use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Office of the Assistant Secretary for Administration and Management.

Type of Review: Extension without change of an existing OMB Control Number.

Title of Collection: Applicant Background Questionnaire.

OMB Control Number: 1225–0072.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 20,500.

Total Estimated Annual Burden Hours: 1,608.

Description: The Applicant Background Questionnaire, which is completed voluntarily by job applicants, provides information on the applicants' gender, race or ethnicity, disability, and the applicants' source of recruitment information for vacancy. This data will be used to evaluate the effectiveness of various recruitment methods to tailor recruitment to meet equal employment opportunity objectives. For additional information, see related notice published at 73 FR 43476 on July 25, 2008.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E8–25247 Filed 10–22–08; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 17, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Mary Beth Smith-Toomey on 202–693–4223 (this is not a toll-free number) / e-mail *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Dept of Labor—Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316 / Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Revision of an existing OMB Control Number.

Title of Collection: Project Gate.

OMB Control Number: 1205–0444.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 2,431.

Total Estimated Annual Burden Hours: 1,216.

Total Estimated Annual Costs Burden: $0.

Description: Project GATE is a demonstration program designed to assist individuals interested in self-employment to develop their businesses. To determine whether the program should be replicated on a larger scale, an evaluation has been conducted and is in its final stage, OMB approved an additional survey of 400 individuals (Wave II), which was completed early in 2007. However, the analysis of Wave II data did not indicate anticipated improved earnings; therefore, ETA is requesting to conduct an identical 5-year follow-up with 2,431 Project GATE program completers to enable ETA to determine whether this finding persists over time.

Darrin A. King,

Departmental Clearance Office.

[FR Doc. E8–25249 Filed 10–22–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11471]

Notice of Proposed Amendment; Prohibited Transaction Exemption (PTE) 99–34 Involving the Chase Manhattan Bank/JPMorgan Chase Bank, National Association

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of proposed amendment to individual exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual exemption, which, if granted, would amend PTE 99–34 (64 FR 46419, August 25, 1999), an exemption granted to The Chase Manhattan Bank (CMB). PTE 99–34 permits the lending of securities to affiliates of The Chase Manhattan Corporation (CMC) by employee benefit plans, including commingled investment funds holding plan assets for which CMC affiliates act as directed trustee or custodian and securities lending agent or subagent, and the receipt of compensation in connection with the transactions. The amendment, if granted, would apply to JPMorgan Chase Bank, National Association (JPMCB), a successor organization to CMB, and would extend the provisions of PTE 99–34 to certain transactions with affiliates of the Bear Stearns Companies Inc. (Bear Stearns). If granted, the proposed amendment would affect participants and beneficiaries and fiduciaries of employee benefit plans to which affiliates of JPMCB act as securities lending agent or sub-agent and may also act as custodian or directed trustee.

DATES: *Effective Date:* Except as otherwise specified herein, the amendment, if granted, will be effective as of August 25, 1999.

DATES: Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department December 8, 2008.

ADDRESSES: All written comments and requests for a public hearing concerning the proposed exemption should be sent to the Office of Exemptions Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, *Attention:* Application No. D–11471. Alternatively, interested persons are invited to submit comments or hearing requests to the Department by e-mail to *moffitt.betty@dol.gov* or by facsimile at (202) 219–0204.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that would amend PTE 99–34, originally granted to CMB. CMB merged in November 2001 with Morgan Guaranty Trust Company of New York to form JPMCB (together with its affiliates, the Applicant). This followed the December 31, 2000 merger of CMB's parent company, CMC, with JPMorgan & Co. Incorporated, to form JPMorgan Chase & Co. (JPMCC).

This amendment, if granted, will be granted to JPMCB, as successor organization to CMB. As part of the amendment, the names of other related corporate entities that were changed due to the merger will be updated. For the sake of simplicity, the current names of those entities will be used in the textual discussion of the existing provisions of PTE 99–34.

PTE 99–34 conditionally permits (1) the lending of securities to affiliates of JPMCC which are engaged in JPMCC's capital markets line of business (referred to herein as Global Capital Markets), by employee benefit plans, including commingled investment funds holding Client Plan assets, for which JPMCC, through its Investor Services line of business, as operated through JPMCB and its affiliates (Investor Services), acts as directed trustee or custodian, and for which JPMCC through its Financing & Market Products or any other similar division of JPMCB or a U.S. affiliate of JPMCB (collectively, FMP) acts as securities lending agent or sub-agent and (2) the receipt of compensation by FMP in connection with the proposed transactions.

The Department is proposing this amendment to PTE 99–34 pursuant to 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).[1]

[1] Section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. at 214 [2000 ed.]) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210 at (202) 693–8554. This is not a toll-free number.

Summary of Facts and Representations:

1. JPMCB is a national banking association with its principal place of business in Columbus, Ohio, that is regulated by the Office of the Comptroller of the Currency. Among its other business activities, JPMCB acts as trustee and custodian of employee benefit plans that are subject to ERISA, and of collective investment funds that serve as investment vehicles for ERISA plan assets. JPMCB is a wholly-owned subsidiary of JPMCC, a financial holding company incorporated under Delaware law and headquartered in New York, New York. JPMCC is one of the largest banking institutions in the United States, with $1.6 trillion in assets, $123 billion in stockholders' equity and operations worldwide as of December 31, 2007.

2. On March 16, 2008, JPMCC and Bear Stearns entered into an Agreement and Plan of Merger, which was subsequently amended as of March 24, 2008 (the Merger Agreement). The Merger Agreement provided that, upon the terms and subject to the conditions set forth in the Merger Agreement, a newly-formed wholly-owned JPMCC subsidiary would merge with and into Bear Stearns, with Bear Stearns continuing as the surviving corporation and as a wholly-owned subsidiary of JPMCC (the Merger). The holders of Bear Stearns common stock approved and adopted the Merger Agreement at a special meeting of stockholders held on May 29, 2008. Following the satisfaction or waiver of the other conditions in the Merger Agreement, the Merger became effective on May 30, 2008.

3. Pursuant to Section 5.1 of the Merger Agreement, prior to the effective time of the Merger, each of JPMCC and Bear Stearns were required, among other things, to use commercially reasonable efforts to maintain and preserve intact its business organization and advantageous business relationships. In furtherance of the foregoing, Bear Stearns agreed to operate within its existing credit, principal, market and other risk limits and comply with existing risk-related policies and procedures. JPMCC had the right to oversee Bear Stearns in the setting of such limits in any and all respects, and in connection with changes in any of the foregoing policies and procedures. During such period, JPMCC had custody of and the immediate right to manage the collateral pool (valued at $30 billion as of March 14, 2008) that was being pledged as security for $29 billion in term financing from the Federal Reserve Bank of New York to facilitate the Merger, and related hedges. Subject to the continued effectiveness of the Guaranty (as defined below) and JPMCC's compliance with the terms thereof, JPMCC was entitled to oversee the business, operations and management of Bear Stearns in its reasonable discretion. Bear Stearns also agreed to refrain from taking certain actions without JPMCC's consent.

4. On March 24, 2008, JPMCC, in connection with the amendment to the Merger Agreement, entered into an amended and restated guaranty agreement (the Guaranty), effective retroactively from March 16, 2008, which replaced the guaranty agreement entered into on March 16, 2008, in connection with the Merger Agreement. Pursuant to the Guaranty, JPMCC agreed to guarantee certain credit and trading liabilities of Bear Stearns and certain of its operating subsidiaries to the extent such liabilities arise prior to the end of the specified ''Guaranty Period'' which terminates 120 days after the closing of the Merger on May 30, 2008.

5. In addition, on March 24, 2008, Bear Stearns and JPMCC, in connection with entering into the amendment to the Merger Agreement, entered into a share exchange agreement, under which JPMCC agreed to purchase 95 million newly issued shares of Bear Stearns' common stock, or 39.5% of the outstanding shares of Bear Stearns' common stock after giving effect to the issuance, in exchange for the issuance of 20,665,350 shares of JPMCC common stock to Bear Stearns and the entry by JPMCC into the amendment to the Merger Agreement described above, an amended and restated Guaranty as described above and a guaranty in favor of the New York Federal Reserve. The share exchange was completed on April 8, 2008, following which JPMCC beneficially owned approximately 47.41% of the outstanding shares of the common stock of Bear Stearns (as reported in JPMCC's Amendment No. 2 to its Schedule 13D filed with the SEC on April 9, 2008).

Securities Lending Transactions

6. JPMCB represents that it is a provider of securities lending services to pension plans and other institutional investors, performing this service as an adjunct to its directed trustee and

custody services or under a separate relationship unrelated to its custody business. The purpose of securities lending is to obtain an additional return on a plan's investments by lending out the securities held by the plan to broker-dealers that require them, for example, to cover short sales or trade settlements. JPMCB offers a limited ''indemnified'' program, whereby if the borrower defaults with insufficient collateral, JPMCB is obligated to make good the deficiency, thereby limiting customer risk. Borrowers provide collateral for the securities loan in the form of securities or cash.

7. Affiliates of Bear Stearns are major borrowers in JPMCB's securities lending program, with approximately $10 billion in securities loans outstanding as of the last business day before the Merger Agreement was signed (as applicable to both ERISA and non-ERISA accounts). The specific Bear Stearns affiliates with which JPMCB entered into securities loan arrangements are Bear Stearns Securities Corp. (as assignee under an agreement with Bear Stearns & Company Inc.), Bear Stearns International Limited (UK) and Bear Stearns International Trading Limited (UK). They are collectively referred to herein as the ''Bear Stearns Borrowers.''

8. JPMCB's securities lending agreements with its client employee benefit plans authorize JPMCB, as securities lending agent for the plan, to loan securities to various borrowers on behalf of the plans. A list of approved borrowers is appended to the securities lending agreements, and may be updated by JPMCB to add new borrowers upon notice to the plan, subject to the plan's right to object within five business days to a potential borrower. Therefore, under the terms of their securities lending agreements, the plans that currently have securities loans outstanding to Bear Stearns Borrowers, and that would therefore be subject to the relief requested by Applicants, have previously approved such Bear Stearns Borrowers as borrowers. Prior to March 16, 2008, any such loans to the Bear Stearns Borrowers were typically made in reliance on Prohibited Transaction Exemption 2006–16 (PTE 2006–16), 71 FR 63786 (Oct. 31, 2006), because Bear Stearns, as a leading brokerage firm, is likely to be a party in interest to any large pension plan.

9. The execution of the Merger Agreement and related documents on March 16, 2008, raised potential prohibited transaction issues in the Applicants' view. As soon as it became evident that the merger transaction was to proceed and JPMCC realized that prohibited transaction issues would be raised as a result, JPMCC contacted the Department and worked with the Department to determine how best to address these issues.

While the Merger did not become effective until May 30, 2008, the Applicant is concerned that JPMCC may be viewed as having ''controlled'' Bear Stearns prior to that date by reason of the control JPMCC was able to exercise over Bear Stearns under the provisions of the Merger Agreement and the Guaranty Agreement, which may have caused its subsidiary JPMCB and the Bear Stearns Borrowers to be treated as ''affiliates'' of each other.

10. PTE 2006–16 does not provide relief for securities lending transactions from the prohibitions of section 406(b) of ERISA, which, in the Applicants' view could be violated where the securities lending agent, acting as a fiduciary on behalf of the plan in making securities loans, is affiliated with the securities borrower. One of JPMCB's predecessor entities, CMB, applied for exemptive relief to be able to enter into securities loans with its affiliated broker-dealers, which was granted as PTE 99–34. Among the conditions of the exemption are that (i) JPMCC and its affiliates may not have or exercise discretionary or control or render investment advice with respect to the investment of the assets involved in the transaction; (ii) the securities lending arrangement be approved in advance by an independent fiduciary; (iii) the securities loan be at market rates and on terms at least as favorable as arm's-length terms; (iv) the most recent available audited and unaudited statements of financial condition of the client plans' borrowers be received by JPMCB and provided to the plans before entering into the loan agreements with those borrowers; (v) minimum collateral requirements be met; (vi) the client plan be indemnified against loss; and (vii) certain indicia of ownership in the United States be maintained. Only client plans with at least $50 million in assets are permitted to participate, with a special rule applicable to master trusts and commingled funds.

11. Given the unexpected timing of the Merger Agreement, JPMCB was not able to meet all the requirements of PTE 99–34 necessary to cover loans to the Bear Stearns Borrowers prior to the Merger Agreement date. Specifically, it had not provided advance disclosure of the most recent available audited and unaudited statements of financial condition for the Bear Stearns Borrowers to Client Plans, nor was it able to satisfy PTE 99–34's advance approval condition. Therefore, JPMCB is seeking to amend PTE 99–34 to permit these conditions to be met retroactively for securities loans to the Bear Stearns Borrowers. The Applicants represent that, if the existing securities loans between JPMCB as securities lending agent for ERISA plans and Bear Stearns Borrowers were terminated, the result would be disruptive to the plans and to the securities lending market.

12. Upon consideration of the facts and representations, the Department proposes to amend PTE 99–34 effective March 16, 2008, to permit securities lending by client plans to Bear Stearns Borrowers by JPMCC's Financing & Market Products line of business (FMP) as securities lending agent or sub-agent, and the receipt by FMP of compensation in connection therewith for the period from March 16, 2008, through April 15, 2008, provided that no later than April 15, 2008: (1) FMP provided the most recently available audited and unaudited financial statements of Bear Stearns Borrowers' parent company to client plans, and (2) FMP furnished a description of the general terms of the securities loan agreements between such client plans and the Bear Stearns Borrowers in the form of copies of the standard forms of those agreements (FMP negotiates the specific terms of such agreements). The cover letter accompanying this disclosure package notified the independent fiduciaries of the client plans of their right to object to the extension of securities loans to the Bear Stearns Borrowers, and that if the client plan objected, FMP (1) would cease making new loans to the Bear Stearns Borrowers immediately, and (2) would work with the client plan to determine how to unwind existing loans to Bear Stearns Borrowers expeditiously. Absent an objection within ten days of the notice, FMP would treat the client plan as consenting to the continuation of securities loans to Bear Stearns Borrowers. In the event of an objection, loans on behalf of the objecting client plan that are continuing or new loans entered into after March 16, 2008 but prior to the objection, up to the date the loans are unwound in a manner approved by the client plan, will still be treated as covered by PTE 99–34, as amended.

13. Additionally, Applicants state that neither PTE 2006–16 nor PTE 99–34 permits the lending of securities of a plan to an affiliate of the manager of the plan's portfolio of which those securities are a part. Prior to the date of the Merger Agreement, this condition would not have prevented JPMCB from lending securities managed by a JPMCB

affiliate to a Bear Stearns Borrower. Following the Merger Agreement, however, the JPMCB asset managers may be considered affiliated with the Bear Stearns Borrowers. As a result, Applicants are concerned that relief under the exemptions would cease to be available for loans of such securities to those borrowers.

14. In response, the Department has determined to propose an amendment to PTE 99–34 under which the condition in section II(b) of PTE 99–34, that the securities loaned to a borrower not be subject to the discretionary authority or control of an affiliate of the borrower, will not be imposed with respect to the lending of securities by a client plan to a Bear Stearns Borrower for the 90-day period from March 16, 2008, through June 14, 2008.

15. This temporary relief would be subject to the condition that information as to whether a particular security is on loan to a Bear Stearns Borrower will not be available to a JPMCB-affiliated manager. FMP has assured compliance with this condition by blocking the reporting of securities lending transactions for client plans of JPMCB's asset management affiliate through VIEWS, an electronic reporting facility, so that JPMCB's affiliate will not have access to information regarding the identity of the borrowers of securities that are out on loan. Similarly, the Client Service and Operations teams will not be permitted to provide such information through other media or orally to the JPMCB affiliate.

16. Additionally, JPMCB has agreed to retain an Independent Fiduciary to review loans of securities that would otherwise not be permitted by section II(b) of PTE 99–34. The term ''Independent Fiduciary'' will be defined in section IV(f) of the exemption. The Independent Fiduciary will conduct a Review (as defined in section IV(f) of the exemption) of a representative sample of transactions for compliance with the following: (1) Whether allocation of the opportunity to lend securities by the applicable client plan account was in accordance with JPMCB's internal securities loan allocation procedures; (2) Whether the loan of securities by the client plan to Global Capital Markets was at market rates and terms which were at least as favorable to such client plan as if made at the same time and under the same circumstances to an unrelated party (as required by section II(d) of the exemption); (3) Whether with respect to each successive two-week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans by FMP, in the aggregate, were to unrelated borrowers (as required by section II(q) of the exemption); and (4) Whether investment by the applicable client plan in the underlying securities that were loaned was consistent with the investment guidelines for the particular client plan account. The Independent Fiduciary will issue a written report presenting its specific findings within 180 days of the date of publication of this proposed amendment in the **Federal Register**.

17. The relief under the amendment would be limited to securities loans to ''Bear Stearns Affiliates,'' defined as The Bear Stearns Companies Inc. and its affiliates as constituted on March 15, 2008, the day before the Merger Agreement was entered into. This definition will prevent the special relief from being available for securities loans to JPMCB affiliates other than those that may be treated as affiliated as a result of the Merger Agreement with Bear Stearns.

Investment of Cash Collateral

18. As an additional service to employee benefit plans, JPMCB will invest cash collateral received from borrowing broker dealers. Collateral for securities loans generally can take the form of either securities or cash. If the collateral is in the form of securities, the borrower pays the lending plan a fee for the loan. If the collateral is in the form of cash, then the securities lending agreement authorizes JPMCB to invest and reinvest the cash collateral in accordance with investment guidelines appended to the agreement, and the compensation to the plan for the loan is based on the return that JPMCB is able to obtain on the investment of the cash.

19. The return on cash collateral is typically divided into three parts. A certain target return (a fixed rate such as 5% or a variable rate such as the Fed Funds rate, as negotiated between the securities lending agent and the borrower) is paid over to the borrower, and then the lending plan and JPMCB divide the remainder in an agreed-upon ratio, such as 80% to the plan and 20% to JPMCB. JPMCB's share serves as its compensation for providing the securities lending services. JPMCB also may invest cash collateral through collective investment funds, to achieve the benefit of increased diversification.

20. The permitted investments for securities lending cash collateral depend on what is approved by the client as part of the collateral investment guidelines. Some more conservative clients limit the permitted investments to U.S. Government securities. Others, seeking a higher return, permit investments such as commercial paper and repurchase agreements. A more aggressive approach would permit medium term notes and corporate bonds. A factor in this decision is whether the investor will have a frequent need to pull back securities from loans, in which case the associated collateral must be returned to the borrower unless it can be used to collateralize another loan. Those investors with higher need for liquidity or higher turnover would authorize shorter-term and less risky investments, while those with a longer time horizon and less turnover—often the case for employee benefit pension plans—would authorize longer-term and higher-risk investments.

21. As of March 14, 2008, the last business day before the JPMCC-Bear Stearns merger agreement, approximately $1.1 billion of the cash collateral holdings for JPMCB ERISA securities lending accounts was invested in secured and unsecured notes of Bear Stearns subsidiaries, as well as repurchase agreements with those firms. Many of these investments were issued under a master note that permitted JPMCB to exercise a put right to require Bear Stearns to redeem the note. JPMCB exercised that put right prior to the date of the Merger Agreement, so that the investments under the master note matured and were redeemed on June 13, 2008. The medium term notes will mature in July and December of 2008, and March and July of 2009 (collectively, Medium Term Notes). The repurchase agreements were generally overnight and have by now matured.

22. JPMCB requests relief for investment of client plan assets in a $750 million advance paid to certain subsidiaries of The Bear Stearns Companies, Inc. The advance was made pursuant to the Master Note Agreement dated February 9, 2007 by and between JPMCB as agent for a group of lending entities and The Bearn Stearns Companies Inc. subsidiaries (Master Note), which matured on June 13, 2008. The obligation was jointly held by several securities lending accounts, including both ERISA plans and commingled funds and non-ERISA investors. Of the $750 million total, 10.13% was allocated to ERISA investors. As a condition of the exemption, JPMCB agreed to unconditionally guarantee repayment of the advance.

The Department proposes to amend PTE 99–34 to temporarily permit the investment of client plan assets in the Master Note. A new Section III will be inserted and will replace the existing

Section III. The Definitions section will be redesignated as Section IV.

23. With respect to the Medium Term Notes, the Applicants represent that there are four sets of notes, as follows: (1) Notes in the amount of $279.5 million with a maturity date of July 14, 2008; (2) notes in the amount of $534 million with a maturity date of December 4, 2008; (3) notes in the amount of $720 million with a maturity date of March 23, 2009; and (4) notes in the amount of $100 million with a maturity date of July 16, 2009. Applicants state that the amounts represent the totals of each particular bond issue held by JPMCB for securities lending cash collateral accounts, and the amounts specifically allocable to ERISA plans are less than the entire amounts.

24. Applicants represent that the Medium Term Notes are publicly-traded Series B medium-term notes issued by The Bear Stearns Companies Inc. in 2006 and 2007. All are floating rate notes, with the floating rate based either on the Federal Funds Open Rate (in the case of the first three) or LIBOR (in the case of the last one). None of the Medium Term Notes provide an option for early redemption by the holder or an option for the holder to extend the maturity date. The principal terms of the notes can be changed only by the issuer, and then only with the consent of two-thirds of the holders, or in some instances, only with the consent of all the holders. The applicant represents that while there currently is a market for the Medium Term Notes, they are trading at a discount.

25. The investment by plans in the Medium Term Notes may represent transactions with a party in interest, as Bear Stearns entities are service providers to many plans through their brokerage activities. Prior to the Merger Agreement, Applicants relied on PTE 84–14 [2] and PTE 91–38 [3] for relief from section 406(a) of ERISA with respect to these transactions. PTE 84–14 and PTE 91–38 are class exemptions that provide relief for a range of transactions between plans and parties in interest, provided that the assets are managed, respectively, by a ''qualified professional asset manager,'' or as part of a bank collective investment fund. Due to the Merger, however, Applicants are not currently able to meet a condition present in each of the exemptions, that the transactions not occur with a party ''related to'' the QPAM or an ''affiliate'' of the sponsoring bank. The Applicants' view is that regardless of their current inability to meet a condition of the class exemptions, relief for any prohibited transaction that would arise under section 406(a) of ERISA should continue to be available, pursuant to section V(i) of PTE 84–14 and section IV(h) of PTE 91–38, the ''continuing transactions'' provisions of the exemptions. These conditions clarify the application of the exemptions to continuing transactions, and generally provide that if the requirements of the respective class exemptions are satisfied at the time a transaction is entered into or renewed, or would have become prohibited but for that exemption, they will continue to be satisfied thereafter with respect to the transaction. The Department concurs with Applicants' analysis that relief under section 406(a) of ERISA would continue to be available under the exemptions with respect to the public-traded Medium Term Notes.

26. The Department has previously cautioned with respect to section V(i) of PTE 84–14, ''that, although Part I may continue to be available for the entire term of a continuing transaction which subsequently fails to satisfy one or more of the conditions of that Part, no relief would be provided for an act of self-dealing described in section 406(b)(1) of ERISA if the QPAM has an interest in the person which may affect the exercise of its best judgment as a fiduciary.'' [4] The Department urged fiduciaries to take appropriate steps to avoid engaging in 406(b) violations should circumstances change during the course of a continuing transaction. In this regard, Applicants represent that the terms of the Medium Term Notes are fixed from the standpoint of the investors and do not allow for any renegotiation or early redemption. Accordingly, it is the Applicants' position that no 406(b) violation will occur with respect to the Medium Term Notes because there is no opportunity for discretionary action on the part of the responsible fiduciary.

JPMCC as Custodian or Directed Trustee

The Applicant notes that the exempted transaction in PTE 99–34 is described as involving plans for which JPMCC, through one of its lines of business, including JPMCB, acts as directed trustee or custodian and for which it also operates through a division as securities lending agent or sub-agent. The Applicant represents that in the period since PTE 99–34 was granted, it has become more common for a plan to engage a securities lending agent that is not the plan's trustee or custodian (or an affiliate thereof). Accordingly, the Applicant requests that the language of the exemption be modified to cover relationships in which it (or an affiliate) serves only as securities lending agent and not also trustee or custodian. The Applicant requests that such language change be made retroactive to the original effective date of the exemption. The Department has proposed the suggested modification.

Application of Statutory Criteria

The Applicant represents that the requested amendment to PTE 99–34 meets the statutory criteria under ERISA section 408(a) as follows:

The requested exemption is administratively feasible because it would not impose any administrative burdens on the Applicant or the Department beyond those described in JPMCB's existing exemption, PTE 99–34. With respect to existing securities loans, each of PTE 99–34's current conditions has been satisfied, except for two conditions as to which the Applicant proposes to comply on a retroactive basis. In addition, the requested temporary relief for securities loans from managed assets will be subject to conditions that are self-executing. The advance under the Master Note for which relief was requested has matured and was fully repaid as of Friday, June 13, 2008; accordingly, Applicant states that the Department will not have to monitor the implementation or enforcement of the relief.

Applicants represent that the exemption for securities loans is in the interests of the plan and its participants and beneficiaries, as, if the existing securities loans between JPMCB as securities lending agent for ERISA plans and Bear Stearns Borrowers were terminated, the result would be disruptive to the plans and to the securities lending market for the following reasons. First, the Bear Stearns Borrowers may not be able to return the securities immediately because of, among other things, the inability of third parties to redeliver those securities to the applicable Bear Stearns Borrower or a scarcity of borrowing sources. Second, it may be difficult in the current market to immediately find borrowers for all the recalled securities, resulting in lost income opportunities for the affected plans. Third, JPMCB may need to liquidate the investments in which it has placed the cash collateral for the loans so that it can return the cash to the

[2] 70 FR 49305 (August 23, 2005).

[3] 56 FR 31966 (July 12, 1991).

[4] Preamble to Proposed Amendment to PTE 84–14, 68 FR 52423 (September 3, 2003).

Bear Stearns Borrowers. Since the cash collateral is invested mainly in short-term fixed-income securities and obligations that JPMCB had planned to hold to maturity, but whose market value may be depressed because of current market conditions, liquidating the collateral at this time could result in losses to the affected plans.

The Master Note was a privately negotiated lending arrangement between JPMCB as manager of securities lending cash collateral for various investors, including ERISA plans, and certain Bear Stearns entities. While the individual notes under the Master Note could, under their terms, be sold or transferred with the consent of the Bear Stearns borrowers, there was no market for the notes following the publicized problems with Bear Stearns' financial solvency that led to the merger agreement with JPMCC on March 16, 2008. Even if a sale might have been possible, it would likely have been at a substantial discount due to Bear Stearns' circumstances, resulting in a loss to the investing plans. Holding the Master Note advance to maturity was in the interests of the affected plans because it permitted them to realize the full value of the advance, including both principal and interest, without loss. Furthermore, even while they continued to hold interests in the Master Note advance, they were not exposed to the risk of default by Bear Stearns' financial difficulties because, under the terms of the proposed relief, repayment of the Master Note advance was unconditionally guaranteed by JPMCB, which continued to have a high credit rating.

The requested amendment to PTE 99–34 would be protective of the rights of the participants and beneficiaries of the affected plans because PTE 99–34, as amended, would incorporate the safeguards that the Department has previously found to be protective. JPMCB would continue to be subject to the requirements of PTE 99–34, which in turn, incorporates the procedural requirements of PTE 2006–16 and its predecessors Prohibited Transaction Exemption 81–6, 46 Fed. Reg. 7527 (Jan. 23, 1981) and Prohibited Transaction Exemption 82–63, 47 Fed. Reg. 14804 (April 6, 1982). The only exception would be the timing of when the information required to be provided by PTE 99–34 is furnished regarding the Bear Stearns Borrowers—the plan fiduciaries will still receive the information. Furthermore, as described above, the requested temporary relief for securities loans from managed assets will be subject to an automated system block to assure that JPMCB-affiliated asset managers will not have information regarding which outstanding securities loans are to Bear Stearns Borrowers. Finally, the requested exemption for investment of plan assets in the Master Note advance would be protective of the rights of participants and beneficiaries of the affected plans because JPMCB, a large financial institution with a high credit rating, has unconditionally guaranteed the repayment of the advance under the Master Note. Furthermore, the advance has, as of June 13, 2008, been repaid in full.

In summary, the Applicants represent that the requested exemption will satisfy the statutory criteria of section 408(a) of ERISA and section 4975(c)(2) of the Code for the following reasons:

(A) The Applicant's securities loans to Bear Stearns Borrowers have met the conditions of PTE 99–34, except certain disclosure and approval requirements under circumstances where it was not feasible to obtain advance disclosures and approvals due to the unexpected timing of the Merger Agreement's execution.

(B) Where disclosures were not provided in advance of a loan transaction, the Applicant will furnish such disclosures as soon after the Merger Agreement's execution as it was administratively feasible to do so.

(C) While some loans would not comply with a condition of PTE 99–34 because the underlying assets were managed by a JPMCB affiliate, JPMCB intends to terminate those loans within 90 days and in the interim to prevent the affiliated manager from obtaining information regarding which securities are on loan to Bear Stearns Borrowers, thereby preventing any potential conflict of interest.

(D) Permitting the securities loans to Bear Stearns Borrowers to continue in this fashion will avoid the need to terminate the loans at a time of high market volatility, which could result in investment losses and lost income opportunities for the affected plans.

Notice to Interested Persons

The applicant will distribute notice of the proposed amendment by U.S. Postal Service to an independent plan fiduciary for each plan currently utilizing Applicant's securities lending services that previously approved making securities loans to Bear Stearns Borrowers. Notification will be mailed within 15 days after publication of this proposed amendment in the **Federal Register**. Any written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed amendment in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and/or 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act and/or the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary provisions of section 404 of the Act which, among other things, requires a fiduciary to discharge his or her duties respecting the plan solely in the interests 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) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or 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;

(3) The availability of this exemption, if granted, is subject to the express condition that the material facts and representations contained in the application are true and complete and accurately describe all material terms of the transaction which is the subject of this exemption. In the case of continuing transactions, if any of the material facts or representations described in the application change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department; and

(4) Before an exemption may be granted under section 408(a) of ERISA and 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 beneficiaries and protective of the rights or participants and beneficiaries of the plan.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments and/or requests for a public hearing on the pending exemption to the address, as set forth below, within the time frame, as set forth below. All comments and requests for a public hearing will be made a part of the record. Comments and hearing requests should state the reasons for the writer's interest in the proposed exemption. A request for a public hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. Comments and hearing requests received will also be available for public inspection with the referenced application at the address, as set forth below.

Proposed Exemption

Based on the facts set forth in the application, and 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), the Department proposes to modify PTE 99–34 as set forth below:

JPMorgan Chase Bank, National Association, located in Columbus, Ohio

Section I. Covered Transactions

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lending of securities to affiliates of JPMorgan Chase & Co. Inc. (JPMCC), which are engaged in JPMCC's capital markets line of business (referred to herein as Global Capital Markets), by employee benefit plans (the Client Plans), including commingled investment funds holding Client Plan assets, for which JPMCC through its Financing & Market Products or any other similar division of JPMCB or a U.S. affiliate of JPMCC (collectively, FMP) acts as securities lending agent or sub-agent, and for which JPMCC, through its Investor Services line of Business, as operated through JPMCB and its affiliates (Investor Services), may also act as directed trustee or custodian, and (2) to the receipt of compensation by FMP in connection with the proposed transactions, provided the general conditions set forth below in section II are met.

Section II. General Conditions

(a) This exemption applies to loans of securities to Global Capital Markets, as operated in the United States (J. P. Morgan Securities Inc., or the U.S. Affiliated Borrower) and in the following foreign countries: the United Kingdom (J. P. Morgan Securities Ltd.), Canada (J. P. Morgan Securities Canada Inc.), Australia (J. P. Morgan Securities Australia Limited), Japan (J. P. Morgan Securities Japan Co. Ltd) (collectively, the Foreign Affiliated Borrowers). Global Capital Markets will also include other companies or their successors which are affiliated with either JPMCB or JPMCC within these countries.[5]

(b) For each Client Plan, neither Investor Services, Global Capital Markets, FMP, nor any other division or affiliate of JPMCC has or exercises discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction (other than with respect to the lending of securities designated by an independent fiduciary of a Client Plan as being available to lend and the investment of cash collateral after securities have been loaned and collateral received), or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, including decisions concerning a Client Plan's acquisition and disposition of securities available for loan.

(i) Notwithstanding the foregoing, for the period from March 16, 2008, through June 14, 2008, section II(b) shall not apply to the lending of securities by a Client Plan to Bear Stearns Affiliates, provided that (i) no division or affiliate of JPMCC that has discretionary authority or control with respect to the investment of the assets of the Client Plan involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, has access to information regarding whether the particular securities have been loaned to a Bear Stearns Affiliate, and (ii) an Independent Fiduciary (as defined in section IV(f)) conducts a Review (as defined in section IV(g)) of Client Plan securities loans to Bear Stearns Affiliates and within 180 days of the date of publication of this proposed amendment in the **Federal Register**, issues a written report presenting its specific findings.

(c) Before a Client Plan participates in a securities lending program and before any loan of securities to Global Capital Markets is effected, a Client Plan fiduciary which is independent of Global Capital Markets must have—

(1) Authorized and approved a securities lending authorization agreement with FMP, where FMP is acting as the securities lending agent;

(2) Authorized and approved the primary securities lending authorization agreement with the primary lending agent where FMP is lending securities under a sub-agency agreement with the primary lending agent;[6] and

(3) Approved the general terms of the securities loan agreement (the Loan Agreement) between such Client Plan and Global Capital Markets, the specific terms of which are negotiated and entered into by FMP.

Notwithstanding the foregoing, section II(c)(3) shall be deemed satisfied with respect to the lending of securities by Client Plans to Bear Stearns Affiliates by FMP as securities lending agent or sub-agent for the period between March 16, 2008, and April 15, 2008, provided (i) FMP provided to such Client Plans no later than April 15, 2008, a description of the general terms of the securities loan agreements between such Client Plans and the Bear Stearns Affiliates and (ii) at the time of providing such information, FMP notified each Client Plan of the following: that it had 10 days to object in writing to the continued lending of securities to the Bear Stearns Affiliates; if a written objection was received from a Client Plan within the 10-day period, FMP would cease to make any new securities loans for that Client Plan to Bear Stearns Affiliates; any securities loans made on behalf of that Client Plan to Bear Stearns Affiliates prior to the date the objection is received shall be covered by this exemption, and FMP shall seek to expeditiously terminate such securities loan in a manner approved by the Client Plan.

(d) Each loan of securities by a Client Plan to Global Capital Markets is at market rates and terms which are at least as favorable to such Client Plan as if made at the same time and under the same circumstances to an unrelated party.

(e) The Client Plan may terminate the agency or sub-agency arrangement at any time without penalty to such Client Plan on five business days notice whereupon Global Capital Markets delivers securities identical to the borrowed securities (or the equivalent in the event of reorganization,

[5] Unless otherwise noted, Global Capital Markets will consist collectively of the above referenced entities.

[6] The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than FMP, beyond that provided pursuant to PTE 2006–16.

recapitalization or merger of the issuer of the borrowed securities) to the Client Plan within—

(1) The customary delivery period for such securities;

(2) Five business days; or

(3) The time negotiated for such delivery by the Client Plan and Global Capital Markets, whichever is less.

(f) The Client Plan receives from Global Capital Markets (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to Global Capital Markets, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by a U.S. bank, which is a person other than Global Capital Markets or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 2006–16 (as amended from time to time or, alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans), having, as of the close of business on the preceding business day, a market value (or, in the case of a letter of credit, a stated amount) initially equal to at least the percentage required in PTE 2006–16 (as amended from time to time) but in no case less than 102 percent of the market value of the loaned securities.

(g) If the market value of the collateral on the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of business on that day, Global Capital Markets delivers additional collateral on the following day such that the market value of the collateral again equals 102 percent or the percentage otherwise required by 2006–16.

(h) The Loan Agreement gives the Client Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral and FMP monitors the level of the collateral daily.

(i) Before entering into a Loan Agreement, Global Capital Markets furnishes FMP the most recently available audited and unaudited statements of the financial condition of the applicable borrower within Global Capital Markets. Such statements are, in turn, provided by FMP to the Client Plan. At the time of the loan, Global Capital Markets gives prompt notice to the Client Plan fiduciary of any material adverse change in the borrower's financial condition since the date of the most recent financial statement furnished to the Client Plan. In the event of any such changes, FMP requests approval of the Client Plan to continue lending to Global Capital Markets before making any such additional loans. No new securities loans will be made until approval is received and each loan constitutes a representation by Global Capital Markets that there has been no such material adverse change.

Notwithstanding the foregoing, section II(i) shall be deemed satisfied with respect to the lending of securities by Client Plans to Bear Stearns Affiliates by FMP as securities lending agent or sub-agent for the period between March 16, 2008, and April 15, 2008, provided (i) FMP provided to such Client Plans no later than April 15, 2008, the most recently available audited and unaudited consolidated statements of the financial condition of the parent company of the applicable Bear Stearns Affiliates and the parent company's subsidiaries, and notice of any material adverse change in financial condition since the date of the most recent financial statement being furnished to the Client Plans, and (ii) at the time of providing such information, FMP notified each Client Plan of the following: That it had 10 days to object in writing to the continued lending of securities to the Bear Stearns Affiliates; if a written objection was received from a Client Plan within the 10-day period, FMP would cease to make any new securities loans for that Client Plan to Bear Stearns Affiliates; any securities loans made on behalf of that Client Plan to Bear Stearns Affiliates prior to the date the objection is received shall be covered by this exemption, and FMP shall seek to expeditiously terminate such securities loan in a manner approved by the Client Plan.

(j) In return for lending securities, the Client Plan either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (In the case of cash collateral, the Client Plan may pay a loan rebate or similar fee to Global Capital Markets if such fee is not greater than the fee the Client Plan would pay an unrelated party in a comparable arm's length transaction.)

(k) All procedures regarding the securities lending activities conform to the applicable provisions of PTE 2006–16 (as amended from time, or alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans).

(l) If Global Capital Markets defaults on the securities loan or enters bankruptcy, the collateral will not be available to Global Capital Markets or its creditors, but will be used to make the Client Plan whole. In this regard,

(1) In the event a Foreign Affiliated Borrower defaults on a loan, JPMCB will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, JPMCB will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify properly under this provision). Alternatively, if such identical securities are not available on the market, FMP will pay the Client Plan cash equal to—

(i) The market value of the borrowed securities as of the date they should have been returned to the Client Plan, plus

(ii) All the accrued financial benefits derived from the beneficial ownership of such loaned securities as of such date, plus

(iii) Interest from such date to the date of payment.

The lending Client Plans will be indemnified in the United States for any loans to the Foreign Affiliated Borrowers.

(2) In the event the U.S. Affiliated Borrower defaults on a loan, JPMCB will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, either JPMCB or the U.S. Affiliated Borrower will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify property under this provision).

(m) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including all interest, dividends and distributions on the loaned securities during the loan period.

(n) Prior to any Client Plan's approval of the lending of its securities to Global Capital Markets, copies of the notice of proposed exemption and the final exemption are provided to the Client Plan.

(o) Each Client Plan receives a monthly report with respect to its

securities lending transactions, including but not limited to the information described in Representation 24 of the proposed exemption for PTE 99–34 (64 FR 34281, 6/25/99), so that an independent fiduciary of the Client Plan may monitor the securities lending transactions with Global Capital Markets.

(p) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to Global Capital Markets; provided, however, that—

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

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

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

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(q) With respect to each successive two week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans by FMP, in the aggregate, will be to unrelated borrowers.

(r) In addition to the above, all loans involving Foreign Affiliated Borrowers within Global Capital Markets have the following supplemental requirements:

(1) Such Foreign Affiliated Borrower is registered as a bank or broker-dealer with—

(i) The Financial Services Authority in the case of J.P. Morgan Securities Ltd.;

(ii) The Office of the Superintendent of Financial Institutions (OSFI), in the case of J.P. Morgan Securities Canada Inc.;

(iii) The Australian Securities & Investments Commission in the case of J.P. Morgan Securities Australia Ltd.; and

(iv) The Financial Services Agency in the case of J.P. Morgan Securities Japan Ltd.

(2) Such broker-dealer or bank is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or dollar-denominated securities or letters of credit of U.S. banks or any combination thereof, or other collateral permitted under PTE 2006–16 (as amended from time to time, or alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans);

(4) All collateral is held in the United States;

(5) The situs of the Loan Agreement is maintained in the United States;

(6) The lending Client Plans are indemnified by JPMCB in the United States for any transactions covered by this exemption with the Foreign Affiliated Borrower so that the Client Plans do not have to litigate in a foreign jurisdiction nor sue the Foreign Affiliated Borrower to realize on the indemnification; and

(7) Prior to the transaction, each Foreign Affiliated Borrower enters into a written agreement with FMP on behalf of the Client Plan whereby the Foreign Affiliated Borrower consents to service of process in the United States and to the jurisdiction of the courts of the United States with respect to the transactions described herein.

(s) JPMCB or J.P. Morgan Securities Inc. (JPMSI) maintains, or causes to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the 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 JPMCB or JPMSI, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than JPMCB or JPMSI 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 below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(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 (s) are unconditionally available at their customary location during normal business hours by:

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

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

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

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

(t)(2) None of the persons described above in paragraphs (t)(1)(ii)–(t)(1)(iv) of this paragraph (t)(1) are authorized to examine the trade secrets of JPMCB, the U.S. Affiliated Borrowers, or the Foreign Affiliated Borrowers or commercial or financial information which is privileged or confidential.

Section III. Temporary Exemption for Investment in Bear Stearns Master Note

The restrictions of sections 406(a)(1)(A) through (D) and sections 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the investment of securities lending collateral by JPMCB, as the investment manager of such collateral on behalf of the Client Plan or Collective Fund that has lent the securities, in the Bear Stearns Master Note (as defined in paragraph (b) below), provided that the condition set forth below in paragraph (a) is met.

(a) Repayment of the Bear Stearns Master Note is unconditionally guaranteed by JPMCB.

(b) For purposes of this Section III, the term ''Bear Stearns Master Note'' means the $750 million Evergreen Advance dated October 23, 2007, under the Master Note Agreement dated February 9, 2007, by and between JPMCB as agent for a group of lending entities and certain subsidiaries of The Bear Stearns Companies Inc., which matured on June 13, 2008, and was paid in full.

Section IV. Definitions

For purposes of this exemption,

(a) The terms ''JPMCB'' and ''JPMCC'' as referred to herein in Sections I, II and III, refer to JPMorgan Chase Bank, National Association, and its parent, JPMorgan Chase & Co., Inc.

(b) The term ''affiliate'' means any entity now or in the future, directly or indirectly, controlling, controlled by, or under common control with JPMCC or its successors. (For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(c) The term ''U.S. Affiliated Borrower'' means an affiliate of JPMCC that is a bank supervised by the United States or a State, or a broker-dealer registered under the 1934 Act.

(d) The term ''Foreign Affiliated Borrower'' means an affiliate of JPMCC that is a bank or a broker-dealer which is supervised by—

(i) The Financial Services Authority in the United Kingdom;

(ii) OSFI in Canada;

(iii) The Australian Securities & Investments Commission in Australia; and

(iv) The Financial Services Agency in Japan.

(e) The term ''Bear Stearns Affiliate'' means The Bear Stearns Companies Inc. and its affiliates as constituted on March 15, 2008.

(f) The term ''Independent Fiduciary'' means a fiduciary who is independent of and unrelated to JPMCB and Bear Stearns Affiliates. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to JPMCB and Bear Stearns Affiliates if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with JPMCB or a Bear Stearns Affiliate;

(ii) Such fiduciary, or any officer, director, partner, employee or relative of the fiduciary, is an officer, director, partner or employee of JPMCB or a Bear Stearns Affiliate (or is a relative of such persons);

(iii) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption, except that the Independent Fiduciary may receive compensation from JPMCB for acting as Independent Fiduciary as contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision; or

(iv) The annual gross revenue received by such fiduciary, during any year of its engagement, from JPMCB and Bear Stearns Affiliates exceeds five percent (5%) of the fiduciary's annual gross revenue from all sources for its prior tax year.

(g) The term ''Review'' means a test by an Independent Fiduciary of a representative sample of transactions falling under section II(b)(i) of this Exemption that is sufficient in size to afford the Independent Fiduciary a reasonable basis to make findings as to compliance with the following:

(i) Whether allocation of the opportunity to lend securities to the applicable client plan account was in accordance with JPMCB's internal securities loan allocation procedures;

(ii) Whether the loan of securities by the Client Plan to Global Capital Markets was at market rates and terms which were at least as favorable to such Client Plan as if made at the same time and under the same circumstances to an unrelated party (as required by section II(d) hereof);

(iii) Whether with respect to each successive two-week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans by FMP, in the aggregate, were to unrelated borrowers (as required by section II(q) of the exemption); and

(iv) Whether investment by the applicable Client Plan in the underlying securities that were loaned was consistent with the investment guidelines for the particular Client Plan account.

For a more complete statement of facts and representations supporting the Department's decision to grant PTE 99–34, refer to the proposed exemption (64 FR 34281, June 25, 1999) and the grant notice (64 FR 46419, August 25, 1999).

Signed at Washington, DC, this 17th day of *October*, 2008.

Ivan L. Strasfeld,

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

[FR Doc. E8–25235 Filed 10–22–08; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request; Submitted for Public Comment and Recommendations; Part 46—Training, Training Plans, and Records; Sections 46.3, 46.5, 46.6, 46.7, 46.8, 46.9, and 46.11

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the 30 CFR Sections 46.3, 46.5, 46.6, 46.7, 46.8, 46.9, and 46.11; Training Plans, New Miner Training; Newly-Hired Experienced Miner Training; New Task Training; Annual Refresher Training; Records of Training; and Site-Specific Hazard Awareness Training.

DATES: Submit comments on or before December 22, 2008.