

gambling establishment, aquarium, zoo, golf course or swimming pool.

c. Compliance with the requirements to obtain a D-U-N-S® number and register with the Central Contractor Registry (CCR). ETA has issued additional guidance related to these reports which can be found in the TEGL No. 29-08, dated June 10, 2009.

d. Submission of required reports in accordance with Section 1512 of the Recovery Act. These reports will be due quarterly within 10 days of the end of the reporting period and are in addition to the ETA-required reports addressed in Section VI.C of this SGA. The ETA will issue additional guidance related to these reports and their submission requirements shortly.

Implementing OMB guidance may be found at <http://www.recovery.gov>.

### C. Reporting

Quarterly financial reports, quarterly progress reports, and MIS data will be submitted by the grantee electronically. The grantee is required to provide the reports and documents listed below:

- *Quarterly Financial Reports.* A Quarterly Financial Status Report (ETA 9130) is required until such time as all funds have been expended or the grant period has expired. Quarterly reports are due 45 days after the end of each calendar year quarter. Grantees must use DOL's On-Line Electronic Reporting System. Information and instructions on using the system will be provided to grantees.

- *Quarterly Performance Reports.* The grantee must submit a quarterly progress report within 45 days after the end of each calendar year quarter. In order to submit these quarterly reports, grantees will be expected to track participant-level data on the individuals who are involved in training and other services provided through the grant and report on participant status in a variety of fields and outcome categories, as well as provide narrative information on the status of the grant. The last quarterly progress report that grantees submit will serve as the grant's Final Performance Report. This report should provide both quarterly and cumulative information on the grant's activities. It must summarize project activities, project outcomes, and other deliverables. DOL will provide grantees with formal guidance on the data and other information that is required to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet DOL reporting requirements.

- *Record Retention.* Applicants should be aware of Federal guidelines on record retention, which require

grantees to maintain all records pertaining to grant activities for a period of not less than three years from the time of final grant close-out.

### VII. Agency Contacts

For further information regarding this SGA, please contact Rahel Bizuayene, Grants Management Specialist, Division of Federal Assistance, at (202) 693-3256 (this is not a toll-free number).

Applicants should e-mail all technical questions to [Bizuayene.Rahel@dol.gov](mailto:Bizuayene.Rahel@dol.gov) and must specifically reference SGA/ DFA PY 09-06, and along with question(s), include a contact name, fax and phone number. This announcement is being made available on the ETA Web site at <http://www.doleta.gov/grants> and at <http://www.grants.gov>.

### VIII. Additional Resources of Interest to Applicants

#### A. Other Web-Based Resources

DOL maintains a number of Web-based resources that may be of assistance to applicants. America's Service Locator (<http://www.servicelocator.org>) provides a directory of our nation's One-Stop Career Centers.

### IX. Other Information

*OMB Information Collection No. 1225-0086, Expires November 30, 2012*

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, to the attention of Darrin A. King, Departmental Clearance Officer, 200 Constitution Avenue NW, Room N1301, Washington, DC 20210. Comments may also be e-mailed to [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov). Please do not return the completed application to this address. Send it to the sponsoring agency as specified in this solicitation.

This information is being collected for the purpose of awarding a grant. The information collected through this SGA will be used by DOL to ensure that grants are awarded to the applicant best suited to perform the functions of the

grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the application is not considered to be confidential.

Please be advised that the Grant Officer for this competition is James Stockton.

Signed at Washington, DC, this 9th day of March, 2010.

**Eric Luetkenhaus,**

*Grant Officer, Employment and Training Administration.*

[FR Doc. 2010-5552 Filed 3-12-10; 8:45 am]

BILLING CODE 4510-FN-P

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving: 2010-04, JPMorgan Chase Bank, N.A. (JPMCB or the Applicants), D-11491; 2010-05, Goldman Sachs & Its Affiliates (Goldman or the Applicants, D-11509; 2010-06, Louis B. Chaykin, M.D., P.A. Cross-Tested Profit Sharing Plan (the Plan), D-11532; and 2010-07, Columbia Management Advisors, LLC (Columbia, or the Applicant) and Its Current and Future Affiliates (Collectively, the Applicants), D-11556**

**AGENCY:** Employee Benefits Security 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 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be

held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type 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 exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

### JPMorgan Chase Bank, N.A. (JPMCB or the Applicant), Located in New York, New York

*[Prohibited Transaction Exemption 2010-04; Application No. D-11491]*

### Exemption

#### Section I—Transactions

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, effective July 1, 2004, to the continued and future provision by JPMCB or by its current or future affiliates of letters of credit to guarantee the commercial lease obligations of unrelated third-party tenants in connection with commercial properties owned by a Fund (as defined below in Section III) or commercial properties for which a Fund has a security interest, where JPMCB is the manager and trustee (Trustee) of such Funds that hold the assets of certain employee benefit plans (the Plans), provided that the conditions set forth below in Section II are satisfied.

#### Section II—Conditions

A. With respect to existing or future letters of credit, each of the Funds is

represented by an independent fiduciary to perform the following functions:

(1) Monitor monthly reports of rental payments of tenants utilizing such letters of credit issued by JPMCB, or any current or future affiliate of JPMCB, to guarantee their lease payments;

(2) Confirm whether an event has occurred that calls for a letter of credit to be drawn upon; and

(3) Represent each of the Funds, and the Plans to the extent they are invested in the Funds, as an independent fiduciary in any circumstances with respect to a letter of credit which would present a conflict of interest for the Trustee or otherwise violate section 406(b), including but not limited to: the need to enforce a remedy against JPMCB or a current or future affiliate with respect to its obligations under a letter of credit.

B. With respect to future letters of credit issued by JPMCB, or any current or future affiliate of JPMCB, the following additional conditions are met:

(1) JPMCB, or any current or future affiliate of JPMCB, as the issuer of a letter of credit, has at least an “A” credit rating by at least one nationally recognized statistical rating service at the time of the issuance of the letter of credit;

(2) The letter of credit has objective market drawing conditions and states precisely the documents against which payment is to be made;

(3) JPMCB and its affiliates do not “steer” the Funds’ tenants to JPMCB or its affiliates in order to obtain a letter of credit;

(4) Letters of credit are issued only to third-party tenants which are unrelated to JPMCB; and

(5) The terms of any future letters of credit are not more favorable to the tenants than the terms generally available in transactions with other similarly situated unrelated third-party commercial clients of JPMCB or of its current or future affiliates.

C. JPMCB or its affiliates maintain, or cause to be maintained, for a period of six (6) years from the date of any transactions involving letters of credit described in Section I above such records as are necessary to enable the persons, described below in Section II(D), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Plan whose assets are involved in letter of credit transactions described in Section I above, other than JPMCB or its affiliates, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a)

and (b) of the Code, if such records are not maintained, or not available for examination, as required below by Section II(D); and

(2) A separate prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of JPMCB or its affiliates, such records are lost or destroyed prior to the end of the six-year period.

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

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, the Securities and Exchange Commission (SEC), and any U.S. banking regulatory agency;

(ii) Any fiduciary of any Plan whose assets are involved in the letter of credit transactions described in Section I above, or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan whose assets are involved in the letter of credit transactions described in Section I above, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a Plan whose assets are involved in the letter of credit transactions described in Section I above, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described above in Section II(D)(1)(ii)–(iv) shall be authorized to examine trade secrets of JPMCB or its affiliates, or commercial or financial information which is privileged or confidential; and

(3) Should JPMCB or its affiliates refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to Section II(D)(2) above, JPMCB or its affiliates shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

#### Section III—Definitions

A. The term “independent fiduciary” means Fiduciary Counselors Inc. (Fiduciary Counselors) or any successor Independent Fiduciary, provided that Fiduciary Counselors or its successor is: (1) Independent of, and unrelated to, JPMCB and its affiliates, and (2) appointed to act on behalf of each Fund

for the purposes described in Section II.A and II.B above. For purposes of this exemption, a fiduciary will not be deemed to be independent of, and unrelated to, JPMCB if: (i) Such fiduciary directly or indirectly, controls, is controlled by, or is under common control with JPMCB; (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption, except that it may receive compensation for acting as an independent fiduciary from JPMCB in connection with the transactions described herein, if the amount or payment of such compensation is not contingent upon, or in any way affected by such fiduciary's decision; and (iii) more than 5 percent of such fiduciary's annual gross revenue in its prior tax year will be paid by JPMCB and its affiliates in the fiduciary's current tax year with respect to any particular 12-month tax period.

B. The term "affiliate" means: (1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; (2) any officer, director, or partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and (3) any corporation or partnership of which such person is an officer, director, or partner or employee. For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

C. The term "Fund" or "Funds" means "collective investment funds," of JPMCB and its current or future affiliates, within the meaning of Prohibited Transaction Class Exemption 91-38 (PTE 91-38) and "investment funds," of JPMCB and its current or future affiliates, within the meaning of Prohibited Transaction Class Exemption (PTE 84-14) and encompasses the following Funds: (i) The Commingled Pension Trust Fund (Strategic Property) of JPMorgan Chase Bank, N.A. (the Strategic Property Fund); (ii) the Commingled Pension Trust Fund (Special Situation Property) of JPMorgan Chase Bank, N.A. (the Special Situation Property Fund); and (iii) the Commingled Pension Trust Fund (Mortgage Private Placement) of JPMorgan Chase Bank, N.A. (the Mortgage Fund).

#### Written Comments

1. The Notice of Proposed Exemption (the Notice), published in the **Federal Register** on November 16, 2009 beginning at page 58987, invited all

interested persons to submit written comments and requests for a hearing to the Department within forty-five (45) days of the date of its publication. On December 29, 2009, the Department received a written comment from the Applicant regarding the content of the Notice. This comment, which was the only one received by the Department in connection with the Notice, suggested several minor editorial adjustments to Sections II and III of the Notice. Specifically, the Applicant requested that the text of Section II.A.(3) of the Notice (located at the first column of page 58988 of the November 16, 2009 issue of the **Federal Register**) be amended in the final grant of exemption by clarifying that each of the Funds, and the Plans *to the extent that they are invested in the Funds*, will be represented by an independent fiduciary in any circumstances with respect to an existing or future letter of credit provided by JPMCB or by its current or future affiliates which would present a conflict of interest for the Trustee or otherwise violate section 406(b) of the Act. In addition, the Applicant also suggested amending the text of Section III.C. of the Notice (beginning at the third column of page 58988 and continuing onto the first column of page 58989 of the same issue of the **Federal Register**) to more precisely describe the official names of the three Funds (the Strategic Property Fund, the Special Situation Property Fund, and the Mortgage Fund) that are parties to the exemption transaction. After due consideration, the Department has adopted each of these amendments suggested by the Applicant.

2. In its written comment, the Applicant also requested that the Department amend the information contained in the first paragraph of Representation 3 of the Notice (located at the second column of page 58989 of the aforementioned issue of the **Federal Register**) to provide a more accurate description of the real estate assets generally held by each of the Funds as of December 31, 2008. Accordingly, the Department notes that the Applicant has revised the text of the first paragraph of Representation 3 of the Notice to read as follows: "As of December 31, 2008, the Strategic Property Fund had net assets of approximately \$13.7 billion, which were invested in 152 developed real estate properties, primarily office buildings, industrial parks, residential properties, and retail properties. As of December 31, 2008, the Special Situation Property Fund had net assets of approximately \$2.5 billion, which were invested in real estate properties,

primarily office buildings, industrial parks, residential properties, hotels and retail properties. As of December 31, 2008, the Mortgage Fund had net assets of approximately \$5.4 billion, which were invested primarily in non-recourse secured mortgage loans collateralized by office, industrial, retail, multi-family, residential and senior citizen residential properties."

The Department further notes that it did not receive any requests for a hearing from the Applicant or from any other person during the aforementioned 45-day comment period.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the text of the Notice at 74 FR 58987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Judge of the Department at (202) 693-8550. (This is not a toll-free number).

**Goldman, Sachs & Co. and Its Affiliates (Goldman or the Applicant); Located in New York, New York**

*[Prohibited Transaction Exemption 2010-05; Exemption Application No. D-11509]*

#### Exemption

*Section I. Sales of Auction Rate Securities From Plans To Goldman: Unrelated to a Settlement Agreement*

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (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), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan (as defined in Section V(e)) of an Auction Rate Security (as defined in Section V(c)) to Goldman, where such sale (an Unrelated Sale) is unrelated to, and not made in connection with, a Settlement Agreement (as defined in Section V(f)), provided that the conditions set forth in Section II have been met.<sup>1</sup>

*Section II. Conditions Applicable to Transactions Described in Section I*

(a) The Plan acquired the Auction Rate Security in connection with brokerage or advisory services provided by Goldman to the Plan;

(b) The last auction for the Auction Rate Security was unsuccessful;

(c) Except in the case of a Plan sponsored by Goldman for its own

<sup>1</sup> For purposes of this exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

employees (a Goldman Plan), the Unrelated Sale is made pursuant to a written offer by Goldman (the Offer) containing all of the material terms of the Unrelated Sale. Either the Offer or other materials available to the Plan provide: (1) The identity and par value of the Auction Rate Security; (2) the interest or dividend amounts that are due and unpaid with respect to the Auction Rate Security; and (3) the most recent rate information for the Auction Rate Security (if reliable information is available). Notwithstanding the foregoing, in the case of a pooled fund maintained or advised by Goldman, this condition shall be deemed met to the extent each Plan invested in the pooled fund (other than a Goldman Plan) receives written notice regarding the Unrelated Sale, where such notice contains the material terms of the Unrelated Sale;

(d) The Unrelated Sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security;

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends;

(f) The Plan does not waive any rights or claims in connection with the Unrelated Sale;

(g) The decision to accept the Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or IRA owner who is independent (as defined in Section V(d)) of Goldman. Notwithstanding the foregoing: (1) in the case of an IRA (as defined in Section V(e)) which is beneficially owned by an employee, officer, director or partner of Goldman, the decision to accept the Offer or retain the Auction Rate Security may be made by such employee, officer, director or partner; or (2) in the case of a Goldman Plan or a pooled fund maintained or advised by Goldman, the decision to accept the Offer may be made by Goldman after Goldman has determined that such purchase is in the best interest of the Goldman Plan or pooled fund;<sup>2</sup>

<sup>2</sup> The Department notes that the Act's general standards of fiduciary conduct also apply to the transactions described herein. In this regard, section 404 of the Act requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the Auction Rate Security to Goldman for the par value of the Auction Rate Security, plus unpaid interest and dividends. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any of the transactions, to fully understand the risks associated with this type of

(h) Except in the case of a Goldman Plan or a pooled fund maintained or advised by Goldman, neither Goldman nor any affiliate exercises investment discretion or renders investment advice within the meaning of 29 CFR 2510.3-21(c) with respect to the decision to accept the Offer or retain the Auction Rate Security;

(i) The Plan does not pay any commissions or transaction costs with respect to the Unrelated Sale;

(j) The Unrelated Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(k) Goldman and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (l)(1), to determine whether the conditions of this exemption, if granted, have been met, except that:

(1) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than Goldman and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (l)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Goldman or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period;

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

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

(B) Any fiduciary of any Plan, including any IRA owner, that engages in a Sale, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Unrelated Sale, or any authorized employee or representative of these entities;

transaction following disclosure by Goldman of all relevant information.

(2) None of the persons described above in paragraphs (l)(1)(B)–(C) shall be authorized to examine trade secrets of Goldman, or commercial or financial information which is privileged or confidential; and

(3) Should Goldman refuse to disclose information on the basis that such information is exempt from disclosure, Goldman shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

### *Section III. Sales of Auction Rate Securities From Plans to Goldman: Related to a Settlement Agreement*

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (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), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan of an Auction Rate Security to Goldman, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement Agreement, provided that the conditions set forth in Section IV have been met.

### *Section IV. Conditions Applicable to Transactions Described in Section III*

(a) The terms and delivery of the Offer are consistent with the requirements set forth in the Settlement Agreement and acceptance of the offer does not constitute a waiver of any claim of the tendering Plan;

(b) The Offer or other documents available to the Plan specifically describe, among other things:

(1) The securities available for purchase under the Offer;

(2) The background of the Offer;

(3) The methods and timing by which Plans may accept the Offer;

(4) The purchase dates, or the manner of determining the purchase dates, for Auction Rate Securities tendered pursuant to the Offer, if the Offer had any limitation on such dates;

(5) The timing for acceptance by Goldman of tendered Auction Rate Securities, if there were any limitations on such timing;

(6) The timing of payment for Auction Rate Securities accepted by Goldman for payment, if payment was materially delayed beyond the acceptance of the Offer;

(7) The expiration date of the Offer; and

(8) How to obtain additional information concerning the Offer;

(c) The terms of the Settlement Sale are consistent with the requirements set forth in the Settlement Agreement; and

(d) All of the conditions in Section II have been met.

#### Section V. Definitions

For purposes of this exemption:

(a) The term “affiliate” means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

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

(c) The term “Auction Rate Security” means a security: (1) that is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and (2) with an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(d) A person is “independent” of Goldman if the person is: (1) Not Goldman or an affiliate; and (2) not a relative (as defined in section 3(15) of the Act) of the party engaging in the transaction;

(e) The term “Plan” means an individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section 3(3) of the Act; or an entity holding plan assets within the meaning of 29 CFR 2510.3–101, as modified by section 3(42) of the Act; and

(f) The term “Settlement Agreement” means a legal settlement involving Goldman and a U.S. state or federal authority that provides for the purchase of an ARS by Goldman from a Plan.

**DATES: Effective Date:** This exemption is effective as of February 1, 2008.

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 December 22, 2009 at 74 FR 68102.

**FOR FURTHER INFORMATION CONTACT:** Brian Shiker of the Department, telephone (202) 693–8552. (This is not a toll-free number.)

**Louis B. Chaykin, M.D., P.A., Cross-Tested Profit Sharing Plan (the Plan), Located in Lakewood Ranch, Florida**

*[Prohibited Transaction Exemption No. 2010–06; Application Number D–11532]*

#### Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act, and the

sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), through (E) of the Code, shall not apply to the proposed sale (the Sale) at fair market value by the Plan of certain coins (the Collectibles), to Louis B. Chaykin, M.D. (the Applicant), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

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

(b) The Plan pays no commissions, fees or other expenses in connection with the Sale;

(c) The terms and conditions of the Sale are at least as favorable as those obtainable in an arm’s length transaction with an unrelated third party;

(d) The fair market value of the Collectibles was determined by a qualified, independent appraiser;

(e) The Plan receives no less than the fair market value of the Collectibles at the time of the Sale; and

(f) All of the participants of the Plan, with the exception of the Applicant, have been paid their benefits in full.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to the text of the Notice of Proposed Exemption that appears at 74 FR 68105 (December 22, 2009).

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Judge of the Department, telephone (202) 693–8550. (This is not a toll-free number).

**Columbia Management Advisors, LLC (Columbia, or the Applicant) and Its Current and Future Affiliates (collectively, the Applicants); Located in Boston, Massachusetts**

*[Prohibited Transaction Exemption 2010–07; Exemption Application No. D–11556]*

#### Exemption

##### Section I—Transactions

The restrictions of section 406 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 purchase of certain securities (the Securities), as defined, below in Section III(i), by an Asset Manager, as defined, below, in Section III(d), from any person other than such Asset Manager, during the existence of an underwriting or selling syndicate with respect to such Securities, where a broker-dealer affiliated with Columbia (the Affiliated Broker-Dealer), as defined, below, in Section III(b), is a manager or member of such syndicate and the Asset

Manager purchases such Securities, as a fiduciary:

(a) On behalf of an employee benefit plan or employee benefit plans (Client Plan(s)), as defined, below, in Section III(f); or

(b) On behalf of Client Plans, and/or In-House Plans, as defined, below, in Section III(m), which are invested in a pooled fund or in pooled funds (Pooled Fund(s)), as defined, below, in Section III(g); provided that the conditions as set forth, below, in Section II, are satisfied (An affiliated underwriter transaction (AUT)).<sup>3</sup>

#### Section II—Conditions

The exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following requirements:

(a)(1) The Securities to be purchased are either—

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a *et seq.*). If the Securities to be purchased are part of an issue that is exempt from such registration requirement, such Securities:

(A) Are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States,

(B) Are issued by a bank,

(C) Are exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or

(D) Are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding twelve (12) months; or

(ii) Part of an issue that is an Eligible Rule 144A Offering, as defined in SEC Rule 10f–3 (17 CFR 270.10f–3(a)(4)).<sup>4</sup>

<sup>3</sup> For purposes of this exemption an In-House Plan may engage in AUTs only through investment in a Pooled Fund.

<sup>4</sup> SEC Rule 10f–3(a)(4), 17 CFR 270.10f–3(a)(4), states that the term “Eligible Rule 144A Offering” means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(d)], rule 144A thereunder [§ 230.144A of this chapter], or rules 501–508 thereunder [§§ 230.501–230.508 of this chapter];

Where the Eligible Rule 144A Offering of the Securities is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) The Securities to be purchased are purchased prior to the end of the first day on which any sales are made, pursuant to that offering, at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities, except that—

(i) If such Securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such Securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable debt securities offered to the public subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the debt Securities being purchased; and

(3) The Securities to be purchased are offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the Securities being offered, except if—

(i) Such Securities are purchased by others pursuant to a rights offering; or

(ii) Such Securities are offered pursuant to an over-allotment option.

(b) The issuer of the Securities to be purchased pursuant to this exemption must have been in continuous operation for not less than three years, including the operation of any predecessors, unless the Securities to be purchased are—

(1) Non-convertible debt securities rated in one of the four highest rating categories by Standard & Poor's Rating Services, Moody's Investors Service, Inc., FitchRatings, Inc., Dominion Bond Rating Service Limited, Dominion Bond Rating Service, Inc., or any successors

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to § 230.144A of this chapter.

thereto (collectively, the Rating Organizations), provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(2) Debt securities issued or fully guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(3) Debt securities which are fully guaranteed by a person (the Guarantor) that has been in continuous operation for not less than three years, including the operation of any predecessors, provided that such Guarantor has issued other securities registered under the 1933 Act; or if such Guarantor has issued other securities which are exempt from such registration requirement, such Guarantor has been in continuous operation for not less than three years, including the operation of any predecessors, and such Guarantor is:

(a) A bank; or

(b) An issuer of securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(c) An issuer of securities that are the subject of a distribution and are of a class which is required to be registered under section 12 of the 1934 Act (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such securities and that has filed all reports required to be filed thereunder with the SEC during the preceding twelve (12) months.

(c) The aggregate amount of Securities of an issue purchased, pursuant to this exemption, by the Asset Manager with: (i) The assets of all Client Plans; and (ii) The assets, calculated on a *pro-rata* basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the Asset Manager; and (iii) The assets of plans to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3-21(c) does not exceed:

(1) Ten percent (10%) of the total amount of the Securities being offered in an issue, if such Securities are equity securities;

(2) Thirty-five percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in one of the four highest rating categories by at least one of the Rating Organizations, provided that none of the Rating Organizations rates such Securities in a category lower

than the fourth highest rating category; or

(3) Twenty-five percent (25%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the sixth highest rating category; and

(4) The assets of any single Client Plan (and the assets of any Client Plans and any In-House Plans investing in Pooled Funds) may not be used to purchase any Securities being offered, if such Securities are debt securities rated lower than the sixth highest rating category by any of the Rating Organizations;

(5) Notwithstanding the percentage of Securities of an issue permitted to be acquired, as set forth in Section II(c)(1), (2), and (3), above, of this exemption, the amount of Securities in any issue (whether equity or debt securities) purchased, pursuant to this exemption, by the Asset Manager on behalf of any single Client Plan, either individually or through investment, calculated on a *pro-rata* basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Securities being offered in such issue, and;

(6) If purchased in an Eligible Rule 144A Offering, the total amount of the Securities being offered for purposes of determining the percentages, described, above, in Section II(c)(1)–(3) and (5), is the total of:

(i) The principal amount of the offering of such class of Securities sold by underwriters or members of the selling syndicate to “qualified institutional buyers” (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class of Securities in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan in purchasing any Securities which are the subject of this exemption, including any amounts paid by any Client Plan or In-House Plan in purchasing such Securities through a Pooled Fund, calculated on a *pro-rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan or In-House Plan prior to such transaction.

(e) The covered transactions are not part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or its affiliate.

(f) The Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession, or other compensation or consideration that is based upon the amount of Securities purchased by any single Client Plan, or that is based on the amount of Securities purchased by Client Plans or In-House Plans through Pooled Funds, pursuant to this exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designations generated by purchases of the Securities by the Asset Manager on behalf of any single Client Plan or any Client Plan or In-House Plan in Pooled Funds.

(g)(1) The amount the Affiliated Broker-Dealer receives in management, underwriting, or other compensation or consideration is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated Broker-Dealer for foregoing any selling concessions for those Securities sold pursuant to this exemption. Except as described above, nothing in this Section II(g)(1) shall be construed as precluding the Affiliated Broker-Dealer from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other compensation or consideration that is not based upon the amount of Securities purchased by the Asset Manager on behalf of any single Client Plan, or on behalf of any Client Plan or In-House Plan participating in Pooled Funds, pursuant to this exemption; and

(2) The Affiliated Broker-Dealer shall provide to the Asset Manager a written certification, dated and signed by an officer of the Affiliated Broker-Dealer, stating the amount that the Affiliated Broker-Dealer received in compensation or consideration during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with Section II(e), (f), or (g) of this exemption.

(h) The covered transactions are performed under a written authorization executed in advance by an independent fiduciary of each single Client Plan (the Independent Fiduciary), as defined, below, in Section III(h).

(i) Prior to the execution by an Independent Fiduciary of a single Client Plan of the written authorization described, above, in Section II(h), the following information and materials (which may be provided electronically)

must be provided by the Asset Manager to such Independent Fiduciary:

(1) A copy of the Notice of Proposed Exemption (the Notice) and a copy of the final exemption (the Grant) as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously; and

(2) Any other reasonably available information regarding the covered transactions that such Independent Fiduciary requests the Asset Manager to provide.

(j) Subsequent to the initial authorization by an Independent Fiduciary of a single Client Plan permitting the Asset Manager to engage in the covered transactions on behalf of such single Client Plan, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary requests the Asset Manager to provide.

(k)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, unless the Asset Manager provides the written information, as described, below, and within the time period described, below, in this Section II(k)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund).

(2) The following information and materials (which may be provided electronically) shall be provided by the Asset Manager not less than 45 days prior to such Asset Manager engaging in the covered transactions on behalf of a Pooled Fund, pursuant to this exemption, and provided further that the information described below, in this Section II(k)(2)(i) and (iii) is supplied simultaneously:

(i) A notice of the intent of such Pooled Fund to purchase Securities pursuant to this exemption, a copy of the Notice, and a copy of the Grant, as published in the **Federal Register**;

(ii) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the Asset Manager to provide; and

(iii) A termination form expressly providing an election for the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund to

terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that such plan (or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund for a period of no more than 30 days after such plan's (or such In-House Plan's) receipt of the initial notice of intent, described, above, in Section II(k)(2)(i), and that the failure of the Independent Fiduciary of such plan (or fiduciary of such In-House Plan) to return the termination form to the Asset Manager in the case of a plan (or In-House Plan) participating in a Pooled Fund by the specified date shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in the covered transactions as an investor in such Pooled Fund.

Further, the instructions will identify the Asset Manager and the Affiliated Broker-Dealer and will provide the address of the Asset Manager. The instructions will state that this exemption may be unavailable, unless the fiduciary of each plan participating in the covered transactions as an investor in a Pooled Fund is, in fact, independent of the Asset Manager and the Affiliated Broker-Dealer. The instructions will also state that the fiduciary of each such plan must advise the Asset Manager, in writing, if it is not an "Independent Fiduciary," as that term is defined, below, in Section III(h).

For purposes of this Section II(k), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this exemption for each plan be independent of the Asset Manager shall not apply in the case of an In-House Plan.

(l)(1) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this exemption to engage in the covered transactions, the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the fiduciary of such In-House Plan, as the case may be), following the receipt by such Independent Fiduciary of such plan (or by the fiduciary of such In-House Plan, as the case may be) of the written information described, above, in Section II(k)(2)(i) and (ii), provided that the Notice and the Grant, described

above in Section II(k)(2)(i), are provided simultaneously.

(2) For purposes of this Section II(l), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this exemption for each plan proposing to invest in a Pooled Fund be independent of the Asset Manager and its affiliates shall not apply in the case of an In-House Plan.

(m) Subsequent to the initial authorization by an Independent Fiduciary of a plan (or by a fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary of such plan (or the fiduciary of such In-House Plan, as the case may be) requests the Asset Manager to provide.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the Asset Manager shall furnish:

(1) In the case of each single Client Plan that engages in the covered transactions, the information described, below, in this Section II(n)(3)–(7), to the Independent Fiduciary of each such single Client Plan.

(2) In the case of each Pooled Fund in which a Client Plan (or in which an In-House Plan) invests, the information described, below, in this Section II(n)(3)–(6) and (8), to the Independent Fiduciary of each such Client Plan (and to the fiduciary of each such In-House Plan) invested in such Pooled Fund.

(3) A quarterly report (the Quarterly Report) (which may be provided electronically) which discloses all the Securities purchased pursuant to this exemption during the period to which such report relates on behalf of the Client Plan, In-House Plan, or Pooled Fund to which such report relates, and which discloses the terms of each of the transactions described in such report, including:

(i) The type of Securities (including the rating of any Securities which are debt securities) involved in each transaction;

(ii) The price at which the Securities were purchased in each transaction;

(iii) The first day on which any sale was made during the offering of the Securities;

(iv) The size of the issue of the Securities involved in each transaction;

(v) The number of Securities purchased by the Asset Manager for the

Client Plan, In-House Plan, or Pooled Fund to which the transaction relates;

(vi) The identity of the underwriter from whom the Securities were purchased for each transaction;

(vii) The underwriting spread in each transaction (*i.e.*, the difference, between the price at which the underwriter purchases the Securities from the issuer and the price at which the Securities are sold to the public);

(viii) The price at which any of the Securities purchased during the period to which such report relates were sold; and

(ix) The market value at the end of the period to which such report relates of the Securities purchased during such period and not sold;

(4) The Quarterly Report contains:

(i) A representation that the Asset Manager has received a written certification signed by an officer of the Affiliated Broker-Dealer, as described, above, in Section II(g)(2), affirming that, as to each AUT covered by this exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with Section II(e), (f), and (g) of this exemption, and

(ii) A representation that copies of such certifications will be provided upon request;

(5) A disclosure in the Quarterly Report that states that any other reasonably available information regarding a covered transaction that an Independent Fiduciary (or fiduciary of an In-House Plan) requests will be provided, including, but not limited to:

(i) The date on which the Securities were purchased on behalf of the Client Plan (or the In-House Plan) to which the disclosure relates (including Securities purchased by Pooled Funds in which such Client Plan (or such In-House Plan) invests);

(ii) The percentage of the offering purchased on behalf of all Client Plans (and the *pro-rata* percentage purchased on behalf of Client Plans and In-House Plans investing in Pooled Funds); and

(iii) The identity of all members of the underwriting syndicate;

(6) The Quarterly Report discloses any instance during the past quarter where the Asset Manager was precluded for any period of time from selling Securities purchased under this exemption in that quarter because of its status as an affiliate of an Affiliated Broker-Dealer and the reason for this restriction;

(7) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each single Client Plan that engages in the covered transactions that the authorization to engage in such covered

transactions may be terminated, without penalty to such single Client Plan, within five (5) days after the date that the Independent Fiduciary of such single Client Plan informs the person identified in such notification that the authorization to engage in the covered transactions is terminated; and

(8) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each Client Plan (and to the fiduciary of each In-House Plan) that engages in the covered transactions through a Pooled Fund that the investment in such Pooled Fund may be terminated, without penalty to such Client Plan (or such In-House Plan), within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans, after the date that the Independent Fiduciary of such Client Plan (or the fiduciary of such In-House Plan, as the case may be) informs the person identified in such notification that the investment in such Pooled Fund is terminated.

(o) For purposes of engaging in covered transactions, each Client Plan (and each In-House Plan) shall have total net assets with a value of at least \$50 million (the \$50 Million Net Asset Requirement). For purposes of engaging in covered transactions involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) shall have total net assets of at least \$100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be) (the \$100 Million Net Asset Requirement).

For purposes of a Pooled Fund engaging in covered transactions, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets with a value of at least \$50 million. Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets with a value of at least \$50 million, the \$50 Million Net Asset Requirement will be met if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which has total net assets with a value of at least \$50 million. For purposes of a Pooled Fund engaging in covered transactions involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets of at least \$100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be). Notwithstanding the foregoing, if each



such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets of at least \$100 million in securities of issuers that are not affiliated with such Client Plan (or In-House Plan, as the case may be), the \$100 Million Net Asset Requirement will be met if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which have total net assets of at least \$100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be), and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(1)(i)(F)).

For purposes of the net asset requirements described above, in this Section II(o), where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the \$50 Million Net Asset Requirement (or in the case of an Eligible Rule 144A Offering, the \$100 Million Net Asset Requirement) may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes in a single master trust.

(p) The Asset Manager qualifies as a "qualified professional asset manager" (QPAM), as that term is defined under Part V(a) of PTE 84-14. Further, the Asset Manager, which qualifies as a QPAM, must also have total client assets under its management and control in excess of \$5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of \$1 million.

(q) No more than 20 percent of the assets of a Pooled Fund at the time of a covered transaction are comprised of assets of In-House Plans for which the Asset Manager or the Affiliated Broker-Dealer exercises investment discretion.

(r) The Asset Manager and the Affiliated Broker-Dealer, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons, described, below, in Section II(s), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a plan which engages in the covered transactions, other than the Asset Manager and the Affiliated Broker-Dealer, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not

available for examination, as required, below, by Section II(s); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of the Asset Manager, or the Affiliated Broker-Dealer, as applicable, such records are lost or destroyed prior to the end of the six-year period.

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

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

(ii) Any fiduciary of any plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described above, in Section II(s)(1)(ii)–(iv), shall be authorized to examine trade secrets of the Asset Manager, or the Affiliated Broker-Dealer, or commercial or financial information which is privileged or confidential; and

(3) Should the Asset Manager or the Affiliated Broker-Dealer refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to Section II(s)(2) above, the Asset Manager shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

### Section III—Definitions

(a) The term, "the Applicant," means Columbia Management Advisors, LLC.

(b) The term, "Affiliated Broker-Dealer," means any broker-dealer affiliate, as "affiliate" is defined, below, in Section III(c), of the Applicant, as "Applicant" is defined, above, in Section III(a), that meets the requirements of this exemption. Such Affiliated Broker-Dealer may participate in an underwriting or selling syndicate

as a manager or member. The term, "manager," with respect to a syndicate, means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the Securities, as defined below, in Section III(i), being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term "affiliate" of a person includes:

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

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

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

For purposes of this exemption, the definition of "affiliate" shall include any entity that satisfies such definition in the future.

(d) The term "Asset Manager" means Columbia or an affiliate of Columbia as defined above in Section III(c), which entity acts as the fiduciary with respect to Client Plan(s), as defined in Section III(f), below, or Pooled Fund(s), as defined in Section III(g), below.

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

(f) The term, "Client Plan(s)," means an employee benefit plan(s) that is subject to the Act and/or the Code, and for which plan(s) an Asset Manager exercises discretionary authority or discretionary control respecting management or disposition of some or all of the assets of such plan(s), but excludes In-House Plans, as defined, below, in Section III(m).

(g) The term, "Pooled Fund(s)," means a common or collective trust fund(s) or a pooled investment fund(s):

(1) In which employee benefit plan(s) subject to the Act and/or Code invest,

(2) Which is maintained by an Asset Manager, and

(3) For which such Asset Manager exercises discretionary authority or discretionary control respecting the management or disposition of the assets of such fund(s).

(h)(1) The term, "Independent Fiduciary," means a fiduciary of a plan who is unrelated to, and independent of the Asset Manager and the Affiliated Broker-Dealer. For purposes of this

exemption, a fiduciary of a plan will be deemed to be unrelated to, and independent of the Asset Manager and the Affiliated Broker-Dealer, if such fiduciary represents in writing that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for the transactions described above, in Section I of this exemption, is an officer, director, or highly compensated employee (within the meaning of Code section 4975(e)(2)(H)) of the Asset Manager and the Affiliated Broker-Dealer, and represents that such fiduciary shall advise the Asset Manager within a reasonable period of time after any change in such facts occur.

(2) Notwithstanding anything to the contrary in this Section III(h), a fiduciary of a plan is not independent:

(i) If such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Asset Manager or the Affiliated Broker Dealer;

(ii) If such fiduciary directly or indirectly receives any compensation or other consideration from the Asset Manager, or the Affiliated Broker-Dealer for his or her own personal account in connection with any transaction described in this exemption;

(iii) If any officer, director, or highly compensated employee (within the meaning of Code section 4975(e)(2)(H)) of the Asset Manager responsible for the transactions described above, in Section I of this exemption, is an officer, director, or highly compensated employee (within the meaning of Code section 4975(e)(2)(H)) of the sponsor of the plan or of the fiduciary responsible for the decision to authorize or terminate authorization for the transactions described above, in Section I. However, if such individual is a director of the sponsor of the plan or of the responsible fiduciary, and if he or she abstains from participation in: (A) The choice of the plan's investment manager/adviser; and (B) the decision to authorize or terminate authorization for transactions described above, in Section I, then this Section III(h)(2)(iii) shall not apply.

(3) The term, "officer," means a president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), or any other officer who performs a policy-making function for Columbia or any affiliate thereof.

(i) The term, "Securities," shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a-2(36)(2001)). For purposes of this exemption, mortgage-backed or other asset-backed securities rated by

one of the Rating Organizations, as defined, below, in Section III(l), will be treated as debt securities.

(j) The term, "Eligible Rule 144A Offering," shall have the same meaning as defined in SEC Rule 10f-3(a)(4) (17 CFR 270.10f-3(a)(4)) under the 1940 Act).

(k) The term, "qualified institutional buyer," or the term, "QIB," shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(l) The term, "Rating Organizations," means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings, Inc., Dominion Bond Rating Service Limited, and Dominion Bond Rating Service, Inc., or any successors thereto.

(m) The term, "In-House Plan(s)," means an employee benefit plan(s) that is subject to the Act and/or the Code, and that is sponsored by the Applicant as defined, above, in Section III(a), or its affiliate, as defined in Section III(c), for its own employees.

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 December 22, 2009 at 74 FR 68110.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary H. Lefkowitz of the Department, telephone (202) 693-8546. (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 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) This exemption is 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 this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 9th day of March 2010.

**Ivan Strasfel,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. 2010-5535 Filed 3-12-10; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Application Nos. and Proposed Exemptions; D-11500, Carle Foundation Hospital & Affiliates Pension Plan; and Barclays California Corporation (Barcal); et al.

**AGENCY:** Employee Benefits Security 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 (ERISA or 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 requests 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 requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration