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Signed at Washington, D.C. this 7th Day of April 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–9003 Filed 4–13–95; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Application No. D–09660, et al.

Proposed Exemptions; Paloma Securities L.P. & Boston Global Advisors, Inc. et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

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

Written Comments and Hearing Requests

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

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

Notice to Interested Persons

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

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

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

Paloma Securities L.P. (Paloma) & Boston Global Advisors, Inc. (BGA), Located in Boston, Massachusetts

[Application No. D–09660]

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 the exemption is granted, the restrictions of sections 406(a)(1) (A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the lending of securities to Paloma by employee benefit plans (including commingled investment funds holding plan assets) for which BGA, an affiliate of Paloma, acts as securities lending agent (or sub-agent) and to the receipt of compensation by BGA in connection with these transactions, provided that the following conditions are met:

1. Neither BGA, Paloma nor an affiliate of either has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c) with respect to those assets;

2. Any arrangement for BGA to lend plan securities to Paloma in either an agency or sub-agency capacity will be approved in advance by a plan fiduciary who is independent of Paloma and BGA;

3. A plan may terminate the agency or sub-agency arrangement at any time without penalty on five business days notice;

4. The plan will receive from Paloma (either by physical delivery or by book entry in a securities depository, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to Paloma, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than Paloma or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6, having, as of the close of business on the preceding business day, a market value

initially equal to at least 102 percent of the market value of the loaned securities and, if the market value of the collateral falls below 100 percent, Paloma will deliver addition collateral on the following day such that the market value of the collateral will again equal 102 percent;

5. All procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of Prohibited Transaction Exemptions (PTEs) 81–6 and 82–63;

6. Paloma will indemnify the plan against any losses due to its use of the borrowed securities;

7. The plan will receive the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions;

8. Prior to any plan's approval of the lending of its securities to Paloma, a copy of this exemption, if granted, (and the notice of pendency) will be provided to the plan; and

9. Only plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to Paloma.

Summary of Facts and Representations

1. Paloma is a Delaware limited partnership which is a broker-dealer registered with the Securities and Exchange Commission (SEC) and a member of the National Association of Securities Dealers.[1] As of December 31, 1993, Paloma had in excess of $400 million in combined equity. Paloma is approximately 99 percent owned by Paloma Partners Holdings L.P. (PPH), which in turn is more than 90 percent owned by Paloma Partners, L.P. (PPLP), a Delaware limited partnership.

2. Acting as principal, Paloma actively engages in the borrowing and lending of securities, with daily outstanding loan volume averaging several billion dollars. Paloma utilizes borrowed securities to satisfy the trading requirements of the Paloma group, or to re-lend to other broker-dealers and others who need a particular security for various periods of time. All borrowings by Paloma conform to the Federal Reserve Board's Regulation T. Pursuant to Regulation T, permitted borrowing purposes include making delivery of securities in the case of short sales, failures of a broker to receive securities it is required to deliver or other similar situations.

3. BGA, a wholly owned subsidiary of PPH, was organized as a Delaware corporation in August 1993 with its principal office in Boston. BGA is a broker-dealer and investment advisor, in each case registered as such with the SEC.

4. BGA was formed to provide securities lending services, as agent, to institutional clients. BGA, pursuant to authorization from its client, negotiates the terms of loans with borrowers pursuant to a client-approved form of loan agreement and otherwise acts as a liaison between the lender (and its custodian) and the borrower to facilitate the lending transaction. BGA has responsibility for monitoring receipt of all required collateral and marking such collateral to market daily so that adequate levels of collateral are maintained. BGA also monitors and evaluates on a continuing basis the performance and creditworthiness of the borrowers. BGA does not act as a custodian with respect to the client's portfolio of securities being loaned. Custody of such securities is lodged with the client's bank or other custodian. However, BGA may be authorized from time to time by a client to receive and hold pledged collateral and invest cash collateral pursuant to guidelines established by the client. All of BGA's procedures for lending securities are designed to comply with the applicable conditions of Prohibited Transaction Exemption (PTE) 81–6 and PTE 82–63.[2]

5. BGA may be retained occasionally by primary securities lending agents to provide securities lending services in a sub-agent capacity with respect to portfolio securities of clients of such primary lending agents. As securities lending sub-agent, BGA's role under the lending transactions (i.e., negotiating the terms of loans with borrowers pursuant to a client-approved form of loan agreement and monitoring receipt of, and marking to market, required collateral) parallels those under lending transactions for which BGA acts as primary lending agent on behalf of its clients.

6. When a loan is collateralized with cash, the cash will be invested for the benefit and at the risk of the client, and resulting earnings (net of a rebate to the borrower) comprise the compensation to the plan in respect of such loan. Where collateral consists of obligations other than cash, the borrower pays a fee (loan premium) directly to the lending plan.

7. Paloma and BGA request an exemption for the lending of securities owned by certain pension plans for which BGA serves as securities lending agent or sub-agent (referred to hereinafter as client-plans)[3] to Paloma, following disclosure of its affiliation with Paloma, and for the receipt of compensation by BGA in connection with such transactions. BGA will have no discretionary authority or control over these client-plans' decisions concerning the acquisition or disposition of securities available for loan. Its discretion will be limited to activities such as negotiating the terms of the securities loans with Paloma and (to the extent granted by the plan fiduciary) investing any cash collateral received in respect of the loans. Because BGA, under the proposed arrangement, would have discretion to lend plan securities to Paloma, and because Paloma is an affiliate of BGA, the lending of securities to Paloma by plans for which BGA serves as securities lending agent (or sub-agent) may be outside the scope of relief provided by PTE 81–6 and PTE 82–63.[4]

Several safeguards, described more fully below, are incorporated in the application in order to ensure the protection of the plan assets involved in the transactions. In addition, the applicants represent that the proposed lending program incorporates the relevant conditions contained in PTE 81–6 and PTE 82–63.

8. Where BGA is the direct securities lending agent, a fiduciary of a client-plan who is independent of BGA and Paloma will sign a securities lending

[1] The company's name was legally changed to Paloma Securities L.P. from AKT Associates L.P. effective June 1, 1993.

[2] PTE 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) provides an exemption under certain conditions from section 406(a)(1) (A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest.

PTE 82–63 (47 FR 14804, April 6, 1982) provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities.

[3] For the sake of simplicity, future references to BGA's performance of services as securities lending agent should be deemed to include its parallel performance as securities lending sub-agent and references to client-plans should be deemed to refer to plans for which BGA is acting as sub-agent with respect to securities lending activities, unless otherwise indicated specifically or by the context of the reference.

[4] Condition 1 of PTE 81–6 requires, in part, that neither the borrower nor an affiliate of the borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction.

PTE 82–63 permits the payment of compensation to a plan fiduciary for the provision of securities lending services only if the loan of securities itself is not prohibited under section 406(a) of the Act.

agency agreement with BGA (the Agency Agreement) before the plan participates in a securities lending program. The Agency Agreement will, among other things, describe the operation of the lending program, prescribe the form of securities loan agreement (Loan Agreement) to be entered into on behalf of the plan with borrowers, specify the securities which are available to be lent, required margin and daily marking-to-market, and provide a list of permissible borrowers, including Paloma. The Agency Agreement will also set forth the basis and rate for BGA's compensation from the plan for the performance of securities lending services.

9. The Agency Agreement will contain provisions to the effect that if Paloma is designated by the client-plan as an approved borrower (i) the client-plan will acknowledge that Paloma is an affiliate of BGA and (ii) BGA will represent to the client-plan that each and every loan made to Paloma on behalf of the client-plan will be at market rates and in no event less favorable to the client-plan than a loan of such securities, made at the same time and under the same circumstances, to an unaffiliated borrower.

10. When BGA is lending securities under a sub-agency arrangement, the primary lending agent will enter into a securities lending agency agreement (the primary lending agreement) with a fiduciary of a client-plan who is independent of such primary lending agent, BGA or Paloma, before the plan participates in the securities lending program. The primary lending agent will be unaffiliated with BGA or Paloma. The primary lending agreement will contain substantive provisions akin to those in the Agency Agreement relating to the description of the operation of the lending program, use of an approved form of Loan Agreement, specification of securities which are available to be lent, required margin and daily marking-to-market, and provision of a list of approved borrowers (which will include Paloma). The primary lending agreement will specifically authorize the primary lending agent to appoint sub-agents, to facilitate its performance of securities lending agency functions. Where BGA is to act as such a sub-agent the primary lending agreement will expressly disclose that BGA is to so act. The primary lending agreement will also set forth the basis and rate for the primary lending agent's compensation from the client-plan for the performance of securities lending services and will authorize the primary lending agent to pay a portion of its fee, as the primary lending agent determines in its sole discretion, to any sub-agent(s) it retains pursuant to the authority granted under such agreement.

Pursuant to its authority to appoint sub-agents, the primary lending agent will enter into a securities lending sub-agency agreement (the Sub-Agency Agreement) with BGA under which the primary lending agent will retain and authorize BGA, as sub-agent, to lend securities of the primary lending agent's client-plans, subject to the same terms and conditions as are specified in the primary lending agreement. Thus, for example, the form of Loan Agreement will be the same as that approved by the plan fiduciary in the primary lending agreement and the list of permissible borrowers under the Sub-Agency Agreement (which will include Paloma) will be limited to those approved borrowers listed as such under the primary lending agreement.

BGA represents that the Sub-Agency Agreement will contain provisions which are in substance comparable to those described in paragraphs 8 and 9 above, which would appear in an Agency Agreement in situations where BGA is the primary lending agent. In this regard, BGA will make the same representation in the Sub-Agency Agreement as described in paragraph 9 above with respect to arm's-length dealing with Paloma. The Sub-Agency Agreement will also set forth the basis and rate for BGA's compensation to be paid by the primary lending agent.

11. In all cases, BGA will maintain transactional and market records sufficient to assure compliance with its representation that all loans to Paloma are effectively at arm's-length terms. Such records will be provided to the appropriate plan fiduciary in the manner and format agreed to with the lending fiduciary, without charge to the plan. A client-plan may terminate the Agency Agreement (or the primary lending agreement) at any time, without penalty to the plan, on five business days notice.

12. BGA will enter into the same form of Loan Agreement with Paloma on behalf of client-plans as it does with all other borrowers. An independent fiduciary of the client-plan will approve the terms of the Loan Agreement. The Loan Agreement will specify, among other things, the right of the client-plan to terminate a loan at any time and the plan's rights in the event of any default by Paloma. The Loan Agreement will explain the basis for compensation to the client-plan for lending securities to Paloma under each category of collateral. The Loan Agreement also will contain a requirement that Paloma must pay all transfer fees and transfer taxes related to the security loans.

13. Before entering into the Loan Agreement, Paloma will furnish its most recent available audited and unaudited financial statements to BGA, and in turn such statements will be provided to a client-plan before the plan is asked to approve the terms of the Loan Agreement. The Loan Agreement will contain a requirement that Paloma must give prompt notice at the time of a loan of any material adverse changes in its financial condition since the date of the most recently furnished financial statements. If any such changes have taken place, BGA will not make any further loans to Paloma unless an independent fiduciary of the plan has approved the loan in view of the changed financial condition.

14. As noted above, the agreement by BGA to provide securities lending services, as agent, to a client-plan will be embodied in the Agency Agreement. The client-plan and BGA will agree to the arrangement under which BGA will be compensated for its services as lending agent prior to the commencement of any lending activity. Such agreed upon fee arrangement will be set forth in the Agency Agreement and thereby will be subject to the prior written approval of a fiduciary of the client-plan who is independent of Paloma and BGA. Similarly, with respect to arrangements under which BGA is acting as securities lending sub-agent, the agreed upon fee arrangement of the primary lending agent will be set forth in the primary lending agreement, and such agreement will specifically authorize the primary lending agent to pay a portion of such fee, as the primary lending agent determines in its sole discretion, to any sub-agent, including BGA, which is to provide securities lending services to the plan.[5] The client-plan will be provided with any reasonably available information which is necessary for the plan fiduciary to make a determination whether to enter into or continue to participate under the Agency Agreement (or the primary lending agreement) and any other reasonably available information which

[5] The foregoing provisions describe arrangements comparable to conditions c and d of PTE 82–63 which require that the payment of compensation to a ''lending fiduciary'' is made under a written instrument and is subject to prior written authorization of an independent ''authorizing fiduciary.'' In the event that a commingled investment fund will participate in the securities lending program, the special rule applicable to such funds concerning the authorization of the compensation arrangement set forth in paragraph f of PTE 82–63 will be satisfied.

the plan fiduciary may reasonably request.

15. Each time a plan loans securities to Paloma pursuant to the Loan Agreement, BGA will reflect in its records the material terms of the loan, including the securities to be loaned, the required level of collateral, and the fee or rebate payable. The terms of each loan will be at least as favorable to the client-plan as those of a comparable arm's-length transaction between unrelated parties.

16. The client-plan will be entitled to the equivalent of all interest, dividends and distributions on the loaned securities during the loan period. The Loan Agreement will provide that the client-plan may terminate any loan at any time. Upon a termination, Paloma will be contractually obligated to return the loaned securities to the client-plan within five business days of notification (or such longer period of time permitted pursuant to a class exemption). If Paloma fails to return the securities within the designated time, the client-plan will have the right under the Loan Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price and any other expenses of the plan associated with the sale and/or purchase.

17. BGA will establish each day a written schedule of lending fees and rebate rates in order to assure uniformity of treatment among borrowing brokers and to limit the discretion BGA would have in negotiating securities loans to Paloma. Loans to Paloma on any day will be made at rates on the daily schedule or at rates which may be more advantageous to the client-plans. In no case will loans be made to Paloma at rates below those on the schedule. The rebate rates (in respect of cash-collateralized loans made by client-plans) which are established will take into account the potential demand for loaned securities, the applicable bench-mark cost of funds indices (typically, Federal Funds, overnight repo rate or the like) and anticipated investment return on overnight investments which are permitted by the relevant plan fiduciary. The lending fees (in respect of loans made by client-plans collateralized by other than cash) which are established will be set daily to reflect conditions as influenced by potential market demand.

BGA will negotiate rebate rates for cash collateral payable to each borrower, including Paloma, on behalf of a plan. Where, for example, cash collateral derived from an overnight loan is intended to be invested in a generic repurchase agreement, any rebate fee determined with respect to an overnight repurchase agreement benchmark will be set below the applicable ''ask'' quotation therefor. Where cash collateral is derived from a loan with an expected maturity date (term loan) and is intended to be invested in instruments with similar maturities, the maximum rebate fee will be less than the investment return (assuming no investment default). With respect to any loan to Paloma, BGA will never negotiate a rebate rate with respect to such loan which would produce a zero or negative return to the client-plan (assuming no default on the investments related to the cash collateral from such loan where BGA has investment discretion over the cash collateral). BGA represents that the written rebate rate established daily for cash collateral under loans negotiated with Paloma will not exceed the rebate rate which would be paid to a similarly situated unrelated borrower with respect to a comparable securities lending transaction. BGA will disclose the method for determining the maximum daily rebate rate as described above to an independent fiduciary of a client-plan for approval before lending any securities to Paloma on behalf of the plan.

18. For collateral other than cash, the applicable loan fee in respect of any outstanding loan is reviewed daily for competitiveness and adjusted, where necessary, to reflect market terms and conditions. With respect to any calendar quarter, on average 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of client-plans will be to unrelated borrowers, and so the competitiveness of the loan fee will be tested in the marketplace. Accordingly, loans to Paloma should result in competitive rate income to the lending client-plan. At all times, BGA will effect loans in a prudent and diversified manner. BGA will lend securities to requesting borrowers on a ''first come, first served'' basis, as a means of assuring uniformity of treatment among borrowers.

19. Under the Loan Agreement, Paloma will agree to indemnify and hold harmless the applicable client-plan (including the sponsor and fiduciaries of such client-plan) from any and all damages, losses, liabilities, costs and expenses (including attorney's fees) which the client-plan may incur or suffer arising in any way from the use by Paloma of the loaned securities or any failure of Paloma to deliver loaned securities in accordance with the provisions of the Loan Agreement or to otherwise comply with the terms of the Loan Agreement.

20. The client-plan will receive collateral from Paloma by physical delivery, book entry in a securities depository, wire transfer or similar means by the close of business on or before the day the loaned securities are delivered to Paloma. The collateral will consist of cash, securities issued or guaranteed by the U.S. Government or its agencies or irrevocable bank letters of credit (issued by a person other than Paloma or its affiliates) or such other types of collateral which might be permitted by the Department under a class exemption. The market value of the collateral on the close of business on the day preceding the day of the loan will be at least 102 percent of the market value of the loaned securities. The Loan Agreement will give the client-plan a continuing security interest in and a lien on the collateral. BGA will monitor the level of the collateral daily. If the market value of the collateral falls below 100 percent (or such greater percentage as agreed to by the parties) of that of the loaned securities, BGA will require Paloma to deliver by the close of business the next day sufficient additional collateral to bring the level back to at least 102 percent.

21. Each client-plan participating in the lending program will be sent a monthly transaction report. The monthly report will provide a list of all security loans outstanding and closed for a specified period. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or loan premium (as the case my be) at which the security is loaned, and the number of days the security has been on loan.

22. Only client-plans with total assets having an aggregate market value of at least $50 million will be permitted to lend securities to Paloma. This restriction is intended to assure that any lending to Paloma will be monitored by an independent fiduciary of above average experience and sophistication in matters of this kind.

23. In summary, the applicants represent that the described transactions will satisfy the statutory criteria of section 408(a) of the Act because: (1) The form of the Loan Agreement pursuant to which any loan is effected will be approved by a fiduciary of the client-plan who is independent of Paloma and BGA before a client-plan lends any securities to Paloma; (2) the lending arrangements will permit the client-plans to lend to Paloma, a major borrower of securities, and will enable

the plans to diversify the list of eligible borrowers and earn additional income from the loaned securities on a secured basis, while continuing to receive any dividends, interest payments and other distributions due on those securities; (3) the client-plan will receive sufficient information concerning Paloma's financial condition before the plan lends any securities to Paloma; (4) the collateral on each loan to Paloma initially will be at least 102 percent of the market value of the loaned securities, which is in excess of the 100 percent collateral required under PTE 81–6, and will be monitored daily by BGA; (5) the client-plans will receive a monthly report, so that an independent fiduciary of the client-plans also may monitor loan activity, fees, the level of the collateral and loan return/yield; (6) BGA will have no discretionary authority or control over the plan's acquisition or disposition of securities available for loan; (7) the terms of each loan will be at least as favorable to the plans as those of a comparable arm's-length transaction between unrelated parties; and (8) all the procedures under the proposed transactions will, at a minimum, conform to the applicable provisions of PTE 81–6 and PTE 82–63.

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

Bank of Ashland, Inc. (the Bank), Located in Ashland, Kentucky

[Application Nos. D–09841 thru D–09843]

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 the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply as of December 23, 1994, to the cash sale of certain collateralized mortgage obligations (CMOs) by six employee benefit plans for which the Bank acts as trustee (the Plans) to Ashland Bankshares, Inc. (the Holding Company), a party in interest with respect to the Plans, provided that the following conditions were met:

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

(b) Each Plan received an amount which was equal to the greater of (i) the outstanding principal balance for the CMOs owned by the Plan, plus accrued but unpaid interest, at the time of sale, (ii) the amortized cost for the CMOs owned by the Plan, plus accrued but unpaid interest, as determined by the Bank based on the outstanding principal balance for each CMO on the date of sale, or (iii) the fair market value of the CMOs owned by the Plan as determined by an independent, qualified appraiser at the time of the sale;

(c) The Plans did not pay any commissions or other expenses with respect to the sale;

(d) The Bank, as trustee of the Plans, determined that the sale of the CMOs is in the best interests of each Plan and their participants and beneficiaries at the time of the transaction;

(e) The Bank took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the transactions; and

(f) Each Plan received a reasonable rate of interest on the CMOs during the period of time it held the CMOs.

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of December 23, 1994.

Summary of Facts and Representations

1. The Bank is a wholly-owned subsidiary of the Holding Company. The Bank serves as trustee of the Plans and has investment discretion for the assets of the Plans.

The Plans are the John O. Jones, M.D., PSC Money Purchase Pension Plan (the Jones Plan); the Michael G. Ehrie, Jr., M.D., PSC Money Purchase Pension Plan (the Ehrie Pension Plan); the Michael G. Ehrie, Jr., M.D., PSC Profit Sharing Plan (the Ehrie P/S Plan); the Simons Real Estate Money Purchase Pension Plan (the Simons Plan); the Buchanan Sound & Communications, Inc. Profit Sharing Plan (the Buchanan Plan); and the Bank of Ashland, Inc. Profit Sharing Plan (the Bank Plan). All of the Plans are defined contribution plans.

As of December 23, 1994, the Jones Plan had five participants and total assets of $713,790; the Ehrie Pension Plan had seven participants and total assets of $322,168; the Ehrie P/S Plan had seven participants and total assets of $363,513; the Simons Plan had two participants and total assets of $134,791; the Buchanan Plan had 32 participants and total assets of $97,841; and the Bank Plan had 58 participants and total assets of $2,427,300. Thus, as of December 23, 1994, the Plans had 111 participants and total assets of approximately $4,059,403.

2. The Bank represents that at various times during the third and fourth quarters of 1993 and the first quarter of 1994, assets of the Plans were invested in the CMOs. The CMOs were purchased by the Bank from broker-dealers that were independent of the Plans as well as the Bank and its affiliates (including the Holding Company). The CMOs are investment products through which investors purchase an interest in a pool of residential mortgage loans. Investors receive payments of principal and interest. The interest payments change monthly in relation to a specific index, such as the London Interbank Offered Rate (LIBOR) or the U.S. Federal Reserve's Cost of Funds Index (COFI), contained in a formula used to calculate the interest rate for such securities. The repayment of principal is usually guaranteed by various U.S. government agencies, such as the Federal Home Loan Mortgage Corporation (FHLMC or ''Freddie Mac'') or the Federal National Mortgage Association (FNMA or ''Fannie Mae'').

3. The CMOs are described as follows: (i) FHLMC Multiclass Mortgage Participation Certificates, Series 1625, Class SB, SE, and SJ; (ii) FHLMC Multiclass Mortgage Participation Certificates, Series 1655, Class S; (iii) FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1993–102, Class S; (iv) FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1993–110, Class SH; (v) FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1993–139, Class SL and SC; (vi) FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1993–202, Class VJ; and (vii) GE Capital Mortgage Services, Inc., REMIC Multi-Class Pass-Through Certificates, Series 1993–17, Class 17–A20.[6]

[6] The applicant states that the GE Capital Mortgage Services, Inc. REMIC Multi-Class Pass-Through Certificates, Series 1993–17, Class 17–A20 (the GE CMO) was a publicly-offered security. In this regard, the applicant notes that if a plan acquires a publicly-offered security that grants the plan an equity interest in an entity, the plan's assets include the security but not any of the underlying assets of the entity (see 29 CFR 2510.3–101(a)(2) and (b)). Therefore, the applicant represents that the assets of the Plans that own the GE CMO do not include any of the mortgages underlying the GE CMO.

The applicant states further that if a plan acquires a ''guaranteed governmental mortgage pool certificate'', the plan's assets include the certificate but not any of the mortgages underlying such certificate (see 29 CFR 2510.3–101(i). A ''guaranteed governmental mortgage pool certificate'' is a certificate (i) that is backed by, or evidences an interest in, specified mortgages or participation interests, and (ii) whose interest and principal

All of the certificates mentioned above are structured as a real estate mortgage investment conduit (''REMIC'') under section 860D of the Code. The various classes of certificates receive principal and interest payments in differing portions and at differing times from the cash flows provided from the monthly payments received on the underlying mortgages.

The repayment of principal from the underlying mortgages fluctuates significantly. To facilitate the structuring of such REMICs, the prepayments on the pools of mortgages are commonly measured relative to a variety of prepayment models. The model used for these REMICs is the Public Securities Association's standard prepayment model or ''PSA''. This model assumes that mortgages will prepay at an annual rate of .2% in the first month after origination, then the prepayment rate increases at an annual rate of .2% per month up to the 30th month after origination and then the prepayment rate is constant at 6% per annum in the 30th and later months. This assumption is called 100 PSA.

The REMIC structure allocates principal payments to the various classes in varying amounts as principal payments are made. The exact date of repayment of all principal to any class of certificates is not known until the final maturity date. The maturity for the various classes is referred to as the ''weighted average life'' (WAL). The WAL of a security refers to the average amount of time expressed in years that will elapse from the date of its issuance until each dollar of principal has been repaid to the investor based on the PSA assumption. The holders of all classes of the certificates will receive all of their principal back. However, the timing of when that principal is returned is dependent on how quickly the underlying mortgages are repaid or refinanced. In no event will the time for the recovery of principal exceed the final maturity date of the underlying mortgages.

Each month the monthly payments on the underlying mortgages are collected and distributed to the holders of the various REMIC classes. Interest on the certificates is paid monthly and is determined according to a specific formula. The certificates owned by the Plans, described in further detail below, are ''inverse floaters'' with an interest rate indexed to one month LIBOR or COFI. These certificates are ''inverse floaters'' because the formula used to calculate the interest rate, which adjusts monthly for each certificate, usually raises the rate when the index falls and lowers the rate when the index rises.

All of the CMOs were purchased by the Bank, as trustee of the Plans, from either Mark Ross (Mr. Ross) of Kemper Securities, Inc. (Kemper Securities), located in Houston, Texas, or Robert Conroy (Mr. Conroy) of First Institutional Securities, Inc. (FIS), located in Clifton, New Jersey. The Bank states that neither the brokers (i.e. Mr. Ross and Mr. Conroy) nor their brokerage firms have any relationship to the Plans, the employers which maintain the Plans, the Bank, or any affiliates of the Bank.

A description of each of the CMOs, including the respective interest rate formulas, WAL and PSA assumptions are set forth below in the APPENDIX.

4. At the time of purchase, the Bank anticipated that interest rates generally would decline and that each CMO would be retired within three years of the date of purchase due to prepayments of the underlying mortgages in each pool as obligors refinanced their mortgages at lower interest rates. The Bank thought that the CMOs would yield the Plans a high rate of return as well as offset the adverse effects declining interest rates would have on the Plans' floating rate assets during this period. The Bank states that the ideal time to buy CMOs that are ''inverse floaters'' is when interest rates, as measured by indices such as LIBOR or COFI, are high and are expected to go down during the time the investor is holding the CMOs. However, when interest rates rise, the rate of return on the CMOs goes down and the securities become less valuable. The Bank notes that initially the Plans were receiving monthly interest payments on the CMOs at rates that were significantly above the market rate, as measured by interest rate indexes at the time. As a result of increases in interest rates during 1994, and the expectation of additional interest rate increases, the Bank anticipated that the CMOs would not be retired for at least 15 years because of the projected decrease in the prepayments of mortgages held in each pool. Furthermore, as a result of the increase in interest rates, both the rate of return on the CMOs (as measured by the monthly interest payments) and the market value of the CMOs decreased significantly. Thus, the Bank states that it became increasing difficult to find third party investors who were willing to purchase the CMOs from the Plans without the Plans incurring significant losses on their investments.[7]

5. Robert W. Nichols (Mr. Nichols), First Vice President of Morgan Keegan & Company, Inc., an independent, qualified appraiser located in Louisville, Kentucky, calculated the fair market value of the CMOs held by the Plans as of December 15, 1994. Mr. Nichols solicited bids for all of the CMOs from at least three different independent broker-dealers, including First National Bank of Knoxville in Knoxville, Tennessee; First Commerce Securities in Memphis, Tennessee; and Merrill Lynch Institutional Sales in Charleston, West Virginia. Based on pricing information obtained from these broker-dealers, Mr. Nichols advised the Bank that the fair market value of the CMOs was significantly below the original purchase price of the CMOs (as noted in the table below in Paragraph 6). The Bank states that Mr. Nichols is not related to or associated with the Bank, the Holding Company, the Plans or any of the brokers involved in the purchases of the CMOs.

6. In addition, the Bank calculated the value of the CMOs held by the Plans as of December 23, 1994, using an

payments are guaranteed by the Government National Mortgage Association (GNMA), FHLMC, or FNMA. Thus, the applicant represents that since all of the CMOs, except for the GE CMO, have interest and principal payments payable under the CMO guaranteed by either FHLMC or FNMA, the assets of the Plans do not include any of the mortgages underlying such CMOs.

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

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.

In this regard, the Department is not providing any opinion as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a–1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than comparable investments offering a similar return or result.

amortized cost computation. The Bank states that the computation of the amortized cost was arrived at by a series of computations. First, the Bank determined the amount of the premium paid upon purchase (Purchase price − 100 = Premium). The par value or face value of a bond is referred to as 100. The Bank states that since all of CMOs paid interest monthly, the premium was allocated monthly in order to be properly matched to the income. The number of months that the premium was allocated over was determined by the WAL at the time of purchase (expressed in years) multiplied by twelve (WAL × 12 = amortizing months).[8] Then, the Bank determined the amount of premium that was allocated to each month by dividing the premium by the amortizing months. To determine how much premium still remained to be amortized, the Bank subtracted from the amortizing months those months that the Plan actually held the CMO. The Bank states that the remaining months were multiplied by the monthly premium amount to arrive at the premium balance. The premium was added to the par price (i.e. 100) to arrive at the amortized cost remaining for the CMO. Thus, the Bank states that the formula for calculating amortized cost was as follows: [9]

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The Bank also calculated the remaining principal balance on the CMO investments held by each Plan as of December 23, 1994, based on the face amount of the securities and the principal and interest payments received by the Plans through that date. As shown in the table below, the amortized cost of the CMOs held by the Plans exceeded the remaining principal balances on the CMOs at the time of the transaction. In addition, the table below shows the fair market value of the CMOs held by each Plan, based on Mr. Nichols' appraisal of the CMOs on December 15, 1994.

Plan	Amort. cost	Prin. bal.	Mkt. value
Jones Plan	$226,612	$224,473	$105,711
Ehrie Pension Plan	79,449	78,410	41,581
Ehrie P/S Plan	105,046	104,028	52,924
Simons Plan	23,085	22,745	12,002
Buchanan Plan	18,240	18,192	10,445
Bank Plan	646,699	644,433	302,519

The Bank determined that a sales price for the CMOs owned by each of the Plans based on amortized cost, plus the total principal and interest payments received by the Plans as of the date of sale, would produce a total return to the Plans which would exceed the Plans' total original cost for the CMOs (as illustrated below).

Plan	Interest collected	Principal rec.'d + amort. cost	Total receipts	Total cost
Jones Plan	$25,372	$242,078	$267,450	$246,254
Ehrie Pension Plan	8,060	86,039	94,099	86,812
Ehrie P/S Plan	11,367	115,849	127,216	117,982
Simons Plan	2,716	25,313	28,029	25,717
Buchanan Plan	1,414	20,049	21,463	20,100
Bank Plan	72,953	693,782	766,735	705,680

The Bank represents that each Plan received a reasonable rate of interest on the CMOs during the period of time it held the CMOs. In this regard, the Bank states that the weighted annualized rate of interest received by each Plan on its CMOs, net of amortization cost, was as follows: (i) 8.19% for the Jones Plan; (ii) 8.06% for the Ehrie Pension Plan; (iii) 7.58% for the Ehrie P/S Plan; (iv) 8.68% for the Simons Plan; (v) 7.09% for the Buchanan Plan; and (vi) 8.23% for the Bank Plan.[10]

7. The Bank represents that when the market value and the availability of buyers for the CMOs declined, the CMOs became illiquid investments. Therefore, the Bank believed that the CMOs were no longer suitable investments for the Plans. The Bank states that any sale of the CMOs on the open market would have produced significant losses for the Plans and the individual accounts of each Plan

[8] As noted previously in Paragraph 3, the WAL for a CMO is determined at the time of purchase based on various assumptions about the speed of principal repayments and interest rate changes, using financial data provided by independent sources (such as Bloomberg Financial Markets). The Bank states that changes to the formula for calculating the amortized cost based on WAL assumptions other than at the time of purchase would not provide an administratively acceptable method of allocating the premium for a CMO because such a method would require constant adjustments which are not material to the concept of income recognition as it relates to CMOs.

[9] For example, assume that a particular CMO investment has been held by a Plan for 6 months. If the WAL at the time of purchase of the CMO was 2.02 years and the cost was 102.25 based on the par value being referred to as 100, the formula would be $(((102.25 - 100 = 2.25) / 2.02 \times 12 = 24.24) = .09282178) \times ((2.02 \times 12 = 24.24) - 6) = 1.69307 + 100 = 101.69307)$. As the formula indicates, the amortized cost using the WAL at purchase would be 101.69307 as compared to the actual cost of 102.25. Therefore, the Bank states that the amortized cost formula caused the Plan to be paid an amount for this CMO investment which was slightly less than the Plan's original cost (i.e. basis) but more than the total remaining principal balance plus accrued but unpaid interest.

[10] The formula for the annualized rate of return for the months held was as follows: (Interest income collected less amortization of premiums realized) divided by (average outstanding balance) divided by (average months held) and multiplied by 12.

participant involved. In order to prevent such losses, the Bank sold the CMOs to the Holding Company at an amount which for each Plan was the greater of either: (i) The outstanding principal balance for the CMOs owned by the Plan, plus accrued but unpaid interest, at the time of sale; (ii) the amortized cost for the CMOs owned by the Plan, plus accrued but unpaid interest, as determined by the Bank based on the outstanding principal balance for each CMO on the date of sale; or (iii) the fair market value of the CMOs owned by the Plan as determined by an independent, qualified appraiser at the time of the sale.

The Bank, as trustee of the Plans, believed that the transactions were in the best interests of the Plans and their participants and beneficiaries. The Bank states that the transactions allowed the Plan participants to divest themselves of an illiquid investment and shifted to the Holding Company the risks associated with selling the CMOs during the current interest rate environment. As a result, the individual participants in the Plans were no longer subject to the losses that would have resulted from the participants receiving a distribution of their account balances based on the fair market value of the CMOs. The Bank wanted to sell the CMOs to the Holding Company by December 31, 1994, in order to benefit participants of the Plans receiving distributions from their individual accounts during 1995. In this regard, the Bank notes that distributions made to Plan participants are based on the fair market value of the plan assets at the year-end valuation. At the time of the transaction, the fair market value of the CMOs was substantially less than the amount the Plans received as a result of the transactions.

8. The Bank represents that it took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the sale of the CMOs to the Holding Company. The Bank ensured that each Plan received the appropriate amount of cash from the Holding Company in exchange for such Plan's CMOs. The Bank reviewed an updated appraisal of the CMOs to ensure that there was an accurate calculation by the independent appraiser of the fair market value of each of the CMOs held by the Plans, based on pricing information obtained from independent broker-dealers. The Bank also ensured that the Plans did not pay any commissions or other expenses in connection with the transactions.

9. In summary, the applicant represents that the transactions satisfied the statutory criteria of section 408(a) of the Act and section 4975 of the Code because: (a) Each sale was a one-time transaction for cash; (b) each Plan received an amount which was equal to the greater of either (i) the outstanding principal balance for the CMOs owned by the Plan, plus accrued but unpaid interest, at the time of sale, (ii) the amortized cost for the CMOs owned by the Plan, plus accrued but unpaid interest, as determined by the Bank based on the outstanding principal balance for each CMO on the date of sale, or (iii) the fair market value of the CMOs owned by the Plan as determined by an independent, qualified appraiser at the time of the sale; (c) the Plans did not pay any commissions or other expenses with respect to the sale; (d) the Bank, as trustee of the Plans, determined that the sale of the CMOs was in the best interests of each Plan and its participants and beneficiaries; (e) the Bank took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the transactions; and (f) each Plan received a reasonable rate of interest on the CMOs during the period of time it held the CMOs.

Notice to Interested Persons

The applicant states that notice of the proposed exemption shall be made by first class mail to the appropriate Plan fiduciaries within fifteen (15) days following the publication of the proposed exemption in the Federal Register. This notice shall include a copy of the notice of proposed exemption as published in the Federal Register and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the Federal Register.

Appendix

A. The FHLMC Multiclass Mortgage Participation Certificates, Series 1625, Class SB, SE and SJ, were issued by Freddie Mac as part of an issue of multiclass participation certificates with 45 various classes in the total amount of $1.5 trillion. The Bank, as trustee of the Plans, purchased portions of three of those classes on December 2, 1993. The Certificates are secured by first lien residential mortgages with an original term to maturity of 180 months or less.

This REMIC uses a 200 PSA assumption regarding principal repayment (2 times 100 PSA). The WAL for classes SB, SE and SJ based on a 200 PSA was 3.4, 2.0 and 2.0 years, respectively, at the time of purchase.

The formula for the interest on class SB is 57.000005—(LIBOR×6.785715) with a minimum rate of 0.0% and a maximum rate of 9.5%. For class SE, the interest is 17.999996—(LIBOR×2.571428) with a minimum rate of 0.0% and a maximum rate of 17.999996%. For class SJ, the interest is 18.529405—(LIBOR×2.647058) with a minimum rate of 0.0% and a maximum rate of 18.529405%. "LIBOR" refers to one-month LIBOR, a rate established daily by independent market data sources in London, England, based on the arithmetic mean of quotations offered by creditworthy international banks dealing in Eurodollars. LIBOR moves up or down daily as the interest rates charged by such banks move up or down. The movement of LIBOR has an inverse relationship on the interest paid on all inverse floating rate classes. As interest rates increased from February through December 1, 1994, the interest paid on most of these classes declined. The initial interest rates for classes SB, SE and SJ were 9.5%, 9.803569% and 10.091908%, respectively. The interest rates as of December 1, 1994 for classes SB, SE and SJ were 9.5%, 2.57% and 2.65%. The interest rates can drop to 0.0% for classes SB, SE and SJ if LIBOR reaches or exceeds 8.4, 8.0 and 7.0 percent, respectively. LIBOR on December 23, 1994 was 5.94%.

B. The FHLMC Multiclass Mortgage Participation Certificates, Series 1655, Class S, were issued by Freddie Mac as part of an issue of multiclass certificates with 20 various classes in the total amount of $500 million. The Bank, as trustee of the Plans, purchased a portion of a class on December 7, 1993. The Certificates are secured by first lien residential mortgages with an original term to maturity of 180 months or less.

This REMIC uses a 250 PSA assumption regarding principal repayment (2.5 times 100 PSA). The WAL for class S based on a 250 PSA was 3.5 years at the time of purchase.

The formula for the interest on class S is 18.983333333—(LIBOR x 2.333333) with a minimum rate of 3.0% and a maximum rate of 18.98333333%. As discussed above, the movement of LIBOR has an inverse relationship on the interest paid on all inverse floating rate classes. As interest rates increased from February through December 1994, the interest paid on the class S securities declined. The initial interest rate was 11.5458%. As of December 15, 1994, the interest rate was 4.54%. The interest rate can drop to 3.0% if LIBOR reaches 6.85% or higher. As noted

above, LIBOR was 5.94% on December 23, 1994.

C. The FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1993–102, Class S, were issued by Fannie Mae as part of an issue of pass-through certificates with 18 various classes in the total amount of $500 million. The Bank, as trustee of the Plans, purchased a portion of one class on September 2, 1993. The Certificates are secured by first lien residential mortgages with an original term to maturity of 180 months or less.

This REMIC uses a 175 PSA assumption regarding principal repayment (1.75 times 100 PSA). The WAL for class S based on a 175 PSA was 3.5 years at the time of purchase.

The formula for the interest on class S is 26.95598—(LIBOR x 3.85086) with a minimum rate of 0.0% and a maximum rate of 26.95598%. The movement of LIBOR has an inverse relationship on the interest paid on all inverse floating rate classes. As interest rates increased from February through December 1994, the interest paid on class S securities declined. The initial interest rate was 14.92206%. As of December 23, 1994, the interest rate was 3.97%. The interest rate can drop to 0.0% if LIBOR reaches 7% or higher.

D. The FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1993–110, Class SH, were issued by Fannie Mae as part of an issue of pass-through certificates with 28 various classes in the total amount of $925 million. The Bank, as trustee of the Plans, purchased a portion of one class on October 5, 1993. The Certificates are secured by first lien residential mortgages with an original term to maturity of 360 months or less.

This REMIC uses a 200 PSA assumption regarding principal repayment (2 times 100 PSA). The WAL for class SH based on a 200 PSA was 2.8 years at the time of purchase.

The formula for the interest on class SH is 16.9929—(COFI × 1.857144) with a minimum rate of 0.0% and a maximum rate of 16.9929%. In this case, ''COFI'' refers to the U.S. Federal Reserve's 11th District Cost of Funds Index for the second month next preceding the month in which such interest accrual period commences. COFI moves up or down as interest rates move up or down. The movement of COFI will have an inverse relationship on the interest paid on all inverse floating rate classes. COFI does not react immediately to changes in interest rates. Unlike most of the other certificates discussed herein, the interest paid on class SH securities declined only slightly during the period from February to December, 1994. The initial interest rate was 9.24677%. As of December 1, 1994, the interest rate was 9.217%. However, additional interest rate increases will significantly decrease the interest rate on these certificates. The interest rate can drop to 0.0% if COFI reaches 9.15% or higher. COFI was 4.367% for December 1994.[11]

E. The FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1993–139, Class SL and SC, were issued by Fannie Mae as part of an issue of pass-through certificates with 59 various classes in the total amount of $1,650,350,872. The Bank, as trustee of the Plans, purchased a portion of two classes on September 7 and 21, 1993. The Certificates are secured by first lien residential mortgages with an original term to maturity of 360 months or less.

This REMIC uses a 200 PSA assumption regarding principal repayment (2 times 100 PSA). The WAL for class SL and SC based on a 200 PSA was 4.0 and 3.5 years, respectively, at the time of purchase.

The formula for the interest on class SL is 70.05484—(LIBOR × 8.193548) with a minimum rate of 0.0% and a maximum rate of 12.7%. For class SC, the interest is 23.94—(LIBOR × 2.8) with a minimum rate of 0.0% and a maximum rate of 23.94%. The movement of LIBOR has an inverse relationship on the interest paid on all inverse floating rate classes. As interest rates increased from February through December 1994, the interest paid on the class SC securities declined. The initial interest rates for SL and SC classes were 12.7% and 15.015%, respectively. As of December 23, 1994, the interest rates were 12.7% and 8.2%, respectively. The interest rate for both the SL and SC class can drop to 0.0% if LIBOR reaches or exceeds 8.55%. As noted above, LIBOR was 5.94% on December 23, 1994.

F. The FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1993–202, Class VJ, were issued by Fannie Mae as part of an issue of pass-through certificates with 76 various classes in the total amount of $2 trillion. The Bank, as trustee of the Plans, purchased a portion of one class on October 28, 1993. The Certificates are secured by first lien residential mortgages with an original term to maturity of 360 months or less.

This REMIC uses a 200 PSA assumption regarding principal repayment (2 times 100 PSA). The WAL for class VJ based on a 200 PSA was 3.5 years at the time of purchase.

The formula for the interest on class VJ is 21.58 − (LIBOR × 2.6) with a minimum rate of 0.0% and a maximum rate of 21.58%. The movement of LIBOR has an inverse relationship on the interest paid on all inverse floating rate classes. As interest rates increased from February through December 1994, the interest paid on class VJ securities declined. The initial interest rate was 13.455%. As of December 23, 1994, the interest rate was 6.06%. The interest rate can drop to 0.0% if LIBOR reaches 8.3% or higher.

G. The GE Capital Mortgage Services, Inc., REMIC Mult-Class Pass-Through Certificates, Series 1993–17, Class 17–A20, were issued by GE Capital Mortgage Services, Inc., as part of an issue of pass-through certificates with 28 senior classes and 6 junior classes in the total amount of $493,750,000. The Bank, as trustee of the Plans, purchased a portion of one of the senior classes on November 30, 1993. The Certificates are secured by first lien residential mortgages with an original term to maturity of 360 months or less.

This REMIC uses a 340 PSA assumption regarding principal repayment (3.4 times 100 PSA). The WAL for class A20 based on a 340 PSA was 2.5 years at the time of purchase. The repayment of principal is not guaranteed by any U.S. Government Agency. As with the other REMICs, the timing of when the principal is returned is dependent on how quickly the underlying mortgages are actually repaid or refinanced.

The formula for the interest on class A20 is 17.875 − (LIBOR × 2.166666) with a minimum rate of 0.0% and a maximum rate of 17.875%. The movement of LIBOR has an inverse relationship on the interest paid on all inverse floating rate classes. As interest rates increased from February through December 1994, the interest paid on class A20 securities declined. The initial interest rate was 10.96875%. As of December 23, 1994, the interest rate was 4.87%. The interest rate can drop to 0.0% if LIBOR reaches 8.25% or higher.

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

The Neiman Marcus Group, Inc. Employee Savings Plan (the Plan), Located in Chestnut Hill, Massachusetts

[Application No. D–09917]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act

[11] The applicant states that COFI is adjusted monthly, instead of daily.

and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) proposed interest-free loans to the Plan (the Loans) by The Neiman Marcus Group, Inc. (the Employer), the sponsor of the Plan, with respect to guaranteed investment contract number 62638 (the GIC) issued by Confederation Life Insurance Company (Confederation Life); and (2) the Plan's potential repayment of the Loans (the Repayments); provided that the following conditions are satisfied:

(A) No interest and/or expenses are paid by the Plan;

(B) The Loans are made in lieu of amounts due the Plan under the terms of the GIC;

(C) The Repayments are restricted to cash proceeds paid to the Plan by Confederation Life and/or any state guaranty association or other responsible third party making payment with respect to the GIC (the GIC Proceeds), and no other Plan assets are used to make the Repayments; and

(D) The Repayments will be waived to the extent the Loans exceed the GIC Proceeds.

Summary of Facts and Representations

1. The Plan is a defined contribution plan which includes a cash or deferred arrangement under section 401(k) of the Code, and which provides for employer matching contributions and additional employer discretionary contributions. As of September 30, 1994 the Plan had approximately 7,805 participants and total assets of approximately $68,729,722. The trustee of the Plan is Wachovia Bank of North Carolina, N.A. (the Trustee). The Employer, a Delaware public corporation with its principal place of business in Chestnut Hill, Massachusetts, is a retailer of clothing, fashion apparel, and home furnishings.

2. The Plan provides for individual participant accounts (the Accounts) and for participant-directed investment of each Account. Plan participants direct investment of their Accounts among options (the Funds) offered by the Plan. Participants' directions and changes of directions, with respect to investment of the Accounts among the Funds, are permitted on a quarterly basis. The Funds include a fixed income fund (the F.I. Fund), which invests in, among other things, guaranteed investment contracts issued by insurance companies.

2. Among the assets of the F.I. Fund is the GIC, a guaranteed investment contract issued to the Plan in 1992 by Confederation Life Insurance Company (Confederation Life), a Canadian insurance company doing business in the United States. The GIC is a single-deposit, benefit-responsive contract, principal amount $3,500,000, earning interest at a guaranteed annual rate of 7.91 percent (the Contract Rate). The GIC's terms enable the F.I. Fund to make withdrawals (the Withdrawals) to effect, in accordance with the terms of the Plan, benefit distributions, in-service withdrawals, participant loans, and participant-directed transfers of Account balances to other Funds offered by the Plan (the Withdrawal Events). Interest at the Contract Rate is credited daily, calculated on the balance remaining deposited under the GIC. If interest earned under the GIC exceeds the amount withdrawn, the difference is paid annually (the Interest Payments) on the anniversary date of the GIC's effective date. All Interest Payments have been made when due through April 3, 1994. The terms of the GIC also require Confederation Life to make a final payment to the Plan on March 31, 1997 (the Maturity Payment) in the amount of the GIC's accumulated book value, representing total principal deposits plus interest earnings at the Contract Rate less previous withdrawals. As of December 31, 1994, the GIC had a total accumulated book value of $3,684,555.

3. Commencing August 11, 1994 (the Receivership Date), insurance regulatory authorities in Canada and the state of Michigan instituted proceedings to place Confederation Life in receivership (the Receivership) [12], and normal account activity with respect to Confederation Life contracts was stayed pending resolution of the Receivership. Since the commencement of the Receivership, the Plan has received no payments under the GIC to enable the F.I. Fund to fund Withdrawal Events, and the Employer represents that it is uncertain whether, or to what extent, the Plan will receive any payments to enable funding of future Withdrawal Events. Additionally, the Employer represents that it is uncertain whether and to what extent the Maturity Payment under the GIC will be paid.

[12] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

The Employer desires to alleviate the F.I. Fund of risks associated with investments in the GIC, and to enable the F.I. Fund to resume and continue funding the Withdrawal Events. Accordingly, the Employer proposes to make loans to the Plan (the Loans) in lieu of the amounts due from Confederation Life under the terms of the GICs, and is requesting an exemption for the Loans, and for their potential repayment (the Repayments) by the Plan, under the terms and conditions described herein.

5. The Employer and the Trustee will execute a written agreement embodying all the terms and conditions of the Loans and the Repayments (the Agreement). Under the Agreement, the Employer agrees to make a Loan to the F.I. Fund each time Confederation Life fails to pay the Plan the full amount of any Withdrawal in accordance with the terms of the Plan. The amount of each Loan will be the difference between the amount due the Plan as a Withdrawal and the amounts actually paid with respect to that Withdrawal by Confederation Life, any conservator, liquidator, trustee or other person performing similar functions with respect to Confederation Life, or any state guaranty fund or other person or entity (other than the Employer) acting as surety, insurer or guarantor with respect to Confederation Life with respect to the GIC (collectively, the GIC Payors). The Loans will be made only in lieu of amounts due with respect to Withdrawals to fund Withdrawal Events, but not in lieu of amounts due the Plan in the form of the annual Interest Payments. In the event the Receivership and any rehabilitation of Confederation Life are not resolved by January 1, 2001, the Employer will make a final Loan in the amount of the Maturity Payment which would have been due March 31, 1997, less all previous Advances pursuant to the Agreement. The Employer will not credit interest under the Agreement past March 31, 1997, and that portion of any Account which is attributable to amounts remaining invested in the GIC after March 31, 1997 will cease to earn interest under the Agreement.[13] Any Loans made by the Employer after the maturity date of March 31, 1997 will be based on the Maturity Value of the GIC.

6. The Agreement provides that the Loans are to be repaid, but only from payments made to the Plan pursuant to the GIC by the GIC Payors. No other

[13] The Department notes that this exemption, if granted, will not affect the rights of any participant or beneficiary with respect to claims under section 404 of the Act in connection with any aspect of the GIC transactions.

Plan assets will be available for repayment of the Loans. If amounts received by the Plan from the GIC Payors (the GIC Proceeds) are not sufficient to repay fully the Loans, the Agreement provides that the Employer will have no recourse against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount. To the extent the Plan receives GIC Proceeds in excess of the total amount of the Loans, such additional amounts will be retained by the Plan and allocated among the Accounts invested in the F.I. Fund.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Loans enable the Plan to resume the full funding of the Withdrawal Events; (2) The Loans will protect the Plan's investment in the GIC; (3) The Plan will pay no interest or incur any expenses with respect to the Loans; (4) Repayment of the Loans will be restricted to payments by the GIC Payors and no other Plan assets will be involved in the transactions; (5) Repayment of the Loan will be waived to the extent the Plan recoups less from the GIC Payors than the total amount of the Loans; and (6) In the event the Plan receives GIC Proceeds in excess of the Guaranteed Amount, such amounts will be retained by the Plan and allocated among the Accounts.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department (202) 219–8881. (This is not a toll-free number.)

Guarantee Mutual Life Company (Guarantee Mutual), Located in Omaha, NE

[Application No. D–09941]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[14]

Section I. Covered Transaction

If the exemption is granted, the restrictions of section 406(a) 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 (D) of the Code, shall not apply to the proposed receipt of common stock of The Guarantee Life Companies, Inc. (GLCI), or the receipt of cash or policy credits by an eligible policyholder (the Eligible Policyholder) of Guarantee Mutual which is an employee benefit plan (the Plan), other than an Eligible Policyholder which is a plan sponsored by Guarantee Mutual for its own employees,[15] in exchange for the termination of such Eligible Plan Policyholder's membership interest in Guarantee Mutual, in accordance with the terms of a plan of demutualization (the Plan of Conversion or the Conversion Plan) adopted by Guarantee Mutual and implemented pursuant to the Nebraska Insurers Demutualization Act (the Demutualization Act), Nebraska Revised Statutes, Sections 44–6101 through 44–6120.

The proposed exemption is subject to the general conditions set forth below in Section II.

Section II. General Conditions

(a) The Conversion Plan is implemented in accordance with procedural and substantive safeguards that are imposed under Nebraska law and is subject to the review and supervision by the Director of the Department of Insurance of the State of Nebraska (the Director).

(b) The Director reviews the terms of the options that are provided to Eligible Policyholders of Guarantee Mutual, as part of such Director's review of the Conversion Plan, and the Director only approves the Conversion Plan following a determination that such Conversion Plan is fair and equitable to all Eligible Policyholders.

(c) Each Eligible Policyholder has an opportunity to comment on the Conversion Plan and decide whether to vote to approve such Conversion Plan after full written disclosure is given such Eligible Policyholder by Guarantee Mutual, of the terms of the Conversion Plan.

(d) Any election by an Eligible Plan Policyholder to receive stock, cash or policy credits, pursuant to the terms of the Conversion Plan is made by one or more independent fiduciaries (the Independent Fiduciaries) of such Plan and neither Guarantee Mutual nor any of its affiliates exercises any discretion or provides investment advice with respect to such election.

(e) After each Eligible Policyholder entitled to receive stock is allocated at least 10 shares of common stock, additional consideration is allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of Guarantee Mutual which formulas have been approved by the Director.

(f) All Eligible Plan Policyholders participate in the transactions on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(g) No Eligible Policyholder pays any brokerage commissions or fees in connection with their receipt of stock or in connection with the implementation of the commission-free sales program.

(h) All of Guarantee Mutual's policyholder obligations remain in force and are not affected by the Conversion Plan.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term ''Guarantee Mutual'' means Guarantee Mutual Insurance Company and any affiliate of Guarantee Mutual as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Guarantee Mutual includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Guarantee Mutual. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term ''Eligible Policyholder'' means a policyholder who is eligible to vote and to receive consideration in a demutualization. Such policyholder is a policyholder of the mutual insurer on the day the plan of conversion is adopted by the board of directors of the insurer.

(d) The term ''policy credit'' means an increase in accumulation account value (to which no surrender or similar charges are applied) in the general account or an increase in a dividend accumulation on a policy.

[14] For purposes of this exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[15] Guarantee Mutual is not requesting, nor is the Department providing exemptive relief herein with respect to the distributions of stock to plans that Guarantee Mutual or its affiliates maintain for their own employees. Guarantee Mutual represents that such stock would constitute qualifying employer securities within the meaning of section 407(d)(5) of the Act and that section 408(e) of the Act would apply to such distributions. In this regard, the Department expresses no opinion on whether such distributions would satisfy the terms and conditions of section 408(e) of the Act.

Summary of Facts and Representations

1. Guarantee Mutual is a mutual life insurance company organized in 1901 under the laws of the State of Nebraska. It provides group life and health insurance to employers and life insurance and annuities to individuals. Guarantee Mutual transacts business in forty-six states and District of Columbia. As of December 31, 1993, Guarantee Mutual had total assets of approximately $975 million and more than $20 billion of life insurance policies in force.

As a mutual life insurance company, Guarantee Mutual has no stockholders. Policyholders are members of Guarantee Mutual and are entitled to vote to elect directors of the company and would be entitled to share in the assets of the company if it were liquidated.

2. Guarantee Mutual is the sole stockholder of two stock life insurance companies—(a) Guarantee American Life Company (GALC), a Nebraska-domiciled life insurer incorporated in 1982; and (b) Guarantee Protective Life Company (GPLC), a life insurer incorporated in Minnesota in 1936 and acquired by Guarantee Mutual in 1992 and redomesticated to Nebraska in 1993. GALC is principally engaged in reinsuring a portion of certain Guarantee Mutual insurance obligations. GPLC ceded its group life, health and credit insurance lines to nonaffiliated insurance pursuant to reinsurance agreements that were completed in late 1992 and early 1993. Currently, GPLC is not underwriting any new business. In addition to these insurance companies, Guarantee Mutual owns 100 percent of the stock of Guarantee Financial Services, Inc., a non-insurance company incorporated in 1990 in Nebraska that has not yet conducted any operations.

3. Guarantee Mutual provides a wide variety of insurance products to employee benefit plans covered by provisions of the Act and the Code. Guarantee Mutual has actively marketed its products to employee benefit plans and had as of September 30, 1994, approximately 32,100 in force policies and contracts held on behalf of employee pension and welfare plans. These include approximately 1,700 policies and contracts funding pension and profit sharing plans and over 30,400 contracts providing welfare benefit plan coverage such as group life, short- and long-term disability, accidental death and dismemberment and group health coverage.

4. On February 1, 1994, Guarantee Mutual's Board of Directors authorized management to develop a plan of demutualization pursuant to which Guarantee Mutual would be converted from a mutual life insurance company to a stock life insurance company by operation of Nebraska law. The Board of Directors formally adopted the Conversion Plan on December 15, 1994.

The ultimate result of the Conversion Plan will be a structure in which all of Guarantee Mutual's stock will be held by a holding company, GLCI, which has been organized under Delaware law for this purpose. Eligible Policyholders of Guarantee Mutual will receive stock of GLCI or, in certain cases, cash or policy credits and their membership interests and rights in the surplus of Guarantee Mutual will be extinguished. Any election by the Plan to receive stock, cash or policy credits pursuant to the Conversion Plan will be made by one or more Independent Fiduciaries of such Plan and neither Guarantee Mutual nor any of its affiliates will exercise any discretion or render investment advice with respect to such election.

Under the Conversion Plan, two steps will deem to occur simultaneously on the effective date of the transaction. First, Guarantee Mutual will be deemed to issue common stock to a transfer agent for the respective accounts of Eligible Policyholders entitled to receive stock under the Conversion Plan. Second, the transfer agent will be deemed to transfer such shares, on behalf of the Eligible Policyholders, to GLCI in exchange for an equal number of shares of GLCI stock. GLCI will then issue such shares of GLCI stock registered in the respective names of the Eligible Policyholders entitled to receive stock.

5. The initial public offering (the IPO), in which shares of GLCI stock will be sold for cash, is to occur on the effective date of the demutualization which is anticipated to take place during the second half of 1995. GLCI will contribute a portion of the proceeds from the IPO to Guarantee Mutual in an amount at least equal to the amount required to pay cash and fund the crediting of policy credits to Eligible Policyholders who are to receive such consideration. As promptly as possible after the effective date, GLCI will pay, or cause Guarantee Mutual to pay, cash or policy credits to Eligible Policyholders entitled under the Conversion Plan to receive such consideration.

GLCI stock will be publicly-traded. In this regard, an application will be made to list its stock on the National Association of Securities Dealers Automated Quotations National Market System.

6. According to the applicant, the principal purpose of the demutualization is to enhance Guarantee Mutual's strategic and financial flexibility by creating a corporate structure that will make it potentially possible to obtain additional capital from sources that are unavailable to the company as a mutual insurer. In addition, the applicant represents that the conversion of Guarantee Mutual from a mutual life insurance company to a stock life insurance company will enable Guarantee Mutual to use stock options or other equity-based compensation arrangements in order to attract and retain talented employees. Moreover, the applicant notes that Eligible Policyholders will benefit by receiving marketable securities, cash or policy credits in the demutualization. The applicant further represents that the Conversion Plan will not, in any way, change premiums or reduce policy benefits, values, guarantees or other policy obligations of Guarantee Mutual to its policyholders and contractholders.

7. The applicant has outlined the procedural requirements under Nebraska law for life insurance company demutualization. In this regard, the Demutualization Act provides an approval process for demutualization of a life insurance company under Nebraska law. A conversion plan must be approved by the Director as well as by Eligible Policyholders.

The Demutualization Act requires that a mutual insurer wishing to convert to a stock insurer file an application with the Director. The application must include: (a) A plan of conversion that contains a description of the structure and form of the proposed consideration to the policyholders and the projected range of the number of shares of capital stock to be issued by the new stock insurer; (b) a certification that the plan of conversion has been adopted by a vote of not less than two-thirds of the members of the mutual insurer's board of directors; (c) certification adopted by not less than two-thirds of the members of the mutual insurer's board of directors that the plan is fair and equitable to the policyholders; (d) certified copies of the proposed amendments to the insurer's articles of incorporation and bylaws to effectuate the conversion; and (e) a form of the proposed notice to policyholders, describing the plan of conversion and informing policyholders of procedures for the meeting of policyholders and the policyholder vote on the plan.

The Director must make an initial determination to approve or disapprove an application after conducting a public hearing, at which any interested person may appear or otherwise be heard. The

insurer must give such interested person reasonable notice of the public hearing as the Director in his or her discretion requires. After the public hearing, the Director will approve the application only if he or she finds that (a) the plan of conversion is fair and equitable to the policyholders; (b) the plan does not deprive the policyholders of their property rights or due process of law; (c) the new stock insurer would meet the minimum requirements to be issued a certificate of authority by the Director to transact business in Nebraska; and (d) that the continued operations of the new stock insurer would not be hazardous to future policyholders and the public.

After the Director makes an initial determination to approve an application, the insurer is required to hold a meeting of its policyholders to vote on the plan. The Demutualization Act requires that the insurer give at least 30 days notice prior to the time fixed for the meeting, by first-class mail to the last-known address of each policyholder, that the plan of conversion will be voted upon at a meeting of the policyholders. The notice must also include a brief description of the plan and a statement that the Director has initially approved it. Policyholders may vote in person or by written proxy. Each policyholder is entitled to only one vote regardless of the number of policies owned by the policyholder. The plan of demutualization must be approved by the affirmative vote of at least two-thirds of the policyholders who vote on the plan.[16]

After receiving certification from the insurer that the plan of demutualization has been approved by the policyholders, the Director will enter a final order approving the insurer's application. The demutualization will take effect under Nebraska law after the insurer certifies that the conditions set forth in the plan of demutualization have been satisfied and the Director issues a certificate of authority to the insurer.

Under Nebraska law, the consideration given to policyholders may be stock, cash, a combination of stock and cash, or such other valuable consideration as the Director may approve. Policyholders are not required to be given preemptive rights unless the Director so orders.

[16] Although Guarantee Mutual is uncertain about the number of policyholders that will vote on the Conversion Plan, it points out that it has approximately 155,000 policyholders who are eligible to vote. Guarantee Mutual also represents that prior to the public hearing, it will provide each Eligible Policyholder with a summary of the Conversion Plan, a notice of the public hearing and a more detailed policyholder information statement.

The Demutualization Act permits the Director to engage the services of experts to assist in determining whether a plan of conversion meets the requirements of the Demutualization Act. In the case of Guarantee Mutual, the Director has retained actuaries, Ernst & Young; legal advisers, LeBoeuf, Lamb, Green & MacRae and Kennedy, Holland, Delacy & Svoboda; and investment banking firm, Donaldson, Lufkin & Jenrette, Inc., as consultants.

A final order by the Director to approve an application pursuant to the Demutualization Act is subject to judicial review in the Nebraska courts in accordance with the Nebraska Administrative Procedure Act.

7. Guarantee Mutual's Conversion Plan provides for Eligible Policyholders, whose membership interests in the mutual company will be extinguished in the demutualization, to receive common stock of GLCI, or cash or policy credits. For this purpose, an Eligible Policyholder generally is the owner of one or more policies in force on the date that Guarantee Mutual's Board of Directors adopted the Conversion Plan.[17] In order to determine the amount of consideration to which each Eligible Policyholder is entitled, each Eligible Policyholder will be allocated (but not issued) a number of shares of common stock equal to the sum of (a) a fixed component of consideration equal to 10 shares of GLCI stock which will be subject to proportional adjustment; and (b) where the Eligible Policyholder owns one or more participating policies, an additional number of shares based on actuarial formulas that take into account each participating policy's past and expected future contributions to the surplus of Guarantee Mutual.

[17] Guarantee Mutual represents that under sections 44–6103, 44–6106 and 44–6109 of Nebraska Insurance Law, the stock, cash, policy credits or other compensation resulting from the demutualization plan must be distributed to ''policyholders,'' as determined by the records of the mutual life insurance company. Guarantee Mutual further represents that an insurance or annuity policy that provides benefits under an employee benefit plan, typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the policyholder. In this regard, Guarantee Mutual asserts that it is required under Nebraska Insurance Law to make distributions resulting from the demutualization plan to the employer or the plan sponsor when they are the designated policyholder on the plan policy.

In general, it is the Department's view that, if an insurance policy (including an annuity contract) was purchased with assets of an employee benefit plan, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3–3) at the time when Guarantee Mutual incurs the obligation to distribute stock, cash, policy credits or other compensation, then such consideration would constitute an asset of such plan. Under these circumstances, the appropriate plan fiduciaries must take all necessary steps to safeguard the assets of the plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

8. Certain Eligible Policyholders will receive cash or policy credits instead of stock. The amount of cash or policy credits will be determined by reference to the price per share at which GLCI stock is offered to the public in the IPO.[18] Eligible Policyholders whose mailing address is outside the United States, or to whom mail is undeliverable at the address in Guarantee Mutual's records, will receive cash in lieu of stock, in an amount equal to the value of the stock such policyholders would otherwise have received based on the price of GLCI stock in the IPO contemplated by the Plan of Conversion.

In addition, the Plan of Conversion provides that Eligible Policyholders who are allocated a number of shares of GLCI stock which is less than or equal to the maximum number of shares specified by the Board of Directors of Guarantee Mutual, may receive cash instead of stock. The maximum number of shares designated by the Board of Directors may not be less than 10 shares nor may it exceed 40 shares. Such maximum amount is, however, subject to proportional adjustment.

Certain other Eligible Policyholders, namely owners of individual retirement annuities, tax sheltered annuities or certain other policies issued directly to plan participants in qualified pension or profit sharing plans will receive policy credits equal in value to the stock allocated to such Eligible Policyholders.

Under Nebraska law, a plan of conversion must specify the consideration to be given to policyholders and the Director must find that the plan is fair and equitable to the policyholders and does not deprive them of their property rights or due process of law. Moreover, the Director must approve any consideration (such as policy credits) other than cash or stock.

9. The Conversion Plan also provides for a commission-free program that is to begin after the ninetieth day following the effective date of the demutualization and before the 12 month anniversary of such effective date at a time determined by the Board of Directors of GLCI to be appropriate and in the best interests of GLCI and its stockholders. The program, which will continue for 3 months, will be available to any Eligible Policyholder who receives, under the Plan of Conversion, fewer shares than the

[18] For purposes of allocating the consideration, Guarantee Mutual represents that all policyholders will be treated the same within their class groupings.

maximum number of shares entitled to receive cash as consideration.

In the program, such Eligible Policyholders will be entitled to sell, at prevailing market prices, all the shares of GLCI stock received by the Eligible Policyholder in the demutualization. Specifically, Chemical Bank, which is unrelated to Guarantee Mutual, or one of Chemical Bank's affiliates, will effect sales of stock under the commission-free sales program.[19] No brokerage commissions, mailing charges, registration fees or other administrative or similar expenses will be charged in connection with the receipt of stock or the implementation of the commission-free sales program. The commission-free program will also offer Eligible Policyholders the opportunity to purchase enough shares to round-up their holdings to 100 shares, again without paying any fees, charges or commissions (the Round Up Feature). Participation in the Round Up Feature will be made available to all Eligible Policyholders who on the commission-free program's record date hold fewer than a number of shares (not more than 99) specified by the Board of Directors of Guarantee Mutual.

10. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Conversion Plan will be implemented in accordance with procedural and substantive safeguards that are imposed under Nebraska law and will be subject to the review and supervision by the Director.

(b) The Director will review the terms of the options that are provided to Eligible Policyholders of Guarantee Mutual as part of such Director's review of the Conversion Plan, and will approve the Conversion Plan following a determination that such Conversion Plan is fair and equitable to all Eligible Policyholders.

(c) Each Eligible Policyholder will have an opportunity to comment orally or in writing on the Conversion Plan and decide whether to vote to approve in writing such Demutualization Plan after full written disclosure is given such policyholder by State Mutual, of the terms of the Conversion Plan.

(d) Any election by an Eligible Policyholder which is a Plan to receive stock, cash or policy credits, pursuant to the terms of the Conversion Plan will be made by one or more Independent Fiduciaries of such plan and neither State Mutual nor any of its affiliates will exercise any discretion or provides investment advice with respect to such election.

(e) After each Eligible Policyholder is allocated at least 10 shares of stock, additional consideration allocated to Eligible Policyholders who own participating policies will be based on actuarial formulas that take into account each participating policy's contribution to the surplus of Guarantee Mutual which formulas have been approved by the Director.

(f) All Plans that are Eligible Policyholders will participate in the transactions on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(g) No Eligible Policyholder will pay any brokerage commissions or fees in connection with such Eligible Policyholder's receipt of stock or in connection with the implementation of the commission-free sales program.

(h) All of State Mutual's policyholder obligations will remain in force and will not be affected by the Conversion Plan.

Notice to Interested Persons

Guarantee Mutual will provide notice of the proposed exemption to all Eligible Plan Policyholders within 14 days of the publication of the notice of pendency in the Federal Register. Such notice will be provided to interested persons by first class mail and will include a copy of the notice of proposed exemption as published in the Federal Register. The notice will also inform interested persons of their right to comment on the proposed exemption. Comments with respect to the notice of proposed exemption are due within 44 days after the date of publication of this exemption in the Federal Register.

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

General Information

The attention of interested persons is directed to the following:

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

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

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

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

Signed at Washington, DC, this 11th day of April, 1995.

Ivan Strasfeld,

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

[FR Doc. 95–9254 Filed 4–13–95; 8:45 am]

BILLING CODE 4510–29–P

Wage and Hour Division

[Administrative Order No. 662]

Special Industry Committee for All Industries in American Samoa; Appointment; Convention; Hearing

1. Pursuant to section 5 and 6(a)(3) of the Fair Labor Standards Act (FLSA) of 1938, as amended (29 U.S.C. 205, 206(a)(3)), and Reorganization Plan No. 6 of 1950 (3 CFR, 1949–53 Comp., p. 1004) and 29 CFR part 511, I hereby appoint special Industry Committee No. 21 for American Samoa.

2. Pursuant to section 5, 6(a)(3) and 8 of FLSA, as amended (29 U.S.C. 205, 206(a)(3), and 208), reorganization Plan

[19] Guarantee Mutual notes that the performance of services by Chemical Bank or its affiliates under the commission-free sales program will not involve any fiduciary activity on behalf of Eligible Plan Policyholders. Guarantee Mutual further represents that it will not retain an affiliate to effect securities transactions to take place under the commission-free sales program.