Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 5,041,918.

Frequency: On Occasion.

Average Time per response: Time for response ranges from approximately 10 minutes for establishments to obtain and maintain material safety data sheets to 8 hours for manufacturers or importers to conduct a hazard determination.

Estimated Total Burden Hours: 7,301,762.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 4th day of August 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–20669 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10244, et al.]

Proposed Exemptions; Massachusetts Mutual Life Insurance Company (MM)

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

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, US Department of Labor, 200 Constitution Avenue, NW, Washington, DC 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, US Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

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

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (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.

Massachusetts Mutual Life Insurance Company (MM) Located in Springfield, Massachusetts

[Application No. D–10244]

Proposed Exemption

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

Section I. Covered Transactions

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(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 (E) of the Code, shall not apply to: the sale and/or exchange by MM of a partial or complete interest in certain properties (the Properties) from its general investment account assets to one or more separate investment accounts, for which MM shall receive as consideration cash and/or a corresponding interest in such separate account or separate accounts (the Separate Account Transaction), provided the conditions set forth in section II are satisfied.

Section II. Conditions

(A) The sale and exchange of the Properties is a one-time transaction with respect to each separate account of MM which will be established for the Properties; i.e., all Properties transferred in that transaction will be conveyed at the same time, and no further properties will be transferred from MM to such separate account;

(B) In no event shall MM provide any financing with respect to any sale or exchange transaction which is the subject of the exemption proposed herein;

(C) Before the subject transaction is consummated, (i) An independent appraisal firm will have valued each Property to be transferred by MM to one or more separate accounts; (ii) the value of each Property so appraised will be confirmed by the appraiser as of a date not more than two weeks prior to the issuance of interests to third party investors in the separate accounts, and if a material change has occurred the appraiser will revise its appraisal to reflect that new value; (iii) an independent fiduciary for each employee benefit plan subject to the Act (collectively, the Plans) will, prior to agreeing to invest in the separate account, be provided with all information regarding the Properties to

be sold to the separate account, including third party appraisals and a private placement memorandum or other offering document, which will describe the legal structure and include risk disclosures, a summary of principal terms and a schedule of fees; and (iv) such independent fiduciary will have reviewed all pertinent terms of the sale and exchange of the properties to the separate accounts and will have concluded that the transaction is in the best interest of the Plan; and

(D) Only Plans with total assets having an aggregate fair market value of at least $50 million are permitted to engage in the Covered Transactions, provided, however, that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR section 2510.3–101 (the Plan Asset Regulation), which entity engages in a Covered Transaction, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such group trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which engages in a Covered Transaction, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to Plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to Plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed for the sole purpose of engaging in the Covered Transactions.)

Summary of Facts and Representations

1. MM is a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts and subject to supervision and regulation by the Insurance Commissioner of Massachusetts. On February 29, 1996, Connecticut Mutual Life Insurance Company (CM), a mutual life insurance company organized under the laws of the State of Connecticut, was merged with and into MM.

2. MM conducts business in all 50 states, as well as in the District of Columbia and Puerto Rico. Presently, MM has more than 2 million policyholders. MM, either directly or through its affiliates, offers a complete portfolio of life and health insurance, asset accumulation products, and health and pension employee benefits to its employees (including former employees of CM) and investment management services. As of December 31, 1998, MM had $67 billion in assets, and the assets under its management as of that date approximate $176 billion.

3. MM performs a wide variety of services for Plans. As part of these activities, MM enters into arrangements with other employers for the administration of their Plans and the investment of their Plan assets. In addition, MM sponsors retirement plans for its own employees, including the MassMutual Employee Pension Plan (the MM Plan), a defined benefit plan adopted in 1948. MM also sponsors the retirement plan for the benefit of CM employees prior to the merger and to which MM succeeded as a result of the merger.

4. MM has been involved in real estate mortgage investing for more than 50 years and in equity real estate investing for more than 30 years. As of December 31, 1998, MM estimates that it had commercial mortgage loan assets of approximately $4.7 billion, residential mortgage loan pool investments of $1.4 billion and commercial real estate equity investments of approximately $1.9 billion.

5. In 1994, MM created a wholly-owned subsidiary, Cornerstone Real Estate Advisors, Inc. (Cornerstone), to offer investment management services for MM's real estate equity portfolio, as well as to third parties. Cornerstone is registered as an investment adviser under the Investment Adviser's Act of 1940, as amended.

6. The exemption proposed herein involves a transaction relating to the sale for cash and/or exchange for units of one or more separate accounts maintained by MM of certain real estate, i.e. the Properties, from the general account of MM to those separate accounts. The transaction, the Separate Account Transaction, relates to certain Properties which MM proposes to transfer to one or more separate investment accounts of MM and in exchange for which MM shall receive cash and an interest in such separate investment account or accounts. For the Separate Account Transaction, no financing will be provided by MM's general account. Moreover, no commissions or similar payment will be paid in connection with the sale or exchange of the Properties.

7. *The Separate Account Transaction*—The transfer of the Properties will be structured in one of two ways: (1) The separate account(s) will acquire the entire interest of MM's general account in the Properties, and, in return, MM's general account will receive cash and/or units in the separate account(s); or (2) the separate account(s) will purchase a partial interest in the Properties for cash from the general account, and the general account will retain the remaining interest in the Properties. In each instance, the consideration received by MM will equal the fair market value of the interest of the Properties transferred. The transaction will occur simultaneously with or prior to the investment in the separate account(s) by third party investors.

8. The fair market value of each of the Properties will be determined by an independent appraiser as of the date of the sale or exchange. The independent appraiser will be a recognized real estate expert in the type and geographic area of the Properties.

9. Units or interests in such separate accounts will also be marketed to tax-exempt entities, including Plans. The minimum investment in such separate accounts has not been determined, but in no event will be less than $1 million. The determination of any Plan or other entity to make an investment in such separate accounts will be in the sole discretion of that Plan or entity and neither MM nor any affiliate of MM shall serve in any fiduciary capacity to any such Plan or entity in determining

whether an investment in such separate account shall be made. Prior to agreeing to invest in the separate account, an independent fiduciary for each Plan will have before it all the information regarding the properties to be sold to the separate account, including third party appraisals and a private placement memorandum or other offering document which will describe the legal structure and include risk disclosures, a summary of principal terms and a schedule of fees. The applicant represents that independent fiduciaries for the Plans will have all information necessary to make their decisions prior to their agreement to invest in the separate account. The applicant further represents that Plans investing in the separate accounts will be large, sophisticated Plans that will equal or exceed $50 million in assets (or be part of a group trust of that size which also meets other tests).

10. In any particular Covered Transaction, the real estate Properties in the portfolio to be sold to the separate account will be determined and disclosed to an independent fiduciary for each Plan before the transaction occurs. Appraisals of the Properties to be included in the portfolio, performed by appraisers independent of MM, will be available to each such fiduciary. The value of each Property so appraised will be confirmed by the appraiser as of a date not more than two weeks prior to the issuance of interests to third party investors in the separate accounts, and if a material change has occurred the appraiser will revise its appraisal to reflect that new value. Each Covered Transaction will be a one-time transaction (i.e., all Properties transferred in that transaction will be conveyed at the same time, and no other Properties will be transferred by MM to that separate account) with respect to a portfolio of Properties and a particular ''start-up'' separate account of MM which will invest in such Properties. Any purchase, sale, or exchange of property between MM's general account and any MM separate account will independently meet the conditions of the exemption proposed herein.

11. In summary, the applicant represents that the subject transactions satisfy the criteria contained in section 408(a) of the Act for the following reasons: (a) The sale and exchange of the Properties is contemplated as a one-time transaction with respect to each separate account of MM which will be established for the Property group (*i.e.*, all Properties transferred in that transaction will be conveyed at the same time, and no other Properties will be transferred by MM to that separate account); (b) in no event shall MM provide any financing with respect to any sale or exchange transaction which is the subject of the exemption proposed herein; (c) before the subject transactions are consummated, (i) An independent appraisal firm will have valued each Property to be transferred by MM to one or more separate accounts; (ii) the value of each Property so appraised will be confirmed by the appraiser as of a date not more than two weeks prior to the issuance of interests to third party investors in the separate accounts, and if a material change has occurred the appraiser will revise its appraisal to reflect that new value; (iii) an independent fiduciary for each Plan will, prior to agreeing to invest in the separate account, be provided with all information regarding the Properties to be sold to the separate account, including third party appraisals and a private placement memorandum or other offering document, which will describe the legal structure and include risk disclosures, a summary of principal terms and a schedule of fees; and (iv) such independent fiduciary will have reviewed all pertinent terms of the sale and exchange of the properties to the separate accounts and will have concluded that the transaction is in the best interest of the Plan; and (d) Plans investing in the separate accounts will be large, sophisticated Plans that will equal or exceed $50 million in assets (or be part of a group trust of that size which also meets other tests).

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Modern Woodmen of America Employees' Savings Plan (the Plan) Located in Rock Island, Illinois

[Application No. D–10518]

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 (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale, on March 23, 1998, by the Plan of certain commercial mortgages and bonds (the Securities) to Modern Woodmen of America (the Employer), a party in interest with respect to the Plan, provided that the following conditions were satisfied: (1) The sale was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sale; (3) for each Security, the Plan received an amount equal to the highest, as of the date of the sale, of (a) the par value, (b) the book value, or (c) the fair market value of the Security, as determined by a qualified, independent appraiser; and (4) the Plan received the accrued but unpaid interest that was due on each Security at the time of the transaction.

Effective date: The proposed exemption, if granted, will be effective as of March 23, 1998.

Summary of Facts and Representations

1. The Plan was a defined contribution plan sponsored by the Employer, a fraternal life insurance society. As of June 30, 1997, the Plan had approximately 1,141 participants and beneficiaries. As of that same date, the Plan had total assets of approximately $37,541,533.40. Until April 1, 1998, the trustee of the Plan was the Savings Plan Investment Committee (the Committee), comprised of five employees of the Employer having responsibility for investment of the Plan's assets. Effective April 1, 1998, the Plan was merged into a new 401(k) Plan providing for individually directed accounts that is being administered by Vanguard Funds.

2. Among the assets of the Plan were the Securities, which consisted of 21 privately placed commercial mortgages and bonds. Each of the Securities was purchased by the Plan at various times between 1989 and 1996 from various unrelated brokers. The amount paid by the Plan for the Securities in each case was either the par value or the book value. The Committee believed that the Plan's acquisition of these Securities was consistent with the Plan's investment objectives at the time. Since the Securities were not publicly traded, there was no ready market for the Securities.[1] As a result of the need to liquidate the Securities quickly, in order to implement the merger of the Plan into a new 401(k) Plan on April 1, 1998, the Employer filed an exemption application with the Department seeking to purchase the Securities from the Plan. On March 23, 1998, the

[1] The Department expresses no opinion herein as to whether the acquisition and holding of the Securities by the Plan violated any of the provisions of Part 4 of Title I in the Act. However, the Department notes that section 404(a) of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interest of the plan and its participants and beneficiaries when making investment decisions on behalf of the plan.

Employer purchased the Securities from the Plan for a total of $5,685,534.46.

3. The applicant represents that the terms of the sale were at least as favorable to the Plan as terms the Plan could have obtained in an arm's length transaction with an unrelated party. For each Security, the Employer paid the Plan an amount equal to the highest, as of March 23, 1998, of (a) the par value,[2] (b) the book value,[3] or (c) the fair market value of the Security, as determined by a qualified, independent appraiser.

With respect to the fair market value of the Security, the highest quotation obtained from three reputable independent mortgage banking firms was used. The appraisals of the mortgages were conducted by (i) Cauble & Company, located in Charlotte, North Carolina, (ii) Rob Wolf & Associates, located in San Francisco, California, and (iii) Venture Mortgage, located in Edina, Minnesota. The appraisals of the bonds were conducted by (i) Piper Jaffray, located in Minneapolis, Minnesota, and (ii) John G. Kinnard & Co., located in Minneapolis, Minnesota. Each of the entities which appraised the value of the Securities was a dealer who would have bought or sold such Securities in the ordinary course of its business. The appraised value amounts assume that there is a willing third party buyer to purchase the security, although there is no active market for the Securities.

The sale of the Securities by the Plan to the Employer was a one-time transaction for cash. The Plan paid no commissions nor other expenses relating to the sale of the Securities, which represented a significant savings to the Plan in transaction costs.

4. The assets purchased by the Employer from the Plan, which included 10 mortgages and 11 bonds, are individually listed below.

Description	Net rate (percent)	Maturity	Par	Book value	FMV	Accured interest	Purchase price
Mortgages							
Butler Family Partnership, Walgreen's (Lessee), Missouri City, TX	7.375	01/10/16	$607,021.21	$576,670.15 95.00	$623,410.78 102.70	$1,616.62	$625,027.40
Ervin & Susanne Bard, K-Mart (Lessee), Huntington, IN	8.75	07/01/12	486,562.87	486,562.87 100.00	531,472.62 109.23	2,601.76	534,074.38
The Byrd Companies, Inc., First Alabama Bank (Lessee), Vestavia Hills, AL	9.375	03/01/11	362,572.72	362,572.72 100.00	412,498.98 113.77	1,227.46	413,726.44
JRL Amerivest, Ameritech Michigan (Lessee), Auburn, MI	7.75	03/10/01	461,784.70	461,784.70 100.00	481,410.55 104.25	1,292.36	482,702.91
Stockbridge Property Co., (Jonathan P. Rosen), Good Year Tire & Rubber (Lessee), Stockbridge, GA	9.75	02/10/07	279,470.04	279,470.04 100.00	308,702.61 110.46	983.97	309,686.58
Bogel Investments, Inc., The City of Irving, TX, Irving, TX	7.75	07/10/06	770,194.00	770,194.00 100.00	802,696.19 104.22	2,155.47	804,851.66
Argonne Forest Partnership, (Al Payne & Joel O'Connor), ALCO Standard (Lessee), Spokane, WA	8.00	01/01/05	478,512.11	478,512.11 100.00	494,207.31 103.28	2,339.39	496,546.70
Dr. Fred Wurlitzer, (Rezan, L.P.), May Dept. Stores (Lessee), Plano, TX	8.625	01/10/03	250,547.01	250,547.01 100.00	260,368.45 103.92	780.35	261,149.80
Morro Palmes Shopping Ctr., Winn-Dixie (Lessee), Abbeville, SC	8.125	04/10/01	385,577.12	385,577.12 100.00	397,915.59 103.20	1,131.29	399,046.88
Audrey Weedn, Toys ''R'' Us (Lessee), Houston, TX	9.00	05/01/99	110,143.11	108,469.57 98.50	112,103.66 101.78	605.79	112,709.45
Total			4,192,384.89	4,160,360.29	4,424,786.74	14,734.46	4,439,521.20

[2] The par value of each Security was the face value of the Security at the time of the transaction. For example, a bond selling at par is worth the same dollar amount for which it was issued or at which it will be redeemed at maturity, typically $1,000 per bond.

[3] The book value of each Security was the value at which it was carried on the Plan's balance sheet. For example, a bond is typically considered to have a book value equal to its outstanding principal balance plus accrued but unpaid interest.

Description	Net rate (percent)	Maturity	Par	Book value	FMV	Accured interest	Purchase price
Corporate Issues							
Railroads:							
Baltimore & Ohio	8.75	10/15/99	$100,826.94	$101,661.28 100.90	103,473.65 102.625	$3,872.03	107,345.68
Chesapeake & Ohio ...	8.75	10/15/99	50,597.13	51,002.52 100.90	51,925.30 102.625	1,943.07	53,868.37
Chicago & Northwestern Transportation	6.65	06/15/99	25,862.20	25,862.20 100.00	25,862.20 100.00	468.18	26,330.38
Denver & Rio Grande	6.65	06/15/99	19,216.34	19,216.34 100.00	19,216.34 100.00	347.87	19,564.21
Kansas City Southern	6.65	06/15/98	2,358.07	2,358.07 100.00	2,358.07 100.00	42.69	2,400.76
Railbox	9.357	01/10/99	56,255.48	54,526.84 96.90	57,380.59 102.00	190.08	57,570.67
Seaboard Systems	8.75	11/15/99	50,800.74	51,371.18 101.20	52,578.77 103.50	1,580.47	54,159.24
Industrials, Utilities & Governments:							
Shelby Funding Corp.	8.00	10/01/05	259,877.99	259,877.99 100.00	263,334.37 101.33	9,933.11	273,267.48
Third Sixth Mont	8.00	07/01/05	275,786.99	231,661.07 100.00	275,786.99 100.00	5,025.45	280.812.44
Maine Public Service ..	7.12	05/01/98	178,000.00	177,303.53 100.00	178,000.00 100.00	5,002.54	183,002.54
Fairchild Farms (FmHA)	8.75	04/15/07	181,218.51	181,218.51 100.00	181,218.51 99.40	6,472.98	187,691.49
Total	.....	.....	1,200,800.39	1,200,185.45	1,211,134.79	34,878.47	1,246,013.26
Grand Totals ..... (Mortgages & Bonds)	.....	.....	5,393,185.28	5,360,545.74	5,635,921.53	49,612.93	5,685,534.46

As indicated by the chart above, the Plan received a price for each Security equalling the Security's current fair market value. However, with respect to four of the 11 bonds sold by the Plan, the fair market value was determined to be equal to both the bond's par value and book value. In addition, with respect to two of the bonds, the fair market value was equal to the bond's par value. All of the other bonds and all 10 of the mortgages had a fair market value which exceeded either their par value or their book value at the time of the transaction.

The Plan also received the accrued but unpaid interest that was due on the Security at the time of the transaction.

The applicant represents that the sale was in the best interests of the Plan and of its participants and beneficiaries because it enabled the Plan to divest itself of illiquid assets at the best possible price. In addition, the sale permitted Plan participants to timely direct the investment of the full value of their individual accounts, as of the effective date of the reconstituted Plan (i.e., April 1, 1998).

5. In summary, the applicant represents that the subject transaction satisfied the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (1) The sale of the Securities by the Plan to the Employer was a one-time transaction for cash; (2) the Plan paid no commissions nor other expenses relating to the sale of the Securities; (3) for each Security, the Plan received an amount equal to the highest, as of March 23, 1998, of (a) par value, (b) book value, or (c) the fair market value of the Security, as determined by a qualified, independent appraiser; (4) the Plan received the accrued but unpaid interest that was due on each Security at the time of the transaction; and (5) the Plan divested itself of illiquid assets, thus permitting Plan participants to timely direct the investment of the full value of their individual accounts in the new 401(k) Plan.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons by personal delivery or by first-class mail within five days of the date of publication of the notice of pendency 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/or request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 35 days of the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Fleet Bank (RI), National Association (Fleet) Located in Providence, Rhode Island

[Exemption Application No. D–10643]

Proposed Exemption

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

Section I—Transactions

A. Effective as of the date this proposed exemption is published in the **Federal Register**, the restrictions of

sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and an employee benefit plan subject to the Act or section 4975 of the Code (a plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan, as defined in Section III.K. below, by any person who has discretionary authority or renders investment advice with respect to the assets of the Excluded Plan that are invested in certificates. [4]

B. Effective as of the date this proposed exemption is published in the **Federal Register**, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to receivables contained in the trust constituting 0.5 percent or less of the fair market value of the aggregate undivided interest in the trust allocated to the certificates of the relevant series, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group, as defined in Section III.L., and at least 50 percent of the aggregate undivided interest in the trust allocated to the certificates of a series is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates of a series does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition;

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice is invested in certificates representing the aggregate undivided interest in a trust allocated to the certificates of a series and containing receivables sold or serviced by the same entity; [5] and

(v) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice is invested in certificates representing an interest in the trust, or trusts containing receivables sold or serviced by the same entity. For purposes of paragraphs B.(1)(iv) and B.(1)(v) only, an entity shall not be considered to service receivables contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that conditions set forth in Section I. B.(1)(i) and (iii) through (v) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.B.(1) or (2).

C. Effective as of the date this proposed exemption is published in the **Federal Register**, the restrictions of sections 406(a), 406(b) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, including reassigning receivables to the sponsor, removing from the trust receivables in accounts previously designated to the trust, changing the underlying terms of accounts designated to the trust, adding new receivables to the trust, designating new accounts to the trust, the retention of a retained interest by the sponsor in the receivables, the exercise of the right to cause the commencement of amortization of the principal amount of the certificates, or the use of any eligible swap transactions, provided that:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement;

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust; [6]

(3) The addition of new receivables or designation of new accounts, or the removal of receivables in previously-designated accounts, meets the terms and conditions for such additions, designations or removals as are described in the prospectus or private placement memorandum for such certificates, which terms and conditions have been approved by Standard & Poor's Ratings Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Agencies), and does not result in the certificates receiving a lower credit rating from the Rating Agencies than the then current rating of the certificates; and

(4) The series of which the certificates are a part will be subject to an ''Economic Pay Out Event'' (as defined in Section III.BB.), which is set forth in the pooling and servicing agreement and described in the prospectus or private placement memorandum associated with the series, the occurrence of which will cause any revolving period, scheduled amortization period or scheduled accumulation period

[4] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[5] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[6] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, all references to ''prospectus'' include any related supplement thereto, and any documents incorporated by reference therein, pursuant to which certificates are offered to investors.

applicable to the certificates to end, and principal collections to be applied to monthly payments of principal to, or the accumulation of principal for the benefit of, the certificateholders of such series until the earlier of payment in full of the outstanding principal amount of the certificates of such series or the series termination date specified in the prospectus or private placement memorandum.

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed under section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) or (F) of the Code, for the receipt of a fee by the servicer of the trust, in connection with the servicing of the receivables and the operation of the trust, from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in Section III.U. below.

D. Effective as of the date this proposed exemption is published in the **Federal Register**, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider as described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

Section II—General Conditions

A. The relief provided under Section I will be available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

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

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is either: (i) In one of the two highest generic rating categories from any one of the Rating Agencies; or (ii) for certificates with a duration of one year or less, the highest short-term generic rating category from any one of the Rating Agencies; provided that, notwithstanding such ratings, this exemption shall apply to a particular class of certificates only if such class (an Exempt Class) is at the time of such acquisition part of a series in which credit support is provided to the Exempt Class through a senior-subordinated series structure or other form of third-party credit support which, at a minimum, represents five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the consideration received by the sponsor as a consequence of the assignment of receivables (or interests therein) to the trust, to the extent allocable to the class of certificates purchased by a plan, represents not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the servicer, to the extent allocable to the class of certificates purchased by a plan, represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission (SEC) under the Securities Act of 1933;

(7) The trustee of the trust is a substantial financial institution or trust company experienced in trust activities and is familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act (i.e. ERISA). The trustee, as the legal owner of, or holder of a perfected security interest in, the receivables in the trust, enforces all the rights created in favor of certificateholders of such trust, including plans;

(8) Prior to the issuance by the trust of any new series, confirmation is received from the Rating Agencies that such issuance will not result in the reduction or withdrawal of the then current rating of the certificates held by any plan pursuant to this exemption;

(9) To protect against fraud, chargebacks or other dilution of the receivables in the trust, the pooling and servicing agreement and the Rating Agencies require the sponsor to maintain a seller interest of not less than two (2) percent of the principal balance of the receivables contained in the trust;

(10) Each receivable added to a trust is an eligible receivable, based on criteria of the relevant Rating Agency(ies) and as specified in the pooling and servicing agreement. The pooling and servicing agreement requires that any change in the terms of the cardholder agreements must be made applicable to the comparable segment of accounts owned or serviced by the sponsor which are part of the same program or have the same or substantially similar characteristics;

(11) The pooling and servicing agreement limits the number of the sponsor's newly originated accounts to be designated to the trust, unless the Rating Agencies otherwise consent in writing, to the following: (i) With respect to any consecutive three-month period commencing in January, April, July and October of each calendar year, 15 percent of the number of existing accounts designated to the trust as of the first day of the calendar year during which such monthly period commenced, and (ii) with respect to any calendar year, 20 percent of the number of existing accounts designated to the trust as of the first day of such calendar year;

(12) The pooling and servicing agreement requires the sponsor to deliver an opinion of counsel confirming the validity and perfection of each transfer of receivables in newly originated accounts to the trust for each interim addition;

(13) The pooling and servicing agreement requires the sponsor and the trustee to receive confirmation from a Rating Agency that no Ratings Effect will result from (i) a Required Addition (as defined in Section III.MM.) in excess of the limits in paragraph B.(11) above, or (ii) any Restricted Additions (as defined in Section III.NN.);

(14) If a particular class of certificates held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the trust, then each particular swap transaction relating to such certificates:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall include as an early payout event, as specified in the pooling and servicing agreement, the withdrawal or reduction by any Rating Agency of the swap counterparty's credit rating below a level specified by the Rating Agency where the servicer (as agent for the trustee) has failed, for a specified period after such rating withdrawal or reduction, to meet its obligation under the pooling and servicing agreement to:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of certificates will not be withdrawn or reduced;

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the swap counterparty is withdrawn or reduced below the lowest level specified in Section III.II. hereof, the servicer, as agent for the trustee, shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the trust to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from ''Excess Finance Charge Collections'' (as defined below in Section III.LL.) or other amounts that would otherwise be payable to the servicer or the sponsor;

(15) Any class of certificates, to which one or more swap agreements entered into by the trust applies, may be acquired or held in reliance upon this exemption only by Qualified Plan Investors.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision in Section II.A.(6) above is not satisfied for the acquisition or holding by a plan of such certificates, provided that:

(1) Such condition is disclosed in the prospectus or private placement memorandum; and

(2) In the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees shall be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

Section III—Definitions

For purposes of this proposed exemption:

A. ''Certificate'' means a certificate:

(1) That (i) represents a beneficial ownership interest in the assets of a trust and entitles the holder to payments denominated as principal, interest and/or other payments made as described in the applicable prospectus or private placement memorandum and in accordance with the pooling and servicing agreement in connection with the assets of such trust, to the extent allocable to the series of certificates purchased by a plan, either currently or after a revolving period during which principal payments on assets of the trust are reinvested in new assets, or (ii) is denominated as a debt instrument that represents a regular interest in a financial asset securitization investment trust (FASIT), within the meaning of section 860L(a) of the Code, and is issued by and is an obligation of the trust.

For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust; and

(2) With respect to which (a) Fleet or any of its affiliates is the sponsor, and (b) Fleet, any of its affiliates, or an ''underwriter'' (as defined in Section III.C.) is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent.

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

(1) Either:

(a) Receivables (as defined in Section III.V.); or

(b) Participations in a pool of receivables (as defined in Section III.V.) where such beneficial ownership interests are not subordinated to any other interest in the same pool of receivables;[7]

(2) Property which has secured any of the assets described in paragraph B.(1) above;[8]

(3) Undistributed cash or permitted investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders, except during a Revolving Period (as defined herein) when permitted investments are made until such cash can be reinvested in additional receivables described in paragraph B.(1)(a) above;

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any cash collateral accounts, insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements for any certificates, swap transactions, or under any yield supplement agreements,[9] yield maintenance agreements or similar arrangements; and

(5) Rights to receive interchange fees received by the sponsor as partial compensation for the sponsor's taking credit risk, absorbing fraud losses and funding receivables for a limited period prior to initial billing with respect to accounts designated to the trust.

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) The investment pool consists only of receivables of the type which have been included in other investment pools; (ii) certificates evidencing interests in such other investment pools have been rated in one of the two highest generic rating categories by at least one of the Rating Agencies for at least one year prior to the plan's acquisition of certificates

[7] The Department notes that no relief would be available under the exemption if the participation interests held by the trust were subordinated to the rights and interests evidenced by other participation interests in the same pool of receivables.

[8] Fleet states that it is possible for credit card receivables to be secured by bank account balances or security interests in merchandise purchased with credit cards. Thus, the exemption should permit foreclosed property to be an eligible trust asset.

[9] In a series involving an accumulation period (as defined in Section III.Z.), a yield supplement agreement may be used by the Trust to make up the difference between (i) the reinvestment yield on permitted investments, and (ii) the interest rate on the certificates of that series.

pursuant to this exemption; and (iii) certificates evidencing an interest in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. ''Underwriter'' means an entity which has received from the Department an individual prohibited transaction exemption which provides relief for the operation of asset pool investment trusts that issue asset-backed pass-through securities to plans that is similar in format and substance to this exemption (each, an Underwriter Exemption); [10] any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or affiliated person described above is a manager or co-manager with respect to the certificates.

D. ''Sponsor'' means Fleet, or an affiliate of Fleet that organizes a trust by transferring credit card receivables or interests therein to the trust in exchange for certificates.

E. ''Master Servicer'' means Fleet or an affiliate that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the receivables in the trust pursuant to the pooling and servicing agreement.

F. ''Subservicer'' means Fleet or an affiliate of Fleet, or an entity unaffiliated with Fleet which, under the supervision of and on behalf of the master servicer, services receivables contained in the trust, but is not a party to the pooling and servicing agreement.

G. ''Servicer'' means Fleet or an affiliate which services receivables contained in the trust, including the master servicer and any subservicer or their successors pursuant to the pooling and servicing agreement.

H. ''Trustee'' means an entity which is independent of Fleet and its affiliates and is the trustee of the trust. In the case of certificates which are denominated as debt instruments, ''trustee'' also means the trustee of the indenture trust.

I. ''Insurer'' means the insurer or guarantor of, provider of other credit support for, or other contractual counterparty of, a trust. Notwithstanding the foregoing, a swap counterparty is not an insurer, and a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. ''Obligor'' means any person, other than the insurer, that is obligated to make payments with respect to any receivable included in the trust.

K. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. ''Restricted Group'' with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Each swap counterparty;

(7) Any obligor with respect to receivables contained in the trust constituting more than 0.5 percent of the fair market value of the aggregate undivided interest in the trust allocated to the certificates of a series, determined on the date of the initial issuance of such series of certificates by the trust; or

(8) Any affiliate of a person described in paragraphs L.(1) through (7) above.

M. ''Affiliate'' of another person includes:

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

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

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

N. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. ''Sale'' includes the entrance into a forward delivery commitment (as defined in Section III.Q. below), provided that:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. ''Forward Delivery Commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. ''Reasonable Compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. ''Pooling and Servicing Agreement'' means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust and any supplement thereto pertaining to a particular series of certificates. In the case of certificates which are denominated as debt instruments, ''pooling and servicing agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

T. ''Series'' means an issuance of a class or various classes of certificates by the trust all on the same date pursuant to the same pooling and servicing agreement, and any supplement thereto and restrictions therein.

U. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing with respect to the receivables;

(2) The servicer may not charge the fee absent the act or failure to act referred to in paragraph U.(1) above;

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement or described in all material respects in the prospectus or private placement memorandum provided to the plan before it purchases certificates issued by the trust; and

(4) The amount paid to investors in the trust is not reduced by the amount of any such fee waived by the servicer.

V. ''Receivables'' means secured or unsecured obligations of credit card holders which have arisen or arise in Accounts designated to a trust. Such obligations represent amounts charged

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

by cardholders for merchandise and services and amounts advanced as cash advances, as well as periodic finance charges, annual membership fees, cash advance fees, late charges on amounts charged for merchandise and services and certain other fees (such as bad check fees, cash advance fees, and other fees specified in the cardholder agreements) designated by card issuers (other than a qualified administrative fee as defined in Section III.U.).

W. ''Accounts'' are revolving credit card accounts serviced by Fleet or an affiliate, which were originated or purchased by Fleet or an affiliate, and are designated to a trust such that receivables arising in such accounts become assets of the trust.

X. ''Revolving Period'' means a period of time, as specified in the pooling and servicing agreement, during which principal collections allocated to a series are reinvested in newly generated receivables arising in the accounts.

Y. ''Amortization Period'' means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will commence to be paid to the certificateholders of such series in installments.

Z. ''Accumulation Period'' means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will be deposited in an account to be distributed to certificateholders in a lump sum on the expected maturity date.

AA. ''Pay Out Event'' means any of the events specified in the pooling and servicing agreement or supplement thereto that results (in some instances without further affirmative action by any party) in the early commencement of either an amortization period or an accumulation period, including (1) The failure of the sponsor or the servicer, whichever is subject to the relevant obligation under the pooling and servicing agreement, (i) To make any payment or deposit required under the pooling and servicing agreement within five (5) business days after such payment or deposit was required to be made, or (ii) to observe or perform any of its other covenants or agreements set forth in the pooling and servicing agreement, which failure has a material adverse effect on holders of investor certificates of the relevant series and continues unremedied for 60 days; (2) a breach of any representation or warranty made by the sponsor or the servicer in the pooling and servicing agreement that continues to be incorrect in any material respect for 60 days; (3) the occurrence of certain bankruptcy events relating to the sponsor or the servicer; (4) the failure by the sponsor to convey to the trust additional receivables to maintain the minimum seller interest that is required by the pooling and servicing agreement and the Rating Agencies; (5) the failure to pay in full amounts owing to investors on the expected maturity date; and (6) the Economic Pay Out Event.

BB. An ''Economic Pay Out Event'' occurs automatically when the portfolio yield for any series of certificates, averaged over three consecutive months (or such other period approved by one of the Rating Agencies) is less than the base rate of the series averaged over the same period. Portfolio yield for a series of certificates for any period is equal to the sum of the finance charge collections and other amounts treated as finance charge collections less total defaults for the series divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies. The base rate for a series of certificates for any period is the sum of (i) Amounts payable to certificateholders of the series with respect to interest, (ii) servicing fees allocable to the series payable to the servicer, and (iii) any credit enhancement fee allocable to the series payable to a third party credit enhancer, divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies.

CC. ''CCA'' or ''Cash Collateral Account'' means that certain account established in the name of the trustee that serves as credit enhancement with respect to the investor certificates and holds cash and/or permitted investments (as defined below in Section III.KK.) which conform to applicable provisions of the pooling and servicing agreement.

DD. ''Group'' means a group of any number of series offered by the trust that share finance charge and/or principal collections in the manner described in the applicable prospectus or private placement memorandum.

EE. ''Ratings Effect'' means the reduction or withdrawal by a Rating Agency of its then current rating of the certificates held by any plan pursuant to this exemption.

FF. ''Principal Receivables Discount'' means, with respect to any account designated by the sponsor, the portion of the related principal receivables that represents a discount from the face value thereof and that is treated under the pooling and servicing agreement as finance charge receivables.

GG. ''Ratings Dependent Swap'' means an interest rate swap, or (if purchased by or on behalf of the trust) an interest rate cap contract, that is part of the structure of a series of certificates where the rating assigned by the Rating Agency to any senior class of certificates held by any plan is dependent on the terms and conditions of the swap and the rating of the swap counterparty, and if such certificate rating is not dependent on the existence of the swap and rating of the swap counterparty, such swap or cap shall be referred to as a ''Non-Ratings Dependent Swap''. With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the certificates must confirm, as of the date of issuance of the certificates by the trust, that entering into an Eligible Swap with such counterparty will not affect the rating of the certificates.

HH. ''Eligible Swap'' means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. Dollars;

(2) Pursuant to which the trust pays or receives, on or immediately prior to the respective payment or distribution date for the senior class of certificates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g. LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the trust receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the swap counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The certificate balance of the class of certificates to which the swap relates, or (ii) the portion of the certificate balance of such class represented by receivables;

(4) Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in paragraph HH.(2) above, and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is the earlier of the date on which the trust terminates or the related class of certificates is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in paragraphs HH.(1) through (4) above without the consent of the trustee.

II. ''Eligible Swap Counterparty'' means a bank or other financial institution which has a rating, at the

date of issuance of the certificates by the trust, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the certificates; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility hereunder, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the senior class of certificates with which the swap is associated has a final maturity date of more than one year from the date of issuance of the certificates, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

JJ. ''Qualified Plan Investor'' means a plan investor or group of plan investors on whose behalf the decision to purchase certificates is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the trust and the effect such swap would have upon the credit ratings of the certificates. For purposes of the exemption, such a fiduciary is either:

(1) A ''qualified professional asset manager'' (QPAM),[11] as defined under Part V(a) of PTE 84–14 (49 FR 9494, 9506, March 13, 1984);

(2) An ''in-house asset manager'' (INHAM),[12] as defined under Part IV(a) of PTE 96–23 (61 FR 15975, 15982, April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such certificates.

KK. ''Permitted Investments'' means investments that either (i) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligation is backed by the full faith and credit of the United States, or (ii) have been rated (or the obligor thereof has been rated) in one of the three highest generic rating categories by a Rating Agency; are described in the pooling and servicing agreement; and are permitted by the relevant Rating Agency(ies).

LL. ''Excess Finance Charge Collections'' means, as of any day funds are distributed from the trust, the amount by which the finance charge collections allocated to certificates of a series exceed the amount necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

MM. ''Required Additions'' means accounts which are required to be added to the trust when either the seller amount is less than the minimum required seller amount or the principal amount is less than the required principal amount.

NN. ''Restricted Additions'' means accounts which may be added to the trust at the discretion of the sponsor only upon confirmation from a Rating Agency that no Ratings Effect will result from the addition.

The Department notes that this proposed exemption, if granted, will be included within the meaning of the term ''Underwriter Exemption'' as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95–60, 60 FR 35925).

EFFECTIVE DATE: This proposed exemption, if granted, will be effective for transactions described herein and occurring on or after the date this proposed exemption is published in the **Federal Register**.

Summary of Facts and Representations

1. The applicant is Fleet Bank (RI), National Association (Fleet), a national banking association located in Providence, Rhode Island. Fleet conducts nationwide consumer lending programs principally comprised of credit card related activities. Fleet is a wholly-owned indirect subsidiary of Fleet Financial Group, Inc. On February 20, 1998, through a series of transactions, Advanta National Bank (Advanta) transferred substantially all of its consumer credit card business to affiliates of Fleet Financial Group, Inc., including Fleet. As a result, the rights and obligations of Advanta, as Seller and Servicer, under the relevant Pooling and Servicing Agreements (each, a PSA), were assigned, transferred to and assumed by Fleet.

2. The transactions for which an exemption is requested are investments by employee benefit plans in certain certificates (Certificates) representing the right to receive principal and interest payments from the assets of various Trusts which hold credit card receivables. Each Trust will issue, from time to time, a particular series of Certificates (i.e., a Series) which will be secured by the Trust's assets. A Series may include one or more classes of Certificates, some of which may be subordinate to others. However, only senior certificates issued by such Trusts, which meet the restrictive criteria designed to ensure investor safety discussed herein would be eligible for the exemptive relief to be provided under this proposed exemption.

The Trusts

3. Each Trust is created under a PSA between Fleet, as Seller and Servicer, and an independent and unaffiliated Trustee. Upon creation of a Trust, the Seller transfers to the Trust a pool of interest-bearing credit card receivables which are selected under strict criteria approved by one or more of certain nationally recognized rating agencies,[13] from the portfolio of revolving credit card accounts owned by Fleet. The PSA establishes the general parameters for the Trust, such as the requirements for eligible receivables to be transferred to the Trust, the manner of transferring and administering and servicing the receivables, Seller representations and covenants as to receivable eligibility, Servicer and Trustee duties and eligibility, and other matters.

The applicant represents that any Trust that issues a class of Certificates to be covered by the proposed exemption would include the following investor safeguards:

(a) Restricted selection of receivables;

(b) Periodic reporting and monitoring of accounts;

(c) Minimum receivable requirements;

(d) Restrictions regarding addition and removal of accounts;

(e) Servicer eligibility requirements;

[11] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[12] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

[13] As noted in Section I.C.(3) above, these rating agencies are: (i) Standard & Poors Ratings Services, a division of McGraw-Hill Companies Inc.; (ii) Moody's Investors Service, Inc.; (iii) Duff & Phelps Credit Rating Co.; and (iv) Fitch IBCA, Inc., or their successors (collectively, the Rating Agencies).

(f) Servicer reports, duties and public accounting firm review;
(g) Trustee eligibility and duties;
(h) Restrictions on investments;
(i) Protection from the consequences of unplanned events; and
(j) Limited discretion.

These investor safeguards are discussed in the following paragraphs.

4. *Restricted Selection of Receivables.* In order for a receivable to be eligible for transfer to the Trust, either on the initial closing date or on any subsequent date, it must have arisen under an eligible account. An eligible account is one that is in existence and owned by and maintained with Fleet (as of the initial selection date or, with respect to additional accounts, as of the relevant addition cut-off date), and is payable in U.S. dollars. In addition, an eligible account must have a United States address for its obligor, must not have been classified as fraudulent, stolen or lost, and (except as provided below) must not contain a defaulted receivable. However, eligible accounts may include accounts, the receivables of which have been written off, or which have been identified as fraudulent, stolen or lost, provided that the balance of all receivables included in such accounts is reflected on the books and records of the Seller (and is treated for purposes of the PSA) as ''zero,'' and charging privileges with respect to all such accounts have been canceled in accordance with the relevant credit card guidelines (i.e, investors do not pay for such accounts but receive the benefit of any payments made on such accounts). The eligible receivable must have been created in compliance with applicable law. All consents, licenses and other approvals necessary for the creation of the receivable and the execution of the credit card agreement must have been obtained and be in full force and effect, and Fleet must have good title to the receivable, free and clear of liens. Finally, an eligible receivable must constitute the legal valid and binding payment obligation of the obligor, and constitute an ''account'' or ''general intangible'' under Article 9 of the Uniform Commercial Code (the ''UCC''), as in effect in the State of Rhode Island, so as to grant the Trust a first priority security interest in the event of bankruptcy. Once the pool of eligible accounts has been identified, accounts are selected at random for the transfer of their receivables to the Trust so as to provide a combination of receivables that is representative of the entire pool of eligible receivables.

Fleet represents and warrants that the receivables transferred to the Trust, and the accounts related to those receivables, meet the above-described standards for eligible receivables and accounts, and that no selection procedures adverse to the Certificateholders have been employed in selecting accounts. These restrictions on account selection are in place to prevent the concentration of high risk accounts. Each relevant Rating Agency requires that all of these safeguards be in place before a superior rating is given.

5. *Periodic Reporting and Monitoring of Accounts.* In connection with the transfer of the receivables to the Trust, Fleet must record and file a UCC financing statement (including any continuation statements, when applicable) in order to perfect the assignment of the receivables, and must deliver a file-stamped copy of such financing or continuation statement to the Trustee. Fleet must also indicate in its computer system file of credit card accounts the receivables transferred to the Trust by identifying the accounts with a unique designation, as described in the PSA. Fleet must deliver a complete list of all accounts in the Trust to the Trustee on or prior to the initial closing date and thereafter on a periodic basis as required by the PSA.

The Trustee is able to continually monitor the Trust's assets by reviewing the monthly reports regarding pool performance which are prepared for the Trustee and investors by Fleet, as Servicer. In addition, Fleet provides the Trustee with a complete list of accounts prior to each addition or removal, as required by the PSA. Each relevant Rating Agency requires significant monitoring procedures for the servicing of receivables to ensure investor safety as a condition to a superior rating.

6. *Minimum Receivable Requirements.* The aggregate principal amount of the receivables held by the Trust must be at least equal to the sum of the principal amount of the Certificates (prior to the commencement of any related amortization or accumulation) for all Series then outstanding (other than a Series which is backed in full by accumulated cash or permitted investments (see Paragraph 11 below) less any accumulated excess funding amount held in the Trust for Certificateholders. If, on the last business day of any month, the aggregate amount of principal receivables is less than the required minimum, Fleet must designate additional accounts or may convey participations in other credit card receivable pools sponsored by Fleet to be transferred to the Trust so that the aggregate principal receivables will meet the minimum requirement.

Interests in the assets of each Trust are allocated among the Certificateholders of each Series and the Seller (i.e., Fleet) and the principal portion of the Seller's interest is referred to as the ''Seller Amount.'' The interest in the Trust assets allocated to the Seller is referred to as the ''Seller Interest'' less any accumulated excess funding amount held in the Trust for Certificateholders. To protect against fraud, chargebacks or other dilution of receivables in the Trust, the PSA and the Rating Agencies will require Fleet, as the Trust's sponsor, to maintain a seller interest of not less than 2 percent of the principal balance of the receivables contained in the Trust (referred to as the ''Required Seller Percentage''). If, on the last business day of any month, the Seller Amount is less than the Required Seller Percentage, Fleet must designate additional accounts or participations in other credit card receivable pools to be transferred by Fleet to the Trust in order to satisfy the minimum requirement. When account payments exceed account purchases, the total pool of receivables in the relevant Trust contracts. As a result, the Seller Interest declines, thus providing a buffer to prevent a decline in the principal balance of the Certificates prior to the scheduled payment of principal. Thus, when the account balances that secure the Certificates decline, the Seller Interest decreases, not the principal balance of the Certificates. When the account balances again increase, the Seller Interest is increased. The Seller Interest will also decline as a result of dilution of the receivable portfolio resulting from noncash reductions such as merchandise returns or servicer errors.

The minimum receivable requirement and Required Seller Percentage requirement imposed on Fleet by the PSA (as described above) cause the Trustee, Servicer or Seller to have limited discretion regarding the minimum size of the Trust. Each relevant Rating Agency gains comfort from these minimum receivable levels that the Trust will be maintained so as not to adversely affect the ability of the Trust assets to support the promised interest and/or principal payments to Certificateholders.

7. *Restrictions Regarding Addition and Removal of Accounts.* In addition to the limitations discussed above regarding the initial selection of accounts and minimum receivable requirements, the following restrictions apply to the addition of accounts subsequent to the initial transfer of receivables to the Trust. Any transfer of receivables from additional accounts

must be preceded by written notice to the Trustee, each relevant Rating Agency and the Servicer specifying the approximate aggregate amount of receivables to be transferred. In connection with the transfer, Fleet will warrant that the additional accounts are eligible accounts and that each receivable is an eligible receivable, and that no selection procedures believed by Fleet to be materially adverse to the interest of the Certificateholders were utilized in selecting the accounts. Fleet must deliver an opinion of counsel with respect to the added receivables to the Trustee, with a copy to each relevant Rating Agency, that such addition is enforceable and that the Trust has either a valid transfer of, or a grant of security interest in, the additional accounts. The PSA requires that the Servicer and the Trustee receive confirmation from a Rating Agency that no Ratings Effect (i.e., a downgrade or withdrawal of the then current rating of any outstanding Series of Certificates) will result from a proposed transfer of accounts to the Trust.

Fleet may remove receivables and accounts, subject to the minimum receivable requirements discussed above. Fleet must give the Trustee and the Servicer and the relevant Rating Agencies written notice stating the approximate aggregate principal balance of the removal, and certifying that such removal must not result in a Pay Out Event. Fleet must warrant that no selection procedures believed by it to be materially adverse to the Certificateholders were utilized in selecting the removed receivables. Each relevant Rating Agency must have confirmed that such proposed removal will not result in a Ratings Effect. Fleet states further that the amount of any receivables that are removed must be less than 5 percent of the aggregate amount of principal receivables or, if any Series is paid in full, the amount of receivables removed must approximate the initial investor interest of such Series.

Each Rating Agency has determined that the number of additional accounts from which receivables may be added is generally limited to: (i) with respect to any consecutive three-month period commencing in January, April, July and October of each calendar year, 15 percent of the number of existing accounts designated to the Trust as of the first day of the calendar year in which such monthly period commenced, and (ii) with respect to any calendar year, 20 percent of the number of accounts designated to the Trust as of the first day of such calendar year. Fleet may be able to exceed the maximum addition amount if approval is received from each relevant Rating Agency.

By informing the relevant Rating Agencies of all details regarding additions and removals, the Trust is effectively reexamined each time these events occur in order to assure that the changes to the Trust assets will not adversely affect the rating of any outstanding Series. Each relevant Rating Agency scrutinizes the receivables in the additional accounts, or the relative strength of the pool of receivables designated to the Trust both before and after the addition or removal, as the case may be, in making any such re-examinations.

8. *Servicer Eligibility Requirements.* The Servicer of the receivables must be either the Seller (Fleet), an affiliate of Fleet, or an entity unaffiliated with Fleet acting as a ''Subservicer'' which is qualified to service a portfolio of consumer revolving credit card accounts and meets certain requirements. Under such requirements, the entity acting as either a Servicer or Subservicer must be legally qualified and have the capacity to service the accounts, must be qualified to use the software used to service the accounts, must have demonstrated the ability to professionally and competently service a portfolio of similar accounts in accordance with customary standards of skill and care, and must have a certain net worth (e.g. at least $50,000,000). These requirements are in line with the Rating Agencies' standards for servicers.

Regardless of whether the Servicer is Fleet, an affiliate of Fleet, or a third party meeting the eligibility requirements discussed above, the Servicer's duties are largely ministerial and are provided in detail in the PSA. The Servicer administers the receivables, collects payments due thereunder, makes withdrawals from the various accounts created under the PSA which are forwarded to the Trustee on the dates and in the manner provided under the PSA, commences enforcement proceedings with respect to delinquent receivables and makes filings and other necessary reports with the SEC and any state securities authorities as necessary to comply with the law. The Servicer must maintain fidelity bond coverage insuring against losses through its own wrongdoing, and is entitled to receive a reasonable servicing fee which is specifically enumerated in each PSA supplement.

9. *Servicer Daily Reports, Duties and Public Accounting Firm Review.* On each business day the Servicer, upon prior written notice by the Trustee, must prepare and make available to the Trustee a record of the collections processed on the second preceding business day and the aggregate amount of receivables as of the close of business on such day. The Servicer must prepare monthly for the Trustee, the paying agent, any credit enhancement provider, and each relevant Rating Agency, a certificate setting forth the aggregate collections processed during the preceding month with respect to each Series outstanding, the aggregate amount of the investor percentages of collections of finance charge receivables and principal receivables processed during the preceding month with respect to each Series outstanding, the balances in the finance charge account, the principal account or any Series account during the preceding month, and other detailed information.

The Servicer will provide annually a certificate from an officer indicating that the Servicer's activities over a 12-month period were reviewed and the officer believed such obligations were fully performed under the PSA. Every year, a nationally recognized firm of independent certified public accountants will review the internal accounting controls and their relation to the servicing of the receivables as well as the mathematical accuracy of the Servicer's monthly reports, and the results will be provided to the Trustee, any credit enhancement provider, and each relevant Rating Agency. These additional reviews of the Servicer are designed to prevent Servicer fraud and limit Servicer discretion. These safeguards protect investors and are a positive factor in a Rating Agency's evaluation.

10. *Trustee Eligibility and Duties.* The Trustee must be a corporation, bank, or other financial institution organized, doing business and regulated under the laws of the United States, any State or the District of Columbia and have a long-term unsecured debt rating as specified in the PSA. The Trustee must be independent of Fleet and its affiliates and meet the same requirements that would be necessary for an eligible Servicer (as discussed under ''Servicer Eligibility Requirements'' above in paragraph 8). Any successor Trustee must also meet these requirements and be approved by each relevant Rating Agency.

The Trustee is responsible for receiving collections from receivables as provided in the PSA, investing any moneys as directed in the PSA, and directing payments to Certificateholders according to the plan of allocation and payment detailed in the PSA. In performing these functions, the Trustee has little, if any, discretion. The Trustee is also responsible for examining any

resolutions, statements, certificates, opinions, reports or other instruments in order to determine whether they substantially conform to the requirements of the PSA. The Trustee has no power to vary the corpus of the Trust and must perform the duties of other parties should they fail to perform under the PSA. Like the Servicer restrictions, the restrictions on the Trustee limit discretion, enhance investor protection, and are a positive influence on a Rating Agency's evaluation.

11. *Restrictions on Investments.* The collections of principal receivables and finance charge receivables held in the Trust may be invested by the Trustee only in ''permitted investments'' during the interim periods between collection and payment to the Certificateholders. Such permitted investments are detailed in the PSA and represent what each relevant Rating Agency considers to be secure investments that sufficiently protect investors. Under the proposed exemption, permitted investments would be investments that either (i) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligation is backed by the full faith and credit of the United States, or (ii) have been rated (or the obligor thereof has been rated) in one of the three highest generic rating categories by a Rating Agency. In addition, all permitted investments must be described in the PSA and permitted by the relevant Rating Agencies.

12. *Protection From the Consequences of Unplanned Events.* If Fleet should desire to merge or consolidate with, or assume the obligations of, another entity, certain provisions of the PSA ensure that the Trust assets remain secure. The new entity involved in the merger or consolidation must be a national banking association, a state banking corporation, a savings and loan association, or another entity not subject to bankruptcy laws or a bankruptcy remote corporation and must be organized and regulated under the laws of the United States, any State or the District of Columbia. The new entity must expressly assume the performance of every covenant and obligation of Fleet, and Fleet must provide the Trustee with an opinion of counsel that such assumption is legal, valid and binding. Finally, each relevant Rating Agency must be notified in advance of the change. Similarly, a merger, consolidation or assumption of the obligations of the Servicer also requires the same protections of a full assumption of liabilities, an opinion of counsel and Rating Agency notification.

The Certificateholders of each Series receive protection from certain unplanned events (called ''Pay Out Events''). If a ''Pay Out Event'' occurs with respect to a Series, either (i) a rapid amortization period will commence during which the Certificates of such Series will be paid down periodically, as provided in the PSA Supplement, with the principal collections allocable to such Series or with principal collections allocable to other Series which are shared within the same Group (as discussed in Paragraph 15 below), or (ii) a rapid accumulation period will commence during which the Series' principal collections will be accumulated until a designated payment date. Pay Out Events include ''Trust Pay Out Events,'' which apply to all Series, and ''Series Pay Out Events,'' which apply to particular Series. ''Trust Pay Out Events'' include: (i) Certain events of insolvency, conservatorship or receivership relating to Fleet; (ii) the Trust becomes an ''investment company'' within the meaning of the Investment Company Act of 1940, as amended; and (iii) Fleet becomes unable for any reason to transfer receivables to the Trust as required by the PSA.

''Series Pay Out Events'' generally include:

(a) Failure of Fleet to make required payments or observe its other covenants to the extent there is a material adverse effect on the Certificateholders of that Series;

(b) Breach by Fleet of its representations and warranties to the extent there is a material adverse effect on the Certificateholders of that Series;

(c) A default by the Servicer that would have a material adverse effect on the Certificateholders of that Series;

(d) Failure of Fleet to convey additional accounts as required to meet the required seller percentage and principal balance requirements; and

(e) The net portfolio yield for any three consecutive monthly periods is less than the base rate for such period (an ''Economic Pay Out Event'').

With respect to item (e) above, Fleet states that an ''Economic Pay Out Event'' will occur automatically when the portfolio yield for any series of certificates, averaged over three consecutive months (or such other period approved by one of the Rating Agencies) is less than the base rate of the series averaged over the same period. Portfolio yield for a series of certificates for any period is equal to the sum of the finance charge collections and other amounts treated as finance charge collections less total defaults for the series divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies. The base rate for a series of certificates for any period is the sum of (i) amounts payable to certificateholders of the series with respect to interest, (ii) servicing fees allocable to the series payable to the servicer, and (iii) any credit enhancement fee allocable to the series payable to a third party credit enhancer, divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies.

Fleet states that an ''Economic Pay Out Event'' should not occur because the amount of receivables included within the Trust has been designed to create ''excess spread'' between the yield on the receivables and the certificate rates. ''Excess spread'' is the amount by which the yield on the receivables held by the Trust exceeds, at any point in time, the amounts necessary to pay certificate interest, principal (if such payments are due to certificateholders), servicing fees and expenses, and to satisfy cardholder defaults or charge-offs. The Rating Agencies examine the expected amount of ''excess spread'' very closely before providing a high credit rating for the certificates.

A ''Pay Out Event'' accelerates the scheduled payments or accumulation of principal on the Certificates as specified within each PSA Supplement, and eliminates shared allocations from such Series, thus increasing the probability of full payment to senior Certificateholders, including plan investors. During a rapid amortization period, which is triggered by a ''Pay Out Event'', all collections are distributed periodically (instead of being distributed on the originally scheduled principal payment dates), as provided in the PSA Supplement, until the senior Certificateholders are paid in full. During a rapid accumulation period, also triggered by a ''Pay Out Event'', all principal collections allocated to the senior Certificates are accumulated and invested by the Trustee until the senior Certificateholders' interest is backed in full by cash and/or permitted investments which will be distributed on the originally scheduled payment date. Payments or accumulations are then directed to the next level of Certificates below the senior Certificates, until all Certificates have been paid or accumulated, or the Trust terminates. Because this accelerated pay out or accumulation schedule is triggered as a result of poor

performance, senior Certificateholders are protected from a loss which might result from long-term yield reduction, and are, to a level of certainty necessary to support a rating of ''AA'' (or better), likely to receive their entire investment return. The timing or amount of the payments or accumulations is specifically defined in each PSA Supplement, further protecting investors from mismanagement. This automatic pay out trigger is important to each relevant Rating Agency as well, because it strictly limits the potential losses to investors.

Investors are also protected from the negative consequences of an event of Seller insolvency. If one or more of a number of indications of insolvency are present, a ''Pay Out Event'' occurs and a rapid amortization or a rapid accumulation period is triggered. As discussed above, this event accelerates payments or accumulation of collections to maximize the probability that senior Certificateholders will be paid promptly and in full. In addition, the Trustee also liquidates the receivables (unless otherwise instructed by Certificateholders representing undivided interests aggregating more than 50 percent of each outstanding Series) in order to further accelerate the pay out or accumulation process. The proceeds of the liquidation are distributed or accumulated in the tiered manner discussed above in the low-yield scenario.

13. *Limited Discretion.* Inherent in all of the restrictions surrounding creation and management of the Trust, discussed above, is the limited ability of any party to the transaction to make discretionary decisions that would have a major impact on the Trust assets. The PSA addresses every possible important decision and provides the exact course of action required. Each detail is designed to ensure maximum investor security, and minimum Trustee and Servicer discretion.

The Series

14. Once a Trust is established, a Series of Certificates may be issued pursuant to a PSA Supplement. One Trust typically supports multiple Series of Certificates over time. Each Series issued under a Trust is secured, along with other outstanding Series, by the assets of the issuing Trust. The PSA Supplement builds on the PSA by specifying the parameters for the Series, such as the number and type of Certificates, subordination and payment structuring, and other credit enhancement features.

The life of a Series consists of a revolving period and an amortization or accumulation period. During both periods, daily collections are allocated to the Trust accounts in the manner specified in the PSA Supplement. Interest payments are made periodically to the Certificateholders as provided in the PSA Supplement, and principal is paid in a lump sum on the date designated in the PSA Supplement (in the case of an accumulation period), or periodically pursuant to a schedule in the PSA Supplement (in the case of an amortization period), for each class of Certificates. The allocation of collections and the priority of payments differs slightly during the revolving period and the amortization or accumulation period.

15. During a Series' revolving period, periodic interest payments are made to Certificateholders. Principal payments, however, are not made until the amortization period or at the end of the accumulation period. Principal collections during the revolving period typically are shared among the Series that are members of the same Group. If one Series has principal receipts greater than needed to pay principal for that period, the excess may be used to pay principal for another Series in the Group which may have a need for such principal collections. In such instances, the minimum principal receivable balances required by the Rating Agencies for all Series must be maintained. The process of sharing within the Group spreads payment risk over a broader base of collections and effectively allows concentration of principal collections supporting a particular Series, resulting in increased reliability of the payment streams.

Principal collections received during the amortization or accumulation period are also potentially shared, but are first applied to the principal funding for the Series to which they relate. The amortization or accumulation period ends on the earliest of: (i) When the investor interests are paid in full; (ii) the Series termination date provided in the PSA Supplement; or (iii) the commencement of a rapid amortization or rapid accumulation period. Finance charges and fees collected during the revolving period and the accumulation or amortization period are applied to the related Series, and are not generally shared within the Group.

16. Every Trust will have a variety of credit enhancement features, as described in the PSA and specified in the applicable PSA Supplement. In addition to the Group sharing of collections discussed above, other forms of credit enhancement may include subordination and letters of credit or other third party arrangements. The type and value of credit enhancement for a particular Series is designed to complement the underlying Trust receivables so that, as a whole, the Trust assets satisfy the relevant Rating Agencies' requirements for the superior rating desired. In this regard, Fleet represents that the particular class of certificates for each series to which this proposed exemption would apply (an Exempt Class) will have credit support provided to the Exempt Class through either a senior-subordinated series structure or other form of third party credit support which, at a minimum, will represent five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss.

Each Series with an Exempt Class covered by the proposed exemption will include one or more of the following credit enhancing investor safeguards (as discussed further below): (i) subordination; (ii) third party credit enhancement; and (iii) predetermined allocation of collections and payments to certificateholders allows no variation.

17. *Subordination.* Typically, a Series will have some form of subordination incorporated within the payment schedule detailed in the PSA Supplement. Such a Series will consist of at least one class of senior Certificates (typically designated as ''Class A Certificates'') which will be allocated collections in a more favorable manner than, and/or prior to, another class (or other classes) of Certificates (i.e., the next lower level, typically designated as ''Class B Certificates'') and often will include an uncertificated class subordinate to the Class B Certificates (typically designated as the ''Collateral Interest'' or ''Class C Interest''). The subordination process generally will involve both the receipt of collections and the effect of losses. Thus, such collections will be applied to the senior (or Class A) Certificates first and then the second tier (or Class B) Certificates, and will be applied last to the lowest level class of Certificates (or the Collateral Interest). Conversely, the losses will first reduce the lowest class of Certificates (or the Collateral Interest), only affecting the senior (or Class A) Certificates after all other classes have been reduced to zero. The result of this tiered structure is that the senior (or Class A) Certificates are protected from nonpayment by the lower classes. If the certainty of payment provided by the subordination or other credit support mechanism is insufficient to allow each relevant Rating Agency to bestow one of its two highest ratings on the senior Certificates, the senior Certificates

would not be eligible for the relief provided under the proposed exemption.

18. *Third Party Credit Enhancement.* A Series may include a form of credit enhancement provided by an outside party, such as a letter of credit, a cash collateral account, insurance or a guaranty or other extension of credit. This arrangement will be documented by a separate contract outlining the terms of the enhancement. A holder of the Collateral Interest (described in paragraph 17) or other subordinate interest holder may be a loan provider or an investor in the Class C Interest, and the PSA Supplement typically requires that a minimum Collateral Interest (or subordinate interest) be a feature of each Series. As with all the forms of credit enhancement, the terms and the amount of the Collateral Interest will be dependent upon an evaluation of the other Trust assets and the additional support needed to satisfy each relevant Rating Agency that the Certificates are sufficiently protected from default.

19. *Predetermined Allocation of Collections and Payments to Certificateholders Allows No Variation.* The PSA Supplement provides instructions to the Servicer regarding each day's collections and the allocation of those collections to the various accounts created by the PSA. These instructions indicate how to make the payments and allocations during the revolving period, the controlled amortization or controlled accumulation period and the rapid amortization or rapid accumulation period, if any. The instructions also cover the treatment of other moneys from loans or other credit enhancement features, and carefully describe how to accommodate any excess collections, or how to compensate for any shortfalls. In following these detailed instructions, the Servicer does not make any discretionary decisions. The tasks are predetermined and largely ministerial. These explicit instructions, in concert with the Servicer reporting and review requirements, are designed to permit each relevant Rating Agency to conclude that mismanagement risks are minimal.

The Certificates

20. Each Series may include a class or various classes of Certificates, some of which may be subordinate to others. Certificateholders will be entitled to receive periodic payments of interest based upon a fixed or variable interest rate which is set forth in the PSA Supplement and applied to the Certificateholder's unpaid principal balance. Certificateholders will also be entitled to receive a lump sum principal payment on the scheduled payment date, or a series of periodic payments beginning on the scheduled payment commencement date, as specified in the PSA Supplement, to the extent of the Certificateholder's investor interest.

As noted earlier, only Certificates that are not subordinate to any other class or classes of Certificates (the ''Senior Certificates'') would be eligible for exemptive relief under the proposed exemption. However, subordinate certificates that are part of a Series which includes Senior Certificates eligible for the proposed exemption could be purchased by insurance company general accounts if the conditions of Prohibited Transaction Exemption 95–60, 60 FR 35925 (July 12, 1995) (PTE 95–60), are satisfied.

21. Fleet represents that a plan would invest in the Certificates for the same reasons any investor would invest in a highly secure, ''AA'' (or better) rated investment with attractive yields. The Senior Certificates represent an investment alternative which offers all the benefits of a highly rated fixed-income security, such as fixed payment streams, investment diversity and market rates of return. Permitting plans to invest in Senior Certificates in reliance on the proposed exemption would provide plans with additional and safe investment opportunities.

22. With respect to the credit ratings of the Certificates, Fleet states that the rating reflects a Rating Agency's opinion as to the relative amount of protection that investors have against loss of principal and interest during the life of the security. A high rating comports with a low risk of loss. In order to achieve this rating, each relevant Rating Agency requires the credit card securitizations effected through the Trust to include a variety of safeguards—such as subordination or other forms of credit enhancement, limitations on the Seller's discretion, and Rating Agency approval of certain actions taken with respect to the Trust or a Series of Certificates. Each relevant Rating Agency typically requires legal opinions regarding the credit card securitization's structure and performs stress tests on the portfolio of selected receivables in order to evaluate the securitization's anticipated performance within a range of significant market fluctuations. In addition, each relevant Rating Agency performs a comprehensive review of all documents related to the credit card securitization before the formal rating is given. Each relevant Rating Agency must provide confirmations that additions of receivables from accounts to a Trust, or withdrawals of existing accounts from a trust, will not result in a Ratings Effect on the Certificates.

After its rating is assigned, the Rating Agency monitors the performance of the credit card receivables included in a Trust in order to assess whether the performance remains consistent with the rating. Although variations in portfolio performance are expected during a Certificate's duration and are factored into a Rating Agency's analysis, extreme and unexpected performance results may result in a revision of the rating. Fleet makes its Trust performance information available to each relevant Rating Agency in a variety of ways, in order to ensure that such Agency receives all the information it deems necessary to make its evaluation. For example, Fleet provides information on portfolio performance broken down by account balance, credit limit, account age, delinquency period and geographic distribution.

Fleet states that the receipt of one of the two highest generic ratings from a Rating Agency represents the result of an exhaustive analysis of the many risk factors involved with a Series of Certificates, and provides a comfort level to investors that the potential reduction in yield as a result of credit losses is minimal.[14]

23. Fleet represents that the statistics on Certificates backed by credit card trusts indicate that they are sound investments. In this regard, Fleet states that public credit card securitization transactions have been in existence since 1987 and issuers have successfully sold over $230 billion in Certificates backed by credit card receivables since then with a zero investor loss rate. Fleet states further that plans have invested during this time in such Certificates,

[14] In this regard, the Department was advised by representatives from two of the Rating Agencies (RA Reps) of certain issues concerning the ratings of certificates issued by trusts holding credit card receivables. The RA Reps discussed, among other things, the fact that different banks use different underwriting standards and may offer cardholders different terms on their accounts. Some banks may be willing to accept cardholders with more risky credit histories while other banks may not or may offer better terms to cardholders with superior payment histories. The result may be that some banks have a higher quality portfolio of receivables than other banks. The RA Reps stated that if a bank securitizes a portfolio of receivables which holds a number of riskier accounts, the Rating Agencies will require more credit enhancement measures because different assumptions will have to be made about the performance of the portfolio—e.g. higher charge-off rates will be assumed and greater ''excess spread'' will be necessary to avoid losses—in order to achieve an ''AAA'' rating. Thus, for example, Bank A's certificates may receive an ''AAA'' rating along with Fleet's certificates even though Bank A may experience more charge-offs on the credit card accounts and may have different payment rates on the receivables associated with those accounts.

despite the prohibited transaction provisions of the Act, in reliance upon the Department's regulation defining ''plan assets'' and, specifically, the ''100-Holder Exception'' for ''publicly-offered'' securities (see 29 CFR 2510.3–101).[15]

Fleet maintains that the proposed exemption offers a number of safeguards in the form of concentration restrictions that are designed to provide additional protections for plan investors which are not included in the typical 100-holder exception transactions. For example, for purposes of the relief from the prohibitions of section 406(b) of the Act[16] provided under Section I.B. herein (relating to certain obligors of the Trust who may have discretionary authority for a plan investing in certificates of the Trust), the proposed exemption limits such plan's investment in any class of Certificates of any Series to not more than 25 percent of the principal amount of the Certificates of that class outstanding at the time of acquisition. In addition, immediately after the acquisition of the certificates, not more than 25 percent of the assets of such a plan may be invested in certificates representing an interest in the trust, or trusts containing receivables sold or serviced by the same entity. Further, the proposed exemption requires that at least 50 percent of the outstanding principal amount of each class of Certificates in which plans have invested, and at least 50 percent of the outstanding aggregate interest of the Trust, in connection with the initial issuance of the Certificates, must be acquired by persons independent of the Sponsor, the Servicer and other related parties. These restrictions are designed to protect plan investors from the risks inherent in excessive ownership concentration and related party transactions.

[15] The Department's regulation defining ''plan assets'' provides that, if a plan invests in a publicly-offered security, the plan's assets will not include, solely by reason of such investment, any of the underlying assets of the entity issuing the security (i.e. the ''look-through rule'' will not apply and the operations of the entity will not be subject to scrutiny under the prohibited transaction provisions of the Act). The regulation defines a ''publicly-offered'' security as one that is freely transferable, widely-held, and registered under the federal securities laws. A class of securities is ''widely held'' if it is owned by 100 or more investors who are independent of the issuer and of one another at the conclusion of the offering (see 29 CFR 2510.3–101(b)(3)).

[16] Section 406(b) of the Act, in pertinent part, prohibits a plan fiduciary from dealing with the assets of the plan in his own interest or for his own account, or from acting on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan and its participants and beneficiaries.

24. Fleet represents that the requested exemption is similar to the Underwriter Exemptions.[17] The Underwriter Exemptions are a series of exemptions granted by the Department to various underwriters or trust sponsors for transactions relating to the acquisition by plans of certificates representing interests in trusts holding various types of assets (e.g. single and multi-family residential or commercial mortgages, motor vehicle leases and related vehicles, equipment leases or other secured obligations), as provided in Section III.B. of the Underwriter Exemptions.

The Trusts described under the proposed exemption for Certificates backed by credit card receivables differ from trusts holding secured obligations in that the Trusts do not contain a fixed pool of assets and the receivables are not secured by real or tangible personal property. However, Fleet states that this difference in structure does not represent a difference in the quality or safety of investments by plans and other investors in the Certificates. Under the proposed exemption, Fleet represents that the other forms of credit enhancement provide at least the same level of security for investors in Trusts holding credit card receivables as exists for investors in trusts holding tangible or real property as collateral for the payment obligations to Certificateholders. In addition, Trusts holding credit card receivables do not involve the expense and administrative complexities of foreclosure procedures relating to tangible and real property.

25. Certificateholders are entitled to receive periodic payments of interest based upon an interest rate, which may be variable or fixed. This interest rate is specified or defined in the PSA Supplement for the particular Series and is applied to the outstanding principal balance of the Certificates. This outstanding balance (net of any charge-offs) is known as the investor interest for the senior class of Certificates. Certificateholders are also entitled to receive principal payments on the scheduled payment dates, or sooner or later under certain limited circumstances, pursuant to the PSA Supplement to the extent of the Certificateholders' investor interest. The payments are funded from collections on the related receivables and allocated to the investor interests as provided in the PSA Supplement.

[17] As indicated in Footnote 7 above, PTE 97–34 (which granted an amendment to the Underwriter Exemptions) contains the most comprehensive listing of these exemptions.

Fleet states that a Series or class of Certificates may have the benefit of an interest rate swap agreement entered into between the Trustee for a Trust and a bank or other financial institution acting as a swap counterparty. Pursuant to the swap agreement, the swap counterparty would pay a certain rate of interest to the Trust in return for a payment of a rate of interest by the Trust, from collections allocable to the relevant Series or class of Certificates, to the swap counterparty. Fleet represents that the credit rating provided to a particular Series or class of Certificates by the relevant Rating Agency may or may not be dependent upon the existence of a swap agreement. Thus, in some instances, the terms and conditions of the swap agreements will not effect the credit rating of the Series or class of Certificates to which the swap relates (i.e. a ''Non-Ratings Dependent Swap'').

Fleet states that whether or not the credit rating of a particular Series or class of Certificates is dependent upon the terms and conditions of one or more interest rate swap agreements entered into by the Trust (i.e. a ''Ratings Dependent Swap'' or a ''Non-Ratings Dependent Swap''), each particular swap transaction will be an ''Eligible Swap'' as defined in Section III.HH. above.

In this regard, an Eligible Swap will be a swap transaction:

(a) Which is denominated in U.S. Dollars;

(b) Pursuant to which the Trust pays or receives, on or immediately prior to the respective payment or distribution date for the applicable senior class of Certificates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g. LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Trust receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(c) Which has a notional amount that does not exceed either (i) the certificate balance of the class of certificates to which the swap relates, or (ii) the portion of the certificate balance of such class represented by receivables;

(d) Which is not leveraged (i.e. payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in item (b) above, and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(e) Which has a final termination date that is the earlier of the date on which

the Trust terminates or the related class of Certificates is fully repaid; and

(f) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in items (a) through (e) above without the consent of the Trustee.

In addition, any Eligible Swap entered into by the Trust will be with an ''Eligible Swap Counterparty'', which will be a bank or other financial institution with a rating at the date of issuance of the Certificates by the Trust which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Certificates (see Section III.II above). However, if a swap counterparty is relying on its short-term rating to establish its eligibility, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency.

With respect to a Ratings Dependent Swap, an Eligible Swap Counterparty will be subject to certain collateralization or other arrangements satisfactory to the Rating Agencies in the event of a rating downgrade of such swap counterparty below a level specified by the Rating Agency, which would be no lower than the level that would make such counterparty ''eligible'' under this proposed exemption (see Section III.II. above). If these arrangements are not established within a specified period, as described in the PSA, there will be an early payout event causing certificateholders to receive an earlier than expected payout of principal on their certificates for the series to which the swap relates. However, with respect to a Non-Ratings Dependent Swap, the PSA will not specify that there be an early payout event for the series to which the swap relates if the credit rating of the swap counterparty falls below the level required for it to be considered an Eligible Swap Counterparty (as described in Section III.II. above). In such instances, in order to protect the interests of the Trust as a swap counterparty, the servicer (as agent for the trustee of the trust) will be required to either:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement will terminate);

(ii) Cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms.

Under any termination of a swap, the Trust will not be required to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from ''excess finance charge collections'' or other amounts that would otherwise be payable to the servicer or the seller (i.e. Fleet). In this regard, ''excess finance charge collections'' will be, as of any day funds are distributed from the Trust, the amounts by which the finance charge collections allocated to certificates of a series exceed the amounts necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

With respect to Non-Ratings Dependent Swaps, each Rating Agency rating the Certificates must confirm, as of the date of issuance of the Certificates by the Trust, that entering into the swap transactions with the Eligible Swap Counterparty will not effect the rating of the Certificates, even if such counterparty is no longer an ''eligible'' counterparty and the swap is terminated.[18]

Any class of senior Certificates to which one or more swap agreements entered into by the trust applies, will be acquired or held only by Qualified Plan Investors (as defined in Section III.JJ. above). Qualified Plan Investors will be plan investors represented by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction relating to the class of senior Certificates to be purchased and the effect such swap would have upon the credit rating of the senior Certificates to which the swap relates.

For purposes of the proposed exemption, such a qualified independent fiduciary will be either:

(i) A ''qualified professional asset manager'' (i.e. QPAM), as defined under Part V(a) of PTE 84–14;[19]

(ii) An ''in-house asset manager'' (i.e. INHAM), as defined under Part IV(a) of PTE 96–23;[20] or

(iii) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Certificates.

Disclosures Available to Investing Plans

26. In connection with the original issuance of certificates, the prospectus or private offering memorandum will be furnished to investing plans. The prospectus or private offering memorandum will contain information pertinent to a plan's decision to invest in the Certificates, such as:

(a) Information concerning the Certificates, including payment terms, certain tax consequences of owning and selling Certificates, the legal investment status and rating of the Certificates, and any special considerations with respect to the Certificates;

(b) Information about the underlying receivables, including the types of receivables, statistical information relating to the receivables, their payment terms, and the legal aspects of the receivables;

(c) Information about the servicing of the receivables, including the identity of the servicer and servicing compensation;

(d) Information about the Sponsor of the Trust;

(e) A full description of the material terms of the Pooling and Servicing Agreement; and

(f) Information about the scope and nature of the secondary market, if any, for such Certificates.

Certificateholders will be provided with information concerning the amount of principal and interest to be paid on Certificates in connection with each distribution to Certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the status of the Trust.

In the case of a Trust that offers and sells Certificates in a registered public offering, the Trustee, the Servicer or the Sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934, as amended (the '34 Act). Although some Trusts that offer Certificates in a public offering will file quarterly reports on

[18] RA Reps have indicated to the Department that certain series of certificates issued by a trust holding credit card receivables will have certificate ratings that are not dependent on the existence of a swap transaction entered into by the trust. Therefore, a downgrade in the swap counterparty's credit rating would not cause a downgrade in the rating established by the Rating Agency for the certificates. RA Reps state that in such instances there will be more credit enhancements (e.g. ''excess spread'', letters of credit, cash collateral accounts) for the series to protect the certificateholders than there would be in a comparable series where the trust enters into a so-called Ratings Dependent Swap. Non-Ratings Dependent Swaps are generally used as a convenience to enable the trust to pay certain fixed interest rates on a series of certificates. However, the receipt of such fixed rates by the trust from the counterparty is not a necessity for the trust to be able to make its fixed rate payments to the certificateholders.

[19] See Footnote 11 above.

[20] See Footnote 12 above.

Form 10–Q and Annual Reports on Form 10–K, many Trusts (i) obtain, by application to the SEC, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K; or (ii) are not subject to such requirements for one or more Series of Certificates issued by the Trust. If such an exemption is obtained, these Trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the Trust and the Certificates. While the SEC's interpretation of the periodic reporting requirement is subject to change, periodic reports concerning a Trust will be filed to the extent required under the '34 Act.

Fleet states that at or about the time distributions are made to Certificateholders, reports will be delivered to the Trustee as to the status of the Trust and its assets, including underlying Receivables. Such reports will typically contain information regarding the Trust's assets, payments received or collected by the Servicer, the amount of delinquencies and defaults, the amount of any payments made pursuant to any credit support or credit enhancement feature, and the amount of compensation payable to the Servicer. Such reports will also be delivered or made available to the Rating Agency that currently rates the Certificates. Such reports will be available to investors and its availability will be made known to potential investors. In addition, promptly after each distribution date, Certificateholders will receive a statement summarizing information regarding the Trust and its assets and the applicable Series, including underlying receivables.

28. In summary, Fleet represents that the proposed transactions will meet the statutory criteria of section 408(a) of the Act because, among other things:

(a) The acquisition of senior Certificates by a plan will be on terms (including Certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(b) The rights and interests evidenced by the senior Certificates will not be subordinated to the rights and interests evidenced by other investor Certificates of the Trust;

(c) Any senior Certificates acquired by a plan will have received a rating at the time of such acquisition that is in one of the two highest generic rating categories from any one of the Rating Agencies or, for certificates with a duration of one year or less, the highest short-term generic rating category from any one of the Rating Agencies;

(d) The Trustee of the Trust will not be an affiliate of any other member of the Restricted Group;

(e) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of Certificates will represent not more than reasonable compensation for underwriting or placing the Certificates; the consideration received by the Sponsor as a consequence of the assignment of receivables (or interests therein) to the Trust will represent not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the Servicer, which are allocable to the Series or class of certificates purchased by a plan, will represent not more than reasonable compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(f) Any plan investing in such Certificates will be an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the SEC under the Securities Act of 1933, as amended;

(g) The terms of each Series or class of Certificates, and the conditions under which Fleet may designate additional accounts to, or remove previously-designated accounts from, the Trust will be described in the prospectus or private placement memorandum provided to investing plans;

(h) The Trustee of the Trust will be a substantial financial institution or trust company experienced in trust activities and would be familiar with its duties, responsibilities and liabilities as a fiduciary under the Act;

(i) The PSA will include ''Economic Pay Out Events'' triggered by a decline in the performance of the receivables in the Trust;

(j) To protect against fraud, chargebacks or other dilution of the receivables in the Trust, the PSA and the Rating Agencies will require Fleet, as the Trust's sponsor, to maintain a seller interest of not less than 2 percent of the principal balance of the receivables contained in the Trust;

(k) Each receivable added to a Trust will be an eligible receivable, based on criteria of the relevant Rating Agency(ies) and as specified in the PSA;

(l) The PSA will require that any change in the terms of any cardholder agreements also will be made applicable to the comparable segment of accounts owned or serviced by Fleet which are part of the same program or have the same or substantially similar characteristics;

(m) The addition of new receivables or designation of new accounts, and the removal of previously-designated accounts, will meet the terms and conditions for such additions, designations, or removals as described in the prospectus or private placement memorandum for such Certificates, which terms and conditions will have been approved by each relevant Rating Agency, and will not result in the Certificates receiving a lower credit rating from the relevant Rating Agency than the then current rating of the Certificates;

(n) Any swap transaction relating to senior Certificates that are covered by the proposed exemption must satisfy the several investor-protective conditions applicable to Eligible Swaps and must be entered into by the Trust with an Eligible Swap Counterparty; and

(o) Any class of Certificates to which one or more swap agreements entered into by the Trust applies may be acquired or held by plans in reliance upon this proposed exemption only if such plans are represented by ''Qualified Plan Investors.''

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz 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 accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 2nd day of August, 1999.

Ivan Strasfeld,

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

[FR Doc. 99–20190 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on the Benefit Implications Due to the Growth of a Contingent Workforce Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study what the benefit implications are due to the growth of a contingent workforce will hold an open public meeting on Wednesday, September 8, 1999, in Room N3437 A–B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, DC 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to receive testimony from additional witnesses on the most recently available contingent, flexible and non-traditional employment relationships as well as an analysis on the policy implications that flow from the data.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before September 1, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by September 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 1.

Signed at Washington, DC, this 4th day of August, 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–20614 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Exploring the Possibility of Using Surplus Pension Assets To Secure Retiree Health Benefits Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Wednesday, September 8, 1999, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to explore the possibility of using surplus pension assets to secure retiree health benefits.

The session will take place in Room N–3437 A–B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, DC 20210. The purpose of the open meeting, which will run from 1 p.m. to approximately 3:30 p.m., is for working group members to discuss the first draft of the committee's report, due to be completed by mid-November, to begin formulating recommendations for the report and to hear additional actuarial testimony on levels deemed to be adequate regarding pension plan assets.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before September 1, 1999, to Sharon Morrissey, Executive Secretary ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by September 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 1.

Signed at Washington, DC, this 4th day of August 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–20615 Filed 8–10–99; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Issues Surrounding the Trend in the Defined Benefit Plan Market With a Focus on Employer-Sponsored Hybrid Plans Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Thursday, September 9, 1999, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study issues