telephone (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by September 8 at the address indicated.

Signed at Washington, DC this 24th day of August 2009.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E9–20794 Filed 8–27–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Notice of a Proposed Amendment to Prohibited Transaction Exemption (PTE) 96–22, 61 FR 14828 (April 3, 1996), as Amended by PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (November 13, 2000), PTE 2002–41, 67 FR 54487 (August 22, 2002) and PTE 2007–05, 72 FR 13130 (March 20, 2007) as Corrected at 72 FR 16385 (April 4, 2007) (PTE 2007–05), (PTE 96–22), Involving the Wachovia Corporation and Its Affiliates (Wachovia), the Successor of First Union Corporation and PTE 2002–19, 67 FR 14979 (March 28, 2002), as Amended by PTE 2007–05 (PTE 2002–19), Involving J.P. Morgan Chase & Company and Its Affiliates (D–11530)

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of a Proposed Amendment to PTE 96–22 and PTE 2002–19.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 96–22 and PTE 2002–19, Underwriter Exemptions.[1] The Underwriter Exemptions are individual exemptions that provide relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (Plans) of certain asset-backed pass-through certificates representing undivided interests in those investment trusts. The proposed amendment to PTE 96–22 and PTE 2002–19, if granted, would provide a six-month period to resolve certain affiliations, as a result of the Wells Fargo & Company (WFC) acquisition of Wachovia, between Wells Fargo Bank, N.A. (Wells Fargo) the Trustee, and Wachovia as members of the Restricted Group, as those terms are defined in the Underwriter Exemptions (the Proposed Amendment). The Proposed Amendment, if granted, would affect the participants and beneficiaries of the Plans participating in such transactions and the fiduciaries with respect to such Plans.

DATE: Written comments and requests for a hearing should be received by the Department by September 28, 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: Exemption Application Number D–11530). Interested persons are invited to submit comments and/or hearing requests to the Department by the end of the scheduled comment period either by facsimile to (202) 219–0204 or by electronic mail to *moffitt.betty@dol.gov.* The application pertaining to the Proposed Amendment (Application) 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: Wendy M. McColough of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document contains a notice of pendency before the Department of a proposed exemption to amend PTE 96–22 and PTE 2002–19, Underwriter Exemptions. The Underwriter Exemptions are a group of individual exemptions granted by the Department that provide substantially identical relief from certain of the restrictions of sections 406 and 407 of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by sections 4975(a) and (b) of the Internal Revenue Code of 1986, as amended (Code), by reason of certain provisions of section 4975(c)(1) of the Code for the 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.

All of the Underwriter Exemptions were amended by PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (November 13, 2000), and PTE 2007–05, 72 FR 13130 (March 20, 2007), as corrected at 72 FR 16385 (April 4, 2007). Certain of the Underwriter Exemptions were amended by PTE 2002–41, 67 FR 54487 (August 22, 2002) or modified by PTE 2002–19.

The Department is proposing this amendment to PTE 96–22 and PTE 2002–19 pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[2]

1. The Underwriter Exemptions permit Plans to invest in pass-through securities representing undivided interests in asset-backed or mortgage-backed investment pools (Securities). The Securities generally take the form of certificates issued by a trust (Trust). The Underwriter Exemptions permit transactions involving a Trust, including the servicing, management and operation of the Trust, and the sale, exchange or transfer of Securities evidencing interests therein, in the initial issuance of the Securities or in the secondary market for such Securities (the Covered Transactions). The most recent amendment to the Underwriter Exemptions is PTE 2007–05, 72 FR 13130 (March 20, 2007), as corrected at 72 FR 16385 (April 4, 2007) (PTE 2007–05). One of the General Conditions of the Underwriter Exemptions, as amended, requires that the Trustee not be an ''Affiliate'' of any member of the ''Restricted Group'' other than an ''Underwriter.'' PTE 2007–05, subsection II.A.(4). The term ''Restricted Group'' is defined under section III.M. as: (1) Each Underwriter; (2) Each Insurer; (3) The Sponsor; (4) The Trustee; (5) Each Servicer; (6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer; (7) Each counterparty in an Eligible Swap Agreement; or (8) Any Affiliate of a person described in subsections III.M.(1)–(7).'' The term ''Servicer'' is defined to include ''the Master Servicer and any Subservicer.'' PTE 2007–05,

[1] The ''Underwriter Exemptions'' are a group of individual exemptions that provide substantially identical relief for the operation of certain asset-backed or mortgage-backed investment pools and the acquisition and holding by Plans of certain securities representing interests in those investment pools.

[2] Section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 [1996]) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

section III.G. The term ''Affiliate'' is defined, in part, to include ''(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (2) Any officer, director, partner, employee * * * of such other person; and (3) Any corporation or partnership of which such other person is an officer, director or partner.'' PTE 2007–05, section III.N.

2. On April 3, 1996, PTE 96–22 was granted to First Union Corporation (First Union). On September 1, 2001, Wachovia merged into First Union, with First Union being the surviving entity in the merger. Simultaneously with this stock-for-stock merger, First Union changed its name to Wachovia Corporation (Wachovia). As a result of the merger, Wachovia, formerly known as First Union, became owned by the shareholders of both First Union and the former Wachovia, with the shareholders of First Union owning the majority of the outstanding shares. Prior to its acquisition by WFC, Wachovia was a diversified financial services company that provided a broad range of retail banking and brokerage, asset and wealth management, and corporate and investment banking products and services. Wachovia was one of the largest providers of financial services in the United States, with retail and commercial banking operations in 21 states from Connecticut to Florida and west to Texas and California, and nationwide retail brokerage, mortgage lending and auto finance businesses. Its retail brokerage operations, under the Wachovia Securities brand name, managed client assets through offices nationwide. Globally, Wachovia served clients in selected corporate and institutional sectors and through more than 40 international offices. WFC acquired Wachovia on December 31, 2008 and the successor continues to engage in the same broad range of activities conducted previously by Wachovia.

3. The Applicant is Wells Fargo (the Applicant), the national banking subsidiary of WFC. The Applicant is the Trustee of each of the commercial mortgage-backed securitizations in the Covered Transactions. The Proposed Amendment was requested by application dated December 31, 2008, and as updated by Wells Fargo (the Application). The Applicant states that on December 31, 2008 (the Acquisition Date), WFC acquired Wachovia (the Acquisition). Wachovia is a holding company that, through its subsidiaries, provides broker-dealer, investment banking, financing, wealth management, advisory, insurance, lending and related products and services on a global basis. Wachovia is a ''Consolidated Supervised Entity,'' [3] and is subject to group-wide supervision by the Securities and Exchange Commission (SEC). On March 4, 2009, the Applicant explained that Wachovia is the ultimate parent of all of its subsidiaries, and was (prior to its acquisition by WFC) a publicly traded holding company. Among the direct subsidiaries of Wachovia, each 100% owned by Wachovia, are Wachovia Bank, N.A., Wachovia Capital Markets, LLC, Wachovia Securities, Inc., First Union National Bank, First Union Capital Markets and First Union Securities, Inc.

For the Covered Transactions that are the subject of the Applicant's request, First Union National Bank is the Sponsor of 4 transactions and Wachovia Bank, N.A. is the Sponsor of 35 transactions.

4. The Acquisition caused certain transactions previously subject to PTE 96–22 or PTE 2002–19 to fail to satisfy the requirement under the Underwriter Exemptions that the Trustee not be an Affiliate of any member of the Restricted Group other than an Underwriter. PTE 2007–05 subsection II.A.(4). Currently, for transactions where Wachovia is the Servicer, a six-month period is provided by the Underwriter Exemptions to sever the affiliation between the Servicer and the Trustee if the affiliation occurred after the initial issuance of the Securities. PTE 2007–05, subsection II.A.(4)(b).[4] However, there is currently no transitional relief under PTE 96–22 where Wachovia is a Sponsor, Underwriter or a Swap Counterparty and Wells Fargo is the Trustee. Accordingly, Wells Fargo seeks a temporary amendment to PTE 96–22 to provide for a six-month period for resolution of certain prohibited affiliations caused by the Acquisition of Wachovia by WFC, the parent of the Trustee.

In addition, the Applicant requests that the amendment provide similar relief for one other Covered Transaction which is subject to PTE 2002–19. The specified Covered Transaction is the J.P. Morgan Chase Commercial Mortgage Securities Corp., Series 2002–C1 (Series 2002–C1), where Wells Fargo is Trustee and Wachovia is the Sponsor and Master Servicer. In this transaction, one of the Underwriters is Wachovia Securities but PTE 96–22 was not relied on in the relevant disclosure documents. The other Underwriter in Series 2002–C1 is J.P. Morgan Securities Inc., which is unrelated to Wells Fargo, and relies upon PTE 2002–19, granted to J.P. Morgan Chase & Co. and its affiliates. The Applicant provides that J.P. Morgan Securities Inc. is the principal nonbank subsidiary of JP Morgan Chase & Co. (previously, J.P. Morgan Chase & Co.). JP Morgan Chase Commercial Mortgage Securities Corp. is 100% owned by JPMorgan Chase Bank, N.A., which in turn, is 100% owned by JPMorgan Chase & Co. J.P. Morgan Securities Inc. and J.P. Morgan Chase Commercial Mortgage Securities Corp. are ''sister'' companies, with JPMorgan Chase & Co. as the common parent. JPMorgan Chase & Co. has confirmed to the Applicant that it has been notified of the application for the Proposed Amendment and has agreed to coverage under the Proposed Amendment.

Wells Fargo represents that it has placed a notice on its Web pages for each of the Covered Transactions affected by the Acquisition and that this notice would be updated upon publication of the Proposed Amendment, and if granted, the final amendment. Further, the Web pages will note the appointment of any co-trustee and the appointment of the replacement trustee. The Applicant states that Wells Fargo, in its role of Trustee, will bear the cost of appointing such co-trustee and that there will be no financial impact on any Underwriter.

5. Wells Fargo represents that the Covered Transactions affected by the Acquisition consist of 39 commercial mortgage-backed securitizations (CMBS) (Securitizations) as detailed at section III.KK. or Section III.LL. of PTE 2002–19 of the Proposed Amendment (the Securitization List). Wells Fargo states that 38 of the Securitizations were structured and are managed to meet the requirements of PTE 96–22 and Series 2002–C1 was structured and managed to meet the requirements of PTE 2002–19,

[3] Effective August 2004, the Securities and Exchange Commission (SEC) adopted rule amendments that established a voluntary, alternative method for computing net capital for certain broker-dealers. As a condition to its use of the alternative method, a broker-dealer's ultimate holding company and affiliates (referred to collectively as a consolidated supervised entity or CSE) must consent to group-wide SEC supervision. These rules, among other things, respond to international developments. Specifically, affiliates of certain U.S. broker-dealers that conduct business in the European Union (EU) have stated that they must demonstrate that they are subject to consolidated supervision at the ultimate holding company level that is ''equivalent'' to EU consolidated supervision. SEC supervision incorporated into these rule amendments addresses this standard. These amendments and the SEC's program for consolidated supervision of broker-dealers and affiliates will minimize duplicative regulatory burdens on firms that are active in the EU, as well as in other jurisdictions that may have similar laws.

[4] *But see,* below at Paragraph 10., the Department's discussion on the ''Split Loan'' Transactions.

in each case as amended by PTE 2007–05. Wells Fargo is the Trustee in each of the Securitizations. The Applicant represents that, in its role as Trustee, Wells Fargo is obligated under both the operative documents that securitize the loans, and under state law relating to fiduciaries, to protect the interests of security holders. Specifically, the Trustee is required to enforce the rights of security holders against other parties to the transaction, including Servicers, Swap Counterparties and loan sellers. The Applicant notes further that in practice, due to industry standards and reputation concerns by the various parties, little such protection or enforcement is necessary, and the Trustee's role, while vigilant, is relatively passive. Wachovia is a party to each of the Securitizations in the capacity or capacities detailed in the Securitizations List. The Applicant states that, in any of these capacities, Wachovia is obligated, under the operative documents of the transaction, to perform its designated duties under contractual and, in some cases, industry standards for the benefit of security holders. The Applicant represents that each of the Pooling and Servicing Agreements has been structured to comply with PTE 96–22 or in the case of Series 2002–C1, PTE 2002–19, and that each of the Trusts has been managed in accordance with the related Pooling and Servicing Agreement. Consequently, Securities issued by each Trust currently are eligible for purchase by Plans that meet the requirements of PTE 96–22 or in the case of Series 2002–C1, PTE 2002–19.

6. The Applicant states that none of the Trusts were formed or marketed with the knowledge that Wells Fargo and Wachovia would become affiliated. In this regard, the Applicant notes that there are no securitizations on the Securitization List that closed later than 2007; the Acquisition was announced in the third quarter of 2008. The Applicant states that, in general, the Pooling and Servicing Agreements governing the applicable Securitizations permit the cures detailed in their Application by contemplating a Trustee's resignation and replacement so as to comply with applicable law and providing the Trustee the ability to appoint co-trustees and other agents authorized to carry out the Trustees' duties. The Applicant notes that the agreements do not provide specific qualifications for co-trustees. While the agreements vary in the detail, after due diligence, the Applicant asserts that it is not aware of any provisions of the agreements or SEC requirements that preclude the cures detailed in the Application.

7. Wells Fargo represented in its Application that, during the proposed six month resolution period, for each Securitization on the Securitization List, the Trustee shall appoint a co-trustee, which is not an Affiliate of Wells Fargo, no later than the earlier of (a) March 31, 2009 or (b) five business days after Wells Fargo, the Trustee, has become aware of a conflict between the Trustee and any member of the Restricted Group that is an Affiliate of the Trustee. The co-trustee would be solely responsible for resolving such conflict between the Trustee and any member of the Restricted Group that has become an Affiliate of the Trustee as a result of the Acquisition; provided that if the Trustee has resigned on or prior to March 31, 2009, and no event described in clause (b) has occurred, no co-trustee shall be required since a replacement trustee would be in place by March 31, 2009. Wells Fargo represented that as Trustee, Wells Fargo would appoint a co-trustee with the knowledge and skill necessary to resolve any conflict arising between Wells Fargo and any Wells Fargo affiliated member of the Restricted Group. In the event that a co-trustee were appointed, such co-trustee would assume Wells Fargo's role under the related Pooling and Servicing Agreement (solely with respect to any conflict between Wells Fargo and a Wells Fargo affiliate that is a member of the Restricted Group) until a replacement trustee replaced Wells Fargo.

For purposes of this Proposed Amendment, a conflict would arise whenever (a) Wachovia is a member of the Restricted Group and fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Wells Fargo, as Trustee, or (b) Wells Fargo, as Trustee, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Wachovia, a member of the Restricted Group. The time as of which a conflict occurs is the earlier of the day immediately following the last day on which compliance is required under the relevant Pooling and Servicing Agreement; or the day on which a party affirmatively responds that it will not comply with a request for performance.

Additionally, for purposes of this Proposed Amendment, the term conflict includes but is not limited to, the following: (1) Wachovia's failure, as Sponsor, to repurchase a loan for breach of representation within the time period prescribed in the relevant Pooling and Servicing Agreement, following Wells Fargo's request, as Trustee, for performance; (2) Wachovia, as Sponsor, notifies Wells Fargo, as Trustee, that it will not repurchase a loan for breach of representation, following Wells Fargo's request that Wachovia repurchase such loan within the time period prescribed in the relevant Pooling and Servicing Agreement (the notification occurs prior to the expiration of the prescribed time period for the repurchase); and (3) Wachovia, as Swap Counterparty, makes or requests a payment based on a value of LIBOR [5] that Wells Fargo, as Trustee, considers erroneous.

8. The Applicant stated that it intended to complete the negotiations and paperwork on an ongoing basis, with the effective date for all changes to be March 31, 2009. The Applicant noted that in contrast to co-trustees, any replacement trustee would have to meet the requirements of the related Trust agreement for qualification as a Trustee (*i.e.,* would meet the same requirements that Wells Fargo had to meet). A copy of a typical Pooling and Servicing Agreement requirements for a Trustee was provided to the Department. The Applicant further noted that if a conflict were to arise prior to March 31, 2009, with respect to any Trust, the most likely course would be that Wells Fargo would promptly resign as Trustee and the replacement trustee would assume its role earlier than scheduled. The next most likely scenario is that the party that would become the replacement trustee (and hence meets the requirements of the related Pooling and Servicing Agreement for qualification as a Trustee) would be appointed co-trustee under the terms of the Proposed Amendment. The Applicant stated, however, there might be situations where either such course of action would be impossible or impractical, in which case the parties would have to appoint a different co-trustee until the replacement trustee assumed its role.

The Applicant stated that in certain cases, Wells Fargo would continue as a securities administrator, retaining certain reporting requirements but be responsible to the replacement trustee. The replacement trustee would have legal title to the assets of the trust, would have fiduciary responsibility to the securities holders and would be responsible for supervising Wells Fargo in whatever role it retains. Wells Fargo stated that it would notify the Department of Labor of any conflict that arose prior to the replacement of Wells

[5] The London Interbank Offered Rate.

Fargo as Trustee in any of the Covered Transactions. The Applicant noted that, as a technical matter, in the most likely case (*e.g.* the assertion of a breach of representation or warranty by the Sponsor), the Pooling and Servicing Agreements all require that the Trustee provide the offending party 90 days to cure the issue before the Trustee may take any action to do so itself. Consequently, if an issue arose after December 31, 2009, the Trustee would not have been able to take any action to cure the issue until after March 31, 2009. The Applicant asserts that since it was expected that the Trustee replacements would be made by March 31, 2009, it was not anticipated that a conflict would arise while Wells Fargo was the Trustee of any of the Covered Transactions.

9. On June 3, 2009, the Applicant informed the Department that Wells Fargo is resigning as Trustee from a total of 115 transactions (this number includes transactions where the conflict is not ERISA-related and the transaction is not on the Securitization List). Wells Fargo resigned from 15 of these transactions on December 31, 2008, resigned from 41 of these transactions by March 31, 2009, and will resign from the remaining 59 no later than June 30, 2009. Of the 15 transactions Wells Fargo resigned from on December 31, 2008, it resigned from 7 solely for ERISA purposes and 8 solely for securities law purposes. As of March 31, 2009, 56 transactions had received replacement trustees. The Applicant represented that the replacement trustees for the remaining transactions were currently being negotiated. On May 7, 2009, the Applicant informed the Department that for all 39 of the Covered Transactions on the Securitization List, the replacement trustees were in place as of March 31, 2009. Bank of America, N.A. will be the replacement trustee for 23 of the Covered Transactions and U.S. Bank National Association will be the replacement trustee for the remaining 16 Covered Transactions. The Applicant has further indicated that there were no actual conflicts from the date that the affiliation arose, December 31, 2009, through March 31, 2009. Thus, no co-trustee had to be appointed during that period. The Applicant noted that in cases where the Trustee is also the securities administrator, Wells Fargo will resign as Trustee and remain securities administrator.

10. The Applicant represents that in the financial services industry, large commercial mortgage loans may be securitized by splitting such loans into two or more *pari passu* portions and including each portion in a different securitization (Split Loan Transaction). This is a risk management technique that prevents the loan from representing too large a portion of a single securitization. From the borrower's perspective, the loan remains a single debt instrument and, consequently, the loan is serviced as such.

Servicing of the loan is the responsibility of the parties to the first securitization to close, with the other lenders (whether or not such lenders are themselves securitization vehicles) agreeing to a passive role. This arrangement is memorialized in an intercreditor agreement,[6] which describes the rights and responsibilities of the parties to such agreement (Intercreditor Agreement). In many cases, the securitizations to which the other notes are to be contributed have not been determined as of the date of the Intercreditor Agreement.

In a commercial mortgage securitization transaction, the Servicer is the entity that carries out the day-to-day collection and enforcement of the receivables which back the securities issued in a transaction. The two primary types of Servicers are the Master Servicer, which is generally the lead servicer for the transaction for performing assets, and the ''Special Servicer'', which is generally appointed to service non-performing assets such as defaulted loans and real estate owned (REO) properties.[7] The Applicant notes that the term ''Primary Servicer'' is synonymous with Subservicer, and refers to the servicer who is actually responsible for collection of the mortgage payments with respect to a property. The Primary Servicer is responsible to the Master Servicer for the transaction; the details of the relationship are described in a servicing agreement between the Primary Servicer and the Master Servicer.

The Applicant states that the trigger for transferring the servicing from the Master Servicer to the Special Servicer is a ''Servicing Transfer Event'' (which generally include the uncured failure (or expected failure) of the mortgagor to make payments when due; non-monetary defaults that would materially impair the value of the mortgaged property as security for the loan; bankruptcy, insolvency or similar proceeding by the mortgagor; admission by the mortgagor of its inability to pay its debts; and commencement of foreclosure or similar proceedings with respect to the related mortgaged property).[8] Although the first and foremost difference between a Special Servicer and a Master Servicer is in terms of the assets each one services (*i.e.,* the Master Servicer with respect to performing assets and the Special Servicer with respect to non-performing assets), the Special Servicer is also involved in the servicing of performing assets with respect to certain ''Special Actions'' discussed below.

Upon the occurrence of a Servicing Transfer Event with respect to an asset, the Master Servicer transfers the servicing files for such asset to the Special Servicer and the Special Servicer takes over the primary servicing for such asset (including, but not limited to, collection of payments from the mortgagor, maintenance of insurance, enforcement of alienation clauses, inspections, reports and record keeping) from the Master Servicer. In addition, due to the nature of non-performing assets, the Special Servicer's primary task is to resolve the asset, *i.e.,* either to return the loan to performing status by negotiating a workout with the mortgagor or to realize value from such non-performing asset by undertaking court action and enforcement procedures including, but not limited to, liquidation of the asset through foreclosure and sale of the asset or conversion of the asset into an REO property.

Due to the nature of non-performing assets, the Special Servicer also has additional servicing responsibilities with respect to such non-performing assets such as the production of asset status reports and approval of modifications, waivers, amendments and consents with respect to non-performing assets. While the Special Servicer is generally engaged to service the non-performing assets, in certain instances set forth in the securitization documents, the Special Servicer also

[6] The Applicant has provided the Department with a redacted intercreditor agreement, each of two public offering documents and each of two pooling and servicing agreements used in a typical loan splitting transaction. Because the two notes comprising the loan subject to this intercreditor agreement were securitized in publicly offered securitization transactions, the offering documents and pooling and servicing agreements for such securitizations were filed with the SEC and are public documents. The Applicant notes that the intercreditor agreement itself is not a public document (although the material features of the intercreditor agreement are described in the offering documents for the two securitizations).

[7] The Applicant defines REO property as real property that has been acquired by a securitization trust via foreclosure or by deed in lieu of foreclosure. Tax law requires that such REO property be disposed of by the trust within a specified time period and imposes restrictions on income that can be earned with respect to the property.

[8] The pooling and servicing agreement provides the definition of a ''Servicing Transfer Event'' and related definitions from the pooling agreement.

has the right to consult with and sometimes to direct the Master Servicer to take or refrain from taking certain actions with respect to all assets (whether performing or non-performing) ordinarily referred to as ''Special Actions''. Typical examples of Special Actions include (1) Proposed or actual foreclosure upon an asset, (2) material modifications or waivers of assets, (3) proposed sales of assets, (4) the determination to bring a REO Property into compliance with applicable environmental laws or to otherwise address hazardous materials thereon, (5) acceptance of substitute or additional collateral (where there is lender discretion), (6) the waiver of a ''due-on-sale'' clause or ''due-on-encumbrance'' clause, (7) assumption agreements that would release a borrower from liability, (8) the acceptance of a discounted payoff of an asset, (9) the release of earnout reserve funds [9] or letters of credit (where there is lender discretion), (10) approval of a material lease (where there is lender discretion), (11) any change in property manager or franchise (where there is lender discretion) and (12) with respect to certain loans, approval of defeasance (including confirmation that conditions to a permitted defeasance have been met). In servicing the non-performing assets or with respect to Special Actions, the Special Servicer is typically required to consult with and follow the directions of the Directing Holder, as defined below, unless doing so would violate the servicing standard under the securitization documents.

The Special Servicer is typically appointed by, and can be terminated and replaced by, the ''Directing Holder'' (sometimes referred to as the ''Controlling Class'') for the securitization. This is generally the owner of the most subordinate portion of such securitization.[10] In addition, the Special Servicer (including a replacement Special Servicer) must meet the qualification requirements for a Special Servicer (*e.g.,* required ratings by the ratings agencies) and must not trigger a Special Servicer event of default under the securitization documents to serve as Special Servicer.

The Intercreditor Agreement is drafted in a manner that gives a great deal of, but not limitless, discretion to the Master Servicer and Special Servicer. Both the Master Servicer and the Special Servicer are obligated to act within the confines of the ''Servicing Standard,'' a somewhat amorphous set of guidelines—obviously not prescriptive but with boundaries commonly accepted by the lending industry. Further, certain major decisions with respect to the special servicing of troubled assets are subject to a vote by the Directing Holders, as described above.

The purpose of the Intercreditor Agreement is twofold: first, to provide for the servicing of the various notes as a single loan, and second, to provide assurance that tax laws critical to securitizations will be observed. It is important to holders that the proper tax treatment of any securitizations is ensured. Violating the tax rules for securitizations can cause the securitization vehicle itself to become a taxable corporation, reducing returns to security holders, even tax-exempt holders, by the amount of the taxes due. The Intercreditor Agreement provides that a split loan will be serviced from the first transaction to close. Holders of the other notes comprising the loan, whether or not such notes are included in subsequent securitizations, agree to be bound by the pooling and servicing agreement for the first securitization with respect to the loan. The rights retained by the subsequent securitizations are exercisable by the Directing Certificateholders [11] for each such subsequent securitization, not by the trustee per se. The material terms of the Intercreditor Agreement are spelled out in the disclosure for each of the securitizations, so that all investors understand prior to their investment in the securitization that decision making with respect to the note representing the split loan has been ceded to the lead securitization.

The Intercreditor Agreement provides that, if the contemplated servicing cannot be realized (*e.g.,* because the first securitization is terminated), a substantially similar agreement will be reached. The Applicant states that, if other portions of the loan are in securitizations designed to comply with the Underwriter Exemptions, the trustee counsel, which is sensitive to the issues involved, would not permit any agreement that would cause the conditions of the Underwriter Exemptions to be violated. Either: (i) The subsequent agreement would provide for substantially the same limitation on trustee rights as was the case with the original Intercreditor Agreement; (ii) additional exemptive relief would be sought from the Department; or (iii) the trustee of the affected securitization would be replaced.

The Applicant notes that in a split loan situation where the first securitization suffers considerable losses, since all of the notes making up the loan are *pari passu,* the first note would continue to be outstanding, even if it were no longer in a securitization; therefore, there would have to be a holder of that first note. The holder of the first note would continue to be responsible for any direction to be given to the Master Servicer and the Special Servicer of the first securitization (except for the times where directions would be given by the Directing Holder). Additionally, the servicing would have to be performed in a manner that did not jeopardize the pass-through tax status (normally, REMIC or grantor trust) of securitizations holding notes 2, 3, etc. These are the prime ''substantially similar'' features. The remote possibility exists that the first holder would refuse to put itself in the controlling position. In that case, control would go to one of the other securitizations. At this point, the Applicant states that control would not end up in a securitization where there was an affiliated trustee [12] (and, as a last resort, the trustee would be replaced to ensure non-affiliation).

[9] The Applicant defines ''earnout reserve funds'' as amounts held back from a commercial borrower by the lender at the time of closing of the loan which may, upon satisfaction of conditions set forth in the loan documents and via the procedures set forth in the related pooling and servicing agreement, be released to the borrower for other purposes as set forth in the loan documents. If the conditions are not met, the earnout reserve fund is applied to reduce the outstanding principal balance of the loan.

[10] In the case of a loan split among more than a single transaction, special rules apply. Typically, the Directing Holder is the most subordinate class of each securitization whose assets include a portion of such loan, with voting based on the percentage interest of the loan held by the securitization. Tie votes are broken by the decision of an advisor appointed by the holders. Additionally, the ''Controlling Class'' is the most junior class of a securitization; this class is responsible for appointing and terminating the Special Servicer and for making certain decisions with respect to defaulted loans. If there is more than one holder of an interest in the Controlling Class, it is possible for there to be disagreement among such holders. In this case, the majority would rule. The holders forming such majority are known as ''Directing Certificateholders'' or ''Directing Holders'' (the terms are interchangeable).

[11] Because Directing Certificateholders are the most junior class, they are very unlikely (except in cases where securitization pools have suffered considerable losses) to include Plan investors. Moreover, because of the subordination structure of securitization pools, the interests of Directing Certificateholders are generally aligned to the interests of holders of more senior classes (i.e., because Directing Certificateholders suffer losses before more senior classes, any decision that reduces the likelihood of the most junior class suffering a loss will automatically reduce the likelihood of losses affecting more senior classes).

[12] The Department notes that if this were to occur, the Underwriter Exemption would become unavailable to the transaction.

As illustrated above, the depositing of portions of one loan into multiple transactions increases the potential relationship issues. Though the loan continues to be serviced solely by the Primary, Master and Special servicers (the Split Loan Servicers) under the first transaction, and notwithstanding that each other transaction discloses the fact that such loan is serviced under, and pursuant to, the terms of the initial transaction, these Split Loan Servicers may fall within the definition of Servicer in the Underwriter Exemptions, making such parties members of the Restricted Group for such other transactions. As a result, the pool of available unaffiliated trustees for each other transaction is narrowed.

The December 31, 2008 Acquisition of Wachovia by WFC (Acquisition) caused a certain fact pattern illustrated by the following example to emerge in these nine CMBS transactions (Split Loan Transactions List):

1. Banc of America Commercial Mortgage Trust 2006–4.
2. Banc of America Commercial Mortgage Trust 2007–2.
3. Banc of America Commercial Mortgage Trust 2008–LS1.
4. Citigroup Commercial Mortgage Trust 2008–C7.
5. COMM 2004–LNB–2.
6. COMM 2007–C9.
7. J.P. Morgan Chase Commercial Mortgage Securities Trust 2006–CIBC16.
8. LB–UBS Commercial Mortgage Trust 2004–C2.
9. Morgan Stanley Capital I Trust 2005–HQ5.

For example, a large commercial loan (Loan) is split among four transactions. Each securitization trust, S1, S2, S3 and S4, contains a *pari passu* portion of the Loan. Wachovia is the Primary Servicer of the Loan. Because S1 closes first, the entire Loan is serviced by Wachovia under the S1 securitization and the trustees of the four trusts sign an intercreditor agreement. An unaffiliated bank is Trustee of S1; Wachovia is Master Servicer of S1 and CW Capital is Special Servicer of S1. Pursuant to the Intercreditor Agreement, because Wachovia is Master Servicer of all the loans in S1, Wachovia is now the Master Servicer for the Loan in S1, S2, S3 and S4. As noted above, Wachovia is also the Primary Servicer.

While S1, S2, S3 and S4 are all structured to comply with one or more of the Underwriter Exemptions, a problem may arise because Wells Fargo is the Trustee of S4. With the acquisition of Wachovia by Wells Fargo, Wells Fargo, in its role as Trustee of S4, is now affiliated with a member of the Restricted Group, i.e., Wachovia in its role as Primary Servicer and Master Servicer of the Loan. Wachovia has no other role in or connection with S4; in fact, all of its obligations arise only under the terms of S1 and the Intercreditor Agreement. The Applicant believes that the Underwriter Exemptions' conditions may require that Wells Fargo resign as Trustee of S4, despite the Applicant's belief that Wells Fargo has no control over Wachovia in its role as Master Servicer of the Loan (other than as a result of the already signed Intercreditor Agreement where it cedes control to the unaffiliated bank that is Trustee of S1).

The Applicant notes that when this type of prohibited relationship is known before the transactions close, it is possible to appoint a co-trustee with respect to similarly divided participations in a loan. In this case, however, with the transactions already closed, the Applicant asserts that appointing a co-trustee would likely require an amendment to the pooling and servicing agreement, which may require the consent of all the security holders (a situation made even more problematic with book-entry securities). Consequently, the Applicant believes that the appointment of a co-trustee is not feasible.

The Applicant represents that the presence of an independent trustee in S1 (the unaffiliated bank), which is responsible for the actions of the Master Servicer, provides sufficient protection against any harm the prohibited relationship in S4 could cause. As an additional safeguard, if the Loan were ever to become delinquent, servicing would be transferred to the Special Servicer who is unaffiliated with Wells Fargo. Further, the Intercreditor Agreement was negotiated and signed prior to any indication that a prohibited relationship would exist in any of the trusts. Thus, the Applicant asserts, that the agreement could not have been drafted in a manner as to favor Wells Fargo or Wachovia at the expense of any Plan, or to otherwise circumvent the conditions of the Underwriter Exemption. Additionally, the Applicant believes that the presence of an independent trustee for the Loan and the lack of discretion on the part of Wells Fargo as Trustee of S4 is factually similar to the situation created with the appointment of a co-trustee. The Applicant believes that, if responsibility for the servicing of the Loan is confined to the servicer of one of the securitization vehicles, such servicer should not be considered a member of the Restricted Group within the meaning of the Underwriter Exemptions in the other securitizations where portions of the loan are collateral.

The Applicant notes that Holders, including fiduciaries holding on behalf of Plans, could bring suit against any parties to the transaction or could collectively order the trustee to bring such suits on behalf of the securitization (with the threat of replacing the trustee for failure to comply). As a practical matter, all transaction agreements provide mechanisms for replacing parties, a less expensive and more certain means of stopping bad behavior. Nonetheless, such suits are possible and it is impossible to predict the outcome of any such suit. Moreover, legislative and regulatory actions in response to the current economic situation could make such suits far more probable or, in the alternative, could preempt them completely. The legislative and regulatory situation, both at the federal and the state and local level, is too much in flux to even predict how the landscape might look one, two or ten years in the future. This lack of predictability, though, is pervasive in the capital markets. There is no feature of the split loan structure that makes it any more susceptible to legal action, legislative or regulatory decisions, etc. The Applicant believes that splitting a large loan among several securitizations is best viewed as a matter of prudence. While allowing large loans to be made when appropriate underwriting considerations are taken into account, splitting the loan into multiple notes spreads the risk among several transactions and prevents too great a concentration in any one transaction.

The Applicant has provided the Department with a detailed description of one particular intercreditor agreement (the Agreement) and a redacted copy of the Agreement, as well as the related provisions in the applicable pooling and servicing agreements (PSAs). The Applicant states that in the subsequent loan transactions that arise from the initial securitizations identified in the Split Loan Transactions List, the trustees have agreed (or, more accurately, have inherited an agreement made by its predecessor in interest) to a passive role with limited rights exercisable only under extreme circumstances and that the PSAs for these subsequent securitizations confirm this passivity. Thus, the Applicant asserts that the obligations detailed in the PSAs are ministerial, not discretionary. The Applicant states that the PSAs are explicit that the loan is not serviced or administered from the subsequent securitizations and that the parties to these securitizations are not obligated or authorized to supervise the

administration and servicing of the loan in the initial securitization.

The Applicant represents further that a split loan is serviced in the first transaction to close and the Intercreditor Agreement governs the servicing of the split loan under the first transaction (and limits the rights and responsibilities of other holders of pieces of the loan). The terms of the PSA for any subsequent transaction containing a piece of the split loan specify that the master servicer, the special servicer and the trustee of such subsequent transaction ''shall have no obligation or authority'' to service the loan or to direct the servicing of the split loan or, subject to extremely limited exceptions, to make advances with respect to the split loan. The only responsibilities left for the trustee of a subsequent transaction are: (i) To keep photocopies of the ''Mortgage File''; [13] (ii) to release said Mortgage File upon payment in full of the loan; and (iii) to make advances with respect to the loan to the extent that the advance would be recoverable and such advance has not been made by the Master Servicer of the first transaction or the Master Servicer of the second transaction.

The Applicant states that the first two responsibilities, keeping a photocopy of the Mortgage File and releasing it, are completely ministerial and involve no discretion. The third responsibility is also non-discretionary. The Master Servicer of the first transaction (MS1) is obligated under the PSA for the first transaction to either make the advance or certify that it would be nonrecoverable. If MS1 neither makes the advance nor certifies as to nonrecoverability, the same obligation falls on the Master Servicer of the related subsequent transaction (MS2). MS2 only has the obligation with respect to the piece of the loan in its transaction. If MS2 also neither advances nor certifies, the trustee of the second transaction either (i) must make the advance with respect to the piece of the loan in its transaction (with no authority under certain PSAs to pass judgment on non-recoverability) or (ii) must make either the advance with respect to the piece of the loan in its transaction or the certification of non-recoverability (under the terms of other PSAs—there is some variance among pooling and servicing agreements between approach (i) and approach (ii)). Even in case (ii), the process is not discretionary. While there is admittedly some leeway (that could be interpreted as discretion) in valuing the loan, it is in the trustee's economic interest to make an accurate determination. If the trustee places too high a value on the asset, it risks not being repaid the advance (and note that it is an advance, so there is the expectation of repayment). Too low a value, and the trustee risks action by securityholders that would have benefited from the advance (such holders eventually get their money, but lose the time value). If the trustee is bound by a PSA that permits a certification in lieu of the advance, such certification requires an explanation of the basis for the determination and such explanation requires an objective determination that would satisfy securityholders. The objectivity of the process indicates that discretion plays, at most, a minimal role.

The Applicant concludes that consequently, it should not matter that the trustee for the subsequent securitization is related to the Master Servicer or Special Servicer for the initial securitization; provided that any such party is not otherwise a member of the Restricted Group with respect to the subsequent securitization. More generally, because the relevant features of the Agreement are substantially similar to those found in all intercreditor agreements used in the market, the Applicant requests that the Department determine that if the only potentially prohibited affiliation is between a trustee and a servicer of a loan serviced in another securitization under the eye of an independent trustee, the trustee of the subsequent securitization should not be disqualified in the case of an affiliation arising as a result of a merger between the trustee and servicer that occurs subsequent to the securitization solely because of such affiliation.

Based on the representations and documents that the Applicant has provided to the Department, the Department is of the view that, if the affiliation between the Master Servicer of the first Securitization and a trustee of a loan serviced in a subsequent securitization is solely as a consequence of the acquisition of Wachovia by Wells Fargo, the Master Servicer of the first securitization would not be considered a member of the Restricted Group of a trustee of the subsequent securitizations in each Split Loan Transaction for the nine transactions identified in the Split Loan Transaction List, that are otherwise eligible for relief under the Underwriter Exemptions.

11. The Applicant notes that Plans acquired Securities issued under the Securitizations in reliance on the exemptive relief provided by the Underwriter Exemptions. Absent additional relief, the Acquisition has caused these granted exemptions to cease to apply to several of the Securitizations. Wells Fargo represents that the Securities issued in transactions such as the Securitizations are attractive investments for Plans subject to Title I of ERISA or section 4975 of the Code and conversely, such plans are an important market for issuers of such Securities. Wells Fargo asserts that to force Wells Fargo to resign as Trustee in all of the Securitizations before the Acquisition was not administratively feasible because the number of available trustees is limited and there is work required in changing trustees. Similarly, to have the exemptions no longer apply to the Securitizations would force the Plans to sell their securities in the current unstable market, likely at a loss. The Applicant additionally notes that although the Acquisition has been widely covered, it is conceivable that Plan fiduciaries would not realize that the Underwriter Exemption relied upon by the Plans had ceased to apply, raising the possibility that a Plan would not sell and that non-exempt prohibited transactions would occur.

12. Wells Fargo states that the Plans purchased Securities in reliance on PTE 96–22 or PTE 2002–19. At that time, the Plans had no knowledge that the Trustee would become an Affiliate of one or more members of the Restricted Group. On or after the Acquisition, except in cases covered by PTE 96–22 as amended by PTE 2000–58 (providing a six-month window for Trustee-Servicer affiliations) or PTE 2002–41 (Trustee-Underwriter affiliations), the purchased Securities would no longer be afforded coverage under the Underwriter Exemptions and the Plans would have been obligated to sell the Securities prior to December 31, 2008. The Applicant asserts that this is problematic for several reasons. First, as is customary for such transactions, the physical securities are not used in most cases. Rather, an electronic system, usually the Depository Trust Company's electronic system, is utilized and the securities are in global form. In such cases, it is difficult (and may be impossible) to ascertain the beneficial ownership of the securities, meaning

[13] The Mortgage File is defined in the PSA to include, among other documents, the original executed mortgage note and the original or in some cases, a copy of: The mortgage and any assignment and recordation; assignment of all unrecorded documents related to the mortgage loan; any modification, consolidation, assumption and substitution agreements; the policy or certificate of lender's title insurance or irrevocable binding commitment; filings of relevant UCC Financial Statements; any ground lease and related documents; any relevant intercreditor agreement, loan agreement, letter of credit, management and franchise agreements; and any documents related to any companion loan.

that it is not known whether Plans are owners and to what extent. The Applicant claims that identifying the affected Plans would be time consuming and expensive, and may be impossible to do with complete accuracy because of the book-entry system under which Securities were issued. As stated above, the Applicant represents that notice of this request for relief was posted on the Trustee's Web site at the time this Application was submitted, which would be updated to reflect any action of the Department with respect to the Application. The Applicant has informed the Department that, as noted above, although Wells Fargo has been replaced as Trustee by March 31, 2009, Wells Fargo will remain as the securities administrator for any of the Securitizations on the Securitization List for which it was providing such services. Further, the Applicant has indicated that either Wells Fargo (in cases where Wells Fargo continues as securities administrator) or the replacement trustee (in all other cases) will continue to update its Web site concerning the status of the Proposed Amendment. In this regard, the Applicant also requests that the publication of the Proposed Amendment in the **Federal Register** serve as the Notice to Interested Persons for purposes of this submission.

Second, and more importantly, The Applicant notes that the current disruption in the mortgage-backed securities market makes sales problematic, both in terms of finding buyers and establishing proper valuation. Granting the requested relief prevents these problems. The Applicant states further that the relief is of the same duration, six months, as that already provided by the Department for Trustee-Servicer affiliations, suggesting that the Department has already determined that this period is sufficiently brief to prevent serious conflicts of interest from arising.

13. Wells Fargo requests that the relief, if granted, be made retroactive to December 31, 2008, the Acquisition Date. If the relief is granted retroactively, Plans would be able to retain their prior Securitization investments and to purchase Securities in the secondary market relying upon the Underwriter Exemptions once exemptive relief is granted, even if the transactions originally closed or will close prior to the date the final Amendment is published in the **Federal Register**, if granted by the Department.

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 section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her 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 requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

2. Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plans and of their participants and beneficiaries and protective of the rights of participants and beneficiaries of the plans; and

3. The proposed amendment, 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.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending amendment to the address above, within the time frame set forth above, after the publication of this proposed amendment in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the Application at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990), the Department proposes to modify Prohibited Transaction Exemption (PTE) 96–22, 61 FR 14828 (April 3, 1996), as amended by PTE 97–34, 62 FR 39021 (July 21, 1997), PTE 2000–58, 65 FR 67765 (November 13, 2000), PTE 2002–41, 67 FR 54487 (August 22, 2002) and PTE 2007–05, 72 FR 13130 (March 20, 2007) as corrected at 72 FR 16385 (April 4, 2007) (PTE 2007–05), (PTE 96–22) and PTE 2002–19, 67 FR 14979 (March 28, 2002) as amended by PTE 2007–05, (PTE 2002–19).

1. Subsection II.A.(4) of PTE 96–22 is amended to add a new subsection (c) and subsection II.A.(4) of PTE 2002–19 is amended to add a new subsection (d) that read as follows:

(c) [(d) of PTE 2002–19] Effective December 31, 2008 through June 30, 2009, Wells Fargo, N.A., the Trustee, shall not be considered to be an Affiliate of any member of the Restricted Group solely as the result of the acquisition of Wachovia Corporation and its affiliates (Wachovia) by Wells Fargo & Company and its subsidiaries (WFC), the parent holding company of Wells Fargo, N.A. (the Acquisition), which occurred after the initial issuance of the Securities, provided that:

(i) The Trustee, Wells Fargo, N.A., ceases to be an Affiliate of any member of the Restricted Group no later than June 30, 2009;

(ii) Any member of the Restricted Group that is an Affiliate of the Trustee, Wells Fargo, N.A., did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from December 31, 2008 through the date the member of the Restricted Group ceased to be an Affiliate of the Trustee, Wells Fargo, N.A.; and

(iii) In accordance with each Pooling and Servicing Agreement, the Trustee, Wells Fargo, N.A., appoints a co-trustee, which is not an Affiliate of Wachovia or any other member of the Restricted Group, no later than the earlier of (A) March 31, 2009 or (B) five business days after Wells Fargo, N.A. becomes aware of a conflict between the Trustee and any member of the Restricted Group that is an Affiliate of the Trustee. The co-trustee will be responsible for resolving any conflict between the Trustee and any member of the Restricted Group that has become an Affiliate of the Trustee as a result of the Acquisition; provided, that if the Trustee has resigned on or prior to March 31, 2009 and no event described in clause (B) has occurred, no co-trustee shall be required.

(iv) For purposes of this subsection II.A.(4)(c) [subsection II.A.(4)(d) of PTE 2002–19], a conflict arises whenever (A) Wachovia, as a member of the Restricted Group, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Wells Fargo, N.A., as Trustee, or (B) Wells Fargo, N.A., as Trustee, fails to perform in accordance with the timeframes contained in the relevant Pooling and Servicing Agreement following a request for performance from Wachovia, a member of the Restricted Group.

The time as of which a conflict occurs is the earlier of: The day immediately following the last day on which compliance is required under the relevant Pooling and Servicing Agreement; or the day on which a party affirmatively responds that it will not comply with a request for performance.

For purposes of this subsection II.A.(4)(c) [subsection II.A.(4)(d) of PTE 2002–19], the term ''conflict'' includes but is not limited to, the following: (1) Wachovia's failure, as Sponsor, to repurchase a loan for breach of representation within the time period prescribed in the relevant Pooling and Servicing Agreement, following Wells Fargo, N.A.'s request, as Trustee, for performance; (2) Wachovia, as Sponsor, notifies Wells Fargo, N.A., as Trustee, that it will not repurchase a loan for breach of representation, following Wells Fargo, N.A.'s request that Wachovia repurchase such loan within the time period prescribed in the relevant Pooling and Servicing Agreement (the notification occurs prior to the expiration of the prescribed time period for the repurchase); and (3) Wachovia, as Swap Counterparty, makes or requests a payment based on a value of the London Interbank Offered Rate (LIBOR) that Wells Fargo, N.A., as Trustee, considers erroneous.

2. The Definition of ''Underwriter'' at section III.C. of PTE 96–22 and PTE 2002–19 is temporarily amended to include Wachovia and J.P. Morgan Securities Inc. for the period noted and reads:

C. Effective December 31, 2008 through June 30, 2009,

''Underwriter'' means:

(1) Wachovia or J.P. Morgan Securities Inc.;

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

(3) Any member of an underwriting syndicate or selling group of which such firm or person described in subsections III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

3. The Definition of ''Sponsor'' at section III.D. of PTE 96–22 and PTE 2002–19 is temporarily extended to include language applicable to transactions on the Securitization List at section III.KK [or section III.LL. of PTE 2002–19] and reads:

D. ''Sponsor'' means:

(1) The entity that organizes an Issuer by depositing obligations therein in exchange for Securities; or

(2) Effective December 31, 2008 through June 30, 2009, for those transactions listed on the Securitization List at section III.KK. [at section III.LL. of PTE 2002–19], Wachovia.

4. Section III. of PTE 96–22 is temporarily amended to add a new section III.KK and Section III. of PTE 2002–19 is temporarily amended to add a new section III.LL. that read as follows:

KK. [LL. of PTE 2002–19] Effective December 31, 2008 through June 30, 2009,

''Securitization List'' means:

Name	Issuance type	Wachovia role	Exemption
First Union Commercial Mortgage Trust FUNB Series 1999–C1.	CMBS	Master Servicer: First Union National Bank Sponsor: First Union National Bank Underwriter: First Union Capital Markets.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C6.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C8.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2004–C10.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2004–C11.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C23.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C25.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2002–C01.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: First Union Securities, Inc.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2002–C2.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003—C3.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C5.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C7.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2004–C15.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Banc of America Commercial Mortgage Trust, Series 2001–3.	CMBS	Master Servicer: First Union National Bank Sponsor: First Union National Bank Underwriter: First Union Securities, Inc.	96–22
First Union Commercial Mortgage Trust, Series 2001–C4.	CMBS	Master Servicer: First Union National Bank Sponsor: First Union National Bank Underwriter: First Union Securities, Inc.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C4.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2003–C9.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C16.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C17.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
COBALT CMBS Commercial Mortgage Trust, Series 2006–C1.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
COBALT CMBS Commercial Mortgage Trust, Series 2007–C2.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
COBALT CMBS Commercial Mortgage Trust, Series 2007–C3.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22

Name	Issuance type	Wachovia role	Exemption
Wachovia Bank Commercial Mortgage Trust, Series 2006–C27.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C29.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C32.	CMBS	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series, 2005–C22.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C33.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C34.	CMBS	Master Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
J.P. Morgan Chase Commercial Mortgage Securities Corp., Series 2002–C1.	CMBS	Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Securities, Inc. (but note that PTE 96–22 is not relied on in the disclosure document).	2002–19
Wachovia Bank Commercial Mortgage Trust, Series 2006 WHALE 7.	CMBS	Servicer: Wachovia Bank, N.A. Special Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C21.	CMBS	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–C19.	CMBS	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C26.	CMBS	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2006–C28.	CMBS	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C30.	CMBS	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–C31.	CMBS	Master Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2007–ESH.	CMBS	Master Servicer: Wachovia Bank, N.A. Special Servicer: Wachovia Bank, N.A. Swap Provider: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
Wachovia Bank Commercial Mortgage Trust, Series 2005–WHALE 6.	CMBS	Servicer: Wachovia Bank, N.A. Special Servicer: Wachovia Bank, N.A. Sponsor: Wachovia Bank, N.A. Underwriter: Wachovia Capital Markets, LLC.	96–22
First Union–Lehman Brothers Wells Fargo, Series 1998–C2.	CMBS	Master Servicer: First Union National Bank Sponsor First Union National Bank Underwriter: First Union Capital Markets.	96–22

Legend: CMBS = Commercial mortgage-backed securitizations

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

Signed at Washington, DC, this 24th day of August 2009.

Ivan L. Strasfeld,

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

[FR Doc. E9–20736 Filed 8–27–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. L–11482]

Notice of Proposed Individual Exemption Involving The Alaska Laborers-Construction Industry Apprenticeship Training Trust (the Plan), Located in Seattle, WA

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

ACTION: Notice of proposed individual exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of