prescribings violated the CSA and numerous state laws, they were acts that were inconsistent with the public interest,'' [32] and which warranted the suspension of her registration.[33] *Id.*

Orders

Pursuant to the authority vested in me by 21 U.S.C. 824, as well as 28 CFR 0.100(b) & 0.104, I affirm my order which immediately suspended the now-expired DEA Certificate of Registration, AS7091894, issued to Nirmal Saran. Pursuant to the above cited authority, I also affirm my order which immediately suspended the now-expired DEA Certificate of Registration, BS8415956, issued to Nisha Saran. These orders are effective immediately.

Dated: December 12, 2008.

Michele M. Leonhart,

Deputy Administrator.

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BILLING CODE 4410–09–P

[32] As both J.P.'s and Dr. Van Komen's testimony shows, the prescribing of controlled substances over the internet creates a grave threat to public health and safety. As Dr. Van Komen explained, reviewing an online questionnaire is ''absolutely no way'' for a physician to detect whether a person seeking a controlled substance has a legitimate medical need for the drug or is a drug abuser. Tr. 285. This Agency has discussed the threat to public health and safety posed by internet prescribing in numerous cases. *See, e.g. , William R. Lockridge*, 71 FR 77791 (2006); *Mario Alberto Diaz,* 71 FR70788 (2006); *Mario Avello*, 70 FR 11695 (2005).

[33] Neither Respondent has an application pending before the Agency. I note, however, that even if the Respondents had submitted applications, I would have denied their applications.

Under agency precedent, where the Government has proved that a registrant has committed acts inconsistent with the public interest, a registrant must '' 'present[] sufficient mitigating evidence to assure the Administrator that [it] can be entrusted with the responsibility carried by such a registration.' '' *Samuel S. Jackson*, 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller*, 53 FR 21931, 21932 (1988)). Moreover, because ''past performance is the best predictor of future performance,'' *ALRA Labs., Inc.,* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), this Agency has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for his/her actions and demonstrate that he/she will not engage in future misconduct. *See Jackson,* 72 FR at 23853; *John H. Kennedy*, 71 FR 35705, 35709 (2006); *Prince George Daniels*, 60 FR 62884, 62887 (1995). *See also Hoxie* v. *DEA*, 419 F.3d at 483 (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[]'' in the public interest determination).

Notably, neither Respondent testified in this proceeding. I therefore further find that neither Respondent has accepted responsibility for his/her misconduct.

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions and Grant of Individual Exemptions involving: 2008–15, Popular, Inc., Banco Popular de Puerto Rico, and Popular Financial Holdings, Inc. (collectively, the Applicants), D–11396; and 2008–16, BlackRock, Inc. (BlackRock, and The PNC Financial Services Group, Inc. (PNC) (collectively, the Applicants), D–11453

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.

Popular, Inc., Banco Popular de Puerto Rico, and Popular Financial Holdings, Inc. (collectively, the Applicants) Located in the Commonwealth of Puerto Rico.

[Prohibited Transaction No. 2008–15; Exemption Application No: D–11396]

Exemption

Section I: Transactions

(a) The restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act shall not apply, effective November 23, 2005, to:

(1) The acquisition of stock rights (the Rights) by certain plans, described, below, in Section I(a)(1)(A) through (D) of this exemption, in connection with an offering of such Rights (the Offering) by Popular, Inc. (Popular), a party in interest with respect to such plans:

(A) Popular, Inc. Retirement Savings Plan for Puerto Rico Subsidiaries (the Popular PR Plan);

(B) Banco Popular de Puerto Rico Savings and Stock Plan (the BPPR Savings Plan),

(C) Popular, Inc. U.S.A. Profit Sharing/401(k) Plan (the Popular USA Plan),

(D) Popular Financial Holdings, Inc. Savings and Retirement Plan (the PFH Savings Plan) [1], and

(2) The holding of the Rights by the certain plans, described, above, in Section I(a)(1)(A) through (D) of this exemption, until the expiration of such Rights; provided that the conditions in Section II of this exemption, as set forth, below, are satisfied and

(b) The sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the U.S. Code), by reason of section 4975(c)(1)(A) through (E) shall not apply, effective November 23, 2005, to the acquisition of the Rights by certain plans, described, above, in Section I(a)(1)(C), and Section I(a)(1)(D) of this exemption; [2] provided

[1] The BPPR Savings Plan, the Popular PR Plan, the Popular USA Plan, and the PFH Savings Plan are referred to, herein, collectively, as the Participant Directed Plans.

[2] The Applicants represent that, because the fiduciaries for the BPPR Savings Plan, and the Popular PR Plan have not made an election under

Continued

that the conditions in Section II of this exemption, as set forth, below, are satisfied.

Section II: Conditions

The relief provided in this exemption is conditioned upon adherence to the material facts and representations described herein and as set forth in the application file and upon compliance with the conditions, as set forth in this exemption.

a. The receipt by each of the Participant Directed Plans of the Rights occurred in connection with the Offering made available by Popular on the same terms to all shareholders of the common stock of Popular (the Popular Stock);

b. The acquisition of the Rights by the Participant Directed Plans resulted from an independent act of Popular as a corporate entity, and all holders of the Rights, including the Participant Directed Plans, were treated in the same manner with respect to the acquisition of the Rights;

c. All shareholders of the Popular Stock, including the Participant Directed Plans received the same proportionate number of Rights based on the number of shares of Popular Stock held by such Participant Directed Plans;

d. The acquisition of the Rights by the Participant Directed Plans was made pursuant to provisions of each such plan for individually-directed investment of participant accounts (the Account(s));

e. All decisions regarding the Rights made by the Participant Directed Plans were made in accordance with the provisions of each such plan for individually-directed investment of participant Accounts, by the individual participants whose Accounts in each such plan received the Rights in connection with the Offering; and

f. Popular must refund to the Banco Popular de Puerto Rico Profit Sharing Plan and the Banco Popular de Puerto Rico Profit Restoration Plan (collectively, the P/S Plans), and to the Accounts of each of the participants in the Participant Directed Plans, the *pro rata* portion of a dealer manager/solicitation fee (the Fee) in the aggregate amount of $81,261.34. This Fee was received by Popular Securities, Inc., the co-dealer/manager of the Rights Offering, as a result of the exercise of the Rights by each such plan and by each such Account, and the payment by each such plan and each such Account of the subscription price of $21.00 per share for the Popular Stock. Furthermore, Popular must refund to each such plan and to each such Account an additional amount attributable to lost earnings experienced by each such plan and each such Account on the *pro rata* portion of such Fee, and interest on such lost earnings, for the period from December 19, 2005, to the date when Popular has refunded the *pro rata* portion of the Fee attributable to each such plan and each such Account, the lost earnings amount, plus interest on such lost earnings. For the purpose of calculating the lost earnings on the *pro rata* portion of the Fee attributable to each such plan and each such Account, plus interest, on such lost earnings, Popular will use the Online Calculator for the Voluntary Fiduciary Correction Program [3] that appears on the Web site of the Employee Benefits Security Administration.

Effective Date: This exemption is effective as of November 23, 2005, the date of the announcement of the Offering.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Exemption published on September 3, 2008, at 73 FR 51516.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number.)

BlackRock, Inc. (BlackRock), and the PNC Financial Services Group, Inc. (PNC) (Collectively, the Applicants) Located in New York, New York

[Prohibited Transaction No. 2008–16; Exemption Application No: D–11453]

Exemption

Section I—Covered Transactions

The restrictions of section 406 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 (F) of the Code, shall not apply to the purchase of certain securities (the Securities), as defined, below in Section IV(k), by an Asset Manager, as defined, below, in Section IV(f), from any person other than the Asset Manager or PNC/BlackRock Related Entities, as defined, below, in Section IV(c), during the existence of an underwriting or selling syndicate with respect to such Securities, where the Asset Manager purchases such Securities, as a fiduciary on behalf of an employee benefit plan or employee benefit plans (Client Plan(s)), as defined, below, in Section IV(h); or on behalf of Client Plans, and/or In-House Plans, as defined, below, in Section IV(o), which are invested in a pooled fund or in pooled funds (Pooled Fund(s)), as defined, below, in Section IV(i) under the following circumstances:

(a) Where a PNC/BlackRock Related Broker-Dealer, as defined, below, in Section IV(b), is a manager or member of such syndicate (an affiliated underwriter transaction (AUT)); or

(b) Where a PNC/BlackRock Related Broker-Dealer, as defined, below, in Section IV(b), is a manager or member of such syndicate and an Affiliated Servicer, as defined below in Section IV(p), serves as servicer of a trust that issued the Securities (whether or not debt securities) (an affiliated servicer transaction (AUT and AST); or

(c) Where an Affiliated Servicer serves as servicer of a trust that issued the Securities (whether or not debt securities) (AST).

This exemption applies to transactions, as described, above, in Section I(a) and (b) of this exemption only if the applicable conditions as set forth, below, in Section II, are satisfied. This exemption applies to the transaction, as described, above, in Section I(c) of this exemption, only if all of the conditions, as set forth, below, in Section III are satisfied.

Section II—Conditions for Transactions Described in Section I(a) and (b).

The exemption is conditioned upon satisfaction of the following requirements:(a)(1) The Securities to be purchased are either—

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a et seq.). If the Securities to be purchased are part of an issue that is exempt from such registration requirement, such Securities:

(A) Are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, (B) Are issued by a bank, (C) Are exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or

(D) Are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject

section 1022(i)(2) of the Act, whereby such plans would be treated as a trust created and organized in the United States for purposes of tax qualification under section 401(a) of the U.S. Code, that jurisdiction under Title II of the Act does not apply. Accordingly, the Department is not providing any relief for the prohibitions, as set forth in Title II of the Act, for the acquisition of the Rights by these plans.

[3] 70 FR 17516, April 6, 2005.

to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding twelve (12) months; or

(ii) Part of an issue that is an Eligible Rule 144A Offering, as defined in SEC Rule 10f–3 (17 CFR 270.10f 3(a)(4)). Where the Eligible Rule 144A Offering of the Securities is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) The Securities to be purchased are purchased prior to the end of the first day on which any sales are made, pursuant to that offering, at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities, except that—

(i) If such Securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such Securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable debt securities offered to the public subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the debt Securities being purchased; and

(3) The Securities to be purchased are offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the Securities being offered, except if—

(i) Such Securities are purchased by others pursuant to a rights offering; or

(ii) Such Securities are offered pursuant to an over-allotment option.

(b) The issuer of the Securities to be purchased pursuant to this exemption must have been in continuous operation for not less than three (3) years, including the operation of any predecessors, unless the Securities to be purchased—

(1) Are non-convertible debt securities rated in one of the four highest rating categories by Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings, Inc., DBRS Limited, DBRS, Inc., or any successors thereto (collectively, the Rating Organizations); provided that none of the Rating Organizations rates such securities in a category lower than the fourth highest rating category; or

(2) Are debt securities issued or fully guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(3) Are debt securities which are fully guaranteed by a person (the Guarantor) that has been in continuous operation for not less than three (3) years, including the operation of any predecessors, provided that such Guarantor has issued other securities registered under the 1933 Act; or if such Guarantor has issued other securities which are exempt from such registration requirement, such Guarantor has been in continuous operation for not less than three (3) years, including the operation of any predecessors, and such Guarantor:

(A) Is a bank, or

(B) Is an issuer of securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(C) Is an issuer of securities that are the subject of a distribution and are of a class which is required to be registered under section 12 of the 1934 Act (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such securities and that has filed all reports required to be filed hereunder with the SEC during the preceding twelve (12) months.

(c) The aggregate amount of Securities of an issue purchased, pursuant to this exemption, by the Asset Manager with: (i) The assets of all Client Plans; and (ii) The assets, calculated on a *pro rata* basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the Asset Manager; and (iii) the assets of plans to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3 21(c) does not exceed:

(1) 10 percent (10%) of the total amount of the Securities being offered in an issue, if such Securities are equity securities;

(2) 35 percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in one of the four highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(3) 25 percent (25%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the sixth highest rating category; and

(4) The assets of any single Client Plan (and the assets of any Client Plans and any In-House Plans investing in Pooled Funds) may not be used to purchase any Securities being offered, if such Securities are debt securities rated lower than the sixth highest rating category by any of the Rating Organizations;

(5) Notwithstanding the percentage of Securities of an issue permitted to be acquired, as set forth in Section II(c)(1), (2), and (3), above, of this exemption, the amount of Securities in any issue (whether equity or debt securities) purchased, pursuant to this exemption, by the Asset Manager on behalf of any single Client Plan, either individually or through investment, calculated on a *pro rata* basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Securities being offered in such issue, and;

(6) If purchased in an Eligible Rule 144A Offering, the total amount of the Securities being offered for purposes of determining the percentages, described, above, in Section II(c)(1)–(3) and (5), is the total of:

(i) The principal amount of the offering of such class of Securities sold by underwriters or members of the selling syndicate to ''qualified institutional buyers'' (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class of Securities in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan in purchasing any Securities which are the subject of this exemption, including any amounts paid by any Client Plan or In-House Plan in purchasing such Securities through a Pooled Fund, calculated on a *pro-rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan or In-House Plan prior to such transaction.

(e) The covered transactions are not part of an agreement, arrangement, or

understanding designed to benefit any PNC/BlackRock Related Entity.

(f) If the transaction is an AUT, no PNC/BlackRock Related Broker-Dealer receives, either directly, indirectly, or through designation, any selling concession, or other compensation or consideration that is based upon the amount of Securities purchased by any single Client Plan, or that is based on the amount of Securities purchased by Client Plans or In-House Plans through Pooled Funds, pursuant to this exemption. In this regard, a PNC/BlackRock Related Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designations generated by purchases of the Securities by the Asset Manager on behalf of any single Client Plan or any Client Plan or In-House Plan in Pooled Funds.

(g)(1) If the transaction is an AUT, the amount a PNC/BlackRock Related Broker Dealer receives in management, underwriting, or other compensation or consideration is not increased through an agreement, arrangement, or understanding for the purpose of compensating such PNC/BlackRock Related Broker-Dealer for foregoing any selling concessions for those Securities sold pursuant to this exemption. Except as described above, nothing in this Section II(g)(1) shall be construed as precluding a PNC/BlackRock Related Broker-Dealer from receiving management fees for serving as manager of an underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other compensation or consideration that is not based upon the amount of Securities purchased by the Asset Manager on behalf of any single Client Plan, or on behalf of any Client Plan or In-House Plan participating in Pooled Funds, pursuant to this exemption; and

(2) Each PNC/BlackRock Related Broker-Dealer shall provide to the Asset Manager a written certification, signed by an officer of such PNC/BlackRock Related Broker-Dealer, stating the amount that each such PNC/BlackRock Related Broker-Dealer received in compensation or consideration during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with Section II(e), (f), or (g) of this exemption.

(h) The covered transactions are performed under a written authorization executed in advance by an independent fiduciary of each single Client Plan (the Independent Fiduciary), as defined below, in Section IV(j).

(i) Prior to the execution by an Independent Fiduciary of a single Client Plan of the written authorization described above, in Section II(h), the following information and materials (which may be provided electronically) must be provided by the Asset Manager to such Independent Fiduciary:

(1) A copy of the Notice of Proposed Exemption (the Notice) and a copy of the final exemption (the Grant) as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously; and

(2) Any other reasonably available information regarding the covered transactions that such Independent Fiduciary requests the Asset Manager to provide.

(j) Subsequent to the initial authorization by an Independent Fiduciary of a single Client Plan permitting the Asset Manager to engage in the covered transactions on behalf of such single Client Plan, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary requests the Asset Manager to provide.

(k)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, unless the Asset Manager provides the written information, as described, below, and within the time period described, below, in this Section II(k)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund).

(2) The following information and materials, (which may be provided electronically) shall be provided by the Asset Manager not less than 45 days prior to such Asset Manager engaging in the covered transactions on behalf of a Pooled Fund, pursuant to this exemption; and provided further that the information described, below, in this Section II(k)(2)(i) and (iii) is supplied simultaneously:

(i) A notice of the intent of such Pooled Fund to purchase Securities pursuant to this exemption, a copy of this Notice, and a copy of the Grant, as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously;

(ii) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the Asset Manager to provide; and

(iii) A termination form expressly providing an election for the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that such plan (or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund for a period of no more than 30 days after such plan's (or such In-House Plan's) receipt of the initial notice of intent, described above, in Section II(k)(2)(i), and that the failure of the Independent Fiduciary of such plan (or fiduciary of such In-House Plan) to return the termination form to the Asset Manager in the case of a plan (or In-House Plan) participating in a Pooled Fund by the specified date shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in the covered transactions as an investor in such Pooled Fund.

Further, the instructions will identify the Asset Manager and the PNC/BlackRock Related Broker-Dealer and/or the Affiliated Servicer and will provide the address of the Asset Manager. The instructions will state that this exemption may be unavailable, unless the fiduciary of each plan participating in the covered transactions as an investor in a Pooled Fund is, in fact, independent of the PNC/BlackRock Related Entities. The instructions will also state that the fiduciary of each such plan must advise the Asset Manager, in writing, if it is not an ''Independent Fiduciary,'' as that term is defined below in Section IV(j).

For purposes of this Section II(k), the requirement that the fiduciary responsible for the decision to authorize the transactions described above, in Section I of this exemption for each plan be independent of the PNC/BlackRock Related Entities shall not apply in the case of an In-House Plan.

(l)(1) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this exemption to engage in the covered transactions, the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the

fiduciary of such In-House Plan, as the case may be), following the receipt by such Independent Fiduciary of such plan (or by the fiduciary of such In-House Plan, as the case may be) of the written information described above, in Section II(k)(2)(i) and (ii); provided that the Notice and the Grant, described above, in Section II(k)(2)(i) are provided simultaneously.

(2) For purposes of this Section II(l), the requirement that the fiduciary responsible for the decision to authorize the transactions described above, in Section I of this exemption for each plan proposing to invest in a Pooled Fund be independent of the PNC/BlackRock Related Entities shall not apply in the case of an In-House Plan.

(m) Subsequent to the initial authorization by an Independent Fiduciary of a plan (or by a fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary of such plan (or the fiduciary of such In-House Plan, as the case may be) requests the Asset Manager to provide.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the Asset Manager shall furnish:

(1) In the case of each single Client Plan that engages in the covered transactions, the information described below, in this Section II(n)(3)–(7), to the Independent Fiduciary of each such single Client Plan.

(2) In the case of each Pooled Fund in which a Client Plan (or in which an In-House Plan) invests, the information described, below, in this Section II(n)(3)–(6) and (8), to the Independent Fiduciary of each such Client Plan (and to the fiduciary of each such In-House Plan) invested in such Pooled Fund.

(3) A quarterly report (the Quarterly Report) (which may be provided electronically) which discloses all the Securities purchased pursuant to this exemption during the period to which such report relates on behalf of the Client Plan, In-House Plan, or Pooled Fund to which such report relates, and which discloses the terms of each of the transactions described in such report, including:

(i) The type of Securities (including the rating of any Securities which are debt securities) involved in each transaction;

(ii) The price at which the Securities were purchased in each transaction;

(iii) The first day on which any sale was made during the offering of the Securities;

(iv) The size of the issue of the Securities involved in each transaction;

(v) The number of Securities purchased by the Asset Manager for the Client Plan, In-House Plan, or Pooled Fund to which the transaction relates;

(vi) The identity of the underwriter from whom the Securities were purchased for each transaction;

(vii) The underwriting spread in each transaction (*i.e.*, the difference, between the price at which the underwriter purchases the securities from the issuer and the price at which the securities are sold to the public);

(viii) The price at which any of the Securities purchased during the period to which such report relates were sold;

(ix) The market value at the end of the period to which such report relates of the Securities purchased during such period and not sold; and

(x) In the case of an AST, the basis upon which the Affiliated Servicer is compensated;

(4) The Quarterly Report contains:

(i) A representation that the Asset Manager has received a written certification signed by an officer of each PNC/BlackRock Related Broker-Dealer, as described, above, in Section II(g)(2), affirming that, as to each AUT covered by this exemption during the past quarter, such PNC/BlackRock Related Broker-Dealer acted in compliance with Section II(e), (f), and (g) of this exemption. In the case of an AST, a representation of the Asset Manager affirming that, as to each AST, the transaction was not part of an arrangement or understanding designed to benefit the Affiliated Servicer; and

(ii) a representation that copies of such certifications will be provided upon request;

(5) A disclosure in the Quarterly Report that states that any other reasonably available information regarding a covered transaction that an Independent Fiduciary (or fiduciary of an In-House Plan) requests will be provided, including, but not limited to:

(i) The date on which the Securities were purchased on behalf of the Client Plan (or the In-House Plan) to which the disclosure relates (including Securities purchased by Pooled Funds in which such Client Plan (or such In-House Plan) invests;

(ii) The percentage of the offering purchased on behalf of all Client Plans (and the *pro-rata* percentage purchased on behalf of Client Plans and In-House Plans investing in Pooled Funds); and

(iii) The identity of all members of the underwriting syndicate;

(6) The Quarterly Report discloses any instance during the past quarter where the Asset Manager was precluded for any period of time from selling Securities purchased under this exemption in that quarter because of its relationship to a PNC/BlackRock Related Broker-Dealer or of an Affiliated Servicer and the reason for this restriction;

(7) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each single Client Plan that engages in the covered transactions that the authorization to engage in such covered transactions may be terminated, without penalty to such single Client Plan, within five (5) days after the date that the Independent Fiduciary of such single Client Plan informs the person identified in such notification that the authorization to engage in the covered transactions is terminated; and

(8) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each Client Plan (and to the fiduciary of each In-House Plan) that engages in the covered transactions through a Pooled Fund that the investment in such Pooled Fund may be terminated, without penalty to such Client Plan (or such In-House Plan), within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans, after the date that that the Independent Fiduciary of such Client Plan (or the fiduciary of such In-House Plan, as the case may be) informs the person identified in such notification that the investment in such Pooled Fund is terminated.

(o) For purposes of engaging in covered transactions, each Client Plan (and each In-House Plan) shall have total net assets with a value of at least $50 million (the $50 Million Net Asset Requirement). For purposes of engaging in covered transactions involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be) (the $100 Million Net Asset Requirement).

For purposes of a Pooled Fund engaging in covered transactions, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets with a value of at least $50 million. Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets with a value of at least $50 million, the $50

Million Net Asset Requirement will be met, if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which has total net assets with a value of at least $50 million.

For purposes of a Pooled Fund engaging in covered transactions involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be). Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or In-House Plan, as the case may be), the $100 Million Net Asset Requirement will be met if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be), and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset requirements described, above, in this Section II(o), where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 Million Net Asset Requirement (or in the case of an Eligible Rule 144A Offering, the $100 Million Net Asset Requirement) may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes in a single master trust.

(p) No more than 20 percent of the assets of a Pooled Fund, at the time of a covered transaction, are comprised of assets of In-House Plans for which the Asset Manager, a PNC/BlackRock Related Entity or the Affiliated Servicer exercises investment discretion.

(q) The Asset Manager and the PNC/BlackRock Related Broker Dealer, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons, described below, in Section II(r), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a plan which engages in the covered transactions, other than the Asset Manager, and the PNC/BlackRock Related Broker-Dealer or Affiliated Servicer, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by Section II(r); and

(2) A prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of the Asset Manager, or the PNC/BlackRock Related Broker Dealer, or the Affiliated Servicer, as applicable, such records are lost or destroyed prior to the end of the six year period. (r)(1) Except as provided below, in Section II(r)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in Section II(q) are unconditionally available at their customary location for examination during normal business hours by—

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

(ii) Any fiduciary of any plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in Section II(r)(1)(ii)—(iv) shall be authorized to examine trade secrets of the Asset Manager, or the PNC/BlackRock Related Broker-Dealer, or the Affiliated Servicer, or commercial or financial information which is privileged or confidential; and

(3) Should the Asset Manager, or the PNC/BlackRock Related Broker-Dealer or the Affiliated Servicer refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to Section II(r)(2), above, the Asset Manager shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section III—Conditions for Transactions Described in Section I(c)

The exemption is conditioned upon satisfaction of the following requirements:

(a) The Securities to be purchased are pass-through certificates or trust certificates that represents a beneficial ownership interest in the assets of an issuer which is a trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such trust and the corpus or assets of which consist solely of obligations that bear interest or are purchased at a discount and which are secured by commercial real property (including obligations secured by leasehold interests on commercial real property) that are rated in one of the four highest rating categories by the Rating Organizations; provided that none of the Rating Organizations rates such securities in a category lower than the fourth highest rating category (CMBS).

(b) The purchase of the CMBS meets the conditions of an applicable underwriter exemption (the Underwriter Exemption(s)). The Underwriter Exemptions are a group of individual exemptions granted by the Department to provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding, and disposition by plans of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The most recent amendment to the Underwriter Exemptions is PTE 2007–05, 72 FR 13130 (March 20, 2007), Technical Correction at 72 FR 16385 (April 4, 2007) (PTE 2007–05).

(c)(1) The aggregate amount of CMBS of an issue purchased, pursuant to this exemption, by the Asset Manager with:

(i) The assets of all Client Plans; and

(ii) The assets, calculated on a *pro rata* basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the Asset Manager; and

(iii) The assets of plans to which the Asset Manager renders investment advice within the meaning of 29 CFR § 2510.3–21(c) does not exceed 35 percent (35%) of the total amount of the CMBS being offered in an issue.

(2) Notwithstanding the percentage of CMBS of an issue permitted to be acquired, as set forth in Section III(c)(1) of this exemption, the amount of CMBS in any issue purchased, pursuant to this exemption, by the Asset Manager on behalf of any single Client Plan, either individually or through investment, calculated on a *pro rata* basis, in a

Pooled Fund may not exceed three percent (3%) of the total amount of such CMBS being offered in such issue, and;

(3) If purchased in an Eligible Rule 144A Offering, the total amount of the CMBS being offered for purposes of determining the percentages, described in this Section III(c), is the total of:

(i) The principal amount of the offering of such class of CMBS sold by underwriters or members of the selling syndicate to QIBs; plus

(ii) The principal amount of the offering of such class of CMBS in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan in purchasing any CMBS which are the subject of this exemption, including any amounts paid by any Client Plan or In-House Plan in purchasing such CMBS through a Pooled Fund, calculated on a *pro rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan or In-House Plan prior to such transaction.

(e) The covered transactions are not part of an agreement, arrangement, or understanding designed to benefit any PNC/BlackRock Related Entity.

(f) The covered transactions are performed under a written authorization executed in advance by an Independent Fiduciary of each single Client Plan, as defined, below, in Section IV(j).

The written authorization requirement of this paragraph shall be deemed satisfied with respect to the covered transactions involving ASTs if the Asset Manager provides to the Independent Fiduciary the materials described in Section III(g), below, together with a termination form expressly providing an election for the Independent Fiduciary to terminate the authorization with respect to the covered transactions and a statement to the effect that the Asset Manager proposes to engage in the covered transactions on a specified date (that shall be not less than 45 days after the notice is sent to the Independent Fiduciary) unless the Independent Fiduciary signs and returns the termination form to the Asset Manager prior to such date.

(g) The following information and materials (which may be provided electronically) must be provided by the Asset Manager to the Independent Fiduciary not less than 45 days prior to such Asset Manager engaging in the covered transactions pursuant to this exemption:

(1) A notice of the intent of the Asset Manager to purchase CMBS pursuant to Section I(c) of this exemption, a copy of the Notice, and a copy of the Grant, as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously;

(2) A notice describing the relationship of the Affiliated Servicer to the Asset Manager.

(3) The basis upon which the Affiliated Servicer is compensated and a representation by the Asset Manager affirming that, the transaction was not part of an agreement, arrangement, or understanding designed to benefit the Affiliated Servicer; and

(4) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests the Asset Manager to provide.

(h) Subsequent to the initial authorization by an Independent Fiduciary of a single Client Plan permitting the Asset Manager to engage in the covered transactions on behalf of such single Client Plan, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests the Asset Manager to provide.

(i)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to Section I(c) of this exemption, unless the Asset Manager provides the written information, as described, below, and within the time period described below, in this Section III(i)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund).

(2) The following information and materials, (which may be provided electronically) shall be provided by the Asset Manager not less than 45 days prior to such Asset Manager engaging in the covered transactions on behalf of a Pooled Fund, pursuant to this exemption; and provided further that the information described below, in this Section III(i)(2)(i) and (iii) is supplied simultaneously

(i) A notice of the intent of such Pooled Fund to purchase CMBS pursuant to this exemption, a copy of this Notice, and a copy of the Grant, as published in the **Federal Register**;

(ii) A notice describing the relationship of the Affiliated Servicer to the Asset Manager;

(iii) Information on the basis upon which the Affiliated Servicer is compensated and a representation by the Asset Manager affirming that, the transaction was not part of an agreement, arrangement, or understanding designed to benefit the Affiliated Servicer; and

(iv) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the Asset Manager to provide; and

(v) A termination form expressly providing an election for the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that such plan (or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund for a period of no more than 30 days after such plan's (or such In-House Plan's) receipt of the initial notice of intent, described above, in Section III(i)(2)(i), and that the failure of the Independent Fiduciary of such plan (or fiduciary of such In-House Plan) to return the termination form to the Asset Manager in the case of a plan (or In-House Plan) participating in a Pooled Fund by the specified date shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in the covered transactions as an investor in such Pooled Fund.

Further, the instructions will identify the Asset Manager and the Affiliated Servicer and will provide the address of the Asset Manager.

For purposes of this Section III(i), the requirement that the fiduciary responsible for the decision to authorize the transactions described above, in Section I(c) of this exemption for each plan be independent of the PNC/BlackRock Related Entities shall not apply in the case of an In-House Plan.

(j)(1) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this exemption to engage in the covered transactions, the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the fiduciary of such In-House Plan, as the

case may be), following the receipt by such Independent Fiduciary of the plan (or by the fiduciary of the In-House Plan, as the case may be) of the written information described above, in Section III(i)(2); provided that the Notice and the Grant, described above, in Section III(i)(2)(i) are provided simultaneously. The written authorization requirement of this paragraph shall be deemed satisfied with respect to the covered transactions involving ASTs if the Asset Manager provides to the Independent Fiduciary the materials described in Section III(i)(2) above, together with a termination form expressly providing an election for the Independent Fiduciary to terminate the authorization with respect to the covered transactions and a statement to the effect that the Asset Manager proposes to engage in the covered transactions on a specified date (that shall be not less than 45 days after the notice is sent to the Independent Fiduciary) unless the Independent Fiduciary signs and returns the termination form to the Asset Manager prior to such date.

(2) For purposes of this Section III(j), the requirement that the fiduciary responsible for the decision to authorize the transactions described above, in Section I(c) of this exemption for each plan proposing to invest in a Pooled Fund be independent of the PNC/BlackRock Related Entities shall not apply in the case of an In-House Plan.

(k) Subsequent to the initial authorization by an Independent Fiduciary of a plan (or by a fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary of such plan (or the fiduciary of such In-House Plan, as the case may be) requests the Asset Manager to provide.

(l) The requirements of Section II(o), (p) and (q) are met.

Section IV—Definitions

(a) The term, ''the Applicants,'' means BlackRock Inc. and The PNC Financial Services Group, Inc.

(b) The term, ''PNC/BlackRock Related Broker Dealer,'' means any broker dealer that is a PNC/BlackRock Related Entity that meets the requirements of this exemption. Such PNC/BlackRock Related Broker Dealer may participate in an underwriting or selling syndicate as a manager or member. The term, ''manager,'' means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the Securities, as defined, below, in Section IV(k), being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term, ''PNC/BlackRock Related Entity(s)'' includes all entities listed in this Section IV(c)(i) and (ii):

(i) PNC and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with PNC, and

(ii) BlackRock and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with, BlackRock. For purposes of this exemption, the definition of a PNC/BlackRock Related Entity shall include any entity that satisfies such definition in the future.

(d) The term, ''BlackRock Related Entity'' or ''BlackRock Related Entities,'' means BlackRock and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with BlackRock.

(e) The term, ''PNC Related Entity'' or ''PNC Related Entities,'' means PNC and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with PNC.

(f) The term, ''Asset Manager,'' means a BlackRock Related Entity, as defined, above, in Section IV(d) or a PNC Related Entity, as defined above, in Section IV(e). For purposes of this exemption, the Asset Manager must qualify as a ''qualified professional asset manager'' (QPAM), as that term is defined under section V(a) of PTE 84–14. In addition to satisfying the requirements for a QPAM under section V(a) of PTE 84–14, (49 Fed. Reg. 9494 (Mar. 13, 1984), as amended, 70 Fed. Reg. 49305 (Aug. 23, 2005)), the Asset Manager must also have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million

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

(h) The term, ''Client Plan(s),'' means an employee benefit plan or employee benefit plans that are subject to the Act and/or the Code, and for which plan(s) an Asset Manager exercises discretionary authority or discretionary control respecting management or disposition of some or all of the assets of such plan(s), but excludes In-House Plans, as defined, below, in Section IV(o).

(i) The term, ''Pooled Fund(s),'' means a common or collective trust fund(s) or a pooled investment fund(s):

(1) in which employee benefit plan(s) subject to the Act and/or Code invest,

(2) which is maintained by an Asset Manager, and

(3) for which such Asset Manager exercises discretionary authority or discretionary control respecting the management or disposition of the assets of such fund(s).

(j)(1) The term, ''Independent Fiduciary,'' means a fiduciary of a plan who is unrelated to, and independent of any PNC/BlackRock Related Entity. For purposes of this exemption, a fiduciary of a plan will be deemed to be unrelated to, and independent of any PNC/BlackRock Related Entity, if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for the transactions described, above, in Section I of this exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of any PNC/BlackRock Related Entity, and represents that such fiduciary shall advise the Asset Manager within a reasonable period of time after any change in such facts occur.

(2) Notwithstanding anything to the contrary in this Section IV(j), a fiduciary of a plan is not independent:

(i) If such fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with any PNC/BlackRock Related Entity;

(ii) If such fiduciary directly or indirectly receives any compensation or other consideration from any PNC/BlackRock Related Entity for his or her own personal account in connection with any transaction described in this exemption;

(iii) If any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager responsible for the transactions described, above, in Section I of this exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the sponsor of a plan or of the fiduciary responsible for the decision to authorize or terminate authorization for the transactions described, above, in

Section I. However, if such individual is a director of the sponsor of a plan or of the responsible fiduciary, and if he or she abstains from participation in: (A) the choice of such plan's investment manager/adviser; and (B) the decision to authorize or terminate authorization for transactions described, above, in Section I, then Section IV(j)(2)(iii) shall not apply.

(3) The term, ''officer,'' means a president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), or any other officer who performs a policy-making function for a PNC/BlackRock Related Entity.

(k) The term, ''Securities,'' shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a 2(36)(1996)). For purposes of this exemption, mortgage-backed or other asset backed securities rated by one of the Rating Organizations, as defined, below, in Section IV(n), will be treated as debt securities.

(l) The term, ''Eligible Rule 144A Offering,'' shall have the same meaning as defined in SEC Rule 10f-3(a)(4) (17 CFR 270.10f-3(a)(4)) under the 1940 Act).

(m) The term, ''qualified institutional buyer,'' or the term, ''QIB,'' shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(n) The term, ''Rating Organizations,'' means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings Inc., DBRS Limited, or DBRS, Inc., or any successors thereto.

(o) The term, ''In-House Plan(s),'' means an employee benefit plan(s) that is subject to the Act and/or the Code, and that is sponsored by:

(1) a PNC Related Entity, as defined, above, in Section IV(e), or

(2) a BlackRock Related Entity, as defined, above, in Section IV(d), for their respective employees.

(p) The term ''Affiliated Servicer'' means a PNC/BlackRock Related Entity that serves as a servicer of one or more of the commercial mortgage loans in a Pooled Fund that issues commercial mortgage-backed securities.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications 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.

Effective Date: This exemption is effective as of the date it is published in the **Federal Register**.

Written Comments

In the Notice, the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on October 10, 2008. All comments and requests for a hearing were due by November 24, 2008. During the comment period, the Department received no requests for a hearing. However, in an e-mail dated November 24, 2008, the Department did receive a comment from the Applicants. Specifically, the Applicants seek to correct certain typographical errors found in the operant language of the Notice and to clarify the description of a term found in footnote 1 of the Summary of Facts and Representations (SFR). The Applicants' comments are discussed in the numbered paragraphs below.

1. Section II(n)(4)(i), as set forth in the Notice, at 73 FR 60334, column 3, lines 40–45, reads as follows, ''In the case of an AST, a representation of the asset Manager affirming that, as to each AST, the transaction was not part of an arrangement or understanding designed to benefit the Affiliated Servicer.'' The Applicants have informed the Department that the word, ''asset,'' should have been capitalized in the term, ''Asset Manager.'' The Department has made the requested change to Section II(n)(4)(i) in the final exemption.

2. Section IV(a), as set forth in the Notice, at 73 FR 60337, column 2, line 62, reads as follows: ''The term, 'the Applicants,' means BlackRock Inc. and the PNC Financial Services Group, Inc.'' The Applicants have informed the Department that the word, ''the,'' before PNC Financial Services Group, Inc. should have been capitalized. The correct name is The PNC Financial Services Group, Inc. The Department has made the requested change to Section IV(a) in the final exemption.

3. Footnote 1 in the SFR, as set forth in the Notice, at 73 FR 60327, column 2, reads as follows:

> Commercial mortgage-backed securities are non-convertible debt securities, pass-through certificates or trust certificates that represent a beneficial ownership interest in the assets of an issuer which is a trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such trust and the corpus or assets of which consist solely of obligations that bear interest or are purchased at a discount and which are secured by commercial real property including obligations secured by leasehold interests on commercial real property that are rated in one of the four highest rating categories by the Rating Organizations (such CMBS are described as ''investment grade'').

The Applicants point out that the language of footnote 1, as set forth in the Notice, can be read to imply that the term, commercial mortgage-backed securities or CMBS includes only securities with investment-grade ratings. Alternatively, the passage can be read to imply that the ''obligations'' (*i.e.*, the collateral of the trust rather than the securities issued by the trust) receive the ratings. Accordingly, the Applicants request an amendment to the language of footnote 1, as set forth in the SFR. The Applicants requested changes are indicated by the underlined phrases, as set forth below:

> Commercial mortgage-backed securities are non-convertible debt securities, pass-through certificates or trust certificates that represent a beneficial ownership interest in the assets of an issuer which is a trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such trust and the corpus or assets of which consist solely of obligations that bear interest or are purchased at a discount and which are secured by commercial real property including obligations secured by leasehold interests on commercial real property. *CMBS* that are rated in one of the four highest rating categories by the Rating Organizations (such CMBS are described as ''investment grade'') *may be acquired under the terms of this proposed exemption, provided that certain conditions are met.*

The Department concurs that the Applicants' requested amendment of footnote 1 clarifies the language of the footnote.

Accordingly, after giving full consideration to the entire record, including the written comment received, the Department has decided to grant the exemption, as described and clarified, above. In this regard, the comment submitted by the Applicants to the Department have been included as part of the public record of the exemption application. The complete application file, including the comment received by the Department, is made available for public inspection in the Public Documents Room of the Employee Benefit Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this

exemption refer to the Notice of Proposed Exemption published on October 10, 2008, at 73 FR 60325.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (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 18th day of December 2008.

Ivan Strasfeld,

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

[FR Doc. E8–30512 Filed 12–22–08; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11341]

Notice of Proposed Individual Exemption To Replace Prohibited Transaction Exemption (PTE) 2000–45, Involving Citigroup Global Markets Inc. (CGMI), Formerly Salomon Smith Barney Inc. (Salomon Smith Barney), Located in New York, NY

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

ACTION: Notice of proposed individual exemption to modify PTE 2000–45.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption which, if granted, would replace PTE 2000–45 (65 FR 54315, September 7, 2000). On December 1, 2005, PTE 2000–45 became ineffective due to a material change in the exemption.

PTE 2000–45 related to the operation of the TRAK Personalized Investment Advisory Service (the TRAK Program) and the Trust for Consulting Group Capital Markets Funds (the Trust). If granted, the new exemption would affect participants and beneficiaries of and fiduciaries with respect to employee benefit plans (the Plans) participating in the TRAK Program.

DATES: *Effective Dates:* If granted, this proposed exemption will be effective: (1) From December 1, 2005 until March 10, 2006 with respect to the limited exception described in Section IV; (2) as of December 1, 2005 with respect to the Covered Transactions, the General Conditions and the Definitions described in Sections I, II and III; and (3) as of January 1, 2008 with respect to the new fee offset procedure.

DATES: Written comments and requests for a public hearing should be received by the Department on or before February 23, 2009.

ADDRESSES: All written comments and requests for a public hearing (preferably, three copies) should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210, Attention: Application No. D–11341. Interested persons are also invited to submit comments and/or hearing requests to the Department by facsimile to (202) 219–0204 or by electronic mail to *Vaughan.Anna@dol.gov* by the end of the scheduled comment period. The application pertaining to the proposed exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mrs. Anna Vaughan, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8565. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption that would replace PTE 2000–45. PTE 2000–45 provided an exemption from certain prohibited transaction restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act or ERISA) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1)(A) through (D) of the Code, for the purchase or redemption of shares in the Trust by an employee benefit plan, an individual retirement account, a retirement plan for a self-employed individual, or an individual account pension plan that is subject to the provisions of Title I of the Act and established under section 403(b) of the Code (the Section 403(b) Plan; collectively, the Plans) in connection with such Plans' participation in the TRAK Program.

PTE 2000–45 also provided exemptive relief from the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, with respect to the provision, by the Consulting Group of Salomon Smith Barney (the Consulting Group), of (1) investment advisory services or (2) an automatic reallocation option to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary), which may result in such fiduciary's selection of a portfolio (the Portfolio) in the TRAK Program for the investment of Plan assets.[1]

[1] PTE 2000–45 superseded PTE 99–15 (64 FR 1648, April 5, 1999), PTE 94–50 (59 FR 32024, June 21, 1994) and PTE 92–77 (57 FR 45833, October 5, 1992).

PTE 99–15 allowed Salomon Smith Barney to create a broader distribution of TRAK-related products, adopt an automated recordkeeping reimbursement offset procedure under the TRAK Program, adopt an automated reallocation option under the TRAK Program that would reduce the