

it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

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

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

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

Signed at Washington, DC, this 12th day of November 2008.

**Ivan Strasfeld,**

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

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### **Prohibited Transaction Exemptions 2008-13 Through 2008-14; Grant of Individual Exemptions Involving: Banc One Investment Advisors Corporation and J.P. Morgan Investment Management Inc. (JPMIM) and Their Affiliates (collectively JPMorgan), PTE 2008-13; and Fidelity Brokerage Services, D-11424, LLC (FBS), PTE 2008-14**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income

Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Banc One Investment Advisors Corporation (BOIA) and J.P. Morgan Investment Management Inc. (JPMIM) and their Affiliates (collectively, JPMorgan). Located in New York, New York. [Prohibited Transaction Exemption 2008-13; Application No. D-11263]

### Exemption

#### **Section I—Retroactive Exemption for the Acquisition, Holding, and Disposition of JPMorgan Chase & Co. Stock**

The restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply, as of January 14, 2004, until November 20, 2008, to the acquisition, holding, and disposition of the common stock of JPMorgan Chase & Co. (the JPM Stock) by Index and Model-Driven Funds managed by JPMorgan, provided that the following conditions and the general conditions in Section III are satisfied:

(a) The acquisition or disposition of the JPM Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based.

(b) The acquisition or disposition of the JPM Stock does not involve any agreement, arrangement, or understanding regarding the design or operation of the Fund acquiring the JPM Stock which is intended to benefit JPMorgan or any party in which JPMorgan may have an interest.

(c) All aggregate daily purchases of JPM Stock by the Funds do not exceed, on any particular day, the greater of:

(1) Fifteen (15) percent of the aggregate average daily trading volume for the JPM Stock occurring on the applicable exchange and automated trading system (as described in paragraph (d) below) for the previous five business days, or

(2) Fifteen (15) percent of the trading volume for the JPM Stock occurring on the applicable exchange and automated trading system on the date of the transaction, both as determined by the best available information for the trades occurring on that date or dates.

(d) All purchases and sales of JPM Stock are either (i) Entered into on a principal basis in a direct, arm's length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of JPMorgan and is either registered under the Securities Exchange Act of 1934 (the 1934 Act), and thereby subject to regulation by the Securities and Exchange Commission (SEC), (ii) effected on an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of JPMorgan that is subject to regulation by the SEC, or an automated trading system operated by a recognized U.S.

securities exchange (as defined in Section IV(j) below), which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected on a recognized securities exchange (as defined in Section IV(j) below), so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, JPMorgan (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption); however, this condition would not apply to purchases or sales on an exchange or through an automated trading system (described in paragraph (d) of this Section) on a blind basis where the identity of the counterparty is not known.

(f) No more than five (5) percent of the total amount of JPM Stock that is issued and outstanding at any time is held in the aggregate by Index and Model-Driven Funds managed by JPMorgan.

(g) JPM Stock constitutes no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A plan fiduciary which is independent of JPMorgan authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds JPM Stock, pursuant to the procedures described herein.

(i) A fiduciary independent of JPMorgan directs the voting of the JPM Stock held by an Index or Model-Driven Fund on any matter in which shareholders of JPM Stock are required or permitted to vote.

## **Section II—Prospective Exemption for the Acquisition, Holding, and Disposition of JPMorgan Chase & Co. Stock**

The restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply, as of November 20, 2008 to the acquisition, holding, and disposition of JPM Stock by Index and Model-Driven Funds managed by JPMorgan, provided that the following conditions and the general conditions in Section III are satisfied:

(a) The acquisition or disposition of JPM Stock is for the sole purpose of

maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based.

(b) The acquisition or disposition of JPM Stock does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the JPM Stock which is intended to benefit JPMorgan or any party in which JPMorgan may have an interest.

(c) All purchases of JPM Stock pursuant to a Buy-up (as defined in Section IV(d)) occur in the following manner:

(1) Purchases on a single trading day are from, or through, only one broker or dealer;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from brokers that are not affiliates of JPMorgan (as defined in section IV(g));

(5) Aggregate daily purchases of JPM Stock by the Funds do not exceed, on any particular day, the greater of: (i) Fifteen (15) percent of the aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous five business days, or (ii) fifteen (15) percent of the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades occurring on that date;

(6) All purchases and sales of JPM Stock occur either (i) On a recognized securities exchange (as defined in Section IV(j) below), (ii) through an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of JPMorgan that is registered under the 1934 Act, and thereby subject to regulation by the SEC, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(i) below) that is operated by a recognized securities exchange (as defined in Section IV(j) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis

without the participation of a broker-dealer; and

(7) If the necessary number of shares of JPM Stock cannot be acquired within 10 business days from the date of the event that causes the particular Fund to require JPM Stock, JPMorgan appoints a fiduciary that is independent of JPMorgan to design acquisition procedures and monitor JPMorgan's compliance with such procedures, in accordance with Representation 7 in the Summary of Facts and Representations in the Notice of Proposed Exemption (the Notice).<sup>1</sup>

(d) For transactions subsequent to a Buy-up, all aggregate daily purchases of JPM Stock by the Funds do not exceed, on any particular day, the greater of:

(1) Fifteen (15) percent of the aggregate average daily trading volume for the JPM Stock occurring on the applicable exchange and automated trading system for the previous five (5) business days, or

(2) Fifteen (15) percent of the trading volume for JPM Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(e) All transactions in JPM Stock not otherwise described in paragraph (c) above are either: (i) Entered into on a principal basis in a direct, arms-length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of JPMorgan and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of JPMorgan that is subject to regulation by the SEC, or an automated trading system operated by a recognized securities exchange (as defined in Section IV(j) below), which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized securities exchange (as defined in Section IV(j) below), so long as the broker is acting on an agency basis.

(f) No transactions by a Fund involve purchases from, or sales to, JPMorgan (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets in the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption);

<sup>1</sup> See 73 FR 39168, 39172 (July 8, 2008).

however, this condition would not apply to purchases or sales on an exchange or through an automated trading system (described in paragraphs (c) and (e) of this Section) on a blind basis where the identity of the counterparty is not known.

(g) No more than five (5) percent of the total amount of JPM Stock that is issued and outstanding at any time is held in the aggregate by Index and Model-Driven Funds managed by JPMorgan.

(h) JPM Stock constitutes no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(i) A plan fiduciary independent of JPMorgan authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds JPM Stock, pursuant to the procedures described herein.

(j) A fiduciary independent of JPMorgan directs the voting of the JPM Stock held by an Index or Model-Driven Fund on any matter in which shareholders of JPM Stock are required or permitted to vote.

### Section III—General Conditions

(a) JPMorgan maintains or causes to be maintained, for a period of six years from the date of the transaction, the records necessary to enable the persons described in paragraph (b) of this Section 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, solely due to circumstances beyond the control of JPMorgan, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than JPMorgan 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 (b) below.

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

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

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to

acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (b) shall be authorized to examine trade secrets of JPMorgan or commercial or financial information that is considered confidential.

### Section IV—Definitions

(a) The term “Index Fund” means any investment fund, account, or portfolio sponsored, maintained, trustee, or managed by JPMorgan, in which one or more investors invest, and—

(1) That is designed to track the rate of return, risk profile, and other characteristics of an independently maintained securities Index, as described in Section IV(c) below, by either (i) replicating the same combination of securities that comprise such Index, or (ii) sampling the securities that comprise such Index based on objective criteria and data;

(2) For which JPMorgan does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains “plan assets” subject to the Act; and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit JPMorgan or any party in which JPMorgan may have an interest.

(b) The term “Model-Driven Fund” means any investment fund, account, or portfolio sponsored, maintained, trustee, or managed by JPMorgan, in which one or more investors invest, and—

(1) That is composed of securities, the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of JPMorgan, to transform an independently maintained Index, as described in Section IV(c) below;

(2) That contains “plan assets” subject to the Act; and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria that is intended to

benefit JPMorgan or any party in which JPMorgan may have an interest.

(c) The term “Index” means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) A publisher of financial news or information, or

(C) A public stock exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of JPMorgan; and,

(3) The index is a generally accepted standardized index of securities that is not specifically tailored for the use of JPMorgan.

(d) The term “Buy-up” means an initial acquisition of JPM Stock by an Index or Model-Driven Fund which is necessary to bring the Fund's holdings of such stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index.

(e) The term “JPMorgan” refers to Bank One Investment Advisors Corporation (BOIA) and J.P. Morgan Investment Management Inc. (JPMIM), and their respective Affiliates, as defined in paragraph (f) below.

(f) The term “Affiliate” means, with respect to BOIA or JPMIM, an entity which, directly or indirectly, through one or more intermediaries, is controlling, controlled by, or under common control with BOIA or JPMIM;

(g) An “affiliate” of a person includes:

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

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

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

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

(i) The term “automated trading system” means an electronic trading system that functions in a manner

intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an "alternative trading system" within the meaning of the SEC's Reg. ATS [17 CFR 242.300], as such definition may be amended from time to time, or an "automated quotation system" as described in Section 3(a)(51)(A)(ii) of the 1934 Act [15 U.S.C. 78c(a)(51)(A)(ii)].

(j) The term "recognized securities exchange" means a U.S. securities exchange that is registered as a "national securities exchange" under Section 6 of the 1934 Act (15 U.S.C. 78f), as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (e.g., 17 CFR 240.3b-16).

(k) The term "Fund" means an Index Fund (as described in Section IV(a)) or a Model-Driven Fund (as described in IV(b)).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice, published on July 8, 2008, at 73 FR 39168.

The Department received no written comments with respect to the Notice. The Department notes that the Notice incorrectly stated that, as of December 31, 2005, JPMIM managed \$1.19 trillion in assets for defined benefit and defined contribution plans, endowments and foundations, and other institutional clients, mutual funds, and high net worth individuals. In fact, the applicable date for that information was December 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Lloyd of the Department, telephone (202) 693-8554. (This is not a toll-free number.)

Fidelity Brokerage Services, LLC (FBS) and its affiliates (together with FBS, Fidelity); Located Boston, Massachusetts.

[Prohibited Transaction Exemption No. 2008-14; Application No. D-11424]

### Section I: Covered Transactions

Effective November 20, 2008, the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA, and the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an individual retirement account or annuity pursuant to section 408(e)(2)(A) of the Code, of a Coverdell education savings account pursuant to section 530(d) of the Code, of an Archer medical savings account pursuant to

section 220(e)(2) of the Code, or of a health savings account pursuant to section 223(e)(2) of the Code, by reason of section 4975(c)(1)(D), (E), and (F) of the Code, shall not apply to the receipt of an Applicable Benefit by an individual for whose benefit a Covered Plan is established or maintained, or by his or her Family Members, with respect to a Tiered Product, pursuant to an arrangement offered by Fidelity under which the Account Value of the Covered Plan is taken into account for purposes of determining eligibility to receive such Applicable Benefit, provided that each condition of Section II of this exemption is satisfied.

### Section II: Conditions

(a) The Covered Plan whose Account Value is taken into account for purposes of determining eligibility to receive the Applicable Benefit under the arrangement is established and maintained for the exclusive benefit of the participant covered under the Covered Plan, his or her spouse, or their beneficiaries.

(b) The Applicable Benefit with respect to the Tiered Product must be of the type that Fidelity itself could offer consistent with all applicable federal and state banking laws and all applicable federal and state laws regulating broker-dealers.

(c) The Applicable Benefit with respect to the Tiered Product must be provided by Fidelity or its affiliate in the ordinary course of its business as a bank or broker-dealer to customers of Fidelity who qualify for such arrangement, but who do not maintain Covered Plans with Fidelity or its affiliate.

(d) For purposes of determining eligibility to receive the Applicable Benefit, the Account Value required by Fidelity for the Covered Plan is as favorable as any such requirement based on the value of any type of account and other financial relationships an individual and his or her Family Members have with Fidelity that is used by Fidelity to determine eligibility to receive the Applicable Benefit.

(e) The rate of interest paid with respect to any assets of the Covered Plan invested in a Tiered Interest Product is reasonable.

(f) The combined total of all fees for the provision of services to the Covered Plan is not in excess of reasonable compensation within the meaning of section 4975(d)(2) of the Code and section 408(b)(2) of ERISA.

(g) The investment performance of the Covered Plan's investment(s) is no less favorable than the investment performance of an identical

investment(s) that could have been made at the same time by a customer of Fidelity who is not eligible for (or who does not receive) any Applicable Benefit.

(h) The Applicable Benefits offered with respect to any Tiered Product under the arrangement to a Covered Plan customer must be the same as is offered by Fidelity with respect to such Tiered Product to non-Covered Plan customers of Fidelity having the same aggregate Account Value.

(i) If the Covered Plan is established at a broker-dealer or bank that is unrelated to Fidelity, the assets of the Covered Plan must be custodied with Fidelity and at the time the Covered Plan is established, disclosures must be made to the owner of the Covered Plan specifying that under the arrangement, services are being provided by Fidelity to the Covered Plan.

### III. Definitions

(a) The term "Fidelity" means Fidelity Brokerage Services LLC (FBS) or any of its affiliates. An "affiliate" of Fidelity Brokerage Services LLC includes any person directly or indirectly controlling, controlled by, or under common control with FBS. The term control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(b) The term "Covered Plan" means a plan sponsored by Fidelity or a plan with respect to which Fidelity maintains custody of its assets, and is an Individual Retirement Plan or other savings account described in section III(c), or a Keogh Plan described in section III(d).

(c) The term "Individual Retirement Plan" means an individual retirement account ("IRA") described in Code section 408(a), an individual retirement annuity described in Code section 408(b), a Coverdell education savings account described in section 530 of the Code, an Archer MSA described in section 220(d) of the Code, or a health savings account described in section 223(d) of the Code. For purposes of this exemption, the term Individual Retirement Plan shall not include an Individual Retirement Plan which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code or a Simple Retirement Account described in section 408(p) of the Code which provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

(d) The term “Keogh Plan” means a pension, profit-sharing or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in section 401(c) of the Code. For purposes of this exemption, the term Keogh Plan shall not include a Keogh Plan which is an employee benefit plan covered by Title I of ERISA.

(e) The term “Account Value” means the dollar value of investments in cash or securities held in the account for which market quotations are readily available. For purposes of this exemption, the term “cash” shall include (without limitation) savings accounts that are federally-insured and deposits as that term is defined in section 29 CFR 2550.408b-4(c)(3). The term “Account Value” shall not include investments in securities that are offered by Fidelity exclusively to Covered Plans.

(f) The term “Tiered Product” means an arrangement that is a “Tiered Interest Product” or a “Tiered Loan Product.”

(g) The term “Tiered Interest Product” means a bank deposit, an arrangement for payment of interest on free cash held in a brokerage account, or any other arrangement under which assets in an individual’s account that is eligible for the arrangement (including Covered Plans) are invested, and with respect to which interest is paid at a specified rate based on the aggregate amount of the accounts and other financial relationships an individual and his or her Family Member have with Fidelity that are eligible to be taken into account for purposes of the arrangement, including the Account Value of the Covered Plans.

(h) The term “Tiered Loan Product” means any arrangement for the extension of credit to an individual, with respect to which the interest and/or Loan Expenses required to be paid are reduced to a specified rate or an amount based on the aggregate amount of the accounts and other financial relationships that an individual and his or her Family Member have with Fidelity that are eligible to be taken into account for purposes of the arrangement, including the Account Value of the Covered Plans.

(i) The term “Loan Expenses” means application fees, points, attorneys’ fees, appraisal fees, title insurance, and any other fees or costs that an individual is required to pay in connection with the origination or maintenance of an extension of credit pursuant to a Tiered Loan Product.

(j) The term “Applicable Benefit” means: (i) In the case of a Tiered Interest

Product, an increase in the interest paid on an account established or maintained by an individual or any of his or her Family Members (including, in either case, through a Covered Plan); and (ii) in the case of a Tiered Loan Product, a reduction in the interest and/or Loan Expenses that an individual or any of his or her Family Members is required to pay.

(k) The term “Family Members” means beneficiaries of an individual for whose benefit the Covered Plan is established or maintained who would be members of the family as that term is defined in Code Section 4975(e)(6), or a brother, a sister, or spouse of a brother or sister.

**DATES: Effective Date:** This exemption is effective November 20, 2008.

#### Written Comments

The proposed exemption gave interested persons an opportunity to comment and to request a hearing. In this regard, all interested persons were invited to submit written comments and/or requests for a hearing on the pending exemption on or before October 20, 2008. During the comment period, the Department received one written comment letter and no requests for a public hearing. The comment was submitted by the applicant, and a discussion of the comment is provided below.

#### Exemption Heading

The applicant requested the Department change the heading of the exemption to read “Fidelity Brokerage Services LLC (FBS) and its affiliates (together with FBS, Fidelity.) The Department has made the requested change.

#### Eligibility

In its application, Fidelity discussed that an individual’s eligibility to receive Tiered Products would be calculated based on the aggregate amount of accounts and other financial relationships that the individual and his or her Family Members have with Fidelity. In this regard, Sections II(d), III(g) and III(h) of the proposal relate to eligibility requirements and definitions of the products offered under Fidelity’s program. Section II(d) of the proposal states:

“For purposes of determining eligibility to receive the Applicable Benefit, the Account Value required by Fidelity for the Covered Plan is as favorable as any such requirement based on the value of any type of account used by Fidelity to determine eligibility to receive the Applicable Benefit.”

Section III(g) of the proposal states:

“The term “Tiered Interest Product” means a bank deposit, an arrangement for payment of interest on free cash held in a brokerage account, or any other arrangement under which assets in an individual’s account that is eligible for the arrangement (including Covered Plans) are invested, and with respect to which interest is paid at a specified rate based on the aggregate amount of the accounts maintained with Fidelity by an individual and by his or her Family Members that are eligible to be taken into account for purposes of the arrangement, including the Account Value of the Covered Plans.”

Lastly, Section III(h) of the proposal states:

“The term “Tiered Loan Product” means any arrangement for the extension of credit to an individual, with respect to which the interest and/or Loan Expenses required to be paid are reduced to a specified rate or amount based on the aggregate amount of the accounts and other financial relationships of the individual (and his or her Family Members) eligible to be taken into account for purposes of the arrangement, including the Account Value of the Covered Plans.”

The applicant asks the Department to insert the words “and other financial relationships” in Section II(d) and Section III(g). The Department has made the requested change making all three sections consistent.

#### General Clarification:

The Department makes the following clarifications in response to the applicant’s comments: (1) Fidelity has approximately \$1.7 trillion assets under administration, and (2) the word “as” should be inserted immediately after the word “favorable” in the fifth line of subparagraph 10(d) of the Summary of Facts and Representations of the notice of proposed exemption.

For a complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to the notice of proposed exemption that was published in the **Federal Register** on September 3, 2008 at 73 FR 51521.

#### FOR FURTHER INFORMATION CONTACT:

Allison Padams-Lavigne, U.S. Department of Labor, telephone (202) 693-8564. (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 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) This exemption is 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 this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of November 2008.

**Ivan Strasfeld,**

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

[FR Doc. E8-27615 Filed 11-19-08; 8:45 am]

**BILLING CODE 4510-29-P**

## **NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

### **Agency Information Collection Activities: Submission for OMB Review; Comment Request**

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted to OMB at the address below on or before December 22, 2008 to be assured of consideration.

**ADDRESSES:** Send comments to Mr. Nicholas A. Fraser, Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5167; or electronically mailed to [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov).

### **FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301-837-1694 or fax number 301-713-7409.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on September 11, 2008 (73 FR 52890). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Use of NARA Official Seals.

*OMB number:* 3095-0052.

*Agency form number:* N/A.

*Type of review:* Regular.

*Affected public:* Business or other for-profit, not-for-profit institutions, Federal government.

*Estimated number of respondents:* 10.

*Estimated time per response:* 20 minutes.

*Frequency of response:* On occasion.

*Estimated total annual burden hours:* 3 hours.

*Abstract:* The authority for this information collection is contained in 36 CFR 1200.8. NARA's three official seals are the National Archives and Records Administration seal; the National Archives seal; and the National Archives Trust Fund Board seal. The official seals are used to authenticate various copies of official records in our custody and for other official NARA business. Occasionally, when criteria are met, we will permit the public and other Federal agencies to use our official seals. A written request must be submitted to use the official seals, which we approve or deny using specific criteria.

Dated: November 14, 2008.

**Martha Morphy,**

*Assistant Archivist for Information Services.*

[FR Doc. E8-27684 Filed 11-19-08; 8:45 am]

**BILLING CODE 7515-01-P**

## **NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

### **Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency proposes to renew the information collections described in this notice, which are used in the National Historical Publications and Records Commission (NHPRC) grant program. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be received on or before January 20, 2009 to be assured of consideration.

**ADDRESSES:** Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740-6001; or faxed to 301-713-7409; or electronically mailed to [tamee.fechhelm@nara.gov](mailto:tamee.fechhelm@nara.gov).

### **FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301-837-1694, or fax number 301-713-7409.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are