

Welfare Benefits Administration, Room N-5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Department of Labor, 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 or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application 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, D.C., this 19th day of March, 1996.

Ivan Strasfeld,

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

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[Application No. D-09410, et al.]

Proposed Exemptions; RREEF USA Fund-I (The Trust)

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 restriction 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 request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

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

Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

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

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

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

RREEF USA Fund-I (The Trust) Located in San Francisco, California

[Application No. D-09410]

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 proposed receipt by RREEF America L.L.C., the investment manager of the Trust (the Manager), of a certain performance compensation fee (the Performance Fee) in connection with the liquidation of the Trust, provided that the following conditions are satisfied:

(a) The terms and the payment of the Performance Fee shall be approved in writing, through approval of an amendment to the Group Trust Agreement (the Group Trust Agreement), by independent fiduciaries of the plans that participate in the Trust (the Participating Plans);

(b) The terms of the Performance Fee shall be at least as favorable to the Participating Plans as those obtainable in an arm's-length transaction between unrelated parties;

(c) The total fees paid to the Manager by the Participating Plans that have invested in the Trust, shall constitute no more than reasonable compensation;

(d) The Performance Fee will be payable only when all of the assets of the Trust have been completely liquidated;

(e) The Performance Fee received by the Manager will be based on distributions, adjusted for inflation and present value, and will be calculated using two real hurdle rates of return (the Hurdle Rates). The Performance Fee will equal 10% after the Participating Plans have earned a 5% real return on the initial value of their investment and 20% after the Participating Plans have earned an 8% real return on the initial value of their investment;

(f) In the event of the Manager's resignation or termination as the investment manager to the Trust, the Investment Management Agreement would also terminate¹ and the Manager will not receive a Performance Fee.

(g) The Manager or its affiliates shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (2) of this Section (g) to determine whether the conditions of this exemption have been met, except that:

(1)(a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Manager or its affiliates, the records are lost or destroyed prior to the end of the six year period; and (b) no party in interest, other than the Manager, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for the examinations required from (2) below.

(2)(a) Except as provided in paragraph (3) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (1) of this Part (g) shall be unconditionally available at their customary location for

examination during normal business hours by:

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

(ii) Any fiduciary of a Participating Plan or any duly authorized employee or representative of such fiduciary;

(iii) Any contributing employer to a Participating Plan or any duly authorized employee or representative of such employer; and

(iv) Any participant or beneficiary of a Participating Plan or any duly authorized employee or representative of such participant or beneficiary.

(3) None of the persons described above in paragraph (2)(a)(ii)-(iv) shall be authorized to examine the trade secrets of the Manager and its affiliates or any commercial or financial information which is privileged or confidential.

EFFECTIVE DATE: If granted this exemption will be effective as of January 1, 1993.

Summary of Facts and Representations

1. The assets of the Trust consist of direct or indirect² ownership interests in commercial or industrial real property (the Properties). Currently, there are six Properties held by the Trust which are located in California, Pennsylvania, New Jersey, New York and Illinois. The Trust is a closed-end real estate tax-exempt group trust organized in 1979 in the State of California pursuant to the IRS Revenue Ruling 81-100. The Trust was organized to allow the Participating Plans to pool their assets to purchase income-producing real property for investment. The Trust was created and is operated in accordance with the terms of the Group Trust Agreement dated September 7, 1979, with certain amendments thereto (the Amendments). Initially, the Trust provided for a ten year holding period of the Properties with additional extensions of two years if consented to by more than sixty percent of outstanding beneficiaries. The end of the initial holding period of the Trust was 12/31/92. As of December 31, 1992, the net asset value of the Trust was \$325,040 million. It is represented that this figure was based on the most recent independent annual appraisals obtained prior to December 31, 1992, and it is also the "base" amount against which the Manager's asset management fee (the Base Fee) is determined, as discussed further in paragraph 5 below.

2. The Participating Plans are seven large ERISA plans (including one or

more master or group trusts holding assets of multiple ERISA plans) and one governmental plan (as defined in section 3(32) of ERISA), each with assets in excess of \$1 billion.

3. RREEF America L.L.C. is the investment manager to the Trust (the Manager) and the trustees of the Trust are principals and officers of the Manager (the Trustees), (the Manager and the Trustees, collectively; the Fiduciaries). The Trustees and the Manager have entered into an Investment Management Agreement, also dated September 7, 1979. Pursuant to that Investment Management Agreement, the Manager has the authority to acquire and dispose of any and all properties on behalf of the Trust; perform day-to-day investment and administrative operations of the Trust; and prepare the financial and other reports as provided in the Group Trust Agreement. The Investment Management Agreement is terminable by the Trustees or by a vote or written consent of the Participating Plans holding sixty percent of the outstanding units in the Trust at any time upon not less than sixty days written notice.

4. Pursuant to the Group Trust Agreement, the Trust was scheduled to terminate on December 31, 1992, whereupon an orderly liquidation of the Trust was to begin as soon as practicable. On September 11, 1991, the Participating Plans' representatives and the Fiduciaries held a conference to discuss the pending expiration of the Trust and liquidation of its assets. Due to a downturn in the real estate market, the Participating Plans' representatives proposed to the Fiduciaries that the Trust's liquidation period (the Liquidation Period) be extended for a period of up to six years to avoid "fire sale" prices. This extension of the Liquidation Period also involved restructuring of the fees payable to the Manager so as to provide further incentives to maximize sales prices while liquidating the Trust's real estate assets as soon as practicable. Accordingly, as of December 31, 1992, subject to the unanimous consent of the Participating Plans, the Trustees adopted Amendment #7 to the Group Trust Agreement in order to: (1) Extend the period for liquidating the Trust's real property assets up to six years from its scheduled expiration date; (2) reduce the annual Base Fee payable to the Manager during the Liquidation Period as discussed more fully below; (3) add a performance component (the Performance Fee) to the Base Fee.

5. Until December 31, 1992, the annual investment management fee (the Base Fee) under the Group Trust

¹ Unless termination was in bad faith wherein the Manager may seek legal recourse.

² Several of the real properties of the Trust are held indirectly through wholly owned Code section 501(c)(2) or 501(c)(25) corporations.

Agreement remained at 1% of the net asset value of the Trust as of the preceding December 31 (based on annual independent appraisals), and was payable 1/12th monthly in advance.

However, effective January 1, 1993, pursuant to the unanimous consent of the Participating Plans, and conditioned upon the grant of this proposed exemption, the Base Fee was reduced from 1% to .45% of "the adjusted December 31, 1992, net asset value of the Trust", also payable 1/12th monthly in advance. The "adjusted December 31, 1992 net asset value of the Trust" is the net asset value determined pursuant to the most recent independent appraisals of the Trust's properties at or before December 31, 1992. The net asset value is the base amount on which the Base Fee is determined, and it can be reduced (*not increased*) at the time the Base Fee is calculated to reflect any subsequent material changes in the value of the Trust's properties as evidenced by the Manager's subsequent quarterly internal appraisals. The net asset value and any subsequent reductions to it, if required by the Manager's internal appraisals, will be used by the Manager solely for the determination of the Base Fee. With respect to the Liquidation Period, the Participating Plans determined that continuing to obtain annual appraisals by independent qualified appraisers was too costly and inconsistent with their goal of maximizing their returns. It is represented, however, that the Manager will obtain independent appraisals every three years, and will compare them to the Manager's quarterly internal appraisals.

6. The Performance Fee was proposed by the Participating Plans as an incentive for the Manager to liquidate the assets of the Trust as quickly as possible while achieving the best possible sales prices for the Trust's assets. However, in the event this proposed exemption is not granted, the Base Fee will be calculated on the basis of .60% of the adjusted December 31, 1992 net asset value of the Trust; this resulting increase in the Base Fee will be payable retroactive from January 1,

1993 (without interest); and no Performance Fee will be paid.

7. For the purpose of the Performance Fee, the initial value of the Trust's assets is based on the greater of the Trust's value on December 31, 1991 or December 31, 1992. The Performance Fee will reflect all gains and losses of the Trust with respect to the Properties³ and will be calculated as a cash flow fee with two real (inflation-adjusted) hurdle rates of 5% and 8% (the Hurdle Rates) of the initial value of the Trust's assets. It is represented that the payment of the Performance Fee to the Manager is dependent upon distribution to the Participating Plans' of such initial value plus interest at the real Hurdle Rates.

The Performance Fee is calculated with respect to the cash flow. The applicant represents that prior to the Trust's liquidation, cash flow is all cash actually distributed by the Trust to the Participating Plans, either from operations or capital events. The major sources of cash are rents, interest or dividends on invested reserves, and proceeds of sale, net of all expenses. Upon the liquidation of the Trust, cash flow means all cash available for distribution to the Participating Plans after payment of (or reservation for) all remaining liabilities of the Trust, but before the payment of the Performance Fee.

8. The Performance Fee is payable to the Manager in cash as of the date the last real property asset in the Trust is liquidated and the Trust is fully terminated. The calculation of the Performance Fee is accomplished by converting the annual distributions to the Participating Plans into 1993 dollars (January 1, 1993 is the effective date of the addition of the Performance Fee component to the fees paid by the Trust to the Manager). The annual distributions include, among other things, proceeds from capital events and rents. First, the annual distributions are discounted for inflation using the CPI index. Second, the inflation adjusted annual distributions are discounted to the present value using appropriate discount rates of 5% or 8%, which are

identical to the Hurdle Rates to arrive at the discounted distributions (the Discounted Distributions). The amounts by which the Discounted Distributions exceed the initial value of the Trust as of January 1, 1993 are then calculated (the Excess Distributions).

For purposes of the Performance Fee calculation, these Excess Distributions are converted into the current value (i.e., value during the year when the Manager is paid the Performance Fee). This conversion is calculated as follows. The Excess Distributions are divided first by the inflation CPI index for the year when the Performance Fee is paid, and second, they are divided by the appropriate 5% or 8% discount rates. The result is current excess distributions (Current Excess Distributions).

The Performance Fee paid to the Manager is ten percent (10%) of the Current Excess Distributions when the Participating Plans earn a 5% real Hurdle Rate on the initial value of their investment in the Trust and *until* the Participating Plans earn an 8% real Hurdle Rate return on the initial value of their investment in the Trust. When the Participating Plans earn an 8% real Hurdle Rate return on the initial value of their investment in the Trust, the Performance Fee paid to the Manager is twenty percent (20%) of the Current Excess Distributions in the 8% real Hurdle Rate context *after* they have been *reduced* by 10% Performance Fee amount.

9. In this regard, the applicant submitted a numerical example of how the Performance Fee will work under certain assumptions if the inflation rate is 4% annually. Under these assumptions the Trust holds a single real property with an initial value of \$100,000 as of December 31, 1992, and this property generates distributable (before fees) cash flow of \$10,000 a year for three years. At the end of the third year the property is sold for \$110,000.

At a 5% real Hurdle Rate, the Discounted Distributions are as follows:

	Year 1	Year 2	Year 3	Total
Nominal \$	\$10,000+	\$10,000+	\$120,000=	\$140,000
CPI	*.9615=	*.9246=	*.8890=	
Discount	\$9,615	\$9,246	\$106,680	
5% Discount	*.9524	*.9070	*.8638	
Adjusted \$	\$9,157+	\$8,386+	\$92,150=	\$109,693

³By definition, all gains and losses with respect to the Properties will be realized prior to

calculation of the Performance Fee, i.e., there will be no unrealized gains or losses.

The present value of the Excess Distributions, at a 5% real Hurdle Rate, is \$109,693 – \$100,000=\$9,693.

Converting the Excess Distributions to current value, the excess is \$12,622. This is calculated as follows: 9,693/.8890=10,903 then 10,903/

.8638=\$12,622 (the Current Excess Distributions).

At an 8% real Hurdle Rate, the Discounted Distributions are as follows:

	Year 1	Year 2	Year 3	Total
Nominal \$	\$10,000+	\$10,000+	\$120,000=	\$140,000
CPI	*.9615=	*.9246=	*.8890=	
Discount	\$9,615	\$9,246	\$106,680	
8% Discount	*.9259	*.8573	*.7938	
Adjusted \$	\$8,903+	\$7,927+	\$84,683=	\$101,513

The present value of the Excess Distributions at an 8% real Hurdle Rate, is \$101,513 – \$100,00=\$1,513.

Converting the Excess Distributions to current value, the excess is \$2,144. This is calculated as follows: 1,513/.8890=1701.9 then 1701.9/.7938=\$2,144 (Current Excess Distributions).

For Current Excess Distributions above the 5% real Hurdle Rate and *until* the 8% Hurdle Rate, the Performance Fee is 10%:

\$12,622 – \$2,144=\$10,478 *
10%=\$1,048

This fee payment reduces the remaining amount available for distribution. Accordingly, after subtracting the 10% fee, the remaining Current Excess Distributions are subject to a 20% Performance Fee:

\$2,144 – \$1,048=\$1,096 * 20%=\$219

As such, in this example the total Performance Fee paid is \$1,048 +\$219=\$1,267.

The applicant represents that the cash flow will not be reinvested and the Performance Fee would not be determined and paid until all of the Trust's assets have been liquidated and the Trust is terminated.

10. In the event that the Manager is terminated⁴ or resigns with respect to the Trust, the Manager will not receive a Performance Fee, and the Investment Management Agreement, including all obligations of the Trustees to continue to compensate the Manager thereunder, would also terminate. If, however, the Manager is terminated in bad faith, the Manager may seek legal recourse. Also, whether a replacement investment manager would receive a performance fee is dependent solely upon whether a performance fee was negotiated as part of the investment management agreement of the replacement manager.

11. The applicant represents that the interests of the Participating Plans are fully aligned by the Performance Fee

because the Performance Fee is calculated as a "share" in all distributions after the Plans have received the initial value of their investment plus earnings at the designated real Hurdle Rates. Furthermore, the Performance Fee will reflect all gains and losses of the Trust with respect to the Properties and will be payable only at a pre-established point, i.e., the liquidation of all of the Trust's Properties. It is also represented that the Manager cannot use its discretion to accelerate sales to benefit itself without equally benefitting the Participating Plans, and the Manager cannot use its discretion over the timing of sales to the detriment of the Participating Plans without causing itself a similar detriment. If the Trust distributes a real return of at least 5%, the Manager would receive 10% of all distributions in excess of a 5% real return until the Participating Plans have received a real return of at least 8%. If the Trust distributes a real return of at least 8%, the Manager would receive 20% of all distributions in excess of an 8% real return. It is represented that the Performance Fee component will allow the Manager to potentially offset some or all of the reduction in the Base Fee and to provide other incentives to maximize the value and dispose of the Properties. If the Trust is completely liquidated earlier than the six year period, the Performance Fee will become payable at that time. The applicant also represents that making the payment of the Performance Fee contingent upon the complete liquidation of the Trust would prevent the Fiduciaries from causing the Trust to acquire assets with a view toward increasing the Performance Fee (e.g., by increasing risk).

12. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of

the Act and section 4975(c)(2) of the Code because:

(a) The terms and the payment of the Performance Fee shall be approved in writing, through an amendment to the Group Trust Agreement, by independent fiduciaries of the Participating Plans;

(b) The terms of the Performance Fee shall be at least as favorable to the Participating Plans as those obtainable in an arm's-length transaction between unrelated parties;

(c) The total fees paid to the Manager by the Participating Plans that have invested in the Trust, shall constitute no more than reasonable compensation;

(d) The Performance Fee will be payable only when all of the assets of the Trust have been completely liquidated;

(e) The Performance Fee received by the Manager will be based on distributions, adjusted for inflation and present value, and will be calculated using two real Hurdle Rates of return. The Performance Fee will equal 10% after the Participating Plans have earned a 5% real return on the initial value of their investment and 20% after the Participating Plans have earned an 8% real return on the initial value of their investment;

(f) In the event of the Manager's resignation or termination as the investment manager to the Trust, the Investment Management Agreement would also terminate and the Manager will not receive a Performance Fee. However, if the Manager is terminated in bad faith, the Manager may seek legal recourse;

(g) The Performance Fee is a one-time payment to the Manager upon complete liquidation of the Trust within six years and upon final distribution of its assets; and

(h) The Participating Plans have proposed the Performance Fee as being in their interest because it would encourage the goal of the Participating

³By definition, all gains and losses with respect to the Properties will be realized prior to calculation of the Performance Fee, i.e., there will be no unrealized gains or losses.

⁴The Manager can be terminated by the Trustees, or by a vote or written consent of the Participating Plans holding sixty percent (60%) of the outstanding units in the Trust at any time upon not less than sixty days written notice.

Plans to liquidate the Properties as quickly as practicable while maximizing their sales prices.

Notice to Interested Persons

Those persons who may be interested in the pendency of this exemption include the fiduciaries who are responsible for directing the investment of the Participating Plans' assets in the Trust. The applicant represents that it proposes to notify the interested persons within ten (10) days of the publication of the notice of the proposed exemption in the Federal Register. Such notice will contain a copy of the notice of the proposed exemption published in the Federal Register and a statement advising interested persons of their right to comment and to request a hearing on the proposed exemption. Accordingly, comments and hearing requests on the proposed exemption are due forty (40) days after the date of publication of this proposed exemption in the Federal Register.

For Further Information Contact: Ekaterina A. Uzlyan, U.S. Department of Labor, telephone (202) 219-8883. (This is not a toll-free number.)

PaineWebber Incorporated
(PaineWebber) Located in New York, NY

[Application No. D-09818]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and 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, August 10, 1990).⁵

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply, effective August 18, 1995, to the purchase or redemption of shares by an employee benefit plan, an individual retirement account (the IRA) or a retirement plan for a self-employed individual (the Keogh Plan) (collectively referred to herein as the Plans) in the PaineWebber Managed Accounts Services Portfolio Trust (the Trust) established in connection with such

Plans' participation in the PaineWebber PACE Program (the PACE Program).

In addition, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (E) and (F) of the Code, shall not apply, effective August 18, 1995, to (a) the provision, by PaineWebber Managed Accounts Services (PMAS), a division of PaineWebber, of asset allocation and related services to an independent fiduciary of a Plan (the Independent Fiduciary) or to a directing participant (the Directing Participant) in a Plan that is covered under the provisions of section 404(c) of the Act (the Section 404(c) Plan), which may result in the selection by the Independent Fiduciary or the Directing Participant of portfolios of the Trust (the Portfolios) in the PACE Program for the investment of Plan assets; and (b) the provision of investment management services by Mitchell Hutchins Asset Management, Inc. (Mitchell Hutchins) to the PACE Money Market Investments Portfolio of the Trust.

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

Section II. General Conditions

(a) The participation of each Plan in the PACE Program is approved by an Independent Fiduciary or, if applicable, Directing Participant.

(b) As to each Plan, the total fees paid to PMAS and its affiliates constitute no more than reasonable compensation and do not include the receipt of fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 (the '40 Act) by PMAS and its affiliates in connection with the transactions.

(c) No Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(d) The terms of each purchase or redemption of Trust shares remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) PMAS provides written documentation to an Independent Fiduciary or a Directing Participant of its recommendations or evaluations based upon objective criteria.

(f) Any recommendation or evaluation made by PMAS to an Independent Fiduciary or Directing Participant is implemented only at the express direction of such fiduciary or participant.

(g) PMAS provides investment advice in writing to an Independent Fiduciary or Directing Participant with respect to all available Portfolios.

(h) With the exception of the PACE Money Market Investments Portfolio, any sub-adviser (the Sub-Adviser) appointed by Mitchell Hutchins to exercise investment discretion with respect to a Portfolio is independent of PaineWebber and its affiliates.

(i) The quarterly fee that is paid by a Plan to PMAS for asset allocation and related services rendered to such Plan under the PACE Program (i.e., the outside fee) is offset by such amount as is necessary to assure that Mitchell Hutchins retains 20 basis points as a management fee from any Portfolio (with the exception of the PACE Money Market Investments Portfolio from which Mitchell Hutchins retains an investment management fee of 15 basis points) containing investments attributable to the Plan investor. However, the quarterly fee of 20 basis points that is paid to Mitchell Hutchins for administrative services is retained by Mitchell Hutchins and is not offset against the outside fee.

(j) With respect to its participation in the PACE Program prior to purchasing Trust shares,

(1) Each Independent Fiduciary receives the following written or oral disclosures from PaineWebber:

(A) A copy of the prospectus (the Prospectus) for the Trust discussing the investment objectives of the Portfolios comprising the Trust; the policies employed to achieve these objectives; the corporate affiliation existing between PaineWebber, PMAS, Mitchell Hutchins and their affiliates; the compensation paid to such entities; any additional information explaining the risks of investing in the Trust; and sufficient and understandable disclosures relating to rebalancing of investor accounts.

(B) Upon written or oral request to PaineWebber, a Statement of Additional Information supplementing the Prospectus, which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize and certain risks attendant to those investments, policies and strategies.

(C) An investor questionnaire.

(D) A written analysis of PMAS's asset allocation decision and recommendation of specific Portfolios.

(E) A copy of the agreement between PMAS and such Plan relating to participation in the PACE Program.

(F) Upon written request to Mitchell Hutchins, a copy of the respective investment advisory agreement between Mitchell Hutchins and the Sub-Advisers.

⁵ For purposes of this proposed exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(G) Copies of the proposed exemption and grant notice describing the exemptive relief provided herein.

(2) In the case of a Section 404(c) Plan, the Independent Fiduciary will—

(A) Make copies of the foregoing documents available to Directing Participants.

(B) Allow Directing Participants to interact with PaineWebber Investment Executives and receive information relative to the services offered under the PACE Program, including the rebalancing feature, and the operation and objectives of the Portfolios.

(3) If accepted as an investor in the PACE Program, an Independent Fiduciary of an IRA or Keogh Plan, is required to acknowledge, in writing to PMAS, prior to purchasing Trust shares that such fiduciary has received copies of the documents described in paragraph (j)(1) of this Section II.

(4) With respect to a Section 404(c) Plan, written acknowledgement of the receipt of such documents is provided by the Independent Fiduciary (i.e., the Plan administrator, trustee, investment manager or named fiduciary, as the recordholder of Trust shares). Such Independent Fiduciary will be required to represent in writing to PMAS that such fiduciary is—

(A) Independent of PaineWebber and its affiliates;

(B) Knowledgeable with respect to the Plan in administrative matters and funding matters related thereto; and;

(C) Able to make an informed decision concerning participation in the PACE Program.

(5) With respect to a Plan that is covered under Title I of the Act, where investment decisions are made by a trustee, investment manager or a named fiduciary, such Independent Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to PMAS that such fiduciary is—

(A) Independent of PMAS and its affiliates;

(B) Capable of making an independent decision regarding the investment of Plan assets;

(C) Knowledgeable with respect to the Plan in administrative matters and funding matters related thereto; and

(D) Able to make an informed decision concerning participation in the PACE Program.

(k) As applicable, subsequent to its participation in the PACE Program, each Independent Fiduciary receives the following written or oral disclosures with respect to its ongoing participation in the PACE Program:

(1) Written confirmations of each purchase or redemption transaction by the Plan with respect to a Portfolio.

(2) Telephone quotations from PaineWebber of such Plan's account balance.

(3) A monthly statement of account from PaineWebber specifying the net asset value of the Plan's investment in such account. Such statement is also anticipated to include cash flow and transaction activity during the month, unrealized gains or losses on Portfolio shares held; and a summary of total earnings and capital returns on the Plan's PACE Portfolio for the month and year-to-date.

(4) The Trust's semi-annual and annual report which will include financial statements for the Trust and investment management fees paid by each Portfolio.

(5) A written quarterly monitoring report that includes a record of the Plan's PACE Program portfolio for the quarter and since inception, showing the rates of return relative to comparative market indices (illustrated in a manner that reflects the effect of any fees for participation in the PACE Program actually incurred during the period); an investment outlook summary containing market commentary; and the Plan's actual PACE Program portfolio with a breakdown, in both dollars and percentages, of the holdings in each portfolio. The quarterly monitoring report will also contain an analysis and an evaluation of a Plan investor's account to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations.

(6) A statement, furnished at least quarterly or annually, specifying—

(A) The total, expressed in dollars, of each Portfolio's brokerage commissions that are paid to PaineWebber and its affiliates;

(B) The total, expressed in dollars, of each Portfolio's brokerage commissions that are paid to unrelated brokerage firms;

(C) The average brokerage commissions per share by the Trust to brokers affiliated with PaineWebber, expressed as cents per share; and

(D) The average brokerage commissions per share by the Trust to brokers unrelated to PaineWebber and its affiliates, expressed as cents per share for any year in which brokerage commissions are paid to PaineWebber by the Trust Portfolios in which a Plan's assets are invested.

(7) Periodic meetings with a PaineWebber Investment Executive by Independent Fiduciaries to discuss the quarterly monitoring report or any other questions that may arise.

(l) In the case of a Section 404(c) Plan where the Independent Fiduciary has established an omnibus account in the name of the Plan (the Undisclosed Account) with PaineWebber, the information noted above in subparagraphs (k)(1) through (k)(7) of this Section II may be provided directly by PaineWebber to the Directing Participants or to the Independent Fiduciary for dissemination to the Directing Participants, depending upon the arrangement negotiated by the Independent Fiduciary with PMAS.

(m) If previously authorized in writing by the Independent Fiduciary, the Plan investor's account is automatically rebalanced on a periodic basis to the asset allocation previously prescribed by the Plan or participant, as applicable, if the quarterly screening reveals that one or more Portfolio allocations deviates from the allocation prescribed by the investor by the agreed-upon formula threshold.

(n) The books and records of the Trust are audited annually by independent, certified public accountants and all investors receive copies of an audited financial report no later than 60 days after the close of each Trust fiscal year.

(o) PaineWebber maintains, for a period of six years, the records necessary to enable the persons described in paragraph (p) of this Section II to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of PaineWebber and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than PaineWebber shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (p)(1) of this Section II below.

(p)(1) Except as provided in subparagraph (p)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (o) of this Section II are unconditionally available at their customary location during normal business hours by:

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

(B) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(p)(2) None of the persons described above in paragraphs (p)(1)(B)–(p)(1)(D) of this paragraph (p) are authorized to examine the trade secrets of PaineWebber or Mitchell Hutchins or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term “PaineWebber” means PaineWebber Incorporated and any affiliate of PaineWebber, as defined in paragraph (b) of this Section III.

(b) An “affiliate” of PaineWebber includes—

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

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

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

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

(d) The term “Independent Fiduciary” means a Plan fiduciary which is independent of PaineWebber and its affiliates and is either

(1) A Plan administrator, trustee, investment manager or named fiduciary, as the recordholder of Trust shares of a Section 404(c) Plan;

(2) A participant in a Keogh Plan;

(3) An individual covered under a self-directed IRA which invests in Trust shares;

(4) An employee, officer or director of PaineWebber and/or its affiliates covered by an IRA not subject to Title I of the Act;

(5) A trustee, Plan administrator, investment manager or named fiduciary responsible for investment decisions in the case of a Title I Plan that does not permit individual direction as contemplated by Section 404(c) of the Act; or

(e) The term “Directing Participant” means a participant in a Plan covered under the provisions of section 404(c) of the Act, who is permitted under the

terms of the Plan to direct, and who elects to so direct, the investment of the assets of his or her account in such Plan.

(f) The term “Plan” means a pension plan described in 29 CFR 2510.3–2, a welfare benefit plan described in 29 CFR 2510.3–1, a plan described in section 4975(e)(1) of the Code, and in the case of a Section 404(c) Plan, the individual account of a Directing Participant.

Effective Date: If granted, this proposed exemption will be effective as of August 18, 1995.

Summary of Facts and Representations

1. The parties to the transactions are as follows:

(a) *Paine Webber Group (Paine Webber Group)*, located in New York, New York, is the parent of PaineWebber.

Paine Webber Group is one of the leading full-line securities firms servicing institutions, governments and individual investors in the United States and throughout the world. Paine Webber Group conducts its businesses in part through PMAS, a division of PaineWebber and Mitchell Hutchins, a wholly owned subsidiary of PaineWebber. Paine Webber Group is a member of all principal securities and commodities exchanges in the United States and the National Association of Securities Dealers, Inc. In addition, it holds memberships or associate memberships on several principal foreign securities and commodities exchanges. Although Paine Webber Group is not an operating company and, as such, maintains no assets under management, as of September 30, 1994, Paine Webber Group and its subsidiaries rendered investment advisory services with respect to \$36.1 billion in assets.

(b) *PaineWebber*, whose principal executive offices are located in New York, New York, provides investment advisory services to individuals, banks, thrift institutions, investment companies, pension and profit sharing plans, trusts, estates, charitable organizations, corporations and other business and government entities. PaineWebber is also responsible for securities underwriting, investment and merchant banking services and securities and commodities trading as principal and agent. PaineWebber serves as the dealer of Trust shares described herein.

(c) *PMAS*, located in Weehawken, New Jersey is responsible for individual investor account management and investor consulting services. PMAS provides such services to the investors involved in various PaineWebber investment programs by providing asset allocation recommendations and related

services with respect to their investments. PMAS provides investment consulting and advisory services to more than 40,000 accounts, with account sizes ranging from institutional accounts in excess of \$650 million in assets to individual accounts with \$100,000 minimum investments. PMAS provides investors in the Trust with asset allocation recommendations and related services with respect to investments in the Trust Portfolios.

(d) *Mitchell Hutchins*, which is located in New York, New York, is a registered investment adviser under the Investment Adviser's Act of 1940 (the Advisers Act) and a wholly owned subsidiary of PaineWebber. Mitchell Hutchins provides investment advisory and asset management services to investors and develops and distributes investment products, including mutual funds and limited partnerships. Mitchell Hutchins also provides financial services to over \$24.8 billion in client assets representing twenty-eight investment companies with fifty-five separate portfolios. Mitchell Hutchins is providing investment management and administrative services with respect to the Trust and investment advisory services with respect to one of the Trust's Portfolios.

(e) *State Street Bank and Trust Company (State Street)*, located in North Quincy, Massachusetts, serves as the custodian of assets for the Trust. State Street is not affiliated with PaineWebber and its affiliates. It provides a full array of integrated banking products, focusing on servicing financial assets (i.e., asset custody, cash management, securities lending, multi-currency accounting and foreign exchange), managing assets and commercial lending. As of September 30, 1994, State Street rendered custodian services with respect to approximately \$1.6 trillion in assets and provided investment management services to approximately \$155 billion in assets.

(f) *PFPC, Inc. (PFPC)*, a subsidiary of PNC Bank, National Association, and whose principal address is in Wilmington, Delaware, serves as the Trust's transfer and dividend disbursing agent. PFPC is not affiliated with PaineWebber and its affiliates. PFPC provides a complete range of mutual fund administration and accounting services to a diverse product base of domestic and international investment portfolios. PFPC is also one of the nation's leading providers of transfer and shareholder servicing services to mutual funds and asset management accounts. As of September 30, 1994, PFPC rendered accounting and administration services to over 400

mutual funds and provided transfer agency, dividend disbursing and/or shareholder servicing services with respect to more than 3.1 million shareholder accounts.

2. The Trust is a no load, open-end, diversified management investment company registered under the '40 Act. The Trust was organized as a Delaware business trust on September 9, 1994 and it has an indefinite duration. As of November 6, 1995, the Trust had \$184 million in net assets. The Trust presently consists of twelve different portfolios which will pay dividends to investors. The composition of the Portfolios will cover a spectrum of investments ranging from foreign and U.S. Government-related securities to equity and debt securities issued by foreign and domestic corporations. Although a Portfolio of the Trust is permitted to invest its assets in securities issued by PaineWebber and/or its affiliates, the percentage of that Portfolio's net assets invested in such securities will never exceed one percent. With the exception of the PACE Money Market Investments Portfolio, shares in each of the Portfolios are being initially offered to the public at a net asset value of \$10 per share. Shares in the PACE Money Market Investments Portfolio are being initially offered to the public at a net asset value of \$1.00 per share.

3. Mitchell Hutchins serves as the distributor of Trust shares and PaineWebber serves as the dealer with respect to shares of the Portfolios.⁶ Such shares are being offered by PaineWebber at no load, to participants in the PACE Program. The PACE Program is an investment service pursuant to which PMAS provides participants in the PACE Program with asset allocation recommendations and related services with respect to the Portfolios based on an evaluation of an investor's investment objectives and risk tolerances. As stated above, State Street will serve as the custodian of each Portfolio's assets and PFPC serves as the

Portfolio's transfer and dividend disbursing agent.

To participate in the PACE Program, each investor must open a brokerage account with PaineWebber.⁷ The minimum initial investment in the PACE Program is \$10,000.

Although PaineWebber anticipates that investors in the Trust will initially consist of institutions and individuals, it is proposed that prospective investors will include Plans for which PaineWebber may or may not currently maintain investment accounts. A majority of these Plans may be IRAs or Keogh Plans. In addition, it is proposed that Plans for which PaineWebber or an affiliate serves as a prototype sponsor and/or a nondiscretionary trustee or custodian be permitted to invest in the Trust.⁸

The applicants represent that the initial purchase of shares in the Trust by a Plan participating in the PACE Program may give rise to a prohibited transaction where PaineWebber, or an affiliate thereof, is a party in interest with respect to the Plan. PaineWebber also acknowledges that a prohibited transaction could arise upon a subsequent purchase or redemption of shares in the Trust by a participating Plan inasmuch as the party in interest

⁷ According to the Statement of Additional Information that accompanies the Prospectus for the PACE Program, shares in the Trust are not certificated for reasons of economy and convenience. However, PFPC maintains a record of each investor's ownership of shares. Although Trust shares are transferable and accord voting rights to their owners, they do not confer pre-emptive rights (i.e., the privilege of a shareholder to maintain a proportionate share of ownership of a company by purchasing a proportionate share of any new stock issues). PaineWebber represents that in the context of an open-end investment company that continuously issues and redeems shares, a pre-emptive right would make the normal operations of the Trust impossible.

As for voting rights, PaineWebber states that they are accorded to recordholders of Trust shares. PaineWebber notes that a recordholder of Trust shares may determine to seek the submission of proxies by Plan participants and vote Trust shares accordingly. In the case of individual account plans such as Section 404(c) Plans, PaineWebber believes that most Plans will pass the vote through to Directing Participants on a pro-rata basis.

⁸ The Department notes that the general standards of fiduciary conduct promulgated under the Act would apply to the participation in the PACE Program by an Independent Fiduciary. Section 404 of the Act requires that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, an Independent Fiduciary must act prudently with respect to the decision to enter into the PACE Program with PMAS as well as with respect to the negotiation of services that will be performed thereunder and the compensation that will be paid to PaineWebber and its affiliates. The Department expects that an Independent Fiduciary, prior to entering into the PACE Program, to understand fully all aspects of such arrangement following disclosure by PMAS of all relevant information.

relationship between PaineWebber and the Plan may have been established at that point.

Accordingly, the applicants have requested retroactive exemptive relief from the Department with respect to the purchase and redemption of shares in the Trust by a Plan participating in the PACE Program where PaineWebber does not (a) sponsor the Plan (other than as prototype sponsor) or (b) have discretionary authority over such Plan's assets.⁹ No commissions or fees will be paid by a Plan with respect to the sale and redemption transactions or a Plan's exchange of shares in a Portfolio for shares of another Portfolio. If granted, the proposed exemption will be effective as of August 18, 1995.

4. Overall responsibility for the management and supervision of the Trust and the Portfolios rests with the Trust's Board of Trustees (the Trustees). The Trustees will approve all significant agreements involving the Trust and the persons and companies that provide services to the Trust and the Portfolios.

5. Mitchell Hutchins also serves as the investment manager to each Portfolio. Under its investment management and administration agreement with the Trust, Mitchell Hutchins will provide certain investment management and administrative services to the Trust and the Portfolios that, in part, involve calculating each Portfolio's net asset value¹⁰ and, with the exception of the PACE Money Market Investments Portfolio (for which Mitchell Hutchins will exercise investment discretion), making recommendations to the Board of Trustees of the Trust regarding (a) the

⁹ PaineWebber represents that to the extent employee benefit plans that are maintained by PaineWebber purchase or redeem shares in the Trust, such transactions will meet the provisions of Prohibited Transaction Exemption (PTE) 77-3 (42 FR 18734, April 8, 1977). PaineWebber further represents that, although the exemptive relief proposed above would not permit PaineWebber or an affiliate (while serving as a Plan fiduciary with discretionary authority over the management of a Plan's assets) to invest those assets over which it exercises discretionary authority in Trust shares, a purchase or redemption of Trust shares under such circumstances would be permissible if made in compliance with the terms and conditions of PTE 77-4 (42 FR 18732, April 8, 1977). The Department expresses no opinion herein as to whether such transactions will comply with the terms and conditions of PTEs 77-3 and 77-4.

¹⁰ The net asset value of each Portfolio's shares, except for the PACE Money Market Investments Portfolio, fluctuates and is determined as of the close of regular trading on the New York Stock Exchange (the NYSE) (currently, 4:00 p.m. Eastern Time) each business day. The net asset value of shares in the PACE Money Market Investments Portfolio is determined as of 12:00 p.m. each business day. Each Portfolio's net asset value per share is determined by dividing the value of the securities held by the Portfolio plus any cash or other assets minus all liabilities by the total number of Portfolio shares outstanding.

⁶ As distributor or principal underwriter for the Trust, Mitchell Hutchins will use its best efforts, consistent with its other businesses, to sell shares of the Portfolios. Pursuant to a separate dealer agreement with Mitchell Hutchins, PaineWebber will sell Trust shares to investors. However, neither Mitchell Hutchins nor PaineWebber will receive any compensation for their services as distributor or dealer of Trust shares. According to the applicants, Mitchell Hutchins and PaineWebber may be regarded as having an indirect economic incentive by virtue of the fact that Mitchell Hutchins and PaineWebber will be paid for the services they provide to the Trust in their respective capacities as investment manager and administrator of the Trust (Mitchell Hutchins) and as the provider of asset allocation and related services (PaineWebber, through PMAS).

investment policies of each Portfolio and (b) the selection and retention of the Sub-Advisers who will exercise investment discretion with respect to the assets of each Portfolio.¹¹

The Sub-Advisers will provide discretionary advisory services with respect to the investment of the assets of the respective Portfolios (other than the PACE Money Market Investments Portfolio) on the basis of their performance in their respective areas of expertise in asset management. With the exception of the PACE Money Market Investments Portfolio which will be advised by Mitchell Hutchins, PaineWebber represents that all of the Sub-Advisers, will be independent of, and will remain independent of PaineWebber and/or its affiliates. The Sub-Advisers will be registered investment advisers under the Advisers Act and maintain their principal executive offices in various regions of the United States.

The administrative services for which Mitchell Hutchins will be responsible include the following: (a) supervising all aspects of the operations of the Trust and each Portfolio (e.g., oversight of transfer agency, custodial, legal and accounting services; (b) providing the Trust and each Portfolio with corporate, administrative and clerical personnel as well as maintaining books and records for the Trust and each Portfolio; (c) arranging for the periodic preparation, updating, filing and dissemination of the Trust's Registration Statement, proxy materials, tax returns and required reports to each Portfolio's shareholders and the SEC, as well as other federal or state regulatory authorities; (d) providing the Trust and each Portfolio with, and obtaining for it, office space, equipment and services; (e) providing the Trustees with economic and investment analyses and reports, and making available to the Trustees, upon request, any economic, statistical and investment services. These administrative services do not include any management services that might be performed by Mitchell Hutchins. As noted in Representations 17 and 18,

¹¹ Subject to the supervision and direction of the Trustees, Mitchell Hutchins will provide to the Trust investment management evaluation services principally by performing initial review on prospective Sub-Advisers for each Portfolio and thereafter monitoring each Sub-Adviser's performance. In evaluating prospective Sub-Advisers, Mitchell Hutchins will consider, among other factors, each Sub-Adviser's level of expertise, consistency of performance and investment discipline or philosophy. Mitchell Hutchins will have the responsibility for communicating performance expectations and evaluations to the Sub-Advisers and ultimately recommending to the Trustees whether a Sub-Adviser's contract should be continued.

Mitchell Hutchins is separately compensated for management services rendered to the Trust.

6. Through the PACE Program, PMAS is providing a Plan investor with non-binding, asset allocation recommendations with respect to such investor's investments in the Portfolios. In order to make these evaluations, PMAS will furnish copies of an investor questionnaire, designed to elicit information about the specific investment needs, objectives and expectations of the investor, to an Independent Fiduciary of a Title I Plan that does not permit individually-directed investments, to an Independent Fiduciary of an IRA or a Keogh Plan, or to a Directing Participant of a Section 404(c) Plan. Although the contents of the questionnaire may vary somewhat depending upon the type of Plan investing in the PACE Program, for a particular Plan, the same questionnaire will be given to each participant.

In the case of a Section 404(c) Plan where an Independent Fiduciary has established an Undisclosed Account with PaineWebber in the name of the Plan, PMAS will provide investor questionnaires to each Directing Participant through PaineWebber Investment Executives (who are registered representatives of PaineWebber), via the Plan's benefits personnel or independent recordkeeper (the Recordkeeper), or by other means requested by the Independent Fiduciary. The applicants recognize that Section 404(c) Plans typically employ a Recordkeeper to assist the Independent Fiduciary with maintaining Plan-related data which is used to generate benefit status reports, regulatory compliance reports and participant- and Plan-level investment performance reports. Therefore, the Undisclosed Account arrangement is intended to coordinate with the functions traditionally provided to Section 404(c) Plans by their Recordkeepers.¹²

¹² The applicants wish to emphasize that the PACE Program can currently be provided to participants in Section 404(c) Plans on either an Undisclosed Account or a disclosed account (the Disclosed Account) basis (i.e., where the Independent Fiduciary opens a separate PACE Program account with PaineWebber for each Directing Participant). In this regard, the applicants note that PaineWebber presently offers the PACE Program on a Disclosed Account arrangement to IRAs and Keogh Plans. However, for other Section 404(c) Plans such as those that are covered under the provisions of section 401(k) of the Code, PaineWebber prefers not to establish Disclosed Accounts for individual participants because of servicing and other administrative matters typically undertaken by such Plans' Recordkeepers. The applicants note that from the participant's perspective, there is no difference in the nature of the services provided under the PACE Program regardless of whether the participant's investment

7. Based upon data obtained from the investor questionnaire, PMAS will evaluate the investor's risk tolerances and investment objectives. PMAS will then recommend, in writing, an appropriate allocation of assets among suitable Portfolios that conforms to these tolerances and objectives.

PaineWebber represents that PMAS will not have any discretionary authority or control with respect to the allocation of an investor's assets among the Portfolios. In the case of an IRA or Keogh Plan, PaineWebber represents that all of PMAS's recommendations and evaluations will be presented to the Independent Fiduciary and will be implemented only if accepted and acted upon by such fiduciary.

In the case of a Section 404(c) Plan, PaineWebber represents that Directing Participants in such Plan will be presented with recommendations and evaluations that are tailored to the responses provided by that Directing Participant in his or her questionnaire. PMAS's recommendations will be disseminated to Directing Participants in accordance with procedures established for the Plan.

After receipt of PMAS's initial recommendations, which may or may not be adopted, the Independent Fiduciary or Directing Participant, as applicable, will select the specific Portfolios. PMAS will continue to recommend to Independent Fiduciaries or Directing Participants asset allocations among the selected Portfolios.

8. Aside from the investor questionnaire, in order for a Plan to participate in the PACE Program, PaineWebber or PMAS will provide an Independent Fiduciary with a copy of the Trust Prospectus discussing (a) the investment objectives of the Portfolios comprising the Trust, (b) the policies employed to achieve these objectives, (c) the corporate affiliation existing between PaineWebber, PMAS, Mitchell Hutchins and their subsidiaries, and (d) the compensation paid to such entities by the Trust and information explaining the risks attendant to investing in the Trust. In addition, upon written or oral

is held through a "Disclosed" or "Undisclosed" Account arrangement. The applicants state that these designations are primarily internal distinctions relating to whether the participant's name appears in the account set-up and reflects differences in the applicable sub-accounting functions.

Notwithstanding the above, the Department wishes to point out that, regardless of the arrangement negotiated with PaineWebber, an Independent Fiduciary of a Section 404(c) Plan has the responsibility to disseminate all information it receives to each Directing Participant investing in the PACE Program.

request to PaineWebber, the Independent Fiduciary will be given a Statement of Additional Information supplementing the Prospectus which describes, in further detail, the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize and certain risks attendant to those investments, policies and strategies. Further, each Independent Fiduciary will be given a copy of the investment advisory agreement between PMAS and such Plan relating to participation in the PACE Program, including copies of the notice of proposed exemption and grant notice for the exemptive relief provided herein. Upon oral or written request to the Trust, PaineWebber will also provide an Independent Fiduciary with a copy of the respective investment advisory agreements between Mitchell Hutchins and the Sub-Advisers.

In the case of a Section 404(c) Plan, depending on the arrangement negotiated with the Independent Fiduciary, PaineWebber represents that the Independent Fiduciary will make available copies of the foregoing documents to Directing Participants.

In addition, Independent Fiduciaries and, if applicable, Directing Participants, will receive introductory documentation regarding the PACE Program in marketing materials and in other communications. Further, depending upon the arrangement negotiated between PMAS and the Independent Fiduciary, a PaineWebber Investment Executive will meet with a Directing Participant, upon oral or written request, to discuss the services offered under the PACE Program, including the rebalancing feature described in Representation 12, as well as the operation and objectives of the Portfolios.¹³

9. If accepted as an investor in the PACE Program, an Independent Fiduciary will be required by PMAS to acknowledge, in writing, prior to purchasing Trust shares, that such fiduciary has received copies of the documents referred to in Representation 8. With respect to a Plan that is covered by Title I of the Act (e.g., a defined contribution plan), where investment decisions will be made by a trustee, investment manager or a named fiduciary, PMAS will require that such Independent Fiduciary acknowledge in writing receipt of such documents and

represent to PaineWebber that such fiduciary is (a) independent of PaineWebber and its affiliates, (b) capable of making an independent decision regarding the investment of Plan assets, (c) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and (d) able to make an informed decision concerning participation in the PACE Program.

With respect to a Section 404(c) Plan, written acknowledgement of the receipt of such documents will be provided by the Independent Fiduciary (i.e., the Plan administrator, trustee, investment manager or named fiduciary, as the recordholder of Trust shares). Such Independent Fiduciary will be required to represent, in writing, to PMAS that such fiduciary is (a) independent of PaineWebber and its affiliates, (b) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and (c) able to make an informed decision concerning participation in the PACE Program.

10. After the selection of specific Portfolios by an Independent Fiduciary or a Directing Participant,¹⁴ PMAS will continue to provide recommendations to such persons relating to asset allocations among the selected Portfolios. However, with respect to a Section 404(c) Plan in which at least three Portfolios may be selected by the Independent Fiduciary, PMAS's initial asset allocation recommendation to Directing Participants will be limited to the suggested Portfolios offered under the Plan. PMAS anticipates that it may also work with the Independent Fiduciary of a Section 404(c) Plan to assist the fiduciary in (a) identifying and drafting investment objectives, (b) selecting suitable investment categories or actual Portfolios to be offered to Directing Participants or (c) recommending appropriate long-term investment allocations to a Directing Participant, if this individual receives such advice.

An Independent Fiduciary or a Directing Participant will be permitted to change his or her investment allocation by specifying the new allocation in writing or by other means authorized by the Plan (e.g., by use of a kiosk). Although PaineWebber currently imposes no limitation on the frequency with which an Independent Fiduciary or a Directing Participant may change his or her prescribed asset allocation, PaineWebber reserves the right to impose reasonable limitations.

¹⁴In the case of a Section 404(c) Plan, PMAS will receive electronically from the Recordkeeper each participant's investment selections.

11. Depending on the arrangement negotiated with PMAS, PaineWebber will provide each Independent Fiduciary with the following information: (a) Written confirmations of each purchase and redemption of shares of a Portfolio; (b) daily telephone quotations of such Plan's account balance; (c) a monthly statement of account specifying the net asset value of a Plan's assets that are invested in such account; and (d) a quarterly, written investment performance monitoring report.

The monthly account statement will include, among other information: (a) cash flow and transaction activity during the month, including purchase, sale and exchange activity and dividends paid or reinvested; (b) unrealized gains or losses on Portfolio shares held; and (c) a summary of total earnings and capital returns on the Plan's PACE Program Portfolio for the month and year-to-date. The quarterly investment performance report will include, among other information, the following: (a) a record of the performance of the Plan's PACE Program portfolio for the quarter and since inception showing rates of return relative to comparative market indices (illustrated in a manner that reflects the effect of any fees for participation in the PACE Program actually incurred during the period)¹⁵; (b) an investment outlook summary containing market commentary; and (c) the Plan's actual PACE Program portfolio with a breakdown, in both dollars and percentages, of the holdings in each Portfolio. In addition, to the extent required by the arrangement negotiated with the Independent Fiduciary, the quarterly performance monitoring report will (a) contain an analysis and an evaluation of a Plan investor's account to assist the investor to ascertain whether the investment objectives are being met, and (b) recommend, from time to time, changes in Portfolio allocations. The quarterly performance monitoring report is described in the summary of the PACE Program contained in the Trust Prospectus.

With respect to a Section 404(c) Plan, the quarterly investment performance report transmitted to the Independent Fiduciary will include the following aggregate information relative to the Undisclosed Account as well as market commentary: (a) a record of the performance of the Plan's assets and rates of return as compared to several

¹⁵The comparative index is a blended index of the individual Portfolio indices that are weighted by the allocation percentages corresponding to those holdings that make up the investor's total investment in the PACE Program.

¹³The Department is expressing no opinion as to whether the information provided under the PACE Program is sufficient to enable a Directing Participant to exercise independent control over assets in his or her account as contemplated by section 404(c) of the Act.

appropriate market indices (illustrated in a manner that reflects the effect of any fees for participation in the PACE Program actually incurred during the period); and (b) the Plan's actual investment portfolio with a breakdown of investments made in each Portfolio. As to each Directing Participant, PMAS will provide information to be contained in the quarterly performance monitoring report to such participants.

In addition, on both a quarterly and annual basis, commencing with the first quarterly report due after this notice of proposed exemption is issued, PaineWebber will provide, as applicable, an Independent Fiduciary or a Directing Participant with written disclosures of (a) the total, expressed in dollars, of each Portfolio's brokerage commissions that are paid to PaineWebber and its affiliates; (b) the total, expressed in dollars, of each Portfolio's brokerage commissions that are paid to unrelated brokerage firms; (c) the average brokerage commissions per share by the Trust to brokers affiliated with the PaineWebber, expressed as cents per share; and (d) the average brokerage commissions per share by the Trust to brokers unrelated to the PaineWebber and its affiliates, expressed as cents per share for any year in which brokerage commissions are paid to PaineWebber by the Trust Portfolios in which a Plan's assets are invested.

Further, the Independent Fiduciary or Directing Participant, as applicable, will have access to a PaineWebber Investment Executive for the discussion of the quarterly performance monitoring reports, the rebalancing feature described below in Representation 12 or any questions that may arise.

12. Depending on the arrangement negotiated with PMAS, for any investor who so directs PMAS, the investor's Trust holdings will be automatically rebalanced on a periodic basis to maintain the investor's designated allocation among the Portfolios. PMAS will receive no additional compensation to provide this service. At both the Independent Fiduciary and Directing Participant levels, the rebalancing election will be made in writing or in any manner permitted by the Plan (e.g., in the case of a Section 404(c) Plan, electronic transmission by the Recordkeeper to PMAS of the Directing Participant's election). The election will be accompanied by a disclosure that is designed to provide the Independent Fiduciary and the Directing Participant, as applicable, with an understanding of the rebalancing feature. Disclosure of the rebalancing feature is included in the Prospectus for the PACE Program

which will be provided to each Independent Fiduciary and Directing Participant.

It is currently anticipated that screening will be performed quarterly with respect to the PACE Program accounts for which the investor has elected the rebalancing service and that rebalancing will be performed for each such account where any Portfolio allocation deviates from the allocation prescribed by the investor by the agreed-upon uniform threshold.¹⁶ The threshold for triggering rebalancing is a percentage (presently, 2½ percent) that has been established by PaineWebber and is applied uniformly to all accounts subject to rebalancing. If PaineWebber were, in the future, to determine that this uniform threshold should be changed, PMAS would notify all investors (including Independent Fiduciaries and Directing Participants) who had elected the rebalancing feature. Then, in order to continue to provide this service, PMAS would need to obtain the consent of each such investor.

The applicants note that rebalancing is a feature that an investor chooses to apply indefinitely until the investor notifies PaineWebber that it wishes to have this service discontinued. After rebalancing has been discontinued, an investor may reactivate the rebalancing service by notifying PaineWebber in writing.

13. PaineWebber notes that not all of the services described above will be provided to every Plan. The services that will be provided will depend on what is decided upon by the

¹⁶Currently, with regard to investors who have elected the rebalancing feature, rebalancing is effected by an automated, mechanical system that, as to each account: (a) Calculates the current allocation for each Portfolio based on the quarter-end net asset value; (b) compares the current allocation for each Portfolio with the allocation prescribed by the investor; (c) identifies for rebalancing all accounts with one or more Portfolios whose current allocation deviates by the agreed-upon threshold from the allocation prescribed by the investor; and (d) for each account which has been identified for rebalancing pursuant to (a)–(c), (1) calculates the dollar difference between the current allocation and the allocation prescribed by the investor, (2) reduces each Portfolio whose current allocation exceeds the allocation prescribed by the investor by an amount equal to the dollar difference between the two allocations, and (3) increases each Portfolio whose current allocation is less than the allocation prescribed by the investor by an amount equal to the dollar difference between the two allocations. This rebalancing is accomplished by automatically exchanging, in the order of the Portfolio's respective CUSIP numbers, a dollar-equivalent number of shares of each Portfolio to be reduced for the corresponding number of shares of a Portfolio to be increased until the current allocation is equal to the allocation prescribed by the investor. Valuation of the Portfolios is done as of the close of regular trading on the NYSE each business day.

Independent Fiduciary. Assuming the Independent Fiduciary requests a reduction in the level of services, there will be no corresponding reduction in the fee that the fiduciary pays PMAS. This is due to the bundled nature of the services provided in the PACE Program. For example, if the Independent Fiduciary were to limit the number of Portfolios available as investment options for its Plan participants, this might be deemed a reduction in the services available under the PACE Program that would not result in any reduction in the applicable Program fee. Similarly, under the PACE Program, an Independent Fiduciary of a Section 404(c) Plan may decide for its own reasons not to make the automatic rebalancing service available to Directing Participants. Under such circumstances, PMAS will not reduce its fees to reflect the absence of the provision of rebalancing services to the Plan. Further, under the particular arrangement which it has negotiated with PMAS, the Independent Fiduciary may or may not request PaineWebber Investment Executives to make presentations or be available to meet with Directing Participants.

Thus, an Independent Fiduciary may choose all, some or none of the PACE Program's optional services. If an Independent Fiduciary selects all of these services, the Plan will incur no greater an annual fee than had that Independent Fiduciary selected some or none of these services. The absence of a reduction in fees in the event not all services are requested is an issue that should be considered by the Independent Fiduciary.¹⁷ Nonetheless, the Applicants represent that the reduction in the types of services provided will not cause the fees paid to PaineWebber by a Plan under the PACE Program to violate section 408(b)(2) of the Act.

14. Plans wishing to redeem their Trust shares may communicate their requests in writing or by telephone to PMAS. Redemption requests received in proper form prior to the close of trading on the NYSE will be effected at the net asset value per share determined on that day. Redemption requests received after

¹⁷In this regard, the Department emphasizes that it expects the Independent Fiduciary to consider prudently the relationship of the fees to be paid by the Plan to the level of services to be provided by PaineWebber. In response to the Department's concern over this matter, PaineWebber represents that it will amend the Trust Prospectus to include the following statement: "Investors who are fiduciaries or otherwise, in the process of making investment decisions with respect to Plans, should consider, in a prudent manner, the relationship of the fees to be paid by the Plan along with the level of services provided by PaineWebber."

the close of regular trading on the NYSE will be effected at the net asset value at the close of business of the next day, except on weekends or holidays when the NYSE is closed. A Portfolio will be required to transmit redemption proceeds for credit to an investor's account with PaineWebber within 5 business days after receipt of the redemption request.¹⁸ In the case of an IRA or Keogh Plan investor, PaineWebber will not hold redemption proceeds as free credit balances and will, in the absence of receiving investment instructions, place all such assets in a money market fund (other than the PACE Money Market Investments Portfolio) that may be affiliated with PaineWebber.¹⁹ In the case of Plans that are covered by Title I of the Act, the redemption proceeds will be invested by PaineWebber in accordance with the investment directions of the Independent Fiduciary responsible for the management of the Plan's assets. With respect to a Section 404(c) Plan, the treatment of such investment will depend upon the arrangement for participant investment instructions selected by the Plan sponsor. In the event that the Independent Fiduciary does not give other investment directions, such assets will be swept into a no-load money market fund that may be affiliated with PaineWebber. No brokerage charge or commission is charged to the participant for this service.

Due to the high costs of maintaining small PACE Program (Plan) accounts, the Trust may redeem all Trust shares held in a PACE Program account in which the Trust shares have a current value of \$7,500 or less after the investor has been given at least thirty days in which to purchase additional Trust shares to increase the value of the account to more than the \$7,500 amount. Proceeds of an involuntary redemption will be deposited in the investor's brokerage account unless PaineWebber is otherwise instructed.²⁰

¹⁸ PaineWebber will provide clearance (on a fully disclosed basis), settlement and other back office services to other broker-dealers.

¹⁹ The applicants are not requesting, nor is the Department proposing, exemptive relief with respect to the investment, by PaineWebber, of redemption proceeds in an affiliated money market fund where the Plan investor has not given investment instructions. The applicants represent that to the extent PaineWebber is considered a fiduciary, such investments will comply with the terms and conditions of PTE 77-4. However, the Department expresses no opinion herein on whether such transactions are covered by this class exemption.

²⁰ The thirty day limit does not restrict a Plan's ability to redeem its interest in the Trust. The thirty day notice period is provided to give a Plan an opportunity to increase the value of the assets in its

15. Through the PACE Program, shares of a Portfolio may be exchanged by an investor for shares of another Portfolio at their respective net asset values and without the payment of an exchange fee. However, Portfolio shares are not exchangeable with shares of other PaineWebber group of funds or portfolio families.

With respect to brokerage transactions that are entered into under the PACE Program for a Portfolio, such transactions may be executed through PaineWebber and other affiliated broker-dealers, if in the judgment of Mitchell Hutchins or the Sub-Adviser, as applicable, the use of such broker-dealer is likely to result in price and execution at least as favorable, and at a commission charge comparable to those of other qualified broker-dealers.

16. Each Portfolio will bear its own expenses, which generally include all costs that are not specifically borne by PaineWebber, Mitchell Hutchins or the Sub-Advisers. Included among a Portfolio's expenses will be costs incurred in connection with the Portfolio's organization, investment management and administration fees, fees for necessary professional and brokerage services, fees for any pricing service, the costs of regulatory compliance and costs associated with maintaining the Trust's legal existence and shareholder relations. No Portfolio, however, will impose sales charges on purchases, reinvested dividends, deferred sales charges, redemption fees; nor will any Portfolio incur distribution expenses. Investment management fees payable to Mitchell Hutchins and the Sub-Advisers will be disclosed in the Trust Prospectus.

17. As to each Plan, the total fees that are paid to PMAS and its affiliates will constitute no more than reasonable compensation.²¹ In this regard, for its services under the PACE Program, PMAS charges an investor a quarterly fee for asset allocation and related services. This "outside fee," will not be more than 1.50 percent on an annual basis of the maximum annual value of the assets in the investor's PACE Program account. Such fee may be paid either from the assets in the account or by separate check. A smaller outside fee may be charged depending on such factors as the size of the PACE Program account (e.g., PACE Program accounts in excess of \$100,000), the number of Plan participants or the number of PACE

Plan account with PaineWebber to an amount in excess of \$7,500. If desired, the Plan may still follow the redemption guidelines described above.

²¹ The applicants represent that PMAS and its affiliates will not receive 12b-1 Fees in connection with the transactions.

Program accounts. The outside fee is charged directly to an investor and is neither affected by the allocation of assets among the Portfolios nor by whether an investor follows or ignores PMAS's advice.²² In the case of Plans, the outside fee may be paid by the Plan or the Plan sponsor or, in the case of IRAs only, the fee may be paid by the IRA owner directly.

For Plan investors, the outside fee will be payable in full within five business days (or such other period as may be required under applicable law or regulation) after the trade date for the initial investment in the Portfolios and will be based on the value of assets in the PACE Program on the trade date of the initial investment. The initial fee payment will cover the period from the initial investment trade date through the last calendar day of the subsequent calendar quarter, and the fee will be pro-rated accordingly. Thereafter, the quarterly fee will cover the period from the first calendar day through the last calendar day of the current calendar quarter. The quarterly fee will be based on the value of assets in the PACE Program measured as of the last calendar day of the previous quarter, and will be payable on the fifth business day of the current quarter.

If additional funds are invested in the Portfolios during any quarter, the applicable fee, pro-rated for the number of calendar days then remaining in the quarter and covering the amount of such additional funds, shall be charged and be payable five business days later. In the case of redemptions during a quarter, the fee shall be reduced accordingly, pro-rated for the number of calendar days then remaining in the quarter. If the 'net fee increase or decrease to an investor for additional purchases and/or redemptions during any one quarter is less than \$20, the fee increase or decrease will be waived.

In addition, for investment management and administrative services provided to the Trust, Mitchell Hutchins will be paid, from each Portfolio, a fee which is computed daily and paid monthly at an annual rate ranging from .35 percent to 1.10 percent,

²² PaineWebber represents that the outside fee will not be imposed on the accounts of the Paine Webber Group and its subsidiaries, including PaineWebber, PMAS, Mitchell Hutchins or their subsidiaries, accounts of their immediate families and IRAs and certain employee pension benefit plans for these persons. The applicants state that this fee will be waived to encourage employees to invest in PaineWebber, although PaineWebber reserves the right to impose such fees. However, with respect to IRAs or Plans maintained by PaineWebber or its affiliates for their employees, the applicants assert that such waiver would be required by PTE 77-3.

of which the management fee component ranges from .15 percent to .90 percent on an annual basis, of each Portfolio's average daily net assets depending upon the Portfolio's objective.²³ From these management fees, Mitchell Hutchins will compensate the applicable Sub-Adviser. This "inside fee," which is the difference between the individual Portfolio's total management fee and the fee paid by Mitchell Hutchins to the Sub-Adviser, will vary from the annual rate of .15 percent to .40 percent depending on the

Portfolio. With the exception of the PACE Money Market Investments Portfolio from which Mitchell Hutchins is paid a management fee of 15 basis points, Mitchell Hutchins is retaining 20 basis points as a management fee from each remaining single Portfolio on investment assets attributable to the Plans. Pursuant to Transfer Agency and Service Agreements with the Trust, PFPC and State Street will be paid annual fees of \$350,000 and \$650,000, respectively, for transfer agent and custodial services.

18. The management fees that are paid at the Portfolio level to Mitchell Hutchins and the Sub-Advisers are set forth in the following table. For purposes of the table, Mitchell Hutchins and a Sub-Adviser are referred to as "MH" and "SA," respectively. As noted in the table, the sum of the management fees retained by Mitchell Hutchins and the Sub-Adviser with respect to a Portfolio will equal the total management fee paid by that Portfolio.

Portfolio	MH management fee (per-cent)	SA retained fee (per-cent)	MH retained fee (per-cent)
PACE Money Market Investments	.15	.00	.15
PACE Government Securities Fixed Income Investments	.50	.25	.25
PACE Intermediate Fixed Income Investments	.40	.20	.20
PACE Strategic Fixed Income Investments	.50	.25	.25
PACE Municipal Fixed Income Investments	.40	.20	.20
PACE Global Fixed Income Investments	.60	.35	.25
PACE Large Company Value Equity Investments	.60	.30	.30
PACE Large Company Growth Equity Investments	.60	.30	.30
PACE Small/Medium Company Value Equity Investments	.60	.30	.30
PACE Small/Medium Company Growth Equity Investments	.60	.30	.30
PACE International Equity Investments	.70	.40	.30
PACE International Emerging Markets Investments	.90	.50	.40

PMAS is offsetting, quarterly, against the outside fee such amounts as is necessary to ensure that Mitchell Hutchins retains no more than 20 basis points as a management fee from any Portfolio on investment assets attributable to any Plan.²⁴

The administrative services fee payable to Mitchell Hutchins is not being offset against the outside fee. Instead, that fee is being retained by Mitchell Hutchins.

19. The following example demonstrates the operation of the fee offset mechanism, the calculation of the net inside fee, and the calculation of the

total of a Plan investor's net outside fee and share of the investment management fees paid by the Portfolios in a given calendar quarter or year:

Assume that as of September 30, 1995, the net asset value of Trust Portfolio shares held by a Plan investor was \$1,000. Investment assets attributable to the Plan were distributed among five Trust Portfolios: (1) PACE Money Market Investments in which the Plan made a \$50 investment and from which Mitchell Hutchins would retain an inside fee of .15 percent; (2) PACE Intermediate Fixed Income Investments in which the Plan made a \$200 investment and from which Mitchell Hutchins would retain an inside fee of .20 percent; (3) PACE Large

Company Value Equity Investments in which the Plan made a \$250 investment and Mitchell Hutchins would retain an inside fee of .30 percent; (4) PACE Small/Medium Company Growth Equity Investments in which the Plan made a \$250 investment and Mitchell Hutchins would be entitled to receive an inside fee of .30 percent; and (5) PACE International Equity Investments in which the Plan made a \$250 investment and Mitchell Hutchins would be entitled to receive an inside fee of .30 percent.

Assume that the Plan investor pays an outside fee of 1.50 percent so that the total outside fee for the calendar quarter October 1 through December 31, prior to the fee offset, would be as follows:

Portfolio	Amount invested	Maximum outside quarterly fee	Outside quarterly fee
PACE Money Market Investments	\$50	1.50% (.25)	\$0.1875
PACE Intermediate Fixed Income Investments	200	1.50% (.25)	.7500
PACE Large Company Value Equity Investments	250	1.50% (.25)	.9375
PACE Small/Medium Company Growth Equity Investments	250	1.50% (.25)	.9375
PACE International Equity Investments	250	1.50% (.25)	.9375
Total Outside Fee Per Quarter	1,000		3.7500

Under the proposed fee offset, the outside fee charged to the Plan must be reduced by

a Reduction Factor to ensure that Mitchell Hutchins retains an inside fee of no more

than 20 basis points from each of the Portfolios on investment assets attributable to

²³ The fees payable to Mitchell Hutchins under its investment management and administration agreement with the Trust are comprised of two components. One component is for administrative services provided to each Portfolio at the annual rate of .20 percent of each Portfolio's net assets. The

second component is for investment management and related services provided to each Portfolio. The annualized fee range here is from .15 percent to .90 percent of the Portfolio's average daily net assets.

²⁴ PaineWebber asserts that it chose 20 basis points as the maximum net fee retained for

management services rendered to the Portfolios because this amount represents the lowest percentage management fee charged by PaineWebber among the Portfolios (excluding the PACE Money Market Investments Portfolio for which a fee of 15 basis points will be charged).

the Plan. The following table shows the

Reduction Factor as applied to each of the Portfolios comprising the Trust:

Portfolio	MH retained fee (percent)	Maximum MH fee (percent)	Reduction factor (percent)
PACE Money Market Investments	.15	.15	.00
PACE Government Securities Fixed Income Investments	.25	.20	.05
PACE Intermediate Fixed Income Investments	.20	.20	.00
PACE Strategic Fixed Income Investments	.25	.20	.05
PACE Municipal Fixed Income Investments	.20	.20	.00
PACE Global Fixed Income Investments	.25	.20	.05
PACE Large Company Value Equity Investments	.30	.20	.10
PACE Large Company Growth Equity Investments	.30	.20	.10
PACE Small/Medium Company Value Equity Investments	.30	.20	.10
PACE Small/Medium Company Growth Equity Investments	.30	.20	.10
PACE International Equity Investments	.30	.20	.10
PACE International Emerging Markets Investments	.40	.20	.20

Under the proposed fee offset, a Reduction Factor of .10 percent is applied against the quarterly outside fee with respect to the value of Plan assets that have been invested in PACE Large Company Value Equity Investments, PACE Small/Medium Company Growth Equity Investments and PACE International Equity Investments. As noted above, the PACE Money Market Investments Portfolio and the PACE Intermediate Fixed Income Investments Portfolio do not require the application of a Reduction Factor because the management fee retained by Mitchell Hutchins for managing these Portfolios does not exceed 20 basis points. Therefore, the quarterly offset for the plan investor is computed as follows:

$$(.25) [(\$250).10\% + (\$250).10\% + (\$250).10\%] = \$0.1875 \text{ or } \$.19.$$

In the foregoing example, if the Plan investor elects to receive an invoice directly, the Plan investor would be mailed a statement for its PACE Program account on or about October 15, 1995. This statement would show the outside fee to be charged for the calendar quarter October 1 through December 31, as adjusted by subtracting the quarterly offset from the quarterly outside fee as determined above. The net quarterly outside fee that would be paid to PMAS would be determined as follows:

$$\$3.75 - \$.19 = \$3.56.$$

The Plan investor that elects to receive an invoice directly would be asked to pay the outside fee for that quarter within 30 days of the date on which the statement was mailed (e.g., November 15, 1995). If the outside fee were not paid by that date, PMAS would debit the account of the Plan investor (as with other investors) for the amount of the outside fee (pursuant to the authorization contained in the PACE Program Investment Advisory Agreement, and as described in the PACE Program Description appended to the Prospectus).²⁵ A Plan investor that elects to

have the outside fee debited from its account would receive, in November, a statement as of October 31 reflecting the outside fee and the quarterly offset therefrom.

Assuming the Plan investor's investment in and allocation among the Portfolios remains constant throughout the quarter, (a) the Plan investor's fees for the quarter for asset allocation and related services provided by PMAS (net outside fee) and (b) the fees paid by the Portfolios for investment management services provided by Mitchell Hutchins (inside fee) would be as follows:

$$\begin{aligned} & \$3.56 \text{ (net outside fee)} + (.25) \\ & [(\$50 + \$200 + \$250 + \$250).20\%] \\ & \text{(administrative services fee)} + (.25) \\ & [(\$50).15\% + (\$200).20\% + (\$250 + \$250) \\ & + \$250).30\%] \text{ (inside fee)} = \$4.74. \end{aligned}$$

Assuming the Plan investor's investment in and allocation among the Portfolios remains constant throughout the year, the total net outside fee and inside fee borne by the Plan investor for the year would be as follows:

$$4(\$4.74) = \$18.96 \text{ or } 1.89\% \text{ per } \$1,000 \text{ invested.}$$

20. PaineWebber notes that a potential conflict may exist by reason of the variance in retained inside fees between the different Portfolios. For example, Mitchell Hutchins will retain a lower inside fee with respect to assets invested in the PACE Money Market Investments Portfolio than all other Portfolios. PaineWebber recognizes that this factor could result in the recommendation of a higher fee-generating Portfolio to an investing Plan. Nonetheless, PMAS will be subject to and intends to comply fully with the standards of fiduciary duty that require that it act solely in the best interest of the Plan when making investment recommendations.

21. The books of the Trust will be audited annually by independent, certified public accountants selected by

the outside fee is paid. Since the inside fee is paid at the end of each calendar month, the applicants further explain that Plan investors will realize the full benefit of the offset before the time that the inside fee is paid for the second and third months of the calendar quarter.

the Trustees and approved by the investors. All investors will receive copies of an audited financial report no later than sixty days after the close of each Trust fiscal year. All Trust financial statements will be prepared in accordance with generally accepted accounting principles and relevant provisions of the federal securities laws. The books and financial records of the Trust will be open for inspection by any investor, including the Department, the Service and SEC, at all times during regular business hours.

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

(a) The investment of a Plan's assets in the PACE Program will be made and approved by a Plan fiduciary or participant that is independent of PaineWebber and its affiliates such that the Independent Fiduciary or Directing Participant will maintain complete discretion with respect to participating in the PACE Program.

(b) An Independent Fiduciary or Directing Participant will have full discretion to redeem his or her shares in the Trust.

(c) No Plan will pay a fee or commission by reason of the acquisition or redemption of shares in the Trust and PMAS nor will its affiliates receive 12b-1 Fees in connection with the transactions.

(d) Prior to making an investment in the PACE Program, each Independent Fiduciary or Directing Participant will receive offering materials and disclosures from PMAS which disclose all material facts concerning the purpose, fees, structure, operation, risks and participation in the PACE Program.

(e) PMAS will provide written documentation to an Independent Fiduciary or Directing Participant of its

²⁵ PaineWebber explains that the foregoing example illustrates the fact that Plan investors will get the benefit of the fee offset contemporaneously upon the payment of the outside fee. Because the inside fee is paid monthly and the fee offset is computed quarterly, the applicants also explain that PMAS does not receive the benefit of a "float" as a result of such calculations because the fee offset will always be realized no later than the time that

recommendations or evaluations based upon objective criteria.

(f) With the exception of Mitchell Hutchins which will manage the PACE Money Market Investments Portfolio, any Sub- Adviser appointed to exercise investment discretion over a Portfolio will always be independent of PaineWebber and its and its affiliates.

(g) The quarterly investment advisory fee that is paid by a Plan to PMAS for investment advisory services rendered to such Plan will be offset by such amount as is necessary to assure that Mitchell Hutchins retains 20 basis points from any Portfolio (with the exception of the PACE Money Market Investments Portfolio) on investment assets attributable to the Plan investor. However, the quarterly fee paid to Mitchell Hutchins for administrative services will be retained by Mitchell Hutchins and will not be offset against the outside fee.

(h) Each participating Plan will receive copies of the Trust's semi-annual and annual report which will include financial statements for the Trust that have been prepared by independent, certified public accountants and investment management fees paid by each Portfolio.

(i) On a quarterly and annual basis, PaineWebber will provide written disclosures to an Independent Fiduciary or, if applicable, Directing Participant, with respect to (1) the total, expressed in dollars, of each Portfolio's brokerage commissions that are paid to PaineWebber and its affiliates; (2) the total, expressed in dollars, of each Portfolio's brokerage commissions that are paid to unrelated brokerage firms; (3) the average brokerage commissions per share by the Trust to brokers affiliated with the PaineWebber, expressed as cents per share; and (4) the average brokerage commissions per share by the Trust to brokers unrelated to the PaineWebber and its affiliates, expressed as cents per share for any year in which brokerage commissions are paid to PaineWebber by the Trust Portfolios in which a Plan's assets are invested.

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

Herzog, Heine, Geduld, Inc., Located in New York, New York

[Application No. D-10018]

Proposed Exemption

The Department is considering granting an exemption under the authority of 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 sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the extension of credit between Herzog, Heine, Geduld, Inc. (HHG) and various individual retirement accounts for which HHG serves as passive trustee or custodian (the HHG IRA or HHG IRAs) resulting from the proposed in-kind transfer to HHG IRAs at the direction of the owners of such HHG IRAs of certain senior subordinated notes (the Notes) issued by HHG, and thereafter the holding of such Notes by the HHG IRAs; provided that: (1) officers, directors, and employees in HHG who are also owners of HHG IRAs do not participate in the proposed transactions; (2) the owners of the HHG IRAs have exclusive responsibility and control over the investment of the assets of such accounts; (3) HHG has no discretionary authority or control with respect to the investment of the assets of the HHG IRAs involved in the proposed transactions, nor does HHG render investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets; (4) a separate accounting of the assets in the HHG IRAs, including the Notes which have been acquired by such accounts, will be maintained by HHG; (5) the value of the Notes in each HHG IRA will at no time exceed 25 percent (25%) of the value of the assets of each HHG IRA; (6) the HHG IRAs will pay no fees or commissions in connection with the transactions; and (7) the combined total of all fees received by HHG for the provision of services to the HHG IRAs is not in excess of "reasonable compensation" within the meaning of section 4975(d)(2) of the Code.²⁶

Summary of Facts and Representations

1. HHG is a full service broker/dealer, registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934. HHG also provides fully disclosed clearing services to other broker/dealers. HHG is a member of the New York Stock Exchange (NYSE) and is a leading market maker in NASDAQ and over-the-counter securities. As of September 29, 1995, HHG had total liabilities of \$746.1 million, shareholders' equity of \$107.5 million and \$31.9 million in liabilities

subordinated to the claims of general creditors.

2. It is represented that HHG has for many years offered individual retirement accounts to its customers. In this regard, HHG has been approved, since February 11, 1982, by the Internal Revenue Service to serve as a passive trustee or custodian for individual retirement accounts, Keoghs, and custodial accounts established under section 403(b)(7) of the Code. In its capacity as a custodian, HHG is a disqualified person with respect to the HHG IRAs, pursuant to section 4975(e)(2) of the Code.

It is represented that HHG has considerable experience in dealing with individual retirement accounts that contain investments of all types, including debt instruments. As of January 25, 1995, HHG maintained approximately 8,000 individual retirement accounts for its customers representing approximately \$365 million dollars in assets.

3. In 1992 and 1993, HHG issued the Notes which are the subject of this proposed exemption in minimum face amounts on each of the Notes of \$250,000. The Notes issued in 1992 pay interest quarterly at the annual rate of 11 percent (11%) on an aggregate principal amount of \$7,500,000. The Notes issued in 1993 pay interest quarterly at the annual rate of 10 percent (10%) on an aggregate principal amount of \$7,500,000. It is represented, as of February 19, 1996, that HHG had made all interest payments to the holders of the Notes. The Notes were issued for a term of five (5) years each. In this regard, the maturity date for the Notes issued in 1992 is January 1, 1997, and the maturity date for the Notes issued in 1993, is April 1, 1998. The Notes will pay principal in a balloon payment at maturity. The Notes are described as Senior Subordinated Notes of HHG. In this regard, the Notes are unsecured, rank equally with all other outstanding subordinated debt of HHG, and are subordinate to any senior claim of present or future creditors of HHG. A senior claim is defined as any present or future obligation of HHG, except those obligations which are the subject of subordination agreements.

The Notes were only offered for sale to investors who met the "accredited investor" net worth and income standards described in Regulation D, promulgated under the Securities Act of 1933.²⁷ It is represented that the Notes

²⁶ Pursuant to 29 CFR 2510.3-2(d), the HHG IRAs are not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

²⁷ In general, the "accredited investor" net worth and income standards described in Regulation D promulgated under the Securities Act of 1933 provide that an "accredited investor" is one of the

were acquired by all investors at face value, and were purchased in the same manner and on the same terms by all investors. It is represented that potential investors in the Notes received certain disclosures prior to making the investment. Such disclosures included, among other things, an outline of the nature of the Notes, a description of the risk factors involved in investing in the Notes, and detailed financial disclosures about HHG. It is represented that each investor acknowledged receipt of these disclosures in writing. In addition, it is represented that prior to acquiring the Notes, each purchaser certified in writing that the "accredited investor" net worth and income standards had been satisfied.

It is represented that the entirety of the Notes has been issued and are being held by individual investors and by individual retirement accounts unrelated to HHG. In this regard, approximately 90 percent (90%) of the Notes were sold to customers other than owners of individual retirement accounts, and at least 50 percent (50%) of the Notes are held by persons independent of HHG and/or the HHG IRAs.

There is no public trading market for the Notes. The Notes are not registered under the Securities Act of 1933, because the Notes are issued to "accredited investors;" and therefore, are exempt from registration, pursuant to an exemption described in section 4(2) and/or section 3(b) of the Securities Act of 1933 and by Regulation D. The Notes may not be sold or transferred, except in a transaction exempt from the registration requirements of federal and state securities laws. In addition, the Notes may not be sold or transferred, unless HHG is furnished with a satisfactory opinion of counsel to the effect that an exemption from the registration requirements of federal and state securities laws is available. Further, any proposed sale to another member of the NYSE is subject to a right of first refusal by HHG.

4. In 1992 and 1993 when the Notes were issued, HHG offered them for purchase by certain of its customers. However, the owners of HHG IRAs who met the "accredited investor" standards were not permitted to acquire the Notes, because HHG believed that prohibited

transactions would arise, if the owners of such accounts were to direct HHG, the custodian of such HHG IRAs, to purchase the Notes on behalf of the HHG IRAs with funds from such HHG IRAs. Instead, HHG suggested that the owners of HHG IRAs who were interested in purchasing the Notes for their accounts set up other individual retirement accounts with other custodians or trustees (the Non-HHG IRAs or the Non-HHG IRA) and then arrange for these Non-HHG IRAs to purchase the Notes. Accordingly, it is represented that some owners of HHG IRAs transferred funds from their HHG IRAs into Non-HHG IRAs at other brokerage firms or banks and directed the trustees or custodians of such Non-HHG IRAs to purchase the Notes.²⁸

HHG believes that the HHG IRAs which transferred funds from their HHG IRAs to Non-HHG IRAs in order to purchase the Notes contained assets with an aggregate fair market value of \$4,400,000. It is estimated that for the average owner of a Non-HHG IRA the Notes constituted less than 30 percent (30%) of the total assets of such owner's account.

5. HHG seeks to permit the acquisition and holding of the Notes by the HHG IRAs. In order to accomplish this goal, the owners of the Non-HHG IRAs would transfer assets that include the Notes from the Non-HHG IRAs into the HHG IRAs. It is anticipated that the Notes would be transferred in kind at the direction of the owners of the Non-HHG IRAs from the current trustee of the Non-HHG IRAs to HHG. It is represented that such transfers will be direct custodian to custodian transfers. In this regard, each holder of a Non-HHG IRA who wishes to transfer the assets in such account to the custodianship of HHG will complete and sign a customer account transfer form, and direct that the assets be transferred in kind from the former custodian of the Non-HHG IRA to HHG.

6. HHG believes the transactions described in the paragraph above may be prohibited, pursuant to section 4975(c) of the Code in that such transactions may result in a direct or

indirect lending of money or other extension of credit between a plan and a disqualified person with respect to such plan. Accordingly, HHG seeks exemptive relief from the prohibited transaction provisions, as set forth in section 4975(c)(1) (A) through (D) of the Code.

7. It is represented that the proposed transactions would be in the interest of the affected HHG IRAs, in that owners of the HHG IRAs would not need, solely for the purpose of acquiring and holding the Notes, to incur the additional custodial fees and other expenses related to maintaining the Non-HHG IRAs. In this regard, it is represented that HHG charges for an HHG IRA a custodial fee of \$25 annually,²⁹ which HHG maintains is considerable less than the amount charged by trustees or custodians of the Non-HHG IRAs which currently hold the Notes.

8. It is represented that the proposed transactions would be protective of the rights of participants in the HHG IRAs and their beneficiaries, in that the percentage of the assets of the HHG IRAs involved in the Notes will at no time exceed 25 percent (25%) of the value of the assets of such accounts.

Further, it is represented that HHG has no discretion to direct any investment of any HHG IRA which will be involved in the proposed transactions. Under the terms of the HHG IRAs, the owners of such accounts, as fiduciaries, have exclusive responsibility for and control over the investment of the assets of such accounts. In this regard, it is represented that the owners of the Non-HHG IRAs which purchased the Notes are sophisticated investors who, in most cases, are long standing customers of HHG and are familiar with the firm. It is represented that the owners of the Non-HHG IRAs made the original decision to purchase the Notes with the assets in the Non-HHG IRAs, and, if the proposed exemption is granted, the same individuals who are also the owners of the HHG IRAs will make the decision to transfer all or a portion of the assets in the Non-HHG IRA, including the Notes, into an HHG IRA. It is estimated, as of the date of the application, that eleven (11) participants and beneficiaries may be affected by the requested exemption, as they may be

²⁸ The Department expresses no opinion herein, as to whether the prohibited transactions provisions, as set forth in section 4975 of the Code, have been violated in connection with the purchase of the Notes by the Non-HHG IRAs at the direction of the owners of such accounts who are also officers, directors, or employees of HHG and the subsequent holding of the Notes in such Non-HHG IRAs by trustees or custodians other than HHG. The Department notes that the proposed relief is limited to the transactions described herein, and no relief has been provided in connection with the acquisition and holding of the Notes by the Non-HHG IRAs.

²⁹ The Department, herein, expresses no opinion as to whether the provision of services by HHG to the HHG IRAs and the compensation received therefor satisfies the terms and conditions of the statutory exemption, as set forth in section 4975(d)(2) of the Code. To the extent that such provision of services to the HHG IRAs by HHG does not satisfy the requirements of section 4975(d)(2) of the Code, the Department, herein, is offering no relief.

following: (a) an individual with a net worth (or joint net worth with a spouse) in excess of \$1,000,000; (b) an individual who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year; or (c) a trust with total assets in excess of \$5,000,000.

given the opportunity to transfer Notes from Non-HHG IRAs to HHG IRAs, but will not be obligated to make such a transfer. Of these eleven (11), two individuals are officers of HHG who are employed in the securities trading department of HHG. Under the terms of this proposed exemption, officers, directors and employees of HHG who are also owners of HHG IRAs will not be permitted to participate in the proposed transactions.

9. It is represented that the requested exemption is administratively feasible in that HHG already maintains an individual retirement program, is approved by the IRS to serve as a custodian for individual retirement accounts, and has experience dealing with such accounts. HHG believes that the owners of HHG IRAs would prefer to hold their investments in the Notes in HHG IRA custodial accounts, because it would be less expensive and would be administratively less awkward for both HHG and the owners of the HHG IRAs. In this regard, it is represented that HHG will maintain a separate accounting of all of the holdings in the HHG IRAs, including the Notes that may be acquired, for each owner of an HHG IRA. Further, it is represented that the HHG IRAs will not pay commissions as a result of the transfer of the Notes into the custodianship of HHG.

10. In summary, HHG, the applicant, represents that the proposed transactions meet the statutory criteria of section 4975(c)(2) of the Code because:

(a) officers, directors, or employees in HHG who are also owners of HHG IRAs will not be permitted to participate in the proposed transactions;

(b) the owners of the HHG IRAs have exclusive responsibility and control over the investment of the assets of such accounts;

(c) HHG has no discretionary authority or control with respect to the investment of the assets of the HHG IRAs to be involved in the proposed transaction, nor does HHG render investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets;

(d) a separate accounting of the assets in the HHG IRAs, including the Notes which have been acquired by such accounts, will be maintained by HHG;

(e) the percentage of the assets of the HHG IRAs involved in the Notes will at no time exceed 25 percent (25%) of the value of the assets of such accounts;

(f) the HHG IRAs will pay no fees or commissions in connection with the transactions;

(g) the combined total of all fees received by HHG for the provision of

services to the HHG IRAs are not in excess of "reasonable compensation" within the meaning of section 4975(d)(2) of the Code; and

(h) the owners of the HHG IRAs will avoid the administrative burden and expense of maintaining the Non-HHG IRAs.

FOR FURTHER INFORMATION CONTACT:

Angelena C. Le Blanc of the Department (202) 219-8883. (This is not a toll-free number.)

Pierre W. Mornell, M.D., A Sole Proprietorship, Defined Benefit Plan (the Plan) Located in Mill Valley, California

[Application No. D-10170]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of certain unimproved real property located in Mill Valley, California (the Property) by the Plan to Pierre W. Mornell and Linda C. Mornell, parties in interest with respect to the Plan; provided that the following conditions are satisfied:

(A) All terms and conditions of the transaction are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan receives a cash purchase price for the Property in the amount of the fair market value of the Property; and

(C) The Plan does not incur any expenses or suffer any loss with respect to the transaction.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with one participant and total assets of \$287,585 as of November 1, 1995. The Plan is sponsored by the medical practice of Pierre W. Mornell, M.D. (Dr. Mornell), which is a sole proprietorship (the Employer) located in Mill Valley, California. The Plan's sole participant is Dr. Mornell, who also serves as the Plan's trustee and administrator.³⁰

³⁰ Since Dr. Mornell is the sole proprietor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

2. The Property is a vacant parcel of 3,420 square feet of land located in Mill Valley, California at 19 Park Avenue, zoned for multi-family residential development. Dr. Mornell represents that the Property was purchased by the Plan in 1989 from parties unrelated to himself, his medical practice, and his spouse, and that the terms and conditions of that transaction were negotiated at arm's length with the sellers. The Plan paid a purchase price of \$225,000, of which \$90,000 was represented by a five-year promissory note (the Note) payable to the seller, secured by a first deed of trust on the Property, due on or before August 1, 1994. Dr. Mornell represents that the Note was timely paid in full by the Plan.

3. Dr. Mornell represents that as Plan trustee he caused the Plan to purchase the Property in 1989, and to invest a large percentage of the Plan's assets therein, for a variety of reasons, summarized as follows: During 1989, the value of real estate in the market in which the Property is situated was appreciating rapidly, and Dr. Mornell believed that the Property's value would continue to appreciate after purchase by the Plan. The Property is situated adjacent to a corner lot along a main thoroughfare in an affluent suburban community, and Dr. Mornell, as trustee, represents that he believed that the risk of a significant decline in the Property's value was small, due to these factors. Dr. Mornell notes that he was and is the sole participant in the Plan, and was aware that he would be the only person who would be adversely affected if the Property did not prove to be a favorable investment. Dr. Mornell represents that it had been his intention that the Property be developed by the construction of income-producing improvements thereon, but the value of the Property ceased to appreciate. Instead, Dr. Mornell represents that the Property's value commenced to decline before any improvements had been added to the Property, and the Property has never produced any income of any kind. Since the Property has proven to be an unfavorable investment, Dr. Mornell desires that the Plan divest of the Property and reinvest in other, more diversified assets with more potential for favorable return. Accordingly, Dr. Mornell and his spouse, Linda C. Mornell (together, the Mornells) propose to purchase the Property from the Plan and are requesting an exemption to permit this transaction under the terms and conditions described herein.

4. It is proposed that the Mornells will make a single cash payment to the Plan for the Property in the amount of no less than the fair market value of the

Property, and in no event less than \$215,000. The Property has been appraised by T.B. Combs (Combs), a professional real estate appraiser in Mill Valley, California. Combs represents that as of October 15, 1996, the Property had a fair market value of \$215,000. The Plan will not incur any expenses related to the transaction. Dr. Mornell represents that the proposed transaction is in the best interests and protective of the Plan because it will enable the Plan to dispose of a non-income-producing asset and will receive a cash purchase price representing the Property's fair market value, which can be reinvested in more diverse assets with better prospects for favorable returns.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(c)(2) of the Code for the following reasons: (a) The Plan, in which Dr. Mornell is the sole participant, will receive cash for the Property for reinvestment in more diverse assets; (b) The purchase price will be the fair market value of the Property as determined by Combs' appraisal; (c) the Plan will not incur any expenses related to the proposed transaction; and (d) Dr. Mornell is the only participant affected by the transaction, and he desires that the transaction be consummated.

Notice to Interested Persons

Since Dr. Mornell is the only Plan participant to be affected by the proposed transaction, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due within 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

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

Gail L. Belt Self Employed Retirement Plan (the Plan) Located in Vienna, Virginia

[Application No. D-10219]

Proposed Exemption

The Department is considering granting an exemption under the authority of 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 sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of a parcel of real

property (the Property) by the Plan to Ms. Gail L. Belt, a disqualified person with respect to the Plan for \$115,000, provided the following conditions are satisfied: a) the sale is a one-time transaction for cash; b) the Plan pays no commissions or expenses in connection with the transaction; c) the Plan receives not less than the greater of the fair market value of the Property or its cost in acquiring the Property; d) the fair market value of the Property has been determined by a qualified, independent appraiser; and e) Ms. Belt is the only Plan participant to be affected by the transaction, and she desires that the transaction be consummated.³¹

Summary of Facts and Representations

1. Ms. Belt is a self-employed real estate agent in Northern Virginia. Her primary business is facilitating the buying and selling of residential real estate. She is a realtor for Coldwell Banker, Stevens Realtors, located in Vienna, Virginia. Ms. Belt is the sole trustee and sole participant in the Plan, which is a defined contribution Plan with current assets of approximately \$1,080,597.

2. In August, 1993, Ms. Belt, in her capacity as sole trustee for the Plan, acquired the Property as a Plan investment. The Property was purchased from Edward and Edith Schultz, parties unrelated to Ms. Belt and the Plan, for a purchase price of \$110,000. The Property consists of an unimproved plot of land located at 1747 Lockerbie Lane, Vienna, Virginia.

3. The Plan now wishes to sell the Property to Ms. Belt. The applicant represents that the Property is not increasing in value in the current real estate market, and the Plan has ongoing administrative expenses for the Property. In addition, the Plan has been unable to procure liability insurance to cover any possible injuries on the site. Finally, the Plan would be disposing of an illiquid asset.

4. Mr. Douglas S. Waldron of Residential Appraisal Group, Inc., an independent licensed residential real estate appraiser in Annandale, Virginia, has appraised the Property as having a fair market value of \$115,000 as of February 5, 1996. The applicant represents that Ms. Belt will pay this amount to the Plan since it exceeds the Plan's purchase price for the Property, plus expenses.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(c)(2) of the Code because: a) the sale is a one-time transaction for cash; b) the Plan will pay no commissions or other expenses in connection with the transaction; c) the Plan will receive the greater of its acquisition price for the Property plus expenses, or the current fair market value of the Property as determined by a qualified, independent appraiser; and d) Ms. Belt is the sole participant in the Plan to be affected by the transaction, and she desires that the transaction be consummated.

Notice to Interested Persons

Since Ms. Belt is the only Plan participant to be affected by the proposed transaction, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due within 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

For Further Information Contact: 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;

³¹ Since Ms. Belt is the sole owner of the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

(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 19th day of March, 1996.

Ivan Strasfeld,

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

[FR Doc. 96-6991 Filed 3-21-96; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96-2 CARP-CRA]

Adjustment of Cable Compulsory License Royalty Rates

AGENCY: Copyright Office, Library of Congress.

ACTION: Announcement of negotiation period; filing Notice of Intent to Participate.

SUMMARY: The Copyright Office of the Library of Congress is announcing the 30-day negotiation period to allow interested parties to the cable rate adjustment proceeding to settle their differences. The Office is also announcing, in the event that settlement negotiations are unsuccessful, the date by which parties wishing to participate in the rate adjustment proceeding before a Copyright Arbitration Royalty Panel (CARP) must file their Notice of Intent to Participate.

EFFECTIVE DATES: The 30-day negotiation period begins on April 15, 1996, and ends on May 15, 1996. Notices of Intent

to Participate are due no later than May 20, 1996.

ADDRESSES: If sent by mail, an original and five copies of the Notice of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies of the Notice of Intent to Participate should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, S.E., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Marilyn Kretsinger, Acting General Counsel, or William Roberts, Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707-8380. Telefax (202) 707-8366.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Copyright Act, 17 U.S.C., grants a compulsory copyright license to cable television systems for the retransmission of over-the-air broadcast stations to their subscribers. In exchange for the license, cable operators submit royalty payments, along with statements of account detailing their retransmissions, to the Copyright Office on a semi-annual basis. The Office then deposits the royalties with the United States Treasury for later distribution to copyright owners of broadcast programming. Royalties collected by the Office in recent years for the cable compulsory license have amounted to approximately \$175 million annually.

A cable system calculates its royalty payments in accordance with the statutory formula described in 17 U.S.C. 111(d). The cable system then makes a payment based upon its gross receipts from subscribers for the retransmission of broadcast signals. Section 111(d) subdivides cable systems, based on the amount of their gross receipts, into three categories: small, medium and large. Small systems pay a fixed amount without regard to the number of broadcast signals they retransmit, while medium-sized systems pay a royalty within a specified range, with a maximum amount, based on the number of signals they retransmit. Large cable systems calculate their royalties according to the number of distant broadcast signals which they retransmit to their subscribers.¹ Under this

formula, a large cable system is required to pay a specified percentage of its gross receipts for each distant signal that it retransmits.

Congress established the gross receipts limitations that determine a cable system's size, and provided the gross receipts percentages (rates) for distant signals. 17 U.S.C. 111(d)(1). It also provided for adjustment of both the gross receipts limitations and the distant signal rates. 17 U.S.C. 801(b)(2). The limitations and rates can be adjusted to reflect national monetary inflation, changes in the average rates charged by cable systems for retransmission of broadcast signals, or changes in certain cable rules of the Federal Communications Commission in effect on April 15, 1976. 17 U.S.C. 801(b)(2)(A), (B), (C) and (D). Prior rate adjustments of the Copyright Royalty Tribunal (CRT) made under section 801(b)(2)(B) and (C) may also be reconsidered at five year intervals. 17 U.S.C. 803(b). The current gross receipts limitations and rates are set forth in 37 CFR 256.2. Originally, the CRT performed the rate adjustment, but in 1993, Congress abolished the CRT and vested the rate adjustment authority in the Copyright Arbitration Royalty Panels (CARPs) as administered by the Library of Congress and the Copyright Office.

Section 803 of the Copyright Act, 17 U.S.C., provides that the gross receipts limitations and rates of the cable compulsory license may be adjusted in 1995, and every subsequent fifth calendar year, upon filing a petition with the Library of Congress requesting an adjustment during these window years. If the Library determines that the petitioner has a "significant interest" in the royalty rate or rates in which adjustment is requested, the Library must convene a CARP to determine the adjustment. 17 U.S.C. 803(a)(1). Section 251.63 of the Library's rules provides that "[t]o allow time for the parties to settle their differences regarding rate adjustments, the Librarian of Congress shall * * * designate a 30-day period for consideration of their settlement. The Librarian shall cause notice of the dates for that period to be published in the Federal Register." 37 CFR 251.63.

II. Petitions

Last year was a window year for filing cable rate adjustment petitions and the Copyright Office received two such petitions on December 29, 1995. The first, filed by the National Cable

¹ For cable systems which retransmit only local broadcast signals, there is still a minimum royalty

fee which must be paid. This minimum fee is not applied, however, once the cable system carries one or more distant signals.