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Signed at Washington, D.C. this 12th day of December 1997.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–32873 Filed 12–18–97; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10236, et al.]

Proposed Exemptions; Equitable Life Assurance Society of the United States

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

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

Written Comments and Hearing Requests

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

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–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.

The Equitable Life Assurance Society of the United States (Equitable) Located in New York, New York; Proposed Exemption

[Exemption Application No. D–10236]

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR, part 2570, subpart B (55 FR 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: (1) the leasing of 13,086 square feet of office space and 6,650 square feet of parking space by Equitable Real Estate Investment Management, Inc. (ERE) until June 30, 2002 (the Tower 1 Lease); and (2) the leasing of 5,821 square feet of office space and 3584 square feet of parking space by ERE's subsidiary, Compass Management and Leasing, Inc. (Compass) until August 31, 1999 (the Tower 2 Leases), in office buildings located in Orange County, California, that will be held by the Equitable Separate Account No. 8, also known as the Prime Property Fund (the PPF) and to the 1996 renewal of the original leases provided the following conditions are satisfied: (a) the renewal

of the leases and the terms of the leases were reviewed, negotiated and approved by a qualified independent fiduciary to PPF; (b) the qualified independent fiduciary determined that the terms of the transactions reflect fair market value and are at least as favorable to PPF as the terms would have been in arm's length transactions between unrelated parties; and (c) the independent fiduciary will continue to monitor the leases on behalf of the PPF.

EFFECTIVE DATE OF EXEMPTION: This exemption, if granted, will have an effective date of March 15, 1996. This exemption would expire for the Tower 2 Leases, on August 31, 1999 and for the Tower 1 Lease, on June 30, 2002.

Summary of Facts and Representations

1. Equitable (the Applicant) is a life insurance company organized under the laws of the State of New York and subject to supervision and examination by the Superintendent of Insurance of the State of New York. Equitable is one of the largest insurance companies in the United States. Among the variety of insurance products and services it offers, Equitable provides funding, asset management and other services for several thousand employee benefit plans subject to the provisions of Title I of ERISA.

Equitable maintains several pooled separate accounts (including PPF) in which pension, profit-sharing, and thrift plans participate. Equitable also has several single customer separate accounts and investment management accounts pursuant to which Equitable manages all or a portion of the assets of a number of large plans.

2. The Applicant represents that PPF is an insurance company separate account as defined in section 3(17) of the Act. PPF was established on August 20, 1973. Equitable maintains PPF for the investment of corporate qualified and governmental pension plan assets in real estate and real estate related investments. As of December 31, 1995, PPF held 171 investments in wholly-owned properties or equity interests in real estate partnerships with an aggregate net value of $3.1 billion. In addition, as of December 31, 1995, PPF had eight investments in mortgage loans with an aggregate value of $311 million, or 9.2 percent of PPF's total net asset value. PPF's portfolio is diversified by property type and by geographic region.

As of December 31, 1995, approximately 206 plans participated in PPF (collectively, the Plans). No plan holds more than a 20 percent interest in PPF. The Equitable Retirement Plan for Employees, Managers and Agents (the Plan), a defined benefit plan, participates in PPF. As of December 31, 1995, 2.2 percent of the fair market value of the assets of PPF were represented by the Plan's investment, and the Plan had invested 4.36 percent of its assets in PPF.

3. ERE provides real estate investment advisory services to Equitable and, through its Compass and Compass Retail, Inc. subsidiaries, property management services with respect to certain properties held by Equitable accounts. ERE provides real estate investment advisory services with respect to the real property assets of PPF and the Compass companies manage numerous PPF properties.

The Applicant provides that until 1997, ERE was an indirect wholly-owned subsidiary of Equitable. All of the outstanding stock of ERE was held by Equitable Holding Corporation (EHC), a Delaware corporation wholly-owned by Equitable. However, Equitable has entered into a purchase agreement dated April 19, 1997 whereby EHC transferred all of its interests in ERE to Neptune Real Estate, Inc., a Delaware corporation wholly-owned by Lend Lease Corporation, an Australian corporation. As a result, ERE is no longer an affiliate of Equitable as of the sale closing date on June 10, 1997. However, the Applicant represents that the responsibilities of ERE with respect to Equitable's accounts remain substantially unchanged and that the exemptive relief requested is still required because ERE will continue to be a fiduciary of PPF.

Equitable and ERE have substantial experience in managing real estate investments. Of the more than $69 billion in total assets held by Equitable at year-end 1995, Equitable's general account held $6.5 billion in real estate mortgage loans and approximately $5.3 billion in equity investments in real property and interests in real estate joint ventures. Additionally, more than $11 billion of real property investments were held in Equitable's real estate separate accounts.

4. Equitable represents that the first of the transactions subject to this proposed exemption originated in 1985, when Equitable, on behalf of PPF, entered into a joint venture agreement with Brinderson Towers I (Brinderson), for the purpose of developing a parcel of real estate in Orange County, California. PPF provided construction financing and Brinderson, an entity unrelated to Equitable, was the developer and managing partner of the joint venture, Brin-Mar I, L.P., succeeded by Brin-Mar II, L.P. on December 24, 1991 (Brin-Mar).[1] One of the two buildings in the Newport Gateway complex in Orange County was completed in 1987 and is a 14 story office tower with a total of 286,132 square feet of rentable space (Tower 1). On August 24, 1988, after completion of Tower 1, Banque Paribas[2] provided permanent financing to fully repay the PPF construction loan for approximately $64 million.

In July, 1987, Brin-Mar leased office space in Tower 1 to ERE as its regional headquarters. The terms of the 10 year lease were negotiated between ERE and Brinderson, acting as managing partner on behalf of Brin-Mar, and reviewed by Cushman and Wakefield, to assure that the terms reflected then-market rates. The lease commenced on July 1, 1987 and terminated on June 30, 1997 and includes subleases by ERE for additional space. The Tower 1 Lease now covers a total of 13,086 square feet of office space at a monthly rental rate of $1.88 per square feet. The Applicant represents that the original ERE lease did not constitute a prohibited transaction because of Brin-Mar's status as a REOC.

5. The Applicant provides that the second transaction subject to the proposed exemption arose out of the development of a building adjacent to Tower 1 (Tower 2). On October 18, 1988, Equitable (on behalf of PPF) and Brinderson began development of Tower 2 under a second amendment to the Brin-Mar joint venture agreement. PPF provided the joint venture with construction financing in the amount of $61 million. However, deterioration of the rental market in Orange County led the parties to restructure ownership of Towers 1 and 2 on December 24, 1991.

[1] The Applicant represents that Brin-Mar is a real estate operating company (REOC) within the meaning of the Department's "plan asset" regulation 20 CFR 2510.3–101(e) and that the assets of the partnership are not plan assets for purposes of the prohibited transaction provisions of the Act and the Code. Further, as an entity predating the plan asset regulation, Brin-Mar achieved REOC status as of January 1, 1987. The Department expresses no opinion herein as to whether Brin-Mar is a REOC or whether the partnership's assets constitute plan assets.

[2] At the time of the transaction, Banque Paribas was unrelated to Equitable. As a result of a change in Equitable's structure in 1992, Banque Paribas is now related to Equitable but with respect to Plans invested in PPF, it is not a party in interest as defined under section 3(14) of the Act by virtue of any relationship to Equitable. Specifically, AXA Mutual Companies currently holds a 62.1 percent interest in Finaxa, an entity in which Banque Paribas holds a 26.5 percent interest. Finaxa owns 60 percent of Midi-Participations, which in turn owns 42.3 percent of AXA SA. AXA SA owns 60.46 percent of Equitable Companies, Inc., which in turn holds 100 percent ownership of Equitable. Equitable represents that Banque Paribas would be deemed to have, at most, a 4 percent interest in Equitable and that this *de minimis* interest in no way affected the terms of any of the transactions described in the Equitable application.

Equitable, on behalf of PPF, foreclosed on Tower 2 and took title to Tower 2 in fee simple absolute. As a result, PPF holds 100 percent of the ownership interest in Tower 2. With the improvement of the economy in Orange County, Tower 2 is now 98 percent leased, and is valued at approximately $38.5 million.

In 1992, Compass began leasing office space in Tower 2. The applicant states that the total square footage now occupied by Compass through the Tower 2 Leases is 5821 square feet of office space (including 1,500 square feet of space used as the Compass property management office) and 3584 square feet of parking space. The applicant represents that the original Tower 2 Leases complied with the requirements of Part III of PTE 84–14 which permits a qualified professional asset manager (QPAM) to lease not in excess of the greater of 7500 square feet or 1 percent of the rentable space of the office building in which the investment fund managed by the QPAM (or an affiliate) has the investment.[3]

Furthermore, the Applicant represents that in 1992, when the original Tower 2 Leases were entered, PPF had two different investments in the two buildings. First, PPF, through Equitable, owned 100 percent of Tower 2. Second, PPF held a limited partnership interest in Brin-Mar II, L.P., the successor to Brin-Mar the original joint venture, and the owner of Tower 1. The Applicant states that because of this difference in ownership, the leased spaces in Tower 1 and Tower 2 were treated separately for the purposes of determining compliance with the space limitations in Part III of PTE 84–14. The original Tower 2 Leases expired but continued on a month-to-month basis while the parties negotiated new lease terms.

6. Compass manages Towers 1 and 2 pursuant to PTE 91–8, granted to Equitable by the Department on January 14, 1991 (56 Fed. Reg. 1411). PTE 91–8 permits the provision of property management, leasing and other services by Equitable affiliates with respect to properties held by Equitable separate accounts in which plans invest. Such provision of services is fully disclosed to plans participating in the separate accounts and is approved by plan fiduciaries independent of Equitable. Management fees and leasing commissions payable to Compass are also reviewed and approved by an independent fiduciary and may not exceed those fees charged by comparable firms for similar services. The applicant states that, aside from the lease agreements provided to the Department and described in the exemption application and the Independent Fiduciary's reports, and the property management agreement discussed above, there are no other separate agreements between the parties governing the leased properties.

7. The Applicant represents that with respect to Tower 1, Banque Paribas insisted on the December 24, 1991 restructuring of Brin-Mar so that Equitable, on behalf of PPF, would obtain a 70 percent partnership interest. As a result, Equitable became the managing partner of Brin-Mar. On September 1, 1995, Banque Paribas sold the note on Tower 1 to Equitable, on PPF's behalf, for $38.5 million. Equitable had first offered the opportunity to purchase the note to Brin-Mar but Brinderson refused. Thus, as of September 1, 1995, PPF held a 70 percent interest in the Brin-Mar partnership owning Tower 1, as well as a $65 million (par value) note secured by Tower 1 which was, at that time, technically in default. Equitable determined that it would be in PPF's best interests to foreclose on Tower 1 because the Brin-Mar partnership had negative equity in Tower 1 (the building was worth $41 million but was subject to a $65 million mortgage). In Equitable's view, any actions taken to revive the partnership would only have the net effect of providing an additional return to Brinderson without any additional benefit to PPF. The foreclosure would result in the termination of the Brin-Mar partnership and consolidation of ownership in PPF. It would also clear title to Tower 1 because the outstanding note encumbered title to Tower 1.

8. The applicant states that on March 15, 1996, Equitable, on behalf of PPF, foreclosed on the note secured by Tower 1. As a result, Tower 1 is now held 100 percent by PPF. Equitable states that the most immediate effect of a Tower 1 foreclosure was to terminate the status of Brin-Mar as a REOC because the foreclosure eliminated all of Brin-Mar's interest in Tower 1. A 100 percent ownership interest in Tower 1 was vested directly in Equitable, on behalf of PPF. The continuing Towers 1 and 2 Lease arrangements involving ERE and Compass were then subject to the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions of section 4975 of the Code.

Regulation 29 CFR 2510.3–101(h)(iii) provides that, notwithstanding any other provision of the plan asset regulation, assets held in an insurance company separate account (such as PPF) in which plans invest constitute plan assets. Tower 1 became a plan asset upon foreclosure and the Tower 1 Lease to ERE then constituted a lease between a plan and a party in interest prohibited by section 406(a)(1)(A) of the Act. Furthermore, because ERE is a fiduciary with respect to PPF and an affiliate of Equitable, the Tower 1 Lease may be a violation of sections 406(b)(1) and (b)(2). Thus, March 15, 1996 is the requested effective date of this proposed exemption for the Tower 1 Lease.

9. The Tower 2 Leases with Compass, an affiliate of ERE, were also affected by the foreclosure on Tower 1. Tower 1 and Tower 2 are now both owned by PPF. The Applicant represents that, while before the foreclosure it had relied upon Part III(a) of PTE 84–14 for relief from the lease of Tower 2 to Compass, following foreclosure the aggregate space leased by ERE and Compass in both Towers 1 and 2 exceeded the limitations in Part III of PTE 84–14. The Applicant interprets Part III(a) of PTE 84–14 to provide that the amount of leased space in different buildings in an integrated office park or commercial center in which the investment fund has the investment shall be aggregated for purposes of determining compliance with the space limitations in Part III. Therefore, the Applicant is also seeking relief for the Tower 2 leasing arrangements as of March 15, 1996.

10. Robert A. Alleborn Properties, Inc. (Alleborn) will act as Independent Fiduciary for PPF with regard to the transactions that are subject to the requested exemptions. Alleborn currently manages more than 10 million square feet of commercial, office, industrial and mixed-use property in the western United States. Alleborn is experienced in and familiar with the real estate market in Southern California. Alleborn is also directly familiar with the Newport Gateway Towers through the provision of consulting services to Banque Paribas during the bank's investment in these projects. The Applicant states that Alleborn currently receives no fee income from Equitable, and anticipates that in the future it will not receive more than 3 percent of its annual income from Equitable and its affiliates, including fees for its services as independent fiduciary.

The responsibilities of Alleborn with respect to the transactions are set forth in a letter agreement between Alleborn and Equitable signed on March 6, 1996 (the Agreement). Under the Agreement, Alleborn assumed responsibility as

[3] The Applicant represents that Equitable is a QPAM as that term is defined in PTE 84–14. The Department expresses no opinion herein as to whether Equitable is a QPAM or whether the original Tower 2 Leases complied with the requirements of Part III of PTE 84–14.

independent fiduciary on behalf of PPF to: review the existing ERE and Compass leases; negotiate the ERE and Compass lease extensions, renewals or modifications and prepare for delivery to Equitable, one or more reports regarding these activities; and annually monitor the compliance of ERE and Compass with the terms of the leases.

The Agreement provides that Alleborn's fees may only be changed by written agreement among Alleborn and a majority in interest of the plans participating in PPF. Alleborn may resign as independent fiduciary at any time on no less than 90 days prior written notice to Equitable and will be deemed to have resigned in the event that it no longer meets the requirements for an independent fiduciary. In no event shall Equitable or any affiliate have the authority to terminate Alleborn's service as independent fiduciary. Alleborn may be removed only by a vote of a majority in interest of the plans participating in PPF.

Specifically, the Agreement provides that Alleborn has been authorized by Equitable to determine on behalf of PPF whether it was in the best interests of PPF to continue the Tower 1 and Tower 2 Leases after the foreclosure date of March 15, 1996 under the existing terms. This entailed a determination that the existing leases provides PPF with a market-level return or better. Further, Alleborn was authorized to represent PPF in negotiations regarding the extension, renewal or modification of the Tower 1 and Tower 2 Leases. Alleborn has the authority to determine whether and on what terms PPF will continue the transactions. Upon completion of the negotiations, Alleborn was required to determine whether the lease terms as negotiated were in the best interests of PPF and to submit a report summarizing Alleborn's activities.

Additionally, Alleborn will continue to monitor both the Tower 1 and Tower 2 Leases to assure compliance with the lease terms. Compliance with lease terms will be reviewed at least annually either directly by Alleborn or by an independent contractor reporting to Alleborn. Based on this review, Alleborn will have the authority to take any steps it deems necessary to assure lease compliance.

On March 12, 1996, Alleborn submitted an interim report to Equitable that stated that Alleborn had evaluated the Towers 1 and 2 current leases and preliminarily concluded that the leases provided PPF with above market returns. Alleborn submitted a more detailed review of the current lease terms in the Towers 1 and 2 Leases, and informed Equitable of its conclusion in the May 16, 1996 Independent Fiduciary Review and Opinion of Existing Leases (Review) [4] that the leases in both Tower 1 and Tower 2 provide PPF with above market returns and it was in the best interests of PPF to continue the existing leases pending renegotiation and extension of the leasing relationships. The Review, submitted by the Applicant, compared eight office complexes that would compete and compare favorably with Towers 1 and 2 for tenants and were used in comparing the existing tenancy for rate and term leases.

Alleborn has completed the renegotiation process for the leases to Compass in Tower 2. The application for exemption contained copies of the executed leases and the Independent Fiduciary's report dated September 2, 1996 (Report 1) approving the leases between Equitable and Compass for a three year term commencing September 1, 1996 and terminating August 31, 1999. Report 1 states that the Compass leases are market rates for comparable projects for Tower 1 and Tower 2 and concludes that it is in the best interests of PPF to consummate the Compass leases.

Alleborn has also completed the renegotiation process for the lease to ERE in Tower 1. The application for exemption contained the Independent Fiduciary's report dated October 1, 1996 (Report 2) approving the new lease term between Equitable and ERE for 69 months, commencing October 1, 1996 and terminating June 30, 2002. Report 2 states that concurrent with the execution of a new lease, a Termination and Surrender Agreement for the original lease, dated April 1, 1987, was executed by ERE. An unrelated tenant in Tower 1 has requested a lease extension and at the same time desires to relinquish 231 square feet of space. Effective January 1, 1997, ERE will incorporate the additional 231 square feet into their base lease, allowing their total occupancy for the remaining months on the lease to be 13,086 square feet. Additionally, Alleborn required ERE to pay in their new lease, the unamortized portion of the above market rate that remained in their old lease dated April 1, 1987. This allowed Tower 1 to recapture the potential of lost income between the new lease and the old lease. Report 2 concludes that the lease is a market rate lease comparable to buildings described in the Review and that it is in the best interests of PPF to enter the renegotiated lease.

11. In summary, the applicant represents that the requested exemption will satisfy the criteria of section 408(a) of the Act for the following reasons: (a) the Towers 1 and 2 Leases and the renewals of the original leases are for a limited term; (b) the terms of the Tower 1 and 2 Leases as of March 15, 1996, and the renewal of the leases have been reviewed, negotiated and approved by Alleborn, a qualified independent fiduciary to PPF, who has determined that the terms of the transactions reflect fair market value and are at least as favorable to PPF as the terms would have been in arm's length transactions between unrelated parties; and (c) Alleborn will continue to monitor the leases on behalf of PPF.

For Further Information Contact: Ms. Wendy McColough of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

PNC Capital Markets, Inc. (PNC) Located in Pittsburgh, Pennsylvania; Proposed Exemption

[Application No. D–10521]

I. Transactions

A. Effective October 21, 1997, 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

[4] In a November 17, 1997 letter to the Department, Alleborn stated that between the dates of March 15, 1996 and May 16, 1996, there were no changes to the circumstances surrounding the transactions subject to the requested exemptions that in any way adversely affected Alleborn's May 16, 1996 conclusion.

with respect to the assets of that Excluded Plan.[5]

B. Effective October 21, 1997, 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.[6] 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. Effective October 21, 1997, 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.[7]

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. Effective October 21, 1997, 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 from a rating agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

(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 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.

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B(1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/

[5] 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).

[6] 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.

[7] 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.

or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificateholders or by a rating agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans;

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

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) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, 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 PNC or any of its affiliates 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)(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); and/or

(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); and/or

(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); and/or

(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); and/or

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

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

(b) cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)–(g) of subsection II.A.(7) are met and/or;

(ii) are credited to a capitalized interest account (as defined in section III.X.); and

(iii) are held in the trust for a period ending no later than the first distribution date to certificate holders occurring after the end of the pre-funding period.

For purposes of this clause (c) of subsection III.B.(3), the term *permitted investments* means investments which are either: (i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and servicing agreement; and are permitted by the rating agency.

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.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 described in clauses (a) through (f) of subsection III.B.(1) 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 a rating agency 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) PNC;

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

(3) any member of an underwriting syndicate or selling group of which PNC 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 owns or 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.

W. *Rating Agency* means Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D & P) or Fitch Investors Service, L.P. (Fitch);

X. *Capitalized Interest Account* means a trust account: (i) Which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. *Closing Date* means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. Pre-Funding Account means a trust account: (i) which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. Pre-Funding Limit means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. Pre-Funding Period means the period commencing on the closing date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. PNC means PNC Capital Markets, Inc. and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term ''Underwriter Exemption'' as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at 35932.

Summary of Facts and Representations

1. PNC is an indirect, wholly-owned, separately capitalized investment banking and registered broker-dealer subsidiary of PNC Bank Corp. (the Corporation). As of September 30, 1997, PNC's capitalization was approximately $54.9 million. The Corporation is a diversified financial services company incorporated under the laws of the Commonwealth of Pennsylvania and a multi-bank holding company registered under the Bank Holding Act of 1956, as amended. As of September 30, 1997, the Corporation's consolidated assets were approximately $71.8 billion. The principal executive offices of the Corporation are located in Pittsburgh, Pennsylvania. As of September 30, 1997, the Corporation had indirectly-held subsidiary banks located in seven states. In addition, indirectly-held non-bank subsidiaries of the Corporation offer a wide range of insurance, securities brokerage, investment banking, venture capital investment, mortgage banking and consumer finance products and services.

PNC Mortgage Corp. of America (PNC Mortgage), an Ohio corporation having its principal place of business in Vernon Hills, Illinois, is one of the largest mortgage banking originators in the United States, with offices in all 50 states.

PNC Bank, National Association (the Bank), an indirect, wholly-owned subsidiary of the Corporation, is a national banking association engaged in banking and related activities and is the largest bank in the Corporation's banking group. The Bank is the sole shareholder of PNC Mortgage. As of September 30, 1997, the Bank had total assets of approximately $57.5 billion. The principal executive offices of the Bank are located in Pittsburgh, Pennsylvania. Six other commercial banks and one federal savings bank, located in six states, had aggregated assets slightly exceeding $13.2 billion as of September 30, 1997.

PNC was incorporated in 1984 as a Pennsylvania corporation. PNC maintains its principal place of business in Pittsburgh, Pennsylvania and has branch offices in Pennsylvania, New Jersey, Ohio, and Kentucky.

In 1987, PNC received Federal Reserve Board authorization to underwrite and deal in commercial paper, municipal revenue bonds, residential mortgage-related securities and consumer receivable-related securities. This order is currently subject to the condition that PNC does not derive more than 25% of its total gross revenues from such activities. In addition, PNC's affiliates have the power to sell interests in their own assets in the form of asset-backed securities.

PNC is a member of the National Association of Securities Dealers and the Securities Investor Protection Corporation and underwrites and deals in corporate debt securities, commercial paper, municipal securities, high-yield securities and asset-backed securities, provides private placement and corporate finance advisory services, including merger and acquisition advisory services, publishes research on a wide range of securities and issuers, and engages in the syndication and arranging and trading of bank loans.

PNC has significant experience in asset securitizations. PNC's participation in securitization transactions includes the underwriting of public offerings and serving as private placement agent or commercial paper conduit agent/dealer for transactions backed by retail auto receivables and bank and retail credit card receivables.

Trust Assets

2. PNC 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;[8] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed

[8] 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-l are met. PNC requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, PNC has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

governmental mortgage pool certificate investment trusts.[9]

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.[10]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee.[11] The sponsor or servicer of a trust selects assets to be included in the trust.[12] 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.[13]

Typically, 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. Typically, all receivables to be held in the trust are transferred as of the closing date, but in some transactions, as described more fully below, a limited percentage of the receivables to be held in the trust may be transferred during a limited period of time following the closing date, through the use of a pre-funding account.

PNC, 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 PNC on a firm commitment basis. In addition, PNC anticipates that it may privately place certificates on both a firm commitment and an agency basis. PNC 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. PNC 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.[14]

''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

[9] 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.

[10] 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).

[11] The Department is of the view that the term ''trust'' includes a trust: (a) the assets of which, although all specifically identified by the sponsor or the originator as of the closing date, are not all transferred to the trust on the closing date for administrative or other reasons but will be transferred to the trust shortly after the closing date, or (b) with respect to which certificates are not purchased by plans until after the end of the pre-funding period at which time all receivables are contained in the trust.

[12] It is the Department's view that the definition of ''trust'' contained in III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

[13] It is the view of the Department that section III.B.(4) includes within the definition of the term ''trust'' rights under any yield supplement or similar arrangement which obligates the sponsor or master servicer, or another party specified in the relevant pooling and servicing agreement, to supplement the interest rates otherwise payable on the obligations described in section III.B.(1), in accordance with the terms of a yield supplement arrangement described in the pooling and servicing agreement, provided that such arrangements do not involve swap agreement or other notional principal contracts.

[14] 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.

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 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.[15]

6. The trust will 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.

In some cases the trust will be maintained as a Financial Asset Securitization Investment Trust (''FASIT''), a statutory entity created by the Small Business Job Protection Act of 1996, adding sections 860H, 860J, 860K and 860L to the Code. In general, a FASIT is designed to facilitate the securitization of debt obligations, such as credit card receivables, home equity loans, and auto loans, and thus, allows certain features such as revolving pools of assets, trusts containing unsecured receivables and certain hedging types of investments. A FASIT is not a taxable entity and debt instruments issued by such trusts, which might otherwise be recharacterized as equity, will be treated as debt in the hands of the holder for tax purposes. However, a trust which is the subject of the proposed exemption will be maintained as a FASIT only where the assets held by the FASIT will be comprised of secured debt; revolving pools of assets or hedging investments will not be allowed unless specifically authorized by the exemption, if granted, so that a trust maintained as a FASIT will be maintained as an essentially passive entity.

Trust Structure with Pre-Funding Account

Pre-Funding Accounts

7. As described briefly above, some transactions may be structured using a pre-funding account or a capitalized interest account. If pre-funding is used, cash sufficient to purchase the receivables to be transferred after the closing date will be transferred to the trust by the sponsor or originator on the closing date. During the pre-funding period, such cash and temporary investments, if any, made therewith will be held in a pre-funding account and used to purchase the additional receivables, the characteristics of which will be substantially similar to the characteristics of the receivables transferred to the trust on the closing date. The pre-funding period for any trust will be defined as the period beginning on the closing date and ending on the earliest to occur of (i) the date on which the amount on deposit in the pre-funding account is less than a specified dollar amount, (ii) the date on which an event of default occurs under the related pooling and servicing agreement or (iii) the date which is the later of three months or ninety days after the closing date. Certain specificity and monitoring requirements described below will be met and will be disclosed in the pooling and servicing agreement and/or the prospectus or private placement memorandum.

For transactions involving a trust using pre-funding, on the closing date, a portion of the offering proceeds will be allocated to the pre-funding account generally in an amount equal to the excess of (i) the principal amount of certificates being issued over (ii) the principal balance of the receivables being transferred to the trust on such closing date. In certain transactions, the aggregate principal balance of the receivables intended to be transferred to the trust may be larger than the total principal balance of the certificates being issued. In these cases, the cash deposited in the pre-funding account will equal the excess of the principal balance of the total receivables intended to be transferred to the trust over the principal balance of the receivables being transferred on the closing date.

On the closing date, the sponsor transfers the assets to the trust in exchange for the certificates. The certificates are then sold to PNC for cash or to the certificateholders directly if the certificates are sold through PNC as a placement agent. The cash received by the sponsor from the certificateholders (or PNC) from the sale of the certificates issued by the trust in excess of the purchase price for the receivables and certain other trust expenses such as underwriting or placement agent fees and legal and accounting fees, constitutes the cash to be deposited in the pre-funding account. Such funds are either held in the trust and accounted for separately, or are held in a sub-trust. In either event, these funds are not part of assets of the sponsor.

Generally, the receivables are transferred at par value, unless the interest rate payable on the receivables is not sufficient to service both the interest rates to be paid on the certificates and the transaction fees (i.e., servicing fees, trustee fees and fees to credit support providers). In such cases, the receivables are sold to the trust at a discount, based on an objective, written, mechanical formula which is set forth in the pooling and servicing agreement and agreed upon in advance between the sponsor, the rating agency and any credit support provider or other insurer. The proceeds payable to the sponsor from the sale of the receivables transferred to the trust may also be reduced to the extent they are used to pay transaction costs (which typically include underwriting or placement agent fees and legal and accounting fees). In addition, in certain cases, the sponsor may be required by the rating agencies or credit support providers to set up trust reserve accounts to protect the certificateholders against credit losses.

The pre-funding account of any trust will be limited so that the percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered (the pre-funding limit) will not exceed 25%. The pre-funding limit (which may be expressed as a ratio or as a stated percentage or a combination thereof) will be specified in the prospectus or the private placement memorandum.

Any amounts paid out of the pre-funding account are used solely to purchase receivables and to support the certificate pass-through rate (as explained below). Amounts used to support the pass-through rate are payable only from investment earnings and are not payable from principal. However, in the event that, after all of

[15] 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.

the requisite receivables have been transferred into the trust, any funds remain in the pre-funding account, such funds will be paid to the certificateholders as principal prepayments. Upon termination of the trust, if no receivables remain in the trust and all amounts payable to certificateholders have been distributed, any amounts remaining in the trust would be returned to the sponsor.

A dramatic change in interest rates on the receivables held in a trust using a pre-funding account would be handled as follows. If the receivables (other than those with adjustable or variable rates) had already been originated prior to the closing date, no action would be required as the fluctuations in the market interest rates would not affect the receivables transferred to the trust after the closing date. In contrast, if interest rates fall after the closing date, loans originated after the closing date will tend to be originated at lower rates, with the possible result that the receivables will not support the certificate pass-through rate. In a situation where interest rates drop dramatically and the sponsor is unable to provide sufficient receivables at the requisite interest rates, the pool of receivables would be closed. In this latter event, under the terms of the pooling and servicing agreement, the certificateholders would receive a repayment of principal from the unused cash held in the pre-funding account. In transactions where the certificate pass-through rates are variable or adjustable, the effects of market interest rate fluctuations are mitigated. In no event will fluctuations in interest rates payable on the receivable affect the pass-through rate for fixed rate certificates.

The cash deposited into the trust and allocated to the pre-funding account is invested in certain permitted investments (see below), which may be commingled with other accounts of the trust. The allocation of investment earnings to each trust account is made periodically as earned in proportion to each account's allocable share of the investment returns. As pre-funding account investment earnings are required to be used to support (to the extent authorized in the particular transaction) the pass-through amounts payable to the certificateholders with respect to a periodic distribution date, the trustee is necessarily required to make periodic, separate allocations of the trust's earning to each trust account, thus ensuring that all allocable commingled investment earnings are properly credited to the pre-funding account on a timely basis.

The Capitalized Interest Account

8. In certain transactions where a pre-funding account is used, the sponsor and/or originator may also transfer to the trust additional cash on the closing date, which is deposited in a capitalized interest account and used during the pre-funding period to compensate the certificateholders for any shortfall between the investment earnings on the pre-funding account and the pass-through interest rate payable under the certificates.

The capitalized interest account is needed in certain transactions since the certificates are supported by the receivables and the earnings on the pre-funding account, and it is unlikely that the investment earnings on the pre-funding account will equal the interest rates on the certificates (although such investment earnings will be available to pay interest on the certificates). The capitalized interest account funds are paid out periodically to the certificateholders as needed on distribution dates to support the pass-through rate. In addition, a portion of such funds may be returned to the sponsor from time to time as the receivables are transferred into the trust and the need for the capitalized interest account diminishes. Any amounts held in the capitalized interest account generally will be returned to the sponsor and/or originator either at the end of the pre-funding period or periodically as receivables are transferred and the proportionate amount of funds in the capitalized interest account can be reduced. Generally, the capitalized interest account terminates no later than the end of the pre-funding period. However, there may be some cases where the capitalized interest account remains open until the first date distributions are made to certificateholders following the end of the pre-funding period.

In other transactions, a capitalized interest account is not necessary because the interest paid on the receivables exceeds the interest payable on the certificates at the applicable pass-through rate and the fees of the trust. Such excess is sufficient to make up any shortfall resulting from the pre-funding account earning less than the certificate pass-through rate. In certain of these transactions, this occurs because the aggregate principal amount of receivables exceeds the aggregate principal amount of certificates.

Pre-Funding Account and Capitalized Interest Account Payments and Investments

9. Pending the acquisition of additional receivables during the pre-funding period, it is expected that amounts in the pre-funding account and the capitalized interest account will be invested in certain permitted investments or will be held uninvested. Pursuant to the pooling and servicing agreement, all permitted investments must mature prior to the date the actual funds are needed. The permitted types of investments in the pre-funding account and capitalized interest account are investments which are either: (i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency, as set forth in the pooling and servicing agreement and as required by the rating agencies. The credit grade quality of the permitted investments is generally no lower than that of the certificates. The types of permitted investments will be described in the pooling and servicing agreement.

The ordering of interest payments to be made from the pre-funding and capitalized interest accounts is pre-established and set forth in the pooling and servicing agreement. The only principal payments which will be made from the pre-funding account are those made to acquire the receivables during the pre-funding period and those distributed to the certificateholders in the event that the entire amount in the pre-funding account is not used to acquire receivables. The only principal payments which will be made from the capitalized interest account are those made to certificateholders if necessary to support the certificate pass-through rate or those made to the sponsor either periodically as they are no longer needed or at the end of the pre-funding period when the capitalized interest account is no longer necessary.

The Characteristics of the Receivables Transferred During the Pre-Funding Period

10. In order to ensure that there is sufficient specificity as to the representations and warranties of the sponsor regarding the characteristics of the receivables to be transferred after the closing date:

(i) All such receivables will meet the same terms and conditions for eligibility

as those of the original receivables used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. However, the terms and conditions for determining the eligibility of a receivable may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by a rating agency;

(ii) The transfer to the trust of the receivables acquired during the pre-funding period will not result in the certificates receiving a lower credit rating from the rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(iii) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(iv) The trustee of the trust (or any agency with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to receivables that were acquired as of the closing date, the characteristics of the additional obligations subsequently acquired will either be monitored by a credit support provider or other insurance provider which is independent of the sponsor or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, PNC and the trustee) stating whether or not the characteristics of the additional obligations acquired after the closing date conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date.

Each prospectus, private placement memorandum and/or pooling and servicing agreement will set forth the terms and conditions for eligibility of the receivables to be included in the trust as of the related closing date, as well as those to be acquired during the pre-funding period, which terms and conditions will have been agreed to by the rating agencies which are rating the applicable certificates as of the closing date. Also included among these conditions is the requirement that the trustee be given prior notice of the receivables to be transferred, along with such information concerning those receivables as may be requested. Each prospectus or private placement memorandum will describe the amount to be deposited in, and the mechanics of, the pre-funding account and will describe the pre-funding period for the trust.

Parties to Transactions

11. 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 businesses, 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.

12. 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.

13. 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 PNC, the trust sponsor, the servicer or any other member of the Restricted Group (as defined in section III.L.). PNC 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 or out of the trust assets. 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.

14. 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 PNC. In other cases, however, affiliates of PNC may originate or service receivables included in a trust or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

15. 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.

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.

16. 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.[16] 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.

17. 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.

18. 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.

19. 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.

20. 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

[16] 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.

certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

21. 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

22. The certificates will have received one of the three highest ratings available from a rating agency. 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

23. 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 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 certificateholders' 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

24. 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, including the terms and conditions for eligibility of any receivables transferred during the pre-funding period 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; a description of permitted investments for any pre-funding account or capitalized interest account; 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.

(k) A statement as to the duration of any pre-funding period and the pre-funding limit for the trust.

25. 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.

26. 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 and copies of the statements sent to certificateholders. 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.

27. 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 (including those purchased by the trust from any pre-funding account), 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 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

28. To date, no forward delivery commitments have been entered into by PNC in connection with the offering of any certificates, but PNC 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 PNC may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

29. It is PNC's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter, and it is PNC's intention to make a market for any certificates for which it is lead or co-managing underwriter, although it is under no obligation to do so. At times PNC will facilitate sales by investors who purchase certificates if PNC has acted as agent or principal in the original private placement of the certificates and if such investors request PNC's assistance.

Retroactive Relief

30. PNC represents that it has not engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would be granted prior to the date of their application. However, PNC requests the exemptive relief granted to be retroactive to October 21, 1997, the date of their application, and would like to rely on such retroactive relief for transactions entered into prior to the date exemptive relief may be granted.

Summary

31. 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) In the case where a pre-funding account is used, the characteristics of the receivables to be transferred to the trust during the pre-funding period will be substantially similar to the characteristics of those transferred to the trust on the closing date, thereby giving the sponsor and/or originator little discretion over the selection process, and compliance with this requirement will be assured by the specificity of the characteristics and the monitoring mechanisms contemplated under the

proposed exemption. In addition, certain cash accounts will be established to support the certificate pass-through rate and such cash accounts will be invested in short-term, conservative investments; the pre-funding period will be of a reasonably short duration; a pre-funding limit will be imposed; and any Internal Revenue Service requirements with respect to pre-funding intended to preserve the passive income character of the trust will be met. The fiduciary of the plans making the decision to invest in certificates is thus fully apprised of the nature of the receivables which will be held in the trust and has sufficient information to make a prudent investment decision;

(c) Certificates in which plans invest will have been rated in one of the three highest rating categories by a rating agency. Credit support will be obtained to the extent necessary to attain the desired rating;

(d) All transactions for which PNC 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;

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

(f) PNC anticipates that it will make a secondary market in certificates (although it is under no obligation to do so).

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.)

Jeffrey R. Light, M.D., Inc. Profit Sharing Plan (the Plan) Located in Garden Grove, CA; Proposed Exemption

[Application No. D–10530]

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 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 sale (the Sale) by the individual, self-directed account of Jeffrey R. Light, M.D. within the Plan (the Account) of two parcels of real property (the Property) to Jeffrey R. Light, M.D. (Dr. Light), a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) The terms and conditions of the transaction are no less favorable to the Plan than those which the Plan would receive in an arm's-length transaction with an unrelated party;

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

(C) The Plan does not incur any expenses from the Sale; and

(D) The Plan receives as consideration from the Sale no less than the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser.

Summary of Facts and Representations

1. Jeffrey R. Light, M.D., Inc., located in Garden Grove, California, a California corporation for the practice of medicine, is sponsor of the Plan. Dr. Light is a medical physician and a pathologist, whose practice involves tissue analysis, sample reviews, and providing opinions regarding such analysis and review.

The Plan is a defined contribution plan that is intended to qualify under section 401(a) of the Code. The applicant represents that on December 31, 1996, the Plan had 26 participants and total assets of $523,077, and of the total assets $404,582 was in Dr. Light's Account. The applicant represents that the Plan permits its participants to self-direct their respective accounts into various investments. Dr. Light is represented by the applicant to be the fiduciary and trustee with respect to the Plan.

2. The Property consists of two lots of unimproved land. One of the lots is located at 370 Ranch Road in Mammoth Lakes, California, consists of 0.38 of an acre (16,553 square feet), and is designated as Ranch at Snowcreek Lot #14 (Lot #14). The second lot is located at Majestic Pines Drive in Mammoth, California, consists of 0.2 of an acre (8,750 square feet), and is designated as Mammoth Vista III Lot #34 (Lot #34). The applicant represents that Lot #14 was purchased on January 29, 1996, for the sum of $126,892 and Lot #34 was purchased on January 7, 1991, for the sum of $127,639.55.

The applicant also represents that the Property was purchased only for investment purposes and it has been held in the Account since the respective dates of purchase with no improvements made on or to the Property. Also, the applicant represents that the Property has not been used or leased by anyone since being acquired by the Account.

The Property was appraised on October 3, 1997, by Mitch Dunshee, MAI, AG002575 and Cheryl Bretton, Appraiser, AG023954, The Dunshee Appraisal Group, located in Frensno, California; and Lot #14 was determined to have a fair market value of $130,000 and Lot #34 was determined to have a fair market value of $120,000. Also the appraisal of the Property represented that the Property is zoned residential and located in an earthquake zone that is designated Zone 1: High Risk Damage; Reference: ISO Earthquake Zones, 1981.

3. Dr. Light proposes to purchase the Property from the Account for cash with no expenses incurred by the Plan in a one-time transaction, paying to the Account the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale.

Dr. Light is prompted to take this action by Mr. Douglas B. George, Financial Counsel, Newport Beach, California, whose services were recently employed by Dr. Light with respect to the Plan's finances. The applicant represents the need for the Account to diversify its investments, noting that the Property represents more than 62 percent of the total value of the assets in the Account. Also, Mr. George expressed concern about the lack of investment diversity in the Account and the location of the Property being in the high risk earthquake zone of California.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because (a) the Sale is a one-time transaction for cash; (b) the Plan and the Account will receive the fair market value of the Property as determined by a qualified, independent appraiser on the date of the transaction; (c) the transaction will enable the Account to avoid any risk associated with the continued holding of the Property and enable the Dr. Light to direct Account assets to active and safer investments; (d) neither the Plan or the Account will incur any expenses from the transaction; and (e) other than Dr. Light, no other participant of the Plan will be affected by the transaction, and

he desires that the transaction be consummated.

Notice to Interested Persons

Because the only Plan assets involved in the proposed transaction are those in the Account of Dr. Light and he is the only participant affected by the proposed transaction, there is no need to distribute the notice of the proposed transaction to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver 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 that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of December 1997.

Ivan Strasfeld,

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

[FR Doc. 97–33179 Filed 12–18–97; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Nos. D–10461, D–10462 and D–10463]

Notice of Proposed Amendment to Prohibited Transaction Exemption (PTE) 93–8 Involving the Fortunoff Pension Plans (the Plans) Located in Westbury, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Notice of proposed amendment to PTE 93–8.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption which, if granted, would amend PTE 93–8 (58 FR 7258, February 5, 1993), a purchase, leaseback and license exemption involving Plans sponsored by Fortunoff Fine Jewelry and Silverware, Inc. (FFJ) and M. Fortunoff of Westbury Corporation (M. Fortunoff) and parties in interest. These transactions are described in a notice of pendency that was published in the **Federal Register** on May 8, 1992 at 57 FR 19951. The proposed exemption, if granted, would affect participants and beneficiaries of, and fiduciaries with respect to the Plans.

EFFECTIVE DATE: If granted, this proposed exemption would be effective as of the date the notice granting the exemption is published in the **Federal Register**.

DATES: Written comments and requests for a public hearing must be received by the Department on or before February 2, 1998.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application Nos. D–10461, D–10462 and D–10463. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 219–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of proposed exemption that would amend PTE 93–8. PTE 93–8 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. The proposed exemption was requested in an application filed on behalf of M. Fortunoff and FFJ (collectively), the Applicants) pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). 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. Accordingly, this proposed exemption is being issued solely by the Department.

I. Background

PTE 93–8 provides prospective exemptive relief from 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 with respect to (1) the purchase by the Fortunoff Pension Plan—Employer Group A Plan (the Employer Group A Plan), the Fortunoff Pension Plan—Employer Group B Plan (the Employer Group B Plan) and the Fortunoff Fine Jewelry and Silverware, Inc. Profit Sharing Plan (the Profit Sharing Plan) of undivided interests in certain improved real property (the Property), for the total