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DEPARTMENT OF JUSTICE

Antitrust Division

International Competition Policy Advisory Committee (ICPAC); Notice of Meeting

The International Competition Policy Advisory Committee (the "Advisory Committee") will hold its third meeting on December 16, 1998. The Advisory Committee was established by the Department of Justice to provide advice regarding issues relating to international competition policy; specifically, how best to cooperate with foreign authorities to eliminate international anticompetitive cartel agreements, how best to coordinate United States' and foreign antitrust enforcement efforts in the review of multijurisdictional mergers, and how best to address issues that interface international trade and competition policy concerns. The meeting will be held at The Carnegie Endowment for International Peace, Root Conference Room, 1779 Massachusetts Avenue, N.W., Washington, D.C. 20036 and will begin at 10:00 a.m. EST and end at approximately 4:00 p.m. The agenda for the meeting will be as follows:

1. Enforcement Cooperation
2. Multijurisdictional Merger Review
3. Trade and Competition Policy Interface Issues
4. Work Program: Next Steps

Attendance is open to the interested public, limited by the availability of space. Persons needing special assistance, such as sign language interpretation or other special accommodations, should notify the contact person listed below as soon as possible. Members of the public may submit written statements by mail, electronic mail, or facsimile at any time before or after the meeting to the contact person listed below for consideration by the Advisory Committee. All written submissions will be included in the public record of the Advisory Committee. Oral statements from the public will not be solicited or accepted at this meeting. For further information contact: Merit Janow, c/o Eric J. Weiner, U.S. Department of Justice, Antitrust Division, 601 D Street, N.W., Room 10011, Washington, D.C. 20530, Telephone: (202) 616-2578, Facsimile:

(202) 514-4508, Electronic mail:
icpac.atr@usdoj.gov.

Merit E. Janow,

*Executive Director, International Competition
Policy Advisory Committee.*

[FR Doc. 98-31504 Filed 11-24-98; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98-55;
Exemption Application No. D-10379, et al.]

Grant of Individual Exemptions; John Taylor Fertilizers Company

AGENCY: Pension and Welfare Benefits
Administration, Labor.

ACTION: Grant of individual exemptions.

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

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, 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 proposed to the Secretary of Labor.

Statutory Findings

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

- (a) The exemptions are administratively feasible;
- (b) They are in the interests of the plans and their participants and beneficiaries; and
- (c) They are protective of the rights of the participants and beneficiaries of the plans.

John Taylor Fertilizers Company, Profit Sharing Plan (the Plan), Sacramento, California

[Prohibited Transaction Exemption 98-55;
Exemption Application No. D-10379]

Exemption

The restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of an undivided 16.28% interest (Leasehold Interest) in a certain leasehold of a professional office complex located in Sacramento, California, to John Taylor Fertilizers Company, a party in interest with respect to the Plan, provided that the following conditions are satisfied:

- (A) All terms of the transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;
- (B) The sale is a one-time transaction for cash;
- (C) The Plan pays no commissions or other expenses relating to the sale;
- (D) The purchase price is the greater of: (1) the fair market value of the Leasehold Interest as determined by a qualified, independent appraiser, or (2) the original acquisition cost, plus all costs attributable to holding the Leasehold Interest through the date of the sale; and
- (E) The Plan receives rental income due and owing to the Plan through the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on September 16, 1998 at 63 FR 49612.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

Toyota Motor Credit Corporation (TMCC) and certain of its Affiliates, Located in Torrance, California

[Prohibited Transaction Exemption No. 98-56; Application No. D-10438]

Exemption

Section I—Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, as of September 1, 1997, 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 Section 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, as defined in Section III.K. below, by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.¹

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply, as of September 1, 1997, 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, as defined in Section III.L., 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.² For purposes of this paragraph B.(1)(iv) only, an entity shall 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 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 Section I.B.(1) or (2).

C. The restrictions of sections 406(a), (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, as of September 1, 1997, 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 Agreement; 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.³

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 the 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. below.

D. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply, as of September 1, 1997, to any transaction 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 as 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.

Section II—General Conditions

A. The relief provided under Section 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 such terms would be in an arm's-length transaction with an unrelated party;

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

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Ratings Services, Moody's Investor Service, Inc., Duff & Phelps, Inc., or Fitch IBCA, Inc., or their successors (collectively, the Rating Agencies);

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

¹ 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).

² 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.

³ 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.

solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of the 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 or retained by the sponsor pursuant to the assignment of obligations (or interest therein) to the trust represents not more than the fair market value of such obligation (or interest); 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;

(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) To the extent that the pool of leases used to create a portfolio for a trust is not closed on the date of the issuance of certificates by the trust, additional leases may be added during a period of no more than 15 consecutive months from the closing date used for the initial allocation of leases that was made to create such portfolio, provided that:

(a) All such additional leases meet the same terms and conditions for eligibility as the original leases used to create the portfolio (as described in the prospectus or private placement memorandum for such certificates), which terms and conditions have been approved by the Rating Agencies. Notwithstanding the foregoing, the terms and conditions for an "eligible lease" (as defined in Section III.X below) may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by the Rating Agencies; and

(b) Such additional leases do not result in the certificates receiving a lower credit rating from the Rating Agencies, upon termination of the period during which additional leases may be added to the portfolio, than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(8) Any additional period described in Section II.A.(7) must be described in the

prospectus or private placement memorandum provided to investing plans;

(9) The average annual percentage lease rate (the Average Lease Rate) for the pool of leases in the portfolio for the trust, after the additional period described in Section II.A.(7), shall not be more than 200 basis points greater than the Average Lease Rate for the original pool of leases that was used to create such portfolio for the trust;

(10) For the duration of the additional period described in Section II.A.(7), principal collections that are reinvested in additional leases are first reinvested in the "eligible lease contract" (as defined in Section III.X. below) with the earliest origination date, then in the "eligible lease contract" with the next earliest origination date, and so forth, beginning with any lease contracts that have been reserved specifically for such purposes at the time of the initial allocation of leases to the pool of leases used to create the particular portfolio, but excluding those specific lease contracts reserved for allocation to or allocated to other pools of leases used to create other portfolios;

(11) The trustee of the trust (or the agent with which the trustee contracts to provide trust services) is a substantial financial institution or trust company experienced in trust activities and is 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, enforces all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act;

(12) The Pooling and Servicing Agreement and other governing documents require that funds collected by the servicer with respect to trust assets be deposited on a monthly basis in a trust account, even though distributions on the certificates may be scheduled to be made less frequently than monthly, and invested in certain highly rated debt instruments known as "permitted investments"; and

(13) The Pooling and Servicing Agreement expressly provides that funds collected by the servicer with respect to trust assets are required to be deposited in a trust account within two business days after such collection, if TMCC's short-term unsecured debt is no longer rated P-1 by Moody's Investors Service and A-1 by Standard & Poor's Ratings Services (or successors thereto), unless such Rating Agencies accept an alternative arrangement.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or 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 Section I, if the provision in Section II.A.(6) above is not satisfied for the 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 shall be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

C. Toyota Motor Credit Corporation (TMCC) and its Affiliates abide by all securities and other laws applicable to any offering of interests in securitized assets, such as certificates in a trust as described herein, including those laws relating to disclosure of material litigation, investigations and contingent liabilities.

Section 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 (except during the period described in Section II.A.(7), if any), interest, and/or other payments made in connection with the assets of such trust; or

(2) A certificate denominated as a debt instrument that is issued by and is an obligation of a trust;

With respect to certificates defined in Section III.A.(1) and (2) above, the underwriter shall be an entity which has received from the Department an individual prohibited transaction exemption relating to certificates which is substantially similar to this exemption (as noted below in Section III.C.) and shall be either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include

certificates denominated as debt which are issued by a trust.

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

(1) Either

(a) Qualified motor vehicle leases (as defined in Section III.T.); or

(b) Fractional undivided interests in a trust containing assets described in paragraph (a) of this Section III.B.(1), where such fractional interest is not subordinated to any other interest in the same pool of qualified motor vehicle leases held by such trust;⁴

(2) Property which has secured any of the obligations described in Section III.B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders, except during the period described in Section II.A.(7) above when temporary investments are made until such cash can be reinvested in additional leases described in paragraph (a) of this Section III.B.(1); and

(4) Rights of the trustee under the Pooling and Servicing Agreement, and rights under motor vehicle dealer agreements, any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements for any obligations described in Section 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 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 categories by the Rating Agencies 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 any investment banking firm that has

received an individual prohibited transaction exemption from the Department that provides relief for so-called "asset-backed" securities that is substantially similar in format and structure to this exemption (the Underwriter Exemptions);⁵ or any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such investment banking firm; and any member of an underwriting syndicate or selling group of which such firm or person described above is a manager or co-manager with respect to the certificates.

D. "Sponsor" means an entity affiliated with Toyota Motor Corporation that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means TMCC or an entity affiliated with TMCC 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 TMCC or an entity affiliated with TMCC which, under the supervision of and on behalf of the master servicer, services leases contained in the trust, but is not a party to the Pooling and Servicing Agreement.

G. "Servicer" means TMCC or an entity affiliated with TMCC which services leases contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means an entity that is independent of TMCC and its Affiliates which is the trustee of the trust. In the case of certificates which are denominated as debt instruments, "trustee" 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. In addition, a person is not an insurer if such person merely provides: (1) property damage or liability insurance to an Obligor with respect to a lease or leased vehicle; or (2) property damage, excess liability or contingent liability insurance to any lessor, sponsor or servicer, if such entities are included in the same insurance policy, with respect to a lease or leased vehicle.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments for a lease 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 and at the end of the period described in Section II.A.(7); 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 shall 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 assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in Section III.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

⁴ It is the Department's view that the definition of "Trust" contained in Section III.B. includes a two-tier trust 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 certificates 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.

⁵ For a listing of the Underwriter Exemptions, see the description provided in the text of the operative language of Prohibited Transaction Exemption (PTE) 97-34 (62 FR 39021, July 21, 1997).

(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 for 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 shall not be reduced by the amount of any such fee waived by the servicer.

T. "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 owns or holds a security interest in the leased motor vehicle; and

(3) The trust's interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

U. "Pooling and Servicing Agreement" means, collectively, (i) the securitization trust agreement between a sponsor and the trustee establishing a trust, (ii) the trust and servicing agreement relating to an origination trust and the servicing supplement thereto, and (iii) the supplemental agreement establishing a beneficial interest in certain specified origination trust assets (referred to herein as a "special unit of beneficial interest" or "SUBI"). 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.

V. "Lease Rate" means an implicit rate in each lease calculated as an

annual percentage rate on a constant yield basis, based on the capitalized cost of the leased vehicle as determined under the particular lease contract for the vehicle. With respect to the determination of a "Lease Rate", each lease will provide for equal monthly payments such that at the end of the lease contract term the capitalized cost will have been amortized to an amount equal to the residual value of the leased vehicle established at the time of origination of such contract. The amount to which the capitalized cost has been amortized at any point in time will be the outstanding principal balance for the lease.

W. "Average Lease Rate" means the average annual percentage lease rate, as defined in Section III.V. above, for all leases included at any particular time in a portfolio used to create a trust from which certificates are issued.

X. "Eligible Lease" or "Eligible Lease Contract" means a Qualified Motor Vehicle Lease, as defined in Section III.T. above, which meets the eligibility criteria established for, among other things, the term of the lease, place of origination, date of origination, and provisions for default, as described in the particular prospectus or private placement memorandum for the certificates provided to investors, if such terms and conditions have been approved by the Rating Agencies prior to the issuance of such certificates.

Y. "Permitted Investments" means investments which: (i) are 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; or (iii) consist of interests in money market mutual funds that are registered investment companies under the Investment Company Act of 1940, which are managed by parties independent of the Sponsor or Servicer, and which invest in securities described in item (i) above or highly rated short-term securities of the type described in item (ii) above, or which are of comparable credit quality to securities having such ratings; are described in the pooling and servicing agreement; and are permitted by the Rating Agency.

The Department notes that this exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving

Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95-60, 60 FR 35925).

EFFECTIVE DATE: This exemption is effective for all transactions described herein occurring on or after September 1, 1997.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 8, 1998, at 63 FR 36946.

WRITTEN COMMENTS: The applicant (i.e., TMCC) submitted a written comment on the notice of proposed exemption (the Notice) relating to the proposed definition of "Permitted Investments" contained in Section III.Y.

"Permitted Investments" were defined in the Notice as follows:

* * * investments which (i) are 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.

TMCC's comment states that this definition requires that the securitization trust invest directly in the described investments and not through a mutual fund. TMCC states that it prefers to make such investments through a money market mutual fund designed for institutional investors. TMCC currently uses a mutual fund (Fund) managed by Federated Investors which is called the Prime Obligations Fund. The Fund invests in high quality money market instruments that have an average maturity of 90 days or less and are either rated in the highest short-term rating category by one or more of the Rating Agencies or are of comparable quality to securities having such ratings.

TMCC believes that a mutual fund investing in short-term high quality money market investments should be specifically included as a "permitted investment" for purposes of the exemption. Therefore, TMCC requests that the definition in Section III.Y. of the Notice be revised as follows:

"Permitted Investments" means investments which: (i) are 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; or (iii) consist of interests in money market mutual funds which are registered investment companies under the Investment Company Act of 1940, which are managed by parties independent of the Sponsor or Servicer, and which invest in securities described in item (i) above or highly rated short-term securities of the type described in item (ii) above, or which are of comparable credit quality to securities having such ratings; are described in the pooling and servicing agreement; and are permitted by the Rating Agency. [emphasis added]

The Department agrees with the proposed revision of the definition and has so revised the language of Section III.Y. of the exemption.

The Department received no other written comments, nor any requests for a hearing.

Accordingly, the Department has determined to grant the exemption as modified.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all

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

Signed at Washington, D.C., this 20th day of November, 1998.

Ivan Strasfeld,

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

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-10372, et al.]

Proposed Exemptions; Keystone Financial, Inc.

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.

Keystone Financial, Inc., and Certain of Its Affiliates (Keystone), Located in Harrisburg, Pennsylvania

[Application Nos. D-10372]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Proposed Exemption for In-Kind Transfers of CIF Assets

If the exemption is granted, the restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the past in-kind transfers of assets of various employee benefit plans for which Keystone served as a fiduciary (the Client Plans), that