—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Transactions Among Licensee/Permittees and Transactions Among Licensees and Holders of User Permits.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: The Safe Explosives Act requires that an explosives distributor must verify the identity of the purchaser; an explosives purchaser must provide a copy of the license/permit to the distributor prior to the purchase of explosive materials; possessors of explosive materials must provide a list of explosive storage locations; purchasers of explosive materials must provide a list of representatives authorized to purchase on behalf of the distributor; and an explosive purchaser must provide a statement of intended use of the explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 50,000 respondents, who will take 30 minutes to comply with the required information.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 25,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: November 9, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–27380 Filed 11–13–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Application Nos. and Proposed Exemptions; D–11491, JPMorgan Chase Bank, N.A. (JPMCB or the Applicant); D–11492, Ivy Asset Management Corporation; and D–11571, The Bank of New York (BNY Mellon or the Applicant), 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 (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

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

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

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

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

[Application No. D–11491]

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—Transactions

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act, and the sanctions

resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, 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 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 proposed 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 proposed 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 JCMCB 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 Fund of JPMorgan Chase Bank, N.A. (the Strategic Property Fund); (ii) the Commingled Pension Trust Fund/Special Situation Property Fund of JPMorgan Chase Bank, N.A. (the Special Situation Property Fund); and (iii) the Commingled Pension Trust Fund/Mortgage Private Placement Fund of JPMorgan Chase Bank, N.A. (the Mortgage Fund).

Effective Date: The exemption is effective as of July 1, 2004.

Summary of Facts and Representations

Background

1. JPMorgan Chase & Co. (JPMCC), the parent company of JPMorgan Chase Bank, N.A. (JPMCB), is headquartered in New York. JPMCC had assets of approximately $2.2 trillion as of January 15, 2009. JPMCC has operations in more than 50 countries, and is a leader in investment banking, financial services for consumers and businesses, financial transaction processing, asset and wealth management, and private equity.

On January 14, 2004, JPMCC and Bank One Corporation (Bank One), headquartered in Chicago, Illinois, announced that they had agreed to merge in a strategic business combination that established the second largest banking franchise in the United States, based on core deposits. Completion of the merger (the Bank One Merger) occurred on July 1, 2004, and the merged company is still known as JPMorgan Chase & Co. (i.e., JPMCC). The Bank One Merger created an enterprise with a combined market capitalization of approximately $130 billion. The common stock of JPMCC trades on the New York Stock Exchange under the trading symbol ''JPM.''

Following the Bank One Merger, JPMCC announced the merger of its three lead banks, JPMorgan Chase Bank, N.A., Bank One, N.A. (Chicago Illinois), and Bank One, N.A. (Columbus Ohio), effective as of November 13, 2004. Immediately prior to such merger, JPMorgan Chase Bank converted its charter to a national bank. The name of the surviving entity in the bank merger is JPMorgan Chase Bank, N.A. (hereinafter referred to as JPMCB or the Applicant).

JPMCB is internally organized for management reporting purposes into six major business groups: (i) Asset & Wealth Management; (ii) Card Services; (iii) Commercial Banking; (iv) Investment Banking; (v) Retail Financial Services; and (vi) Treasury & Securities Services. According to the Applicant, only the first business group, Asset & Wealth Management, is relevant to this exemption request.

2. The Applicant represents that JPMCB serves as trustee of various funds, which are ''collective investment funds'' within the meaning of PTE 91–38, and ''investment funds'' within the meaning of PTE 84–14 (collectively the Funds). According to the Applicant, JPMCB, which meets (as did its predecessor, Morgan Guaranty Trust Company) the definition of a qualified professional asset manager (QPAM) within the meaning of PTE 84–14 and which is a bank maintaining a bank collective investment fund within the meaning of PTE 91–38, has ordinarily relied upon these class exemptions to conduct the activities of various Funds including the Strategic Property Fund, the Special Situation Property Fund, and the Mortgage Fund.

3. 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, retail properties, and hotels. 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, and retail properties. As of December 31, 2008, the Mortgage Fund had net assets of approximately $5.4 billion, which were invested primarily in whole loans collateralized by commercial, residential and cooperative properties, GNMA Project Loans, and residential mortgage-backed securities.

As of December 31, 2008, there were approximately 290 employee benefit plans participating in the Strategic Property Fund, 125 employee benefit plans participating in the Special Situation Property Fund, and 355 employee benefit plans participating in the Mortgage Fund. Collectively, these participating plans were comprised of both employee benefit plans subject to Title I of the Act (hereinafter the Plans), as well as employee benefit plans not subject to the Act, such as government-sponsored plans within the meaning of section 3(32) of the Act.

4. The Department previously provided individual exemptive relief in PTE 2003–10 (68 FR 28031, May 22, 2003) with respect to prohibited transactions involving certain leases and letters of credit that arose from the December 31, 2000 merger of J.P. Morgan & Company, Inc. and the Chase Manhattan Corporation (the Chase Merger), which adversely affected JPMCB's ability to rely on the administrative relief provided under PTE 84–14 and PTE 91–38. Specifically, entities that may have been parties in interest with respect to certain Plans whose assets were invested in the Strategic Property Fund and that were involved in certain leases and letters of credit transactions became affiliates of JPMCB. In accordance with the requirements of PTE 2003–10, JPMCB retained an independent fiduciary to act on behalf of the Strategic Property Fund and the participating employee benefit plans with respect to the oversight, negotiation, and approval of certain leases and letters of credit described in PTE 2003–10.

5. The Applicant represents that, just as the Chase Merger affected JPMCB's ability to rely on PTE 84–14 and PTE 91–38, the Bank One Merger also may adversely affect JPMCB's ability to rely on those class exemptions with respect to substantially similar transactions involving letters of credit. Specifically, entities that may be parties in interest with respect to the Plans and involved in the subject letters of credit (as described below) became affiliates of JPMCB as a result of the Bank One Merger. Consequently, one of the conditions of each class exemption, that the party in interest involved in a transaction may not be related to the QPAM of the investment fund (in the case of PTE 84–14) or to the trustee of the bank collective investment fund (in the case of PTE 91–38), is no longer satisfied (except to the extent that the grandfather provisions of Part V(i) of PTE 84–14 and Section IV(h) of PTE 91–38, respectively, of the exemptions are otherwise applicable). In addition, the Applicant also states that there may be issues that will arise under sections 406(b)(1) and 406(b)(2) of the Act if it needs to enforce a remedy on behalf of the Funds against itself or its affiliate regarding the Applicant's obligations under the Bank One letters of Credit. Accordingly, the Applicant seeks exemptive relief with respect to certain prohibited transactions involving Bank One-issued letters of credit that arose from the Bank One Merger.

The Bank One Letters of Credit

6. The Applicant represents that a series of letters of credit were issued by Bank One, prior to the Bank One Merger, to guarantee payment obligations of unrelated third-party tenants to pay rent for space leased in properties owned by the Funds. The tenants were not affiliates of JPMCB or Bank One prior to the Bank One Merger

and are not now affiliates of JPMCB. However, once a Bank One letter of credit is drawn upon by a lessor subsequent to the merger, the affiliation or identity between the Applicant and a JPMCB affiliate issuing the letter of credit would give rise to a prohibited transaction.[1]

The Applicant represents that a letter of credit is an instrument issued by a bank or other lending institution, whose function is similar to that of a guaranty and is used in commercial leasing transactions as a substitute for a security deposit. The Applicant further represents that the lending institution, upon issuing a letter of credit, promises that if actions of the tenant trigger certain default events set forth in the lease, such as bankruptcy of the tenant, it will make such lease payments directly to the applicable Fund up to the face amount of the letter of credit. The beneficiary of the letter of credit, one of the Funds, is issued a redeemable instrument that it may take directly to the issuing lending institution and demand payment merely by stating that payment is due pursuant to the terms of the lease. The bank that issued the letter of credit is obligated to pay without further inquiry and without any requirement on the banks part to verify the accuracy of the information provided. In general, the bank cannot be sued by the tenant for having paid under the letter of credit, absent fraud on its part. The Applicant represents that the Fund is not required to have any further involvement with the tenant in order to receive payment under the letter of credit from the bank that issued the letter of credit. The Bank One letters of credit automatically renew annually until their final stated expiration date, and are either cash collateralized by the tenants or, in the case of particularly creditworthy tenants, the tenants enter into a reimbursement agreement with the bank. The Applicant represents that the existing Bank One letters of credit are cash collateralized. The Applicant further represents that the terms of the Bank One letters of credit are governed by the 1993 Uniform Customs and Practice for Documentary Credits and contain standard provisions widely accepted in the banking industry promulgated by the International Chamber of Commerce Commission on Banking Technique and Practice, which most banking institutions incorporate by reference in their letters of credit. According to the Applicant, the previously referred to standard industry-wide provisions and terms provide certainty in execution, interpretation, and remedies with respect to the letters of credit.

The applicant also represents that it is difficult for the tenants to obtain a letter of credit if they do not otherwise have a business banking relationship with a particular bank. Therefore, if JPMCB or its affiliate is the tenant's commercial bank, then the Applicant, according to its own representations, may be that tenant's only source to obtain a letter of credit. In addition, given the increasing number of bank mergers, there are fewer banks available from which to purchase a letter of credit. Accordingly, in the absence of an individual exemption, the Applicant represents that the disqualification of JPMCB or its affiliates from the available pool of letters of credit providers would be highly disadvantageous to the Funds and the Plans.

7. The chart below shows the outstanding letters of credit that had been issued by various Bank One entities at the time of the Bank One Merger:

Fund interest	Property name	Bank One entity name	Original letter of credit amount
Strategic Property Fund (33.3%).	Century Plaza Towers	Bank One	$98,952
Special Situation Property Fund (50%).	IDI—Valwood West D (IPF 2, LP)—IPA—DUPLIUM.	Bank One, N.A. 1717 Main Street, 11th Floor, Dallas, TX 75201 (1–888–525–9395).	375,000
Special Situation Property Fund (50%).	IDI—Corporate Crossing V (IPF 1, LP)—IPA—Fairington Transportation, Inc.	Bank One, N.A. Global Trade Services, One Bank One Plaza, Mail Code IL1–0236 Chicago, IL 60670–0236 (312–954–1969) (f/k/a—American National Bank).	500,000
Strategic Property Fund (100%).	Woodfield Corporate Center	American National Bank	89,000

Future Letters of Credit

8. The future letters of credit for which the applicant has requested exemptive relief include: (i) Any letters of credit issued by JPMCB or its affiliates on or after the effective date of the Bank One Merger with respect to third-party tenants unrelated to the Applicant in Fund-owned properties or in properties with respect to which a Fund has a security interest; and (ii) Any letters of credit issued by an entity that is not an affiliate of JPMCB at the time the letter of credit is issued but that later becomes an affiliate of JPMCB pursuant to a future merger, with respect to third-party tenants in Fund-owned properties or in properties with respect to which a Fund has a security interest. The Applicant represents that the terms of any future letter of credit will not be more favorable to tenants than the terms generally available in similar transactions with other similarly situated unrelated third-party commercial clients of JPMCB or its affiliates. The Applicant further represents that an independent fiduciary will review and approve the extension of Bank One letters of credit as well as any other letters of credit that are issued by the Applicant or an affiliate (or an entity that later becomes an affiliate) to a third party tenant of a property held by a Fund or in which a Fund has a security interest.

The Independent Fiduciary

9. JPMCB has retained Fiduciary Counselors Inc. (Fiduciary Counselors) of Washington, DC as an independent fiduciary to determine on behalf of all of the Funds and Plans, among other things, whether it is appropriate to draw on any currently outstanding Bank One letters of credit or on any future letters of credit previously described herein. Fiduciary Counselors also will monitor monthly reports of rental payments by tenants so that it can confirm whether such letters of credit should be called.

[1] As a result of the Bank One Merger, JPMCB (the Applicant) will technically also be the issuer of the Bank One letters of credit.

In addition, Fiduciary Counselors will act in place of JPMCB in any situation where the Funds' rights need to be asserted against JPMCB as the issuer of the existing Bank One letters of credit or against JPMCB or its affiliates with respect to any future letters of credit.

The Applicant represents that Fiduciary Counselors is a registered investment adviser registered under the Investment Advisers Act of 1940, and acts primarily as an independent fiduciary for large pension plans. Since its formation in 1999, Fiduciary Counselors has acted as independent fiduciary in transactions involving plan assets totaling more than $4 billion. The Applicant also represents that Fiduciary Counselors has been involved in a variety of transactions requiring an independent fiduciary, such as certain prohibited transaction exemptions granted by the Department, conversion of common and collective mutual funds, mergers of mutual funds, and ESOP transactions. Fiduciary Counselors has acknowledged its duties, responsibilities and obligations as a fiduciary under ERISA to act for the exclusive benefit of the Funds and the Funds' participating plans.

Ms. Nell Hennessy is the president of Fiduciary Counselors, and will lead the project on behalf of the firm with respect to the transactions for which exemptive relief from the Department is sought. The Applicant represents that neither Fiduciary Counselors nor its affiliates are ''affiliates'' of either JPMCB or its affiliates or any of the Plans' sponsors within the meaning of 29 CFR 2570.31(a). The Applicant further represents that no more than five (5) percent of Fiduciary Counselors' annual gross revenue in its prior tax year will be paid by JPMCB and its affiliates in the fiduciary's current tax year. The Applicant represents that, in the event that Fiduciary Counselors terminates its services as the Independent Fiduciary for purposes of overseeing transactions involving the Bank One letters of credit and/or future letters of credit, JPMCB will notify the Department of such termination. In this connection, the Applicant represents that any successor Independent Fiduciary shall be independent of JPMCB and its affiliates, shall possess fiduciary experience comparable to that of Fiduciary Counselors, and shall assume all of the fiduciary responsibilities described above with respect to the oversight of current and future letters of credit described herein.

10. The Applicant represents that the proposed exemption would be administratively feasible because the Bank One and JPMCB letters of credit are, or would be, almost completely self-executing because there is essentially no discretion on the part of the issuing bank with respect to the letters of credit, and any conflict of interest situations would be handled by an independent fiduciary. The Applicant also represents that the continuance and/or future availability of the Bank One or JPMCB letters of credit would be in the interest of the Funds, the Plans, and their beneficiaries because the availability of these letters of credit mitigates the risk of loss of payment to the Funds if the applicable tenants default on their rent. The Applicant further represents that the Bank One and JPMCB letters of credit are and would be protective of the rights of the Funds' Plan participants and beneficiaries because they allow the Funds to recover some or all of lost rental income despite a default by the tenant, and because they incorporate standard industry-wide terms that provide certainty in execution, interpretation, and remedies.

Existing Commercial Leases and the Bank One Merger

11. Although the Applicant withdrew its request for individual exemptive relief with respect to two Bank One leases involving the Strategic Property Fund that were in effect as of the date of the Bank One Merger, the Applicant has made the following representations regarding such leases and their renewals. The Applicant represents that, prior to the Bank One Merger, Bank One Arizona, N.A., an affiliate of Bank One, leased commercial office space in Vodaphone Plaza, a Class A office building in Walnut Creek, California, a property wholly owned by the Strategic Property Fund. The Vodafone Plaza property represented approximately 0.39% of the net asset value of the Strategic Property Fund. Bank One Arizona, N.A. occupied 3,811 square feet, or 1.9%, of the property under a lease (the Original Lease) that originally commenced on May 9, 1997 and that expired, by its terms, on May 8, 2005.[2] The Applicant represents that the original terms of the 1997 Bank One lease executed between Bank One, as tenant, and the Strategic Property Fund, as landlord, was negotiated and entered into between the parties when they were unrelated and when JPMCB was acting on behalf of the Funds as a fiduciary. The Applicant represents that JPMCB met the definition of a QPAM at the time that the Original Lease was entered into between the Strategic Property Fund and Bank One Arizona, N.A. The Applicant further represents that, because the Original Lease that was executed in 1997 continued to be in effect at the time of the 2004 Bank One Merger, the Vodaphone Plaza lease transaction met the requirements of Part I (the General Exemption) of PTE 84–14 between July 1, 2004 and the expiration of the Original Lease.[3]

12. The Applicant also represents that Fiduciary Counselors Inc., acting as an independent fiduciary, negotiated a renewal of the lease of the Vodaphone Plaza property on behalf of the Strategic Property Fund in March of 2005, and the lease renewal became effective in May of 2005.[4] On September 12, 2007, the Vodafone Plaza property was sold by the Strategic Property Fund to an unrelated third party, SVF Oak Road Walnut Creek Corporation (SVC), a subsidiary of a fund managed by American Realty Advisors.

The Applicant further represents that, between the lease renewal and September 12, 2007, the Vodaphone Plaza lease met the conditions of Part III (the Specific Lease Exemption) of PTE 84–14 for the leasing of office or commercial space by an investment fund managed by a QPAM or its affiliate to the QPAM, and therefore an individual exemption is not necessary to cover the lease renewal. Specifically, the Applicant represents that the requirements of Part III of PTE 84–14 were satisfied during the renewal period because: (1) The Vodaphone Plaza lease was for office space; (2) JPMCB is both a QPAM with respect to the Strategic Property Fund (which wholly owned the property that was the subject of the Vodaphone Plaza lease), and is also an affiliate of Bank One Arizona, N.A., the lessee; (3) The unit of space subject to the lease was suitable for use by different tenants; (4) At the time the transaction was entered into (and at the

[2] The Applicant represents that the Original Lease was modified on February 22, 2000, prior to the Bank One Merger, to increase the amount of space occupied by Bank One Arizona, N.A. in the Vodaphone Plaza office building to 3,811 square feet. The lease was amended on May 5, 2005 (*i.e.,* the date upon which the negotiations were finalized).

[3] The Department has expressed the view that the relief from the restrictions of section 406(a) of the Act that is provided under Part I of PTE 84–14 would be generally available for a continuing transaction (*e.g.,* a loan or lease), provided that all the conditions of the exemption are satisfied on the date on which the transaction is entered into, notwithstanding the subsequent failure to satisfy one or more of the conditions of the class exemption (such as the requirement of Part I of PTE 84–14 that the subject transaction not occur with a party ''related to'' the QPAM). See Preamble to Proposed Amendment to PTE 84–14, 68 FR 52423 (September 3, 2003).

[4] The Department expresses no opinion herein as to whether the 2005 renewal of the Vodafone Plaza lease by the Fund may have violated any of the provisions of Part 4 of Title I of the Act.

time of any subsequent renewal or modification that required the consent of the Trustee as QPAM), the terms of the transaction were not more favorable to the lessee, Bank One Arizona, N.A., than the terms generally available in an arm's length transaction between unrelated parties;[5] (5) No commission or other fee was paid by the Strategic Property Fund in connection with the Vodaphone Plaza lease to the QPAM, nor was any commission or fee paid to any person or entity (or any affiliate) who made the decision to have, or had the direct authority to direct, any Plan to invest in the Strategic Property Fund; and (6) The amount of space covered by the lease (*i.e.,* 3,811 square feet, or 1.9% of the rentable area of the Vodaphone Plaza property) did not exceed the greater of 7,500 square feet or one percent (1%) of the available space of the Vodaphone Plaza property.[6]

13. The Applicant also represents that, prior to the Bank One Merger, the Banc One Trust Company, an affiliate of Bank One, leased commercial office space in the Dugan Texas—Texas Plaza I, an industrial building located in Irving, Texas. The Strategic Property Fund has a 50% ownership interest in this property. Banc One Trust Company occupies 54,146 square feet, or 46.7% of the net rentable area, of the Texas Plaza I property under a lease which commenced on July 15, 1999 and which was renewed upon its expiration on August 14, 2006. Prior to the renewal of the lease, Banc One Trust Company paid rent in the amount of $10.25 per square foot per year for the Texas Plaza I property.[7] The Applicant represents that JPMCB, in its capacity as trustee of the Strategic Property Fund, was not involved in the lease renewal decision-making process; rather, the other 50% owner of the Texas Plaza I property (*i.e.,* Duke-Weeks Realty Limited Partnership, now doing business as Duke Realty Limited Partnership and hereinafter referred to as ''Duke Weeks'') made the lease renewal decision without consulting the Strategic Property Fund in any manner.

The Applicant further represents that, on December 28, 2000, pursuant to a 50/50 joint venture by Dugan Texas Acquisition LLC (of which the Strategic Property Fund is the sole member) and Duke Weeks, a real estate operating company known as Dugan Texas LLC was formed. The Applicant represents that Dugan Texas LLC was established to operate and manage thirteen commercial real estate properties (including the Texas Plaza I property) that were initially contributed to it by Duke Weeks on December 28, 2000. The Applicant represents that, since its establishment on December 28, 2000, Dugan Texas LLC has operated so as to qualify as a real estate operating company (REOC), within the meaning of the Department's ''plan asset regulation'' at 29 CFR 2510.3–101.[8]

14. In summary, the transactions for which exemptive relief is sought meet the statutory criteria of section 408(a) of the Act because: (A) With respect to existing or future letters of credit described herein, 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 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 itself or a current or future affiliate with respect to its obligations under a letter of credit; (B) The issuance of future letters of credit by JPMCB, or any current or future affiliate of JPMCB, are subject to the following additional conditions: (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; and (C) JPMCB or its affiliates will maintain records that are sufficient for regulatory authorities and independent third parties to determine whether the conditions of this proposed exemption have been met.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Applicant and the Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

For Further Information Contact: Mr. Mark Judge of the Department at (202) 693–8550. (This is not a toll-free number).

The Bank of New York Mellon (BNY Mellon or the Applicant) Located in New York, NY

[Application No. D–11571]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If granted, the restrictions of sections 406(a) and 406(b)(1) and 406(b)(2) of the Act (or ERISA) 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 as of February 20, 2009, to the cash sale of certain floating rate securities (the Securities) issued by Lehman Brothers Holdings, Inc. or its affiliates (together, Lehman) for an aggregate purchase price of $235,737,419.05 by the EB Temporary Investment Fund—Lehman (Liquidating

[5] This ''arm's length'' determination was addressed by Fiduciary Counselors in its report dated April 13, 2009, based upon material compiled by CB Richard Ellis on January 21, 2005.

[6] The Department is not providing any views in this proposed exemption as to whether the conditions of PTE 84–14 were met in connection with the Vodaphone Plaza lease transactions.

[7] The Applicant represents that the Texas Plaza I lease executed between Banc One Trust Company, as tenant, and the Strategic Property Fund, as landlord, was originally negotiated and entered into between the contracting parties when they were completely unrelated and when JPMCB was acting on behalf of the Strategic Property Fund as an independent ERISA fiduciary.

[8] The Department is not providing any opinion in this proposed exemption as to whether Dugan Texas LLC, which manages the Texas Plaza I lease, qualifies as a REOC, within the meaning of 29 CFR 2510.3–101(e), and therefore is not expressing any opinion as to whether the Texas Plaza I lease arrangement constitutes a prohibited transaction pursuant to section 406 of the Act or section 4975 of the Code. In this connection, the Department has noted in 29 CFR 2509.75–2(c) (Interpretive Bulletin 75–2, or IB 75–2) and subsequent opinions interpreting IB 75–2 that, although a transaction between a party in interest and a corporate entity in which the assets of a plan are invested does not generally give rise to a prohibited transaction, a violation of section 406 of the Act or section 4975 of the Code may occur in instances where a plan invests in a corporation as part of an arrangement or understanding under which it is expected that the corporation will engage in a transaction with a party in interest. See Advisory Opinion 2006–01A (January 6, 2006).

Fund), the EB SMAM Short Term Investment Fund—Lehman (Liquidating Fund), the DF Temporary Investment Fund—Lehman (Liquidating Fund) and the Pooled Employee Daily Liquidity Fund—Lehman (Liquidating Fund) (collectively, the ''Liquidating Funds'') to the Bank of New York Mellon Corporation (BNYMC), a party in interest with respect to employee benefit plans (the Plans) invested, directly or indirectly, in the Liquidating Funds, provided that the following conditions are met:

(a) The sale was a one-time transaction for cash;

(b) The Liquidating Funds received an amount for the sale of the Securities, which was equal to the sum of (1) the par value of the Securities plus (2) accrued but unpaid interest through September 12, 2008, determined at the contract rate, plus (3) accrued and unpaid interest from September 15, 2008 through the earlier of (i) the date of sale or (ii) the maturity date of the Securities, determined at the investment earnings rate of the collective fund (the Collective Fund) from which the Securities were transferred to the Liquidating Fund for the period from September 15, 2008 to the earlier of the maturity date of the Security or February 20, 2009;

(c) The Liquidating Funds did not bear any commissions, fees, transaction costs or other expenses in connection with the sale of the Securities;

(d) BNY Mellon, as trustee of the Liquidating Funds, determined that the sale of the Securities was appropriate for and in the best interests of the Liquidating Funds, and the Plans invested, directly or indirectly, in the Liquidating Funds, at the time of the transaction;

(e) BNY Mellon took all appropriate actions necessary to safeguard the interests of the Liquidating Funds, and the Plans invested, directly or indirectly, in the Liquidating Funds, in connection with the transaction;

(f) If the exercise of any of BNYMC's rights, claims or causes of action in connection with its ownership of the Securities results in BNYMC recovering from Lehman, the issuer of the Securities, or from any third party, an aggregate amount that is more than the sum of:

(1) The purchase price paid for the Securities by BNYMC; and

(2) interest on the par value of the Securities from and after the date BNYMC purchased the Securities from the Liquidating Funds, determined at the last-published interest rate on the Securities preceding the Lehman's bankruptcy filing, BNYMC refunds such excess amount promptly to the Liquidating Funds (after deducting all reasonable expenses incurred in connection with the recovery);

(g) BNY Mellon and its affiliates, 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 person described below in paragraph (h)(1), 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 transaction, other than BNY Mellon 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 (h)(1);

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

(h)(1) Except as provided, below, in paragraph (h)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in paragraph (g) 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 Securities and Exchange Commission; or

(B) Any fiduciary of any Plan that engages in the covered transaction, 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 covered transaction, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan that engages in the covered transaction, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in paragraph (h)(1)(B)–(D) shall be authorized to examine trade secrets of BNY Mellon or its affiliates, or commercial or financial information which is privileged or confidential; and

(3) Should BNY Mellon refuse to disclose information on the basis that such information is exempt from disclosure, BNY Mellon 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.

Effective Date: If granted, this proposed exemption will be effective as of February 20, 2009.

Summary of Facts and Representations

1. BNY Mellon is a state bank subject to regulation by the State of New York. As of December 31, 2008, BNY Mellon managed assets in excess of $210 billion, a substantial part of which consisted of Plans subject to the Act. BNY Mellon is a subsidiary of BNYMC.

2. BNYMC is the parent of BNY Mellon by reason of its 100% ownership of BNY Mellon. BNYMC has a number of subsidiaries and affiliates. It is a Delaware financial services company that provides a wide range of banking and fiduciary services to a broad array of clients, including employee benefit plans subject to the Act and section 4975 of the Code. As of December 31, 2008, BNYMC had total assets of $237.5 billion.

3. The EB Temporary Investment Fund, the EB SMAM Short Term Investment Fund, the DF Temporary Investment Fund and the Pooled Employee Daily Liquidity Fund are either collective investment funds or common trust funds trusteed and managed by BNY Mellon. BNY Mellon serves as a discretionary trustee for each of the Collective Funds. Three of the Collective Funds are group trusts that are exempt from federal income tax pursuant to Rev. Rul. 81–100. Accordingly, all of the investors in these Collective Funds, including three BNY Mellon/BNYMC in-house Plans,[9] are either qualified plans or eligible government plans. There are no individual retirement accounts in any of these Collective Funds.

The DF Temporary Investment Fund is a common trust fund that is exempt from federal income tax pursuant to section 584 of the Code. The investors in this Collective Fund as to which BNY Mellon or one of its affiliates is the trustee include trusts for individuals, nuclear decommissioning trusts, trusts for endowments, private foundations and other tax exempt institutional investors, and certain employee benefit trusts subject to the Act (*e.g.*, VEBA trusts).

Each of the Collective Funds is a short-term investment fund that values

[9] According to the Applicant, the in-house Plans' investments in the Collective Funds range from 0% for the DF Temporary Investment Fund to less than 4% of the EB Temporary Investment Fund.

its assets based on their amortized cost and seeks to maintain a constant unit value equal to $1.00. The Collective Funds invest in a variety of fixed income instruments. As of September 15, 2008, the value of the Collective Funds' aggregate portfolios was $19,961,181,990.59.[10] As of September 15, 2008 there were in excess of 700 investors in the Collective Funds, a substantial number of which were Plans subject to the Act. The other investors included government plans.

4. The Collective Funds purchased the Securities, which were floating rate securities issued by Lehman, an unrelated party, between 2005 and 2007 for acquisition prices ranging from $7,250,000 to $102,000,000, and for a total investment of $233,250,000. The acquisition prices represented the amortized cost of the Securities. The Securities paid interest on a quarterly basis, with the result that each Collective Fund collected interest from the purchase date through either June 23, 2008 or July 22, 2008. The interest payments ranged from $759,804.42 to $6,860,087.55 for a total payment of $15,459,605.43. No interest was paid subsequent to September 15, 2008.

As of September 15, 2008, the approximate net asset value of each Collective Fund was as follows:

The EB Temporary Investment Fund ($4,527,000); the EB SMAM Short Term Investment Fund ($2,070,000); the Pooled Employee Daily Liquidity Fund ($12,423,000,000); and the DF Temporary Investment Fund ($706,000,000).

Set forth below is a table showing each Collective Fund's investment in the Securities prior to Lehman's bankruptcy:

Fund name	Security name, CUSIP and maturity date	Acquisition and par price	Purchase date	Last published interest rate (percent)	Total interest received prior to 9/15/08
EB Temp. Inv. Fund	Lehman Fltr. 52517PW31; 3/23/09.	$50,000,000	3/22/07	7.413	$3,362,788.21
EB SMAM Short Term Inv. Fund	Lehman Fltr. 52517PW31; 3/23/09.	74,000,000	3/22/07	7.413	4,976,925.25
Pooled Employee Daily Liquid Fund.	Lehman Fltr. 52517PW31; 3/23/09.	102,000,000	3/22/07	7.413	6,860,087.55
DF Temp. Inv. Fund	Lehman Fltr. 52517PC58; 10/22/08.	7,250,000	10/24/05	8.00175	759,804.42
Totals:		233,250,000			$15,959,605.43

5. The decision to invest in the Securities was made by BNY Mellon. Prior to the investment, BNY Mellon conducted an investigation of the potential investment by examining and considering the economic and other terms of the Securities. BNY Mellon represents that the investment in the Securities was consistent with the applicable investment policies and objectives of the respective Collective Fund. At the time the Securities were acquired, they were rated ''A1'' by Moody's and ''A+'' by S&P rating agencies. Based on its consideration of the relevant facts and circumstances, BNY Mellon states that it was prudent and appropriate to acquire the Securities on behalf of the Collective Funds.[11]

6. As stated above, on September 15, 2008, Lehman filed for Chapter 11 bankruptcy protection. BNY Mellon represents that following the Issuers' bankruptcy, BNY Mellon determined that it would be in the best interest of the Collective Funds to segregate the Securities from the other assets of the Collective Funds. Therefore, BNY Mellon established the Liquidating Funds to hold the Securities as of such date in the following Liquidating Funds: The EB Temporary Investment Fund—Lehman (Liquidating Fund), the EB SMAM Short Term Investment Fund—Lehman (Liquidating Fund), the DF Temporary Investment Fund—Lehman (Liquidating Fund) and the Pooled Employee Daily Liquidity Fund—Lehman (Liquidating Fund). BNY Mellon also served as the trustee and the manager of each Liquidating Fund. The Applicant represents that BNY Mellon intended to hold the Securities in the Liquidating Funds pending the disposition of the Securities on the market. BNY Mellon further represents that each Collective Fund held 100 percent of the interests of its corresponding Liquidating Fund, and, in turn, the account of each direct investor in such Collective Fund as of September 15, 2008, was credited with units of the applicable Liquidating Fund in lieu of its interests in the Securities.

7. The Applicant represents that on September 30, 2008, the Liquidating Funds entered into guarantees with BNY Mellon pursuant to which BNY Mellon agreed to provide financial support to the Liquidating Funds for an amount up to the par value of the Securities and the accrued and unpaid interest on the Securities through September 12, 2008.[12] The purpose of these guarantees was to enable BNY Mellon and the Collective Funds' investors to value the units of the Liquidating Funds at one dollar per unit.[13]

[10] It is represented that section 408(b)(8) of the Act would apply to the investment by the ERISA-covered plans in the Collective Funds. Section 408(b)(8) of the Act provides a statutory exemption for any transactions between a plan and a common or collective trust fund maintained by a party in interest which is a bank or trust company supervised by a State or Federal agency if certain requirements are met.

[11] The Department is expressing no opinion in this proposed exemption on whether the acquisition and holding of the Securities by the Collective Funds violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

[12] Because September 12 fell on a Friday, the accrued interest on such date included the interest for September 13 and September 14.

[13] The Applicant represents that the guarantees are extensions of credit eligible for exemption under Prohibited Transaction Exemption (PTE) 80–26, 66 FR 54541 (Oct. 29, 2001). PTE 80–26, a class exemption, permits parties in interest to employee benefit plans to make certain interest free loans to such plans provided certain conditions are met. The

8. BNY Mellon represents that following the date of the Lehman's bankruptcy filing, the market value of the Securities decreased substantially. BNY Mellon further states that on February 20, 2009, it obtained pricing information from two independent broker-dealers, Barclays and Morgan Stanley, who confirmed in e-mail messages that the market for the Securities was in extreme distress and that prices for actual trades were substantially lower than the sum of the par value for the Securities plus accrued and unpaid interest thereon. The broker-dealers did not provide written analyses of their findings.

9. In view of the foregoing, BNY Mellon determined that it would be appropriate and in the best interest of the Liquidating Funds if the Securities were sold by the Liquidating Funds to BNYMC at a price equal to the sum of (x) their par value and (y) any accrued but unpaid interest, as doing so would protect the Funds and the investors having an interest in the Liquidating Funds from potential investment losses with respect to the Securities. BNY Mellon also determined that the purchase of the Securities by BNYMC would be permissible under applicable banking law.

10. Shortly before the consummation of the transaction on February 19, 2009, BNY Mellon sent written notice to the designated representative of each of the investors having a direct interest in the Liquidating Funds of BNY Mellon's intent to cause the Liquidating Funds to sell the Securities to BNYMC on February 20, 2009. For purposes of the transaction, the notice stated that the purchase price would be distributed to the unit holders. Such amount would also include an interest component based on the period after September 12, 2008. As a result, the notice further explained that the investor's account would no longer hold units in a Liquidating Fund. While the notice did not require any response, the Applicant represents that it did not receive any negative reaction from any of the recipients thereof.

11. On February 20, 2009, BNYMC purchased the Securities from the Liquidating Funds for an aggregate lump sum payment of $235,737,419.05. This amount represented the sum of the par value of the Securities ($233,250,000) plus the accrued but unpaid interest on the Securities (x) through September 12, 2008 ($1,546,011.97) at the contract rate (which also included accrued interest for September 13th and 14th), and (y) interest from September 15, 2008 through the earlier of February 20, 2009 or the maturity date of the applicable Security at the investment earning rate achieved by the corresponding Collective Fund during such period ($941,407.08).[14] BNY Mellon notes that, in determining the amount of accrued interest subsequent to the date of Lehman's bankruptcy filing, BNY Mellon utilized the investment earnings interest rate earned by the corresponding Collective Fund during such period. On April 21, 2009, the Liquidating Funds were formally terminated.

12. BNY Mellon, as trustee of the Liquidating Funds, believed that the sale of the Securities to BNYMC was in the best interests of the Liquidating Funds, and the Plans invested, directly or indirectly, in the Liquidating Funds, at the time of the transaction. BNY Mellon states that any sale of the Securities on the open market would have produced significant losses for the Liquidating Funds and for the participating investors in the Funds.

13. BNY Mellon represents that the sale of the Securities by the Liquidating Funds to BNYMC benefited the investors in the Liquidating Funds because the purchase price paid by BNYMC for the Securities substantially exceeded the aggregate fair market value of the Securities. In addition, BNY Mellon states that the transaction was a one-time sale for cash in connection with which the Liquidating Funds did not bear any brokerage commissions, fees, or other expenses. BNY Mellon represents that it took all appropriate actions necessary to safeguard the interests of the Liquidating Funds and their participating investors in connection with the sale of the Securities.

Accordingly, BNY Mellon has requested an administrative exemption from the Department with respect to the sale of the Securities by the Liquidating Funds to BNYMC. If granted, the exemption would be effective as of February 20, 2009.

14. BNY Mellon states that the sale of the Securities by the Liquidating Funds to BNYMC resulted in an assignment of all of the Liquidating Funds' rights, claims, and causes of action against Lehman or any third party arising in connection with or out of the issuance of the Securities or the acquisition of the Securities by the Funds. BNY Mellon states further that if the exercise of any of the foregoing rights, claims or causes of action results in BNYMC recovering from Lehman or any third party an aggregate amount that is more than the sum of (a) the purchase price paid for the Securities by BNYMC; and (b) interest on the par value of the Securities from and after the date BNYMC purchased the Securities from the Liquidating Funds, determined at the last-published rate on the Securities preceding Lehman's bankruptcy filing, BNYMC will refund such excess amount promptly to the Funds (after deducting all reasonable expenses incurred in connection with the recovery).

15. In summary, the Applicant represents that the transaction satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The sale was a one-time transaction for cash;

(b) The Liquidating Funds received an amount for the sale of the Securities, which was equal to the sum of (1) the par value of the Securities plus (2) accrued but unpaid interest through September 12, 2008, determined at the contract rate, plus (3) accrued and unpaid interest from September 15, 2008 through the earlier of (i) the date of sale or (ii) the maturity date of the Securities, determined at the investment earnings rate of the Collective Fund from which the Securities were transferred to the Liquidating Fund for the period from September 15, 2008 to the earlier of the maturity date of the Security or February 20, 2009;

(c) The Liquidating Funds did not bear any commissions, fees, transaction costs or other expenses in connection with the sale;

(d) BNY Mellon, as trustee of the Liquidating Funds, determined that the sale of the Securities was appropriate for and in the best interests of the Liquidating Funds, and the Plans invested, directly or indirectly, in the Liquidating Funds, at the time of the transaction;

(e) BNY Mellon took all appropriate actions necessary to safeguard the interests of the Liquidating Funds, and the employee benefit plans invested, directly or indirectly, in the Liquidating Funds, in connection with the transaction;

(f) If the exercise of any of BNYMC's rights, claims or causes of action in connection with its ownership of the Securities results in BNYMC recovering from Lehman, or any third party, an

Department expresses no opinion herein on whether the guarantees satisfy the requirements of PTE 80–26.

[14] The last published interest rate for each of the Securities at the contract rate in effect immediately preceding Lehman's bankruptcy is set forth herein in the table. The investment earnings rate for each Collective Fund for the relevant period on and after September 15, 2008 is as follows: the EB Temporary Investment Fund (1.28707%), the EB SMAM Short Term Investment Fund (0.68443%), the Pooled Employee Daily Liquidating Fund (0.96503%), and the DF Temporary Investment Fund (2.383131%).

aggregate amount that is more than the sum of:

(1) The purchase price paid for the Securities by BNYMC; and

(2) interest on the par value of the Securities from and after the date BNYMC purchased the Securities from the Liquidating Funds, determined at the last-published interest rate on the Securities preceding Lehman's bankruptcy filing, BNYMC will refund such excess amount promptly to the Liquidating Funds (after deducting all reasonable expenses incurred in connection with the recovery);

(g) BNY Mellon and its affiliates, as applicable, have maintained, or will 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 persons such as, employers or representatives of the Department, plan fiduciaries or plan participants, to determine whether the conditions of this exemption have been met.

For Further Information Contact: Anh-Viet Ly of the Department, telephone (202) 693–8648. (This is not a toll-free number).

Ivy Asset Management Corporation
Located in Jericho, NY
[Application No. D–11492]

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: Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A) through (D), 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,[15] shall not apply, effective December 31, 2008, to:

(a) The sale for cash of certain equity interests (the Shares) in hedge funds organized outside the United States,[16] which Shares are held in the Ivy Enhanced Income Fund (the Fund), a sub-fund established under the Alternative Investment-Master Group Trust (the Group Trust), to Ivy Asset Management Corporation (Ivy), a party in interest with respect to certain employee benefit plans, including a defined benefit plan (the Retirement Plan) sponsored by Ivy's parent corporation, The Bank of New York Mellon Corporation,[17] (collectively, the Plan(s)), and certain individual retirement accounts (the IRA(s)), where such Plans and IRAs have interests in the Fund; provided that at the time the Shares were sold, the conditions set forth, below, in section I(b)(1)–(6) of this proposed exemption, and the general conditions, set forth, below, in section II, of this proposed exemption, were satisfied; and

(b) The sale for cash of certain restricted shares (the Restricted Shares) of the D. E. Shaw Composite International Fund, Ltd. (the DE Shaw Fund), a hedge fund organized outside the United States, to Ivy Holding Cayman, LTS, an affiliate of Ivy (the Affiliate) which is also organized outside of the United States, and which is a party in interest with respect to the Plans and the IRAs, where such Plans and IRAs have interests in the Fund; provided that at the time the Restricted Shares were sold to the Affiliate, the conditions set forth, below, in section I(b)(1)–(6) of this proposed exemption, and the general conditions, set forth, below, in section II of this proposed exemption, were satisfied:

(1) The sale of the Shares to Ivy and the sale of the Restricted Shares to the Affiliate were each one-time transactions for cash;

(2) The purchase price paid by Ivy for the Shares and the purchase price paid by the Affiliate for the Restricted Shares was equal to the value of such shares, as reported to the Fund by investment managers of the hedge funds (the Manager(s)), who are independent of and unrelated to Ivy and any of its affiliates, as set forth on the most recent statement issued to the Fund immediately prior to the effective date of this proposed exemption;

(3) The Fund did not incur any commissions or transaction costs with respect to the sale of the Shares to Ivy and with respect to the sale of the Restricted Shares to the Affiliate;

(4) On January 29, 2008, Ivy solicited and received from each of the Plans and IRAs which have an interest in the Fund (the Unit Holder(s)) an affirmative consent to the sale by the Fund of the Shares and of the Restricted Shares;

(5) On January 29, 2008, Ivy solicited and received from each Unit Holder in the Fund an affirmative consent to the entry into a promissory note (the Promissory Note(s)), and as of the effective date of this proposed exemption Ivy entered into such Promissory Notes; and

(6) Pursuant to the terms of each of the Promissory Notes entered into between Ivy and each Unit Holder, in the event that Ivy receives redemption proceeds in excess of the purchase price paid by Ivy to the Fund for the Shares, and/or in the event the Affiliate receives redemption proceeds in excess of the purchase price paid by the Affiliate to the Fund for the Restricted Shares, Ivy will pay, as soon as practicable after receipt of such amounts by Ivy and/or by the Affiliate, the entirety of such excess in cash to each Unit Holder in proportion to each such Unit Holder's investment in the Fund; and Ivy will absorb the loss, if the aggregate redemption proceeds are less than the aggregate purchase price from the sale of the Shares and the sale of the Restricted Shares.

Section II: General Conditions

(a) Ivy, as investment manager of the Fund, represents that the subject transactions are appropriate for and in the interest of the Fund, and each of the Unit Holders which have an interest in the Fund.

(b) Ivy takes all appropriate actions necessary to safeguard the interests of the Fund, and the interests of the Unit Holders in the Fund, in connection with the subject transactions;

(c) The decision by a Unit Holder as to whether to engage in the subject transactions was made, in the case of a Plan by the trustee of each such Plan, in the case of an IRA, by the IRA holder, and in the case of the Retirement Plan by the Benefits Investment Committee (the Committee), which serves as the named fiduciary of the Retirement Plan.

(d) Notwithstanding affirmative consent given by each of the Unit Holders to the sale by the Fund of the Shares and of the Restricted Shares, and notwithstanding the entry into the Promissory Notes between Ivy and each Unit Holder:

(i) The Plans and IRAs have not waived or released and do not waive or release any claims, demands, and/or causes of action which such Plans and IRAs may have against BNYMC and/or Ivy in connection with the acquisition and retention of the Shares and the acquisition and retention of the Restricted Shares; and

[15] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[16] It is represented that to the extent that, prior to the effective date of the final exemption, the Fund had received distributions from the hedge funds in connection with interests in such hedge funds held by the Fund, those proceeds would have been distributed by the Fund to each holder of units in the Fund in proportion to each such holder's interest in the Fund; and accordingly, would not have been purchased by Ivy or by any affiliate of Ivy, pursuant to this proposed exemption.

[17] The Bank of New York Mellon Corporation is hereinafter referred to as BNYMC.

(ii) The Plans and IRAs have not waived or released and do not waive or release any claims, demands, and/or causes of action which such Plans and IRAs may have against BNYMC and/or Ivy in connection with the sale of the Shares to Ivy and the sale of the Restricted Shares to the Affiliate;

(e) Ivy will maintain, or cause to be maintained, for a period of six (6) years from the date of any of the subject transactions such records as are necessary to enable the persons described, below, in section II(f)(1) of this proposed exemption, to determine whether the conditions of this proposed exemption have been met, except that—

(1) No party in interest with respect to a Plan or to an IRA which engaged in the subject transactions, other than Ivy and the Affiliate, 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(f)(1) of this proposed exemption; and

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

(f)(1) Except as provided, below, in section II(f)(2) of this proposed exemption, and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in section II(e) of this proposed exemption, 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 Securities and Exchange Commission; or

(B) Any fiduciary of any Plan or any IRA that engaged in the subject transactions, 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 or an IRA that engaged in the subject transactions, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan or an IRA that engaged in the subject transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in section II(f)(1)(B)–(D) of this proposed exemption, shall be authorized to examine trade secrets of Ivy, or commercial or financial information which is privileged or confidential; and

(3) Should Ivy refuse to disclose information on the basis that such information is exempt from disclosure, Ivy 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.

Effective Date: This proposed exemption, if granted, will be effective, December 31, 2008.

Summary of Facts and Representations

1. The applicant for this proposed exemption is Ivy, a Delaware corporation. On January 1, 2009, Ivy converted to a Delaware limited liability corporation and changed its name to Ivy Asset Management LLC. Ivy is a registered investment adviser under the laws of Delaware, having its principal place of business in Garden City, New York.

2. The Group Trust qualifies as a group trust, pursuant to Revenue Ruling 81–100. The Group Trust is exempt from taxation under section 501(a) of the Code. Ivy is the investment manager of the Group Trust. Custodial Trust Company, a wholly-owned subsidiary of Bear Stearns Companies, Inc., was the trustee of the Group Trust until July 31, 2007. Wells Fargo and Company, a diversified financial services company, became the trustee of the Group Trust on August 1, 2007.

3. The Fund is an Investment Fund established under the Group Trust, as set forth in Section 4.01 of the Group Trust Agreement. As required under Revenue Ruling 81–100, participation in the Fund is limited to certain investors which are themselves exempt from Federal income taxes. In this regard, each of the Unit Holders in the Fund is either a Plan or an IRA. As of August 6, 2008, there were eight (8) Plans and four (4) IRAs each of which had an interest in the Fund. The Fund does not put a limit on the number of units that may be issued to the Unit Holders.[18]

The Fund has issued three (3) classes of units, Class C units, Class D units, and Class E units. The holders of Class C units paid a management fee of 1.5% and paid no performance fees. The minimum investment for the holders of Class C units was $1 million. The Class D units had a tiered management fee and paid a performance fee. The minimum investment for the holders of Class D units was $500,000. In all other material respects the Class C units and the Class D units were the same.

The Retirement Fund is the only holder of Class E units. The Retirement Fund invested $25 million in Class E units in the Fund in 1996 and over time has received in excess of $33,503,000 in distributions. Ivy does not receive any fees with respect to the Class E units.

The net asset value (NAV) of the Fund is determined at the end of each calendar quarter and at such other times as determined by the investment manager. The NAV is equal to the total value of the Fund's assets minus the total value of its liabilities. The value of each unit equals the capital attributable to each unit class of the Fund divided by the outstanding units for each unit class on such valuation date. All outstanding Class C units, Class D units, and Class E units were redeemed.

The Fund is a Section 3(c)(1) fund, as defined in the Investment Company Act of 1940. The Fund is not a registered open-ended investment company. Rather, it is a privately offered fund of funds that invests in private investment vehicles commonly referred to as hedge funds. The Fund is a fund of hedge funds. All of the holdings in the Fund are equity interests in hedge funds which are sponsored by investment Managers unrelated to Ivy and to any of its affiliates.

The Fund is operated pursuant to Commodity Futures Trading Commission (CFTC) exemption Regulation 4.13(a)(4). As such, the investment manager of the Fund is not required to register with the CFTC as a commodity pool operator. In this regard, the investment manager is not required to deliver a CFTC disclosure document and a certified annual report to participants in the pool.

The Fund is subject to tax on the unrelated business taxable income which is generated from income from debt financed investments. It is represented that such tax is paid by the Group Trust, not directly by the participants in the Fund.

As Ivy, the investment manager of the Fund, is a subsidiary of BNYMC, a United States bank holding company, the Fund is subject to the Bank Holding Company Act (the BHCA). Due to BNYMC's regulatory elections, the Fund is subject to the provisions of the BHCA governing merchant banking activities and to the provisions of the Federal Reserve Board's Merchant Banking Regulations. Under such regulations, the

[18] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of interests by the Plans and IRAs in the Group Trust and in the Fund violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

duration of an investment may be limited to 10 years.

Ivy, as the investment manager of the Fund, makes all investment decisions for the Fund. As of June 30, 2008, the approximate fair market value of the Fund's portfolio was $2,425,200.

4. As investment manager for the Fund, Ivy has received a quarterly management fee from the Fund. Ivy maintains in accordance with the provisions of section 408(b)(2) of the Act, it is entitled to payment of its fees from the holders of Class C and Class D units (which are fully disclosed in the Offering Memorandum and accompanying Adoption Agreement through which the investors purchased units of the Fund). Further, Ivy maintains that the payment of these fully disclosed fees is not subject to section 406(b) of the Act, because Ivy did not exercise any of the power that makes it a fiduciary to cause the Fund to pay it additional fees other than the fully disclosed fees which were approved by each investor at the time such investor made its investment in the Fund. It is represented that the holder of the Class E units, the Retirement Plan, paid no fees.

In addition, Ivy under certain circumstances has received performance fees from the Fund. Only holders of Class D units paid performance fees. Ivy maintains that the payment of performance fees to Ivy in connection with the Class D units is entirely consistent with the Department's advisory opinions with respect to the payment of incentive compensation. In this regard, Ivy represents that its performance fee was based on the amount by which the annualized return of the Class D units exceeded the average six (6) month U.S. Treasury rate. The annualized return of the Class D units is determined based on net asset value of each of the underlying hedge funds, as determined by the managers of those funds, each of whom was unrelated to Ivy and its affiliates. It is represented that Ivy took no part in the determination of the net asset values by the managers of the underlying hedge funds, and thus, Ivy did not determine the amount of its own compensation, which was set by external sources. It is further represented that Ivy, as part of its continuing duty as a fiduciary under the Act, routinely reviewed the valuation practices of those managers.

Ivy also has received reimbursement for research, accounting, and operating services provided to the Fund. It is represented that the fact that Ivy charged and received research, accounting, and operating services fees, along with all of its other fees, were fully disclosed in the Offering Memorandum for the class of units purchased by the investors and were approved by the fiduciaries of the plans and IRA holders as part of the investment process. The fee is variable although it is capped at 60 basis points. It is Ivy's view that this particular arrangement has been specifically approved by the Department in footnote 11 in the Notice of Proposed Exemption which ultimately became Prohibited Transaction Exemption 99–13.[19] Ivy maintains that the footnote, sets forth the Department's position that there is no prohibited transaction where a plan fiduciary charges less than or waives a particular fee that has been disclosed in writing to an independent plan fiduciary and approved by such fiduciary, and then later charges the full fee. As a holder of Class E units, the Retirement Plan does not pay any research, accounting, and operating services fees to Ivy.

It is represented that the Fund is no longer paying any fees to Ivy, because, as discussed more fully below, the Fund has been terminated.[20]

5. As an investment manager with discretion over the assets of the Plans and the assets of the IRAs that have interests in the Fund, Ivy is a fiduciary, pursuant to section 3(14)(A) of the Act. Ivy is also a party in interest and service provider, pursuant to section 3(14)(B) of the Act.

The Affiliate, as a wholly-owned subsidiary of Ivy, is a party in interest with respect to the Plans and the IRAs that have interests in the Fund, pursuant to section 3(14)(G) of the Act.

6. In view of the small size of the Fund, Ivy determined that it was in the best interest of the Unit Holders to terminate the Fund. In connection with the decision to terminate the Fund, the Fund sent a notice to each Unit Holder on October 2, 2007, informing all such Unit Holders of the termination of the Fund and of the mandatory redemption date, December 31, 2007. On December 31, 2007, the Fund was terminated.

On January 29, 2008, the Fund sent another notice to Unit Holders reiterating that Ivy had terminated the Fund, effective as of December 31, 2007, and stating that the Fund was in liquidation and that all Unit Holders were to be partially redeemed. In this regard, all Unit Holders were informed that the Fund was unable to distribute the full value of each Unit Holder's interest in the Fund, because of undistributed amounts, as described below in paragraphs 9 and 10, which are retained by the six (6) hedge funds (the Underlying Funds) in which the Fund had an interest.

The January 2008 notice further informed the Unit Holders of the intention of the Fund to sell its interest in the Shares and the Restricted Shares, provided the Department were to grant a final exemption to permit such transactions. As of the same date, the Unit Holders were also informed of Ivy's intention to enter into the Promissory Notes with each of the Unit Holders.

In addition, in the January 2008 notice, Ivy solicited and received from each Unit Holder an affirmative consent to the proposed sale of the Shares and the sale of the Restricted Shares by the Fund and to the proposed entry into the Promissory Notes between Ivy and each Unit Holder.

7. On August 6, 2008, Ivy submitted to the Department an application for an individual exemption. In this regard, Ivy has requested relief from the provisions of section 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act: (i) For the cash sale of the Shares by the Fund to Ivy, and (ii) for the cash sale of the Restricted Shares by the Fund to the Affiliate.

The sale of Shares by the Fund to Ivy and the sale of the Restricted Shares by the Fund to the Affiliate constitute violations of section 406(a)(1)(A). The subject transactions also constitute a transfer to, or use by or for the benefit of a party in interest of any assets of a plan, in violation of section 406(a)(1)(D) of the Act. The subject transactions also raise issues under the self-dealing and conflicts of interest provisions of section 406(b)(1) and 406(b)(2) of the Act, by Ivy, as a fiduciary of the assets of the Plans and the assets of the IRAs invested in the Fund.

8. Ivy has requested that the exemption be made retroactive to December 31, 2008. It is represented that on December 31, 2008, Ivy did, in fact, purchase the Shares. However, on December 31, 2008, Ivy was informed by the DE Shaw Fund that, because the DE Shaw Fund is an offshore fund, such

[19] 64 FR 4131, January 27, 1999.

[20] The Department, herein, is providing no relief from the prohibitions, as set forth in section 406 of the Act, for the receipt of fees by Ivy from the Fund, nor is the Department offering a view, as to whether the provision of services rendered by Ivy to the Fund is covered by the statutory exemption provided in section 408(b)(2) of the Act and the Department's regulations, thereunder, pursuant to 29 CFR 2550.408b–2.

Further, the Department does not concur with Ivy's conclusion that this particular fee arrangement was specifically approved by the Department in footnote 11 of the proposed exemption later finalized as PTE 99–13. Footnote 11 was limited to the need for additional disclosure where the initial disclosure noted that the fees were capped at a maximum number of basis points, but that such fees had initially been set at a lower amount, subject to later increase.

fund would not consent to the sale of the Restricted Shares to Ivy, as Ivy is a Delaware entity. Instead, effective January 1, 2009, the Affiliate purchased from the Fund the Restricted Shares of the DE Shaw Fund. Ivy engaged in the subject transactions prior to obtaining an exemption, because it believes that in view of the current economic conditions, it was in the best interest of the Unit Holders in the Fund that such Unit Holders received the cash proceeds from the sale of the Shares and the sale of the Restricted Shares, as soon as possible.

9. In connection with the decision to terminate the Fund, Ivy submitted redemption requests to each of the hedge funds in which the Fund was invested. As a result, the Fund began receiving redemption payments from such hedge funds in accordance with the private placement memorandum and other governing documents of such hedge funds. In this regard, it is represented that typically hedge funds pay redemption proceeds to a redeeming investor depending on the type of investments held by such hedge funds and the terms of the governing documents of such hedge funds. It is represented that the pace at which hedge funds pay redemption proceeds to a redeeming investor depends, for example, on whether the assets of such hedge funds are illiquid or held in a side pocket.[21] Further, during the period when the assets of such hedge funds are illiquid or held in a side pocket, such hedge funds still owe redemption proceeds to a redeeming investor. The amount due to a redeeming investor will fluctuate as a result of any market gains and losses on the assets of such hedge funds.

10. It is represented that for a variety of reasons the Underlying Funds in which the Fund, as of December 31, 2008, had an interest have not fully paid out redemption proceeds. In this regard, one of the Underlying Funds is undergoing liquidation, and another is subject to an extended redemption payment schedule. Two of the Underlying Funds have established a litigation or regulatory reserve, and another has suspended redemptions with the intention of making periodic cash distributions to investors on a *pro rata* basis, subject to anticipated reserves. The Fund's interests in these Underlying Funds constitute the Shares and the Restricted Shares which are the subject of this proposed exemption.

11. Accordingly, effective December 31, 2008, Ivy purchased the Shares from the Fund for cash, and the Affiliate purchased the Restricted Shares from the Fund for cash, so that the Fund could fully pay out its Unit Holders without requiring such Unit Holders to wait for each of the Underlying Funds to pay to the Fund the full redemption proceeds. The purchase price paid to the Fund by Ivy for the Shares equaled the value of such Shares, and the purchase price paid to the Fund by the Affiliate for the Restricted Shares equaled the value of such Restricted Shares, as reported to Fund by the Managers of the Underlying Funds, who are independent of and unrelated to Ivy and its affiliates, and as set forth on the most recent statement issued to the Fund immediately prior to the effective date of this proposed exemption. The proposed sale by the Fund of the Shares to Ivy and the proposed sale by the Fund of the Restricted Shares to the Affiliate are evidenced by purchase agreements.

12. As a result of the sale by the Fund of the Shares to Ivy and as a result of the sale by the Fund of the Restricted Shares to the Affiliate, Ivy and the Affiliate became shareholders in or creditors of the respective Underlying Funds and will receive the redemption proceeds from such Underlying Funds at such time as the redemption proceeds are paid out by such Underlying Funds. With regard to the payment of redemption proceeds by the Underlying Funds to Ivy and to the Affiliate, it is represented that Ivy entered into a Promissory Note with each of the Unit Holders of the Fund. Under the terms of each of the Promissory Notes, in the event Ivy receives with respect to the Shares, or the Affiliate receives with respect to the Restricted Shares redemption proceeds from the Underlying Funds in excess of the purchase price paid to the Fund by Ivy for the Shares and the purchase price paid by the Affiliate for the Restricted Shares, Ivy will pay, as soon as practicable after the receipt of such amounts by Ivy and the Affiliate, respectively, the entirety of such excess in cash to each Unit Holder in proportion to each such Unit Holder's investment in the Fund. It is represented that if Ivy or if the Affiliate receives redemption proceeds that are less than the purchase price paid by Ivy or by the Affiliate to the Fund, Ivy will absorb the loss.

13. It is represented that the sales transactions were in the interest of the Fund, and the Plans and IRAs which had interests in the Fund. In this regard, the Unit Holders received from the Fund a purchase price, which equaled the aggregate value of the Shares and the Restricted Shares, respectively, as reported to the Fund by the Managers of the Underlying Funds who were independent of and unrelated to Ivy and its affiliates. Further, the Unit Holders did not have to wait for the Underlying Funds to fully pay out redemption proceeds to the Fund. In this regard, the sale of the Shares to Ivy and the sale of the Restricted Shares to the Affiliate converted a potential stream of payments from the Fund to the Unit Holders into one-time payments in cash.

In addition, if the Unit Holders had had to wait until the Underlying Funds fully paid out, the redemption proceeds received by the Fund would have been subject to various administrative expenses (such as audit fees and trustee fees) applicable to any on-going pooled investment fund. Further, Unit Holders would have had to bear the market risk that the value of the assets held in the Underlying Fund, some of which are illiquid or held in a side pocket of the Underlying Funds, may have declined in value during 2009 and thereafter.

It is represented further that the entry into the Promissory Notes is in the interest of Unit Holders, because, such Promissory Notes provide that if Ivy or the Affiliate receives redemption proceeds in excess of the purchase price paid, respectively, by such parties for the Shares and the Restricted Shares, the Unit holders will receive a proportionate share of such excess. On the other hand, it is represented that if Ivy or the Affiliate receives redemption proceeds that are less than the purchase price paid, respectively, by such parties for the Shares and the Restricted Shares, Ivy will absorb the loss.

14. It is represented that the proposed sale transactions are feasible in that each such sale was a one-time transaction for cash. Further, in connection with the sale of the Shares to Ivy and the sale the Restricted Shares to the Affiliate, the Fund did not bear any commissions or transaction costs. In addition, Ivy is responsible for the costs of the exemption application and the cost of notifying interested persons.

15. It is represented that the proposed transactions are protective of the Unit Holders, because the purchase price paid by Ivy and by the Affiliate, respectively, for the Shares and the Restricted Shares, equaled the value of such Shares and Restricted Shares, as reported to the Fund by the Managers of each of the Underlying Funds, each of whom is independent of and unrelated to Ivy and its affiliates. Further, it is

[21] It is represented that particular investments made by a hedge fund which the manager of such hedge fund has determined are either difficult to value on an on-going basis or should be held until the resolution of a special event or circumstance are commonly referred to as in a ''side pocket.''

represented that the decision by a Unit Holder as to whether to engage in the proposed transactions was made: (a) In the case of a Plan, by the trustee of each such Plan; (b) in the case of an IRA, by the IRA holder, and (c) in the case of the Retirement Plan, by the Committee which serves as the named fiduciary on behalf of the Retirement Plan for investment matters. It is represented that although, a majority of the members of the Committee are officers of BNYMC, none of the members of the Committee are employed by Ivy.

16. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act and section 4975 of the Code because:

(a) The sale of the Shares to Ivy and the sale of the Restricted Shares to the Affiliate were one-time transactions for cash;

(b) The purchase price paid by Ivy for the Shares, and the purchase price paid by the Affiliate for the Restricted Shares was equal to the value of such Shares and Restricted Shares, as reported to the Fund by the Managers of each of the Underlying Funds, who are independent of and unrelated to Ivy and its affiliates, and as set forth on the most recent statement issued to the Fund immediately prior to the effective date of this proposed exemption;

(c) The Fund did not incur any commissions or transaction costs with respect to the sale of the Shares to Ivy or the sale of the Restricted Shares to the Affiliate;

(d) The decision by a Unit Holder as to whether to engage in the subject transactions was made, in the case of a Plan by the trustee of each such Plan, in the case of an IRA, by the IRA holder, and in the case of the Retirement Plan by the Committee which serves as the named fiduciary on behalf of the Retirement Plan;

(e) Ivy solicited and received from each Unit Holder an affirmative consent to the sale of the Shares and the Restricted Shares by the Fund and to the entry into the Promissory Notes;

(f) Pursuant to the terms of the Promissory Notes, in the event that Ivy or the Affiliate receives redemption proceeds with respect to the Shares and the Restricted Shares in excess of the purchase price paid to the Fund by Ivy for such Shares or the purchase price paid by the Affiliate for such Restricted Shares, Ivy will pay, as soon as practicable after receipt of such amounts, the entirety of such excess in cash to each Unit Holder in proportion to each such Unit Holder's investment in the Fund, and Ivy will absorb the loss, if the aggregate redemption proceeds are less than the purchase price paid for the Shares and the Restricted Shares;

(g) Ivy, as the investment manager of the Fund, represents that the subject transactions are appropriate for and in the interest of the Fund, and the Unit Holders which have interests in the Fund;

(h) Ivy took all appropriate actions necessary to safeguard the interests of the Fund, and the Unit Holders in the Fund, in connection with the subject transactions;

(i) Ivy will maintain, or cause to be maintained, for a period of six (6) years from the date of any of the subject transactions such records as are necessary to determine whether the conditions of this exemption have been met.

Notice to Interested Persons

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include the trustees of each of the Unit Holders that is a Plan, the custodian of each IRA, and each of the IRA holders, and the Committee which serves as the named fiduciary for the Retirement Plan. The Applicant has not proposed providing notice to each of the participants in the Plans, because each Unit Holder has already consented to the sale to Ivy, and these are the same persons who made the decision to invest in the first place.

It is represented that each of these classes of interested persons will be notified of the publication of the Notice by mail, within fifteen (15) calendar days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all interested persons of their right to comment and to request a hearing.

A11 written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

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

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

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

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of November 2009.

Ivan Strasfeld,

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

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