan following the transfer (and the related per share net asset value and the aggregate dollar value of such shares received);

(e) Each Group Trust will receive shares of the Master Fund that are equal to the value of the Client Plans' all or pro rata share of the Group Trust's assets on the date of the transfer, as determined in a single valuation performed in the same manner at the close of the same business day with respect to any such transfer, in accordance with the procedures set forth in Rule 17a–7 under the 1940 Act, as amended from time to time or any successor rule, regulation, or similar pronouncement;

(f) On the basis of such information described in paragraph (c) of Section II, the Second Fiduciary will authorize in writing the in-kind transfer of the Client Plan's assets held in the subtrust of the Group Trust to the corresponding series of the Master Fund in exchange for the shares of the Master Fund, and the investment of such assets in the corresponding series of the Master Fund. Such authorization is to be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(g) DFA will not execute an in-kind transfer of the Client Plan's assets unless the Second Fiduciary of each affected Client Plan affirmatively consents to the in-kind transfer in writing;

(h) The transfers will be one-time transactions for each subtrust of a Group Trust for which a comparable series of a Master Fund exists; and

(i) there will be no penalty to a Client Plan for not participating in the in-kind transfer.

Notice to Interested Persons

DFA represents that it will distribute by first class mail a copy of the notice of pendency of this proposed exemption (the Notice) within fifteen (15) days of the date of such Notice in the Federal Register to the fiduciaries of any of the Client Plans which are invested in any of the Group Trusts on the date of publication of such Notice in the Federal Register. The distribution to interested persons shall include a copy of the Notice as published in the Federal Register and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2) which informs all interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. DFA also will provide a copy of the proposed exemption and/or a copy of the final exemption, if granted, to any Second Fiduciary of a Client Plan upon request. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

First National Bank of Anchorage Common Trust Fund (the Fund) Located in Anchorage, Alaska

[Application No. D–10117]

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 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the prospective sales of certain defaulted real estate mortgages (the Mortgages) by the First National Bank of Anchorage Common Trust Fund (the Fund) to the First National Bank of Anchorage (the Bank), a party in interest with respect to the Fund, provided that the following conditions are satisfied:

(1) The sales will be one-time cash transactions;

(2) the Fund will incur no costs in connection with the sales;

(3) the Fund will sell each Mortgage for the greater of fair market value, or its outstanding principal balance plus accrued, but unpaid interest, and penalty charges at the time of the sale;

(4) the independent fiduciaries (the Independent Fiduciaries) appointed to act on behalf of the Fund in these transactions will review and determine that a Mortgage is in default, has been properly declared to be in default by the Bank in accordance with the Comptroller of Currency regulations, and that the prospective sale of a Mortgage is in the best interest of the Fund;

(5) neither of the Independent Fiduciaries will derive more than 5% of his gross annual income from the Bank for each fiscal year that he serves in an independent fiduciary capacity with respect to the transactions described herein;

(6) the Mortgages will be purchased, rather than segregated, by the Bank;

(7) the borrowers on the Mortgages will be unrelated third parties;

(8) the conditions of the Prohibited Transaction Exemption 90–60 (PTE 90–60) have been met. PTE 90–60, which expired September 12, 1995, provided retroactive and prospective relief for sales of the Mortgages by the Fund to the Bank;

(9) the Bank maintains for a period of six years, the records necessary to enable persons described in (10) below to determine whether the conditions of this proposed exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to the circumstances beyond the control of the Bank or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(10) (i) Except as provided in paragraph (ii) of this subsection (10) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (9) above are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in the Fund, who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in the Fund, or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in the Fund, or any duly authorized employee or representative of such participant or beneficiary.

(ii) None of the persons described in subparagraphs (B) through (D) of this subsection (10) shall be authorized to examine trade secrets of the Bank, any of its affiliates, or commercial or financial information which is privileged or confidential.

Summary of the Facts and Representations

1. The First National Bank of Anchorage (the Bank) is a bank organized in the state of Alaska, and it provides banking and trust services. The Bank is subject to periodic examinations by the Comptroller of the Currency. The Bank's principal business offices are located at 646 West Fourth Avenue in Anchorage, Alaska, and the Bank maintains 27 banking locations within this geographic area.

2. The Fund is a common trust fund established by the Bank on November 2, 1965. The Fund is established pursuant to the Comptroller of Currency Regulations section 9.18(a)(1) (OCC Regulations), and contains assets of participating estates, trusts, and employee benefit plans (the Participating Trusts). Current investors in the Fund include three defined contribution profit sharing plans. The Trust Committee of the Bank (the Trust Committee) has investment discretion with respect to the Fund. The Bank is the sponsor and fiduciary of the Fund.

The Fund is maintained in accordance with the rules and regulations of the Comptroller of Currency. As required by the regulations, the Fund performs annual internal audits. Also, the Fund is valued quarterly and audited annually by an independent accounting firm. For the 1996 Fund year, KPMG Peat Marwick will perform the quarterly valuations and the annual audit of the Fund. The Fund is also subject to periodic audits by the Comptroller of Currency.

3. The Bank was granted an individual exemption by the Department in 1990 (PTE 90–60), for the past and prospective sales of certain defaulted real estate mortgages (the Mortgages) by the Fund in which the Participating Trusts invest, to the Bank, a party in interest with respect to the Fund. PTE 90–60 provided retroactive relief as of August 5, 1980, and remained effective for a five year period from September 12, 1990, which was the date the final grant appeared in the Federal Register. PTE 90–60 expired September 12, 1995. The applicant represents that the prospective portion of PTE 90–60 was never used by the Bank. With respect to the prospective transactions entered into after September 30, 1988, PTE 90–60 contained conditions that were substantially similar to those proposed herein.

4. The Fund was established by the Bank to collectively invest and reinvest monies received by the Bank in its capacity as fiduciary and trustee of estates, trusts and retirement plans. As authorized by the OCC Regulations, the Fund also invests in first mortgage loans which were originated by the Fund and secured by real property. The borrowers on the Mortgages are independent third parties unrelated to the Bank and the Plans investing in the Fund. Occasionally, some Mortgages go into default. However, over the preceding five years, no Mortgages have gone into default. The Fund currently contains one Mortgage which is not in default. The applicant represents that any Mortgages in default would represent a small percentage of the net asset value of the Fund, which as of June 30, 1995 was $7,443,065. In this regard, approximately 20% of the participation interests in the Fund are owned by the Participating Trusts.

5. The applicant represents that under OCC Regulations, the Bank has two alternative methods to protect the Fund when a Mortgage owned by the Fund goes into default. The Bank may either segregate the defaulted Mortgages from the remainder of the Fund or it may purchase such Mortgages thereby permitting the Fund to reinvest the proceeds. The OCC Regulations section 9.18(b)(7)(ii) specifies that a segregated investment shall be administered separately, realizing its own separate gains and losses, pro-rata, with regard to all participants in the Fund. Accordingly, the applicant represents that because each segregated account bears its own costs and realizes its own income, and except for borrowings, cannot receive any further investment in the account, it is possible that liquidating an account for a defaulted investment would mean significant losses to such account, and the final proceeds of the liquidating account would be significantly less than the value of the assets prior to segregation.

However, in the case of the Bank purchasing a mortgage, the OCC Regulations section 9.18(b)(8)(ii) state that:

''Any bank administering a collective investment fund may purchase for its own account from such fund any defaulted fixed income investment held by such fund, if in the judgement of the board of directors the cost of segregation of such investment would be greater than the difference between its market value and its principal amount plus interest and penalty charges due. If the bank elects to so purchase such investment, it must do so at its market value or the sum of the costs (i.e., outstanding principal plus accrued unpaid interest, and penalty charges, whichever is greater.'' The time period available for a decision with respect to either segregation or purchase of a mortgage is 60 days when the required payment was not received.

6. The Bank will purchase defaulted Mortgages from the Fund for the outstanding principal balance, plus accrued but unpaid interest and penalty charges. As stated in the Summary of the Facts and Representations of the notice preceding PTE 90–60 (the Summary), the Board of Directors of the Bank (the Board of Directors) determined that this practice is a superior alternative to segregation because the costs of retaining and segregating the mortgages are substantial. If the Fund were to retain and segregate the Mortgages under the OCC Regulations, it would, as owner of the Mortgages, incur the costs of foreclosure in order to realize on the collateral of a mortgage loan. Pursuant to the retroactive relief provided under PTE 90–60, the Bank has in the past

purchased defaulted Mortgages from the Fund for outstanding principal balance, plus accrued interest and penalty charges at the time of the purchase.

7. With respect to any prospective purchases of the Mortgages, the Bank obtained determinations of value from an independent appraiser and from a business advisor, who also have rendered their opinions under PTE 90–60. The first determination of value is rendered by Kenneth C. Hume, who is an independent business advisor in the state of Alaska, and a former president of the Alaska State Bank. Mr. Hume was also employed as an assistant vice president with the Bank of California, and a regional vice president with the First National Bank of Oregon (First Interstate), and therefore has experience with transactions involving a bank and its trust department. Mr. Hume concluded on March 5, 1996, that the ''upper limit'' of a fair market value of a mortgage in default would be the outstanding principal balance plus accrued interest, insurance, taxes, and penalties. Mr. Hume also stated that it is in the interest of the Fund to sell the defaulted mortgages and reinvest these proceeds.

8. A second determination of value, dated April 23, 1996, was prepared by David T. McCabe, an independent, qualified real estate appraiser, who has experience as an arbitrator and a general partner with the Alaska Mortgage Group. Mr. McCabe stated that the ''upper limit'' of the fair market value of a mortgage in default is the outstanding principal balance plus accrued but unpaid interest and penalties. Mr. McCabe also stated that it is in the interest of the Fund to sell the defaulted mortgages and reinvest these proceeds.

9. The purchases of defaulted Mortgages will be one-time cash transactions for the greater of fair market value, or the outstanding principal balance plus accrued, but unpaid interest, and penalty charges at the time of the sale. A decision as to the ''default'' status of a mortgage will be made by the Trust Committee in accordance with the Comptroller's Handbook for National Trust Examiners, Precedents and Opinions for Collective Investment Funds, section 9.5740. This section specifies that: ''Any mortgage which is in default for a period of 60 days or more should be removed from the fund before admissions or withdrawals are made. * * * If the loan is not made current before two valuation dates occur (i.e., 60 days), it should be removed from the account. Within this limitation, the trust investment committee could properly be given discretionary authority as to the segregation or sale of such defaulted mortgages.'' After the Trust Committee informs the Board of Directors regarding default of a Mortgage, the Board of Directors makes the decision to purchase the defaulted Mortgage. As was permitted by PTE 90–60, in the past the Bank has always purchased, rather then segregated, the Mortgages.

10. The applicant represents that the Bank's prospective purchases of the Mortgages will continue to be desirable for the Fund. Segregation of a defaulted Mortgage is not a viable alternative because the high costs of segregation are ultimately detrimental to the Fund. These costs would be imposed upon the segregated mortgage assets alone, thereby reducing the amounts ultimately disbursed to the Participating Trusts in the Fund when the segregated accounts are liquidated, after foreclosure. In addition to the foreclosure costs, the Fund would sustain the loss of additional accounting and administrative expenses incurred in the segregation of the Mortgages into ''liquidating accounts'' in the Fund. The likely consequence of segregation is that the final proceeds of the liquidating account available for distribution to the Participating Trusts in the Fund will be significantly less than the value of the assets prior to segregation. In this regard, the applicant represents that the Mortgages will always be purchased, rather than segregated, by the Bank.

11. The applicant also appointed Mr. Hume and Mr. McCabe as the Independent Fiduciaries to monitor prospective purchases of the Mortgages by the Bank.[9] In this regard, Mr. McCabe and Mr. Hume represent that they accept the fiduciary duties and liability set forth in section 404 of the Act regarding fiduciary duties. With respect to the prospective transactions described herein, Mr. McCabe and Mr. Hume will review and determine that a Mortgage is in default, has been properly declared in default by the Bank in accordance with the OCC Regulations, and that the sale of a Mortgage is in the best interest of the Fund. Neither Independent Fiduciary will derive more than 5% of his gross annual income from the Bank for each fiscal year that he serves in an independent fiduciary capacity with respect to the transactions described herein. The applicant represents that it is probable, given the nature and the scope of the Bank's business and the size of the city of Anchorage, that Mr. McCabe and Mr. Hume had a borrower/lender relationship with the Bank in the past five years. However, this relationship was *de minimus* and would not affect their independent judgement as the Independent Fiduciaries.

12. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(1) The sales will be one-time cash transactions;

(2) the Fund will incur no costs in connection with the sales;

(3) the Fund will sell each Mortgage for the greater of fair market value, or its outstanding principal balance plus accrued, but unpaid interest, and penalty charges at the time of the sale;

(4) two Independent Fiduciaries appointed to act on behalf of the Fund in these transactions will review and determine that a Mortgage is in default, has been properly declared to be in default by the Bank in accordance with the Comptroller of Currency regulations, and that the prospective sale of a Mortgage is in the best interest of the Fund;

(5) neither of the Independent Fiduciaries will derive more than 5% of his gross annual income from the Bank for each fiscal year that he serves in an independent fiduciary capacity with respect to the transactions described herein;

(6) the Mortgages will be purchased, rather than segregated, by the Bank;

(7) the conditions of the Prohibited Transaction Exemption 90–60 (PTE 90–60) have been met. PTE 90–60, which expired September 12, 1995, provided retroactive and prospective relief for sales of the Mortgages by the Fund to the Bank; and

(8) the borrowers on the Mortgages will be unrelated third parties.

Notice to Interested Persons

The applicant maintains that parties who may be interested in the pendency of this requested exemption include plan administrators of the plans participating in the Fund. It is represented that within ten (10) days of the date of publication of the notice of proposed exemption (the Notice) in the Federal Register, notification to interested parties will be provided by first class mail or by delivery. Such notification will include a copy of the Notice, 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 parties of their right to comment or

[9] The applicant states that the purpose of having two Independent Fiduciaries is to provide at least one source of independent review, in the event that one of the Independent Fiduciaries is not available at the time when a mortgage must be declared in default by the Bank.

request a hearing within a time period specified in the notification.

For Further Information Contact: Ekaterina A. Uzlyan, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number.)

HSBC Securities, Inc. (HSBC) Located in New York, New York

[Application No. D–10316]

Proposed Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[10]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[11] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[12]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded

[10] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[11] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[12] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. ''Certificate'' means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which HSBC is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. ''Trust'' means an investment pool, the corpus of which is held in trust and consists solely of:

(1) either

(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) ''guaranteed governmental mortgage pool certificates,'' as defined in 29 CFR 2510.3–101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) property which had secured any of the obligations described in subsection B.(1);

(3) undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. ''Underwriter'' means:

(1) HSBC;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with HSBC; or

(3) any member of an underwriting syndicate or selling group of which HSBC or a person described in (2) is a manager or co-manager with respect to the certificates.

D. ''Sponsor'' means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. ''Master Servicer'' means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. ''Servicer'' means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. ''Trustee'' means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. ''Obligor'' means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. ''Restricted Group'' with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. ''Affiliate'' of another person includes:

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

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

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

N. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) such person is not an affiliate of that other person; and

(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. ''Sale'' includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. ''Forward delivery commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. ''Reasonable compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(1) which is secured by equipment which is leased;

(2) which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) the trust holds a security interest in the lease;

(2) the trust holds a security interest in the leased motor vehicle; and

(3) the trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. ''Pooling and Servicing Agreement'' means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

Summary of Facts and Representations

1. HSBC is a New York-based international banking and financial services organization. HSBC is a 100% indirect subsidiary of HSBC Holdings plc (Holdings), a multi-bank holding company registered under the Bank Holding Company Act of 1956, as amended, and the rules and regulations thereunder. Holdings is the largest bank in the world ranked by shareholders' equity. HSBC was incorporated on December 12, 1969, as Carroll, McEntee & Co. (with the current name adopted on April 11, 1994). HSBC provides a wide range of commercial and retail banking and trust services. HSBC [13] also provides various other financial services, including commercial banking, merchant banking, and capital holding markets services.

Together with its affiliates, HSBC is a financial services organization servicing the financial needs of individuals, businesses, governments and financial institutions. As to the capital markets, HSBC engages in securities transactions as both principal and agent and provides underwriting, research and other financial services. HSBC is actively involved in the issuance and trading of corporate debt and other fixed-income securities (including mortgage and asset-backed securities), U.S. government securities and equity securities.

HSBC represents that it has the legal authority to underwrite asset-backed securities. By order dated February 20, 1996, the Board of Governors of the Federal Reserve granted HSBC the power to underwrite and deal in residential mortgage-related and consumer-receivable related securities and all types of debt securities, including securities issued by a trust, partnership, limited liability company or other vehicle secured by or

[13] For purposes of this exemption, ''HSBC'' shall include HSBC and its affiliates, except where the context otherwise requires.

representing interests in debt obligations (such as asset-backed securities). In each case, HSBC's power to so underwrite and deal is subject to a framework of structural and operating limitations set forth in the applicable order, including a condition that it does not derive more than a certain percentage of its gross revenues from such activities.

Trust Assets

2. HSBC seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts;[14] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[15]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mort gages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[16]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. HSBC, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated are to be underwritten by HSBC on a firm commitment basis. In addition, HSBC anticipates that it may privately place certificates on both a firm commitment and an agency basis. HSBC may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. HSBC requests exemptive relief for two types of multi-class certificates: ''strip'' certificates and ''fast-pay/ slow-pay'' certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[17]

''Fast-pay/slow-pay'' certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for

[14] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. HSBC requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, HSBC has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[15] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[16] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

[17] It is the Department's understanding that where a plan invests in REMIC ''residual'' interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(l)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[18]

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a home owner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities: (i) A special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to HSBC, the trust sponsor or the servicer. HSBC represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, the receivables may be "subserviced" by their respective originators and a single entity may "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investor's interest, the servicer ordinarily covenants that this "sold flag" will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing, posting and collection procedures related to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The underwriter will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placement of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to HSBC. In other cases, however, HSBC may originate or service receivables included in a trust, may sponsor a trust and/or may underwrite certificates.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

[18] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[19] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) The unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of a trust that is not a REMIC.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that

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[19] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into ''principal'' and ''interest'' components based on an implicit interest rate.

issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificate holders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer, paying agent or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

24. To date, no forward delivery commitments have been entered into by HSBC in connection with the offering of any certificates, but HSBC may contemplate entering into such commitments. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and HSBC may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

25. It is HSBC's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter. HSBC anticipates that it will make a market in certificates.

Summary

26. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain ''fixed pools'' of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which HSBC seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) HSBC anticipates that it will make a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 [46 FR 7520, January 23, 1981], Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 [48 FR 895, January 7, 1983].

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406(b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406(a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[20]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

HSBC represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[21] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[22] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, HSBC represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. HSBC represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, HSBC represents that to the extent there is a plan asset ''look through'' to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

NOTICE TO INTERESTED PERSONS: The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the Federal Register. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

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

General Information

The attention of interested persons is directed to the following:

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

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

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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 13th day of September, 1996.

Ivan Strasfeld,

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

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BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 96–69; Exemption Application No. D–10189, et al.]

Grant of Individual Exemptions; Westinghouse Savannah River Company/Bechtel Savannah River, Inc. Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of

[20] In referring to different ''types'' of asset-backed securities, the Department means certificates representing interests in trusts containing different ''types'' of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been ''seasoned'' (e.g., originated at least one year prior to the plan's investment in the trust).

[21] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which First Union or any of its affiliates is either (a) the sole underwriter or manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent.

[22] The applicant represents that where a trust sponsor is an affiliate of HSBC, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if HSBC is not a fiduciary with respect to plan assets to be invested in certificates.