DEPARTMENT OF LABOR

Office of the Secretary

Enforcement of Title VI of the Civil Rights Act of 1964; Policy Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of policy guidance; re-opening and extension of comment period.

SUMMARY: This document re-opens and extends the period for filing comments regarding the Department of Labor's (DOL) Revised Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (Revised DOL Recipient LEP Guidance).

DATES: Comments must be submitted on or before August 7, 2003.

ADDRESSES: Interested persons should submit written comments to Ms. Annabelle T. Lockhart, Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room N–4123, Washington, DC 20210. Commenters wishing acknowledgment of their comments must submit them by certified mail, return receipt requested. Please be advised that mail delivery to federal buildings in the Washington, DC metropolitan area may experience delays due to concerns about anthrax contamination. Comments may also be transmitted by facsimile to (202) 693–6505 or by e-mail to *civilrightscenter@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Annabelle Lockhart or Naomi Barry-Pérez at the Civil Rights Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room N–4123, Washington, DC 20210. Telephone: 202–693–6500; TTY: 202–693–6515. Arrangements to receive the Guidance in an alternative format may be made by contacting the named individuals.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 29, 2003 (68 FR 32290), the Department of Labor published Revised Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (Revised DOL Recipient LEP Guidance). Interested persons were requested to submit comments on or before June 30, 2003.

Due to technological difficulties, the email account of the Department of Labor Civil Rights Center (*civilrightscenter@dol.gov*) was unable to receive incoming messages. Messages sent to this email account prior to June 27, 2003, were not received and cannot be retrieved. In order to provide commenters with an opportunity to resubmit comments, the comment period for the Revised DOL Recipient LEP Guidance is extended to August 7, 2003.

Signed in Washington, DC this 1st of July, 2003.

Patrick Pizzella,

Assistant Secretary for Administration and Management.

[FR Doc. 03–17188 Filed 7–7–03; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D–10988 *et al.*]

Prohibited Transaction Exemption 2003–20; Grant of Individual Exemptions; Deutsche Bank Securities, Inc. and Its Affiliates

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 (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.

Deutsche Bank Securities Inc. and Its Affiliates Located in New York, NY

[Prohibited Transaction Exemption 2003–20; Exemption Application No. D–10988]

Exemption

The restrictions of sections 406(a)(1)(A) through (D) of the Act and the sanctions resulting from application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any purchase or sale of securities, in the context of a portfolio liquidation or restructuring, between (i) Deutsche Bank Securities Inc. (DBSI) and its current and future affiliates, including certain foreign broker-dealers or banks (the Foreign Affiliates, as defined in Section III below), (collectively, the Applicant) and (ii) employee benefit plans (the Plans) with respect to which the Applicant is a party in interest, provided that the conditions set forth in Section II are satisfied.

Section II—Conditions

A. The Applicant customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank;

B. The Applicant (including an affiliate) does not have discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, nor renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

Notwithstanding the foregoing, the Applicant may be a directed trustee (as defined in Section III below) with respect to the Plan assets involved in the transaction.

In addition, although the Applicant does not have discretionary authority or control over such Plan assets at the time of the transaction and has not used its discretion to appoint the transition broker-dealer, it may act as a fiduciary with respect to the Plan assets involved in the transaction, solely as: (i) The investment manager of such assets to be managed as an Index or Model-Driven Fund; or (ii) the investment manager of such assets who supplies a list of securities or other investments to be purchased, which list is prepared without regard to the identity of the broker-dealer and without reference to the portfolio being liquidated or restructured, and is substantially the same list that would be provided to other similarly situated investors with substantially similar investment guidelines and objectives, or is substantially similar to the investments in existing portfolios managed in the same style.

Lastly, a transaction will not fail to meet the requirements of this section if the Applicant is being terminated as a manager of the Plan assets involved in the transaction, its investment discretion is terminated prior to the commencement of the portfolio liquidation or restructuring, and the Applicant has not used its discretion to appoint the transition broker-dealer;

C. The transaction is a purchase or sale, for no consideration other than cash;

D. The terms of any transaction are at least as favorable to the Plan as those obtainable in a comparable arm's length transaction with an unrelated party;

E. An Independent Fiduciary has given prior approval that the transaction may be effectuated as a principal transaction and at a price that—

(1) For an equity security, is specified in advance by the Independent Fiduciary and is a stated dollar amount, or is based on an objective measure (as of a specified date or dates), including, but not limited to, the closing price, the opening price, or the volume-weighted average price; or

(2) For a fixed income security, is a stated dollar amount, or is within the bid and asked spread, as of the close of the relevant market (or another predetermined time on a specified date or dates), as reported by an independent third party reporting service or a publicly available electronic exchange or trading system;

F. In the case where the price for any transaction is not based on an objective measure, the Independent Fiduciary has given prior approval for the transaction, specifying whether the transaction is to be agency or principal, either on a security-by-security basis, or based on the whole portfolio or an identifiable part of the portfolio (such as all debt securities, all equity securities, all domestic securities, or the like);

G. All purchases and sales executed on a principal basis are effected within two days following the Independent Fiduciary's direction to purchase or sell a given security—except that, with the approval of the Independent Fiduciary, the Applicant may extend such initial period for a time not exceeding two additional days, on the same terms;

H. The Independent Fiduciary is furnished with confirmations including the relevant information required under Rule 10b-10 of the Securities Exchange Act of 1934 (the 1934 Act), to the extent required under Rule 10b-10, as well as a report, within five business days after the transaction is completed, containing the following information with respect to each security:

(1) The identity of the security;

(2) The date on which the transaction occurred;

(3) The quantity and price of the securities involved; and

(4) Whether the transaction was executed with the Applicant as principal or agent;

I. Each Plan shall have total net assets with a value of at least $100 million. For purposes of the net assets test, where a group of Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $100 million net assets requirement may be met by aggregating the assets of such Plans, if the assets are pooled for investment purposes in a single master trust;

J. The Applicant complies with all applicable securities or banking laws relating to the transaction;

K. Any Foreign Affiliate is a registered broker-dealer or bank subject to regulation by a governmental agency, as described in Section III, B, and is in compliance with all applicable rules and regulations thereof in connection with any transaction covered by the exemption;

L. Any Foreign Affiliate, in connection with any transaction covered by the exemption, is in compliance with the requirements of Rule 15a-6 (17 CFR 240.15a-6) of the 1934 Act, and Securities and Exchange Commission (SEC) interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements;

M. Prior to any transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions. In this regard, the Foreign Affiliate must (i) agree to submit to the jurisdiction of the United States; (ii) agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent); and (iii) consent to service of process on the Process Agent;

N. The Applicant maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction, such records as are necessary to enable the persons described in Paragraph O, below, to determine whether the conditions of the exemption have been met, except that—

(1) A party in interest with respect to a Plan, other than the Applicant, shall not 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 by Paragraph O; and

(2) This record-keeping condition shall not be violated if, due to circumstances beyond the Applicant's control, such records are lost or destroyed prior to the end of the six year period; and

O. Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the Applicant makes the records referred to in Paragraph N, above, unconditionally available within the United States during normal business hours at their customary location to the following persons or a duly authorized representative thereof: (1) The Department, the Internal Revenue Service, or the SEC; (2) any fiduciary of a Plan; (3) any contributing employer to a Plan; (4) any employee organization any of whose members are covered by a Plan; and (5) any participant or beneficiary of a Plan. However, none of the persons described in Items (2) through (5) of this subsection is authorized to examine the trade secrets of the Applicant, or commercial or financial information which is privileged or confidential.

Section III—Definitions

A. The term ''DBSI'' means Deutsche Bank Securities Inc. DBSI and its domestic affiliates must be one of the following: (i) A broker-dealer registered under the 1934 Act; (ii) a reporting

dealer who makes primary markets in securities of the United States Government or of any agency of the United States Government (''Government securities'') and reports daily to the Federal Reserve Bank of New York its positions with respect to Government securities and borrowings thereon; or (iii) a bank supervised by the United States or a State. DBSI and its current and future affiliates, including the Foreign Affiliates (as defined in Paragraph C, below), are collectively referred to herein as ''the Applicant.''

B. The term ''affiliate'' shall include: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; (2) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such person; and (3) any corporation or partnership of which such person is an officer, director or partner. For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

C. The term ''Foreign Affiliate'' means an affiliate of DBSI that is subject to regulation as a broker-dealer or bank by: (1) The Securities and Futures Authority or the Financial Services Authority in the United Kingdom, (2) the Federal Authority for Financial Services Supervision, *i.e.,* der Bundesanstalt fuer Finanzdienstleistungsaufsicht (the BAFin) in Germany, (3) the Ministry of Finance and/or the Tokyo Stock Exchange in Japan; (4) the Ontario Securities Commission and/or the Investment Dealers Association, or the Office of the Superintendent of Financial Institutions, in Canada, (5) the Swiss Federal Banking Commission in Switzerland, or (6) the Australian Prudential Regulation Authority or the Australian Securities & Investments Commission, and/or the Australian Stock Exchange Limited, in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

D. The term ''security'' shall include equities, fixed income securities, options on equity or fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term ''security'' does not include swap agreements or other notional principal contracts.

E. The term ''index'' means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

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

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

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

(iii) A public securities exchange or association of securities dealers;

(2) The index is created and maintained by an organization independent of the Applicant; and

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

F. The term ''Index Fund'' means any investment fund, account, or portfolio trusteed or managed by the Applicant, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile, and other characteristics of an independently maintained securities index (as ''index'' is defined in Paragraph E, above) by either (i) replicating the same combination of securities that compose such index, or (ii) sampling the securities that compose such index based on objective criteria and data;

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

(3) That contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and

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

G. The term ''Model-Driven Fund'' means any investment fund, account, or portfolio trusteed or managed by the Applicant, in which one or more investors invest, and—

(1) Which is composed of securities, the identity of which and the amount of which, are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of the Manager, to transform an Index (as defined in Paragraph E, above);

(2) Which contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund, or the utilization of any specific objective criteria, that is intended to benefit the Applicant or any party in which the Applicant may have an interest.

H. The term ''Plan'' means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act.

I. The term ''Independent Fiduciary'' means a fiduciary of a Plan who is unrelated to, and independent of, the Applicant. For purposes of the exemption, a Plan fiduciary will be deemed to be unrelated to, and independent of, the Applicant if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant and represents that such fiduciary shall advise the Applicant if those facts change.

(1) Notwithstanding anything to the contrary in this Section III, I, a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Applicant;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from the Applicant for his or her own personal account in connection with any transaction described in the exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant, responsible for the transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Plan sponsor or the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director of the Plan sponsor or the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's broker-dealer or bank executing the transactions covered herein, and (B) the decision to authorize or terminate authorization for transactions described in Section I, then Section III, I(1)(iii) shall not apply.

(2) 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 the entity.

J. The term ''directed trustee'' means a Plan trustee whose powers and duties with respect to any assets of the Plan involved in the portfolio liquidation or restructuring are limited to (i) the provision of nondiscretionary trust services to the Plan, and (ii) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term ''nondiscretionary trust services'' means custodial services and services ancillary to custodial services, none of which services is discretionary. For purposes of the exemption, a person who is otherwise a directed trustee will not fail to be a directed trustee solely by reason of having been delegated, by the sponsor of a master or prototype Plan, the power to amend such Plan.

EFFECTIVE DATE: This exemption is effective as of February 6, 2003.

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 February 6, 2003 at 68 FR 6187.

Written Comments

The Department received one written comment with respect to the notice of proposed exemption (the Proposal). The comment was submitted by the Applicant, who requested certain modifications to the operative language as discussed below. Some additional editorial changes have been made by the Department to improve clarity and readability of the final exemption.

1. The Applicant wished to revise Section II.B. of the Proposal (68 FR 6188, center column) to clarify that this condition permits situations where the Applicant is both the legacy and the destination manager and permits legacy or destination positions in all investments, not just securities (although the exemption for principal transactions covers only securities).

Thus, Section II.B. has been revised to read as follows (note bracketed deletions and italicized additions):

B. [Neither] The Applicant *(including an affiliate)* [nor an affiliate thereof has] *does not have* discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, [or] *nor* renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

Notwithstanding the foregoing, the Applicant may be a directed trustee (as defined in Section III below) with respect to the Plan assets involved in the transaction.

[The original third paragraph has been moved to the end of Section II.B.]

In addition, [a transaction will not fail to meet the requirements of this section solely because the Applicant is being retained as an investment manager with respect to the Plan assets involved in the transaction, provided that:] *although the Applicant does not have discretionary authority or control over such Plan assets at the time of the transaction and has not used its discretion to appoint the transition broker-dealer, it may act as a fiduciary with respect to the Plan assets involved in the transaction, solely as:* (i) [the Applicant has not used its discretion to appoint the transition broker-dealer; (ii)] *the investment manager of such assets* to be managed as an Index or Model-Driven Fund; or *(ii)* [(iii)] the investment manager of such assets *who* supplies a list of securities or *other investments* to be purchased, which list is prepared without regard to the identity of the broker-dealer and without reference to the portfolio being liquidated or restructured [(i.e., the] *and is substantially the same* list [is substantially the same as] *that* would be provided to other similarly situated investors with *substantially* similar *investment guidelines and* objectives, or [consists of] is substantially *similar* [the same securities as those in other] *to the investments in* existing [investment] portfolios managed in the same style.

Lastly, [this condition will be deemed satisfied] *a transaction will not fail to meet the requirements of this section* if the Applicant is being terminated as a manager of the Plan assets involved in the transaction, [the termination is effective] *its investment discretion is terminated* prior to the commencement of the portfolio liquidation or restructuring, and the Applicant has not used its discretion to appoint the transition broker-dealer.

2. The Applicant wished to eliminate the requirement in Section II.G. of the Proposal (68 FR at 6188, column 3) that the covered securities be ''publicly traded.'' According to the Applicant, the Independent Fiduciary can assess the fairness of pricing for a non-publicly-traded security by one of the following means: (i) Review the value at which the security is being carried by the Plan; (ii) review the price that other dealers are quoting and the prices at which the security has been trading in the recent past; or (iii) canvass other holders of the security regarding an appropriate trading price.

Further, the Applicant wished to revise Section II.G(2) of this condition (68 FR at 6188, column 3) so that the Independent Fiduciary and the bank or broker-dealer may agree on other objective price references besides ''close of market.''

Accordingly, Section II.G., which has been relettered Section II.E. in sequence (while old Section II.E. is now II.F., and old Section II.F. is now II.G.), has been revised to read as follows (note bracketed deletions and italicized additions):

E. [Prior to any transaction, the] *An* Independent Fiduciary *has given prior approval* [agrees] that the *transaction* [purchase or sale of a security, which must be one that is publicly traded,] may be effectuated [through] *as* a principal transaction *and* at a price that—

(1) [in the case of] *for* an equity security, is specified in advance by the Independent Fiduciary and is a stated dollar amount, or is based on an objective measure (as of a specified date or dates), including, but not limited to, the closing price, the opening price, or the volume-weighted average price; or

(2) [in the case of] *for* a fixed income security, is a stated dollar amount, or is within the bid and asked spread, as of the close of the relevant market (*or another predetermined time* on a specified date or dates), as reported by an independent third party reporting service or a publicly available electronic exchange *or trading system.*

Further, Section II.E. of the Proposal (68 FR at 6188, column 3), which has been relettered Section II.F, has been revised to read as follows (note bracketed deletions and italicized additions):

F. *In the case where the price for any transaction is not based on an objective measure,* [An] the Independent Fiduciary has given prior approval for the transaction, specifying [(solely in the case where the price for any principal transaction is not based on an objective measure)] whether the transaction is to be agency or principal * * *

Also, Section II.F. of the Proposal (68 FR at 6188, column 3), which has been relettered Section II.G, has been revised by adding the italicized language:

G. All purchases and sales *executed on a principal basis* are effected within two days following the Independent Fiduciary's direction to purchase or sell a given security—except that, with the approval of the Independent Fiduciary, the Applicant may extend such initial period for a time not exceeding two additional days, *on the same terms.*

3. Regarding Section II.H. of the Proposal (68 FR 6188, column 3), the Applicant noted that this condition requires a Rule 10b-10 confirmation to be sent for every trade, although some trades do not require such confirmations.

Thus, Section II.H. has been revised to read as follows (note bracketed deletions and italicized additions):

H. The Independent Fiduciary is furnished with confirmations including the relevant information required under Rule 10b-10 of the Securities Exchange Act of 1934 (the 1934 Act), *to the extent required under Rule 10B-10,* as well as a report, within five business days [of] *after* the transaction *is completed,* containing the following information with respect to each security * * *

4. Finally, regarding Section III.C. of the Proposal (68 FR 6189, center column), the Applicant noted that, in foreign jurisdictions, the authority to regulate securities transactions may change from agency to agency, from time to time, or the legal name of the appropriate regulator may change.

Thus, Section III.C. has been revised by adding the italicized language at the end of clause (6):

C. The term ''Foreign Affiliate'' means an affiliate of DBSI that is subject to regulation as a broker-dealer or bank by: (1) * * *, or (6) * * *, and/or the Australian Stock Exchange Limited, in Australia, *or any governmental regulatory authority that is a successor in interest to any such regulator.*

The Department concurs in the Applicant's requested changes to the operative language of this final exemption. Accordingly, based upon the information contained in the entire record, the Department has determined to grant the proposed exemption as modified herein.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Arizona Machinery Group, Inc. (AMG) Located in Avondale, Arizona

[Prohibited Transaction Exemption 2003–21; Exemption Application No. D–11142]

Exemption

Section I. Transactions Covered

The restrictions of sections 406(a), (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (a) The acquisition by the Arizona Machinery Group Employees' Profit Sharing Retirement Plan (the Plan) of customer notes acquired from the Plan sponsor, AMG, or from any successor employer which sponsors the Plan at the time of the acquisition of such customer note, or from any other employer which at the time of the acquisition of such customer note has adopted the Plan (including employers which adopt the Plan subsequent to the date of this exemption) and which generates customer notes as defined herein in Section III (B), or from any affiliate of any such employer; (b) the Plan's holding of the customer notes, if the notes acquired and held by the Plan are guaranteed by the respective employer or affiliate, which accepted and held the customer notes prior to their acquisition by the Plan, as well as by AMG (when the customer note was accepted and held by an employer other than AMG); and (c) the repurchase of customer notes from the Plan by the employer or affiliate which initially transferred those notes to the Plan; provided that, with respect to each such transaction, the conditions set forth below in Section II are met.

Section II. Conditions

(a) The transaction is on terms that are at least as favorable to the Plan as an arm's-length transaction with an unrelated party.

(b) Prior to the consummation of a transaction described in section I of this exemption, the transaction is approved on behalf of the Plan by a qualified fiduciary who is independent of any of the sponsoring or adopting employers or affiliates of the employer(s)(an Independent Fiduciary), upon a determination made by such Independent Fiduciary that the other conditions of this exemption will be satisfied. The Independent Fiduciary shall acknowledge his or her plan fiduciary status under the Act in writing with respect to the transactions. For purposes of this paragraph, a person is independent of an employer even though he or she was selected by AMG or an adopting employer (or by a person with an interest in such employer) if he or she has no other interest in the transaction for which an exemption is sought that might affect his or her best judgment as a fiduciary under the Act.

(c) The Plan's continuing rights under the terms and conditions of the acquired customer notes, and under this exemption, shall be monitored and enforced on behalf of the Plan by the same or another Independent Fiduciary who is independent of any of the sponsoring or adopting employers and who has acknowledged his or her fiduciary status and liability as described in paragraph (B) of this section. The Independent Fiduciary shall be responsible for taking all appropriate actions necessary to protect the Plan's rights with regard to the safety and collection of the notes purchased by the Plan. These actions shall include, but not be limited to, ascertaining that payments are received timely, diligently pursuing the receipt of delinquent payments and enforcing the employer's or affiliates' guarantees to repurchase delinquent notes, with accrued interest, as described in paragraph (e) of this section.

(d) The acquisition of a customer note from AMG, an adopting employer, or an affiliate, shall not cause the Plan to hold immediately following the acquisition: (i) more than twenty-five percent (25%), in the aggregate, of the current value (as defined in section 3(26) of the Act) of Plan assets in customer notes of AMG, adopting employers or affiliates, or (ii) more than five percent (5%) of the current value of Plan assets in the notes of any one customer who is the obligor under such notes.

(e) An employer or affiliate from which the Plan acquires a customer note, as well as AMG (when the customer note was acquired from an employer other than AMG), guarantees in writing the immediate repayment of the outstanding balance of the notes and accrued interest in the event that the note is more than 60 days in arrears or if other events occur that, in the opinion of the Independent Fiduciary referred to in paragraph (b) and (c) of section II, impair the safety of the note as a Plan investment. The Independent Fiduciary may, at his or her discretion, grant an additional 30-day extension before repurchase of the note by an employer or affiliate is necessary upon a petition by the employer or affiliate, if the fiduciary determines, after consultation with the employer or affiliate, that such an extension is in the best interests of the participants and beneficiaries of the Plan. The other events (of impairment) referred to above include, but are not limited to, the following:

(1) The obligor on the note fails to comply with any terms or conditions of the note;

(2) The obligor becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors or a liquidating agent, offers a composition or extension to creditors or makes a bulk sale;

(3) Any proceeding, suit or action at law, in equity, or under any of the provisions of Title 11 of the United States Bankruptcy Code [11 U.S.C. 101 *et seq.*] or amendments thereto for reorganization, composition, extension, arrangements, receivership, liquidation or dissolution is begun by or against the obligor;

(4) A receiver of any property of the obligor is appointed under any jurisdiction at law or in equity; or

(5) The obligor fails to take proper care of or abandons the property being financed by the note.

(f) The Plan receives adequate security for the note. For purposes of this exemption, the term ''adequate security'' means that the note is secured by a perfected security interest in the property purchased by the obligor on the note so that if the security is foreclosed upon, or otherwise disposed of, in default of repayment of the loan, the value and liquidity of the security is such that it may reasonably be

anticipated that loss of principal or interest will not result. In no event shall ''adequate security'' mean an interest in intangible personal property, such as, but not limited to, accounts, contract rights, documents, instruments, chattel paper, and general intangibles.

(g) Insurance against loss or damage to the collateral from fire or other hazards will be procured and maintained by the obligor until the note is repaid or repurchased by the employer or affiliate from which the Plan originally acquired the note, and the proceeds from such insurance will be assigned to the Plan.

(h) Repayment must be provided for in the following manner:

(1) Where the note is secured by heavy equipment, the term of the note shall in no event exceed 60 months. For purposes of this exemption, heavy equipment shall include machinery sold by equipment distributors such as, but not limited to, earth moving, material handling, pipe laying, power generation, and construction machinery manufactured according to standard specifications, but shall not include such equipment which has been specifically designed and manufactured to a user's specifications and which cannot reasonably be resold in the ordinary course of the equipment distributor's business;

(2) Where the note is secured by passenger automobiles and light-duty highway motor vehicles, the term of the note shall in no event exceed 48 months. For purposes of this exemption, passenger automobiles and light-duty highway motor vehicles are defined as vehicles which have a gross weight of 10,000 pounds or less, are propelled by means of their own motor and are a type used for highway transportation; and

(3) Where the note is secured by tangible personal property, other than heavy equipment or motor vehicles described in paragraph (h)(1) and (2) of this section, the term of the note shall in no event exceed 36 months.

(i) All records, information and data required to be maintained which relate to Plan investments in customer notes covered by this exemption shall be unconditionally available at the customary location for examination during normal business hours by:

(1) The Department of Labor,

(2) The Internal Revenue Service,

(3) Plan participants and beneficiaries, or

(4) Any duly authorized employee or representative of a person described in subparagraph (1) through (3) above.

Section III. Definitions

For purposes of this exemption, the following definitions shall apply:

(a) The terms, ''affiliate'' or ''affiliates,'' mean, with respect to an employer of employees covered by the Plan, any corporation that is, at the time the Plan acquires a customer note, a member of a controlled group of corporations (as defined in section 407(d)(7) of the Act and section 1563(a) of the Code), along with AMG or any other adopting employer.

(b) The term ''customer note,'' means a two-party instrument, executed along with a security agreement for tangible personal property, which is accepted and held in connection with, and in the normal course of, an employer's (or affiliate's) primary business activity as a seller of such property. A two-party instrument is a promissory instrument used in connection with an extension of credit in which one party (the maker) promises to pay a second party (the payee) a sum of money.

(c) The term ''Independent Fiduciary'' means a person or entity which is qualified to serve in that capacity (*i.e.*, knowledgeable as to the duties and responsibilities as a fiduciary under the Act and knowledgeable as to the subject transaction) and which is independent of the party in interest engaging in the transaction and its affiliates.

(d) The terms ''employer'' or ''adopting employer'' mean those entities which currently sponsor, or in the future will sponsor, the Plan and who have, or will have, employees that are participants in the Plan, and are considered an ''employer'' as that term is defined in section 3(5) of the Act.

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 (the Notice) published on May 5, 2003 at 68 FR 23778.

Written Comments: The Department received one written comment with respect to the Notice which was submitted by the applicant (AMG). The applicant states that in Subsection (a) of Section III (Definitions) of the Notice, the terms ''affiliate'' or ''affiliates'' were defined, with respect to an employer of employees covered by the Plan, as:

> any corporation that is, at the time the Plan acquires a customer note, a member of a controlled group of corporations (as defined in 407(d)(7) of the Act and section 1563(a) of the Code), along with AMG *and* any other adopting employer. [emphasis added]

In this regard, the applicant represents that only two employers that have adopted the Plan are part of a controlled group. The remaining companies, while related, do not have the requisite level of common ownership to constitute a controlled group, as described in the definition noted above. Thus, in order to include other adopting employers of the Plan that are not currently within a controlled group along with AMG, the applicant requests that the word ''and'' be changed to ''or'' in the last phrase of the definition of the terms ''affiliate'' or ''affiliates'' in Section III(a) of the exemption.

The Department acknowledges the applicant's comment and has revised the definition of ''affiliate'' in Section III(a) of the exemption to reflect the applicant's request.

No other comments, nor any requests for a hearing, were received by the Department. Accordingly, the Department has determined to grant the exemption, as modified.

FOR FURTHER INFORMATION CONTACT: Mr. Brian J. Buyniski of the Department, telephone (202) 693–8545. (This is not a toll-free number.)

Lehman Brothers Holding Inc. (LBHI) and Lehman Brothers Inc. (LBI), *et al.* (collectively, the Applicants) Located in New York, NY

[Prohibited Transaction Exemption 2003–22; Exemption Application No. D–11164]

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) of the Code,[1] shall not apply, effective April 16, 2003, to the purchase of any securities by LBHI and LBI and their affiliate (collectively the Asset Manager), on behalf of employee benefit plans (Client Plans), including Client Plans investing in a pooled fund (the Pooled Fund), for which the Asset Manager acts as a fiduciary, from any person other than the Asset Manager or an affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such securities, where LBI and its affiliates (collectively, the Affiliated Broker-Dealer) are a manager or member of such syndicate, provided that the following conditions are satisfied:

(a) The securities to be purchased are—

(1) Either:

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a *et seq.*) or, if exempt from such registration requirement, are (A) 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) issued by a bank, (C) exempt from such registration requirement pursuant to a

[1] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of Title II of the Code.

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 the issuer of which 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 90 days immediately preceding the sale of securities and has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding 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 is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) Purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of 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 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, provided that the interest rates on comparable debt securities offered to the public subsequent to the first day and prior to the purchase are less than the interest rate of the debt securities being purchased; and

(3) 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 such securities has been in continuous operation for not less than three years, including the operation of any predecessors, unless—

(1) Such securities are non-convertible debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, *i.e.*, Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Organizations); or

(2) Such securities are issued or fully guaranteed by a person described in paragraph (a)(1)(i)(A) of Section I of this exemption; or

(3) Such securities are fully guaranteed by a person who has issued securities described in paragraphs (a)(1)(i)(B), (C), or (D) of Section I, and who has been in continuous operation for not less than three years, including the operation of any predecessors.

(c) The amount of such securities to be purchased by the Asset Manager on behalf of a Client Plan does not exceed three percent of the total amount of the securities being offered. Notwithstanding the foregoing, the aggregate amount of any securities purchased with assets of all Client Plans managed by the Asset Manager (or with respect to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3–21(c)) does not exceed:

(1) 10 percent of the total amount of any equity securities being offered;

(2) 35 percent of the total amount of any debt securities being offered that are rated in one of the four highest rating categories by at least one of the Rating Organizations; or

(3) 25 percent of the total amount of any debt securities being offered that are rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; and

(4) If purchased in an Eligible Rule 144A Offering, the total amount of the securities being offered for purposes of determining the percentages for (1)–(3) above is the total of:

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

(d) The consideration to be paid by the Client Plan in purchasing such securities does not exceed three percent of the fair market value of the total net assets of the Client Plan, as of the last day of the most recent fiscal quarter of the Client Plan prior to such transaction.

(e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or an affiliate.

(f) The Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession or other consideration that is based upon the amount of securities purchased by Client Plans pursuant to this exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation that is attributable to the fixed designations generated by purchases of securities by the Asset Manager on behalf of its Client Plans.

(g)(1) The amount the Affiliated Broker-Dealer receives in management, underwriting or other compensation is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated Broker-Dealer for foregoing any selling concessions for those securities sold pursuant to this exemption. Except as described above, nothing in this paragraph shall be construed as precluding the Affiliated Broker-Dealer from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other consideration that is not based upon the amount of securities purchased by the Asset Manager on behalf of Client Plans pursuant to this exemption; and

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

(h) In the case of a single Client Plan, the covered transaction is performed under a written authorization executed in advance by an independent fiduciary (Independent Fiduciary) of the Client Plan.

(i) Prior to the execution of the written authorization described in paragraph (h) above of this Section I, the following information and materials must be provided in hard copy or in electronic form by the Asset Manager to the Independent Fiduciary of each single Client Plan:

(1) A copy of the notice of proposed exemption and of the final exemption as published in the **Federal Register**; and

(2) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(j) Subsequent to an Independent Fiduciary's initial authorization permitting the Asset Manager to engage in the covered transactions on behalf of a single Client Plan, the Asset Manager will continue to be subject to the

requirement to provide any reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(k) In the case of existing plan investors in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, unless the Asset Manager has provided the written information described below to the Independent Fiduciary of each plan participating in the Pooled Fund. The following information and materials shall be provided in hard copy or in electronic form not less than 45 days prior to the Asset Manager's engaging in the covered transactions on behalf of the Pooled Fund pursuant to the exemption:

(1) A notice of the Pooled Fund's intent to purchase securities pursuant to this exemption and a copy of the notice of proposed exemption and of the final exemption as published in the **Federal Register**;

(2) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests; and

(3) A termination form expressly providing an election for the Independent Fiduciary to terminate the plan's investment in the Pooled Fund without penalty to the plan. Such form shall include instructions specifying how to use the form.

Specifically, the instructions will explain that the plan has an opportunity to withdraw its assets from the Pooled Fund for a period at least 30 days after the plan's receipt of the initial notice described in paragraph (1) of this Section I(k) above and that the failure of the Independent Fiduciary to return the termination form by the specified date shall be deemed to be an approval by the plan of its participation in covered transactions as a Pooled Fund investor. Further, the instructions will identify the Asset Manager and its Affiliated Broker-Dealer and state that this exemption may be unavailable unless the Independent Fiduciary is, in fact, independent of those persons. Such fiduciary must advise the Asset Manager, in writing, if it is not an ''Independent Fiduciary,'' as that term is defined in Section II(g) of this exemption.

For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicants or an affiliate thereof. However, in-house plans must notify the Asset Manager, as provided above.

(1) In the case of a plan whose assets are proposed to be invested in a Pooled Fund subsequent to implementation of the procedures to engage in the covered transactions, the plan's investment in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary, following the receipt by the Independent Fiduciary of the materials described in Section I(k)(1) and (2). For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicants or an affiliate thereof.

(m) Subsequent to an Independent Fiduciary's initial authorization of a plan's investment in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide any reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(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:

(1) Furnish the Independent Fiduciary of each single Client Plan, and of each plan investing in a Pooled Fund, with a report (which may be provided electronically) disclosing all securities purchased on behalf of that Client Plan or Pooled Fund pursuant to this exemption during the period to which such report relates, and the terms of the transactions, including:

(i) The type of security (including the rating of any debt security);

(ii) The price at which the securities were purchased;

(iii) The first day on which any sale was made during this offering;

(iv) The size of the issue;

(v) The number of securities purchased by the Asset Manager for the specific Client Plan or Pooled Fund;

(vi) The identity of the underwriter from whom the securities were purchased;

(vii) The spread on the underwriting;

(viii) The price at which any such securities purchased during the period were sold; and

(ix) The market value at the end of such period of each security purchased during the period and not sold;

(2) Provide to the Independent Fiduciary in the quarterly report a representation that the Asset Manager has received a written certification signed by an officer of the Affiliated Broker-Dealer, as described in paragraph (g)(2) of this Section I, affirming that, as to each offering covered by this exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with Section I(e), (f), and (g) of this exemption, and that a copy of such certification will be provided to the Independent Fiduciary upon request;

(3) Disclose to the Independent Fiduciary that, upon request, any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests will be provided, including, but not limited to:

(i) The date on which the securities were purchased on behalf of the plan;

(ii) The percentage of the offering purchased on behalf of all Client Plans and Pooled Funds; and

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

(4) Disclose to the Independent Fiduciary in the quarterly report, any instance during the past quarter where the Asset Manager was precluded for any period of time from selling a security purchased under this exemption in that quarter because of its status as an affiliate of the Affiliated Broker-Dealer and the reason for this restriction;

(5) Provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a single Client Plan, that the authorization to engage in the covered transactions may be terminated, without penalty, by the Independent Fiduciary on no more than five days' notice by contacting an identified person; and

(6) Provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a plan investing in a Pooled Fund, that the Independent Fiduciary may terminate investment in the Pooled Fund, without penalty, by contacting an identified person.

(o) Each single Client Plan shall have total net assets with a value of at least $50 million. In addition, in the case of a transaction involving an Eligible Rule 144A Offering on behalf of a single Client Plan, each such Client Plan shall have at least $100 million in securities, as determined pursuant to SEC Rule 144A (17 CFR 230.144A). In the case of a Pooled Fund, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having total net assets with a value of at least $50 million. For purchases involving an Eligible Rule 144A Offering on behalf of a Pooled Fund, the $100 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having at least $100 million in assets 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 tests described above, 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 the $100 million net asset requirement may be met by aggregating the assets of such Client Plans, if the assets are pooled for investment purposes in a single master trust.

(p) The Asset Manager qualifies as a ''qualified professional asset manager,'' as that term is defined under Part V(a) of PTE 84–14 (49 FR 9494, 9506, March 13, 1984) and, in addition, has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of $5 billion and shareholders' or partners' equity in excess of $1 million.

(q) No more than 20 percent of the assets of a Pooled Fund, at the time of a covered transaction, is comprised of assets of employee benefit plans maintained by the Asset Manager, the Affiliated Broker-Dealer, or an affiliate for their own employees, for which the Asset Manager, the Affiliated Broker-Dealer, or an affiliate exercises investment discretion.

(r) The Asset Manager and the Affiliated Broker-Dealer maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in Section I(s) of this exemption to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Client Plan, other than the Asset Manager and the Affiliated Broker-Dealer, shall be subject to a civil penalty under section 502(i) of the Act or the sanctions imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by Section I(s); 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 Affiliated Broker-Dealer, such records are lost or destroyed prior to the end of the six-year period.

(s)(1) Except as provided in subparagraph (2) of this Section I(s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section I(r) 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;

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

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Client Plan, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a Client Plan, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in subparagraphs (s)(1)(ii)–(iv) of this Section I shall be authorized to examine trade secrets of the Asset Manager or the Affiliated Broker-Dealer, or commercial or financial information which is privileged or confidential; and

(3) Should the Asset Manager or the Affiliated Broker-Dealer refuse to disclose information on the basis that such information is exempt from disclosure pursuant to Section I(s)(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 II. Definitions

(a) The term ''Asset Manager'' means any asset management affiliate of any Applicant (as ''affiliate'' is defined in Section II(c)) that meets the requirements of this exemption.

(b) The term ''Affiliated Broker-Dealer'' means any broker-dealer affiliate of any Applicant (as ''affiliate'' is defined in paragraph (c) of this Section II) that meets the requirements of this exemption. Such Affiliated 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 being offered, or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term ''affiliate'' of a person includes:

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

(2) Any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and

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

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

(e) The term ''Client Plan'' means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act and whose assets are under the management of the Asset Manager, including a plan investing in a Pooled Fund (as ''Pooled Fund'' is defined in Section II(f) below).

(f) The term ''Pooled Fund'' means a common or collective trust fund or pooled investment fund maintained by the Asset Manager.

(g)(1) The term ''Independent Fiduciary'' means a fiduciary of a Client Plan who is unrelated to, and independent of, the Asset Manager and the Affiliated Broker-Dealer. For purposes of this exemption, a Client Plan fiduciary will be deemed to be unrelated to, and independent of, the Asset Manager and the Affiliated Broker-Dealer if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager or the Affiliated Broker-Dealer and represents that such fiduciary shall advise the Asset Manager if those facts change.

(2) Notwithstanding anything to the contrary in this Section II(g), a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Asset Manager or the Affiliated Broker-Dealer;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from the Asset Manager or the Affiliated Broker-Dealer for his or her own personal account in connection with any transaction described in this exemption;

(iii) 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 in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Client Plan sponsor or of the fiduciary responsible for the

decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director of the Client Plan sponsor or of the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser and (B) the decision to authorize or terminate authorization for transactions described in Section I, then this Section II(g)(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 the entity.

(4) In the case of existing Client Plans in a Pooled Fund, at the time the Asset Manager provides such Client Plans with initial notice pursuant to this exemption, the Asset Manager will notify the fiduciaries of such Client Plans that they must advise the Asset Manager, in writing, if they are not independent, within the meaning of this Section II(g).

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

(i) 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.

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

(k) The term ''Rating Organizations'' means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors.

EFFECTIVE DATE: This exemption is effective as of April 16, 2003.

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 April 16, 2003 at 68 FR 18687.

FOR FURTHER INFORMATION CONTACT: Ms. Silvia Quezada of the Department at (202) 693–8553. (This is not a toll-free number.)

Goldman, Sachs & Co. and Its Affiliates Located in New York, New York

[Prohibited Transaction Exemption 2003–23; Exemption Application No. D–11169]

Exemption

The restrictions of sections 406(a)(1)(A) through (D) of the Act and the sanctions resulting from application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any purchase or sale of securities, in the context of a portfolio liquidation or restructuring, between (i) Goldman, Sachs & Co. (Goldman) and its current and future affiliates, including certain foreign broker-dealers or banks (the Foreign Affiliates, as defined in Section III below), (collectively, the Applicant) and (ii) employee benefit plans (the Plans) with respect to which the Applicant is a party in interest, provided that the conditions set forth in Section II are satisfied.

Section II—Conditions

A. The Applicant customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank;

B. The Applicant (including an affiliate) does not have discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, nor renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

Notwithstanding the foregoing, the Applicant may be a directed trustee (as defined in Section III below) with respect to the Plan assets involved in the transaction.

In addition, although the Applicant does not have discretionary authority or control over such Plan assets at the time of the transaction and has not used its discretion to appoint the transition broker-dealer, it may act as a fiduciary with respect to the Plan assets involved in the transaction, solely as: (i) The investment manager of such assets to be managed as an Index or Model-Driven Fund; or (ii) the investment manager of such assets who supplies a list of securities or other investments to be purchased, which list is prepared without regard to the identity of the broker-dealer and without reference to the portfolio being liquidated or restructured, and is substantially the same list that would be provided to other similarly situated investors with substantially similar investment guidelines and objectives, or is substantially similar to the investments in existing portfolios managed in the same style.

Lastly, a transaction will not fail to meet the requirements of this section if the Applicant is being terminated as a manager of the Plan assets involved in the transaction, its investment discretion is terminated prior to the commencement of the portfolio liquidation or restructuring, and the Applicant has not used its discretion to appoint the transition broker-dealer;

C. The transaction is a purchase or sale, for no consideration other than cash;

D. The terms of any transaction are at least as favorable to the Plan as those obtainable in a comparable arm's length transaction with an unrelated party;

E. An Independent Fiduciary has given prior approval that the transaction may be effectuated as a principal transaction and at a price that—

(1) For an equity security, is specified in advance by the Independent Fiduciary and is a stated dollar amount, or is based on an objective measure (as of a specified date or dates), including, but not limited to, the closing price, the opening price, or the volume-weighted average price; or

(2) For a fixed income security, is a stated dollar amount, or is within the bid and asked spread, as of the close of the relevant market (or another predetermined time on a specified date or dates), as reported by an independent third party reporting service or a publicly available electronic exchange or trading system;

F. In the case where the price for any transaction is not based on an objective measure, the Independent Fiduciary has given prior approval for the transaction, specifying whether the transaction is to be agency or principal, either on a security-by-security basis, or based on the whole portfolio or an identifiable part of the portfolio (such as all debt securities, all equity securities, all domestic securities, or the like);

G. All purchases and sales executed on a principal basis are effected within two days following the Independent Fiduciary's direction to purchase or sell a given security—except that, with the approval of the Independent Fiduciary, the Applicant may extend such initial period for a time not exceeding two additional days, on the same terms;

H. The Independent Fiduciary is furnished with confirmations including the relevant information required under Rule 10b–10 of the Securities Exchange Act of 1934 (the 1934 Act), to the extent required under Rule 10b–10, as well as a report, within five business days after the transaction is completed, containing the following information with respect to each security:

(1) The identity of the security;

(2) The date on which the transaction occurred;

(3) The quantity and price of the securities involved; and

(4) Whether the transaction was executed with the Applicant as principal or agent;

I. Each Plan shall have total net assets with a value of at least $100 million. For purposes of the net assets test, where a group of Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $100 million net assets requirement may be met by aggregating the assets of such Plans, if the assets are pooled for investment purposes in a single master trust;

J. The Applicant complies with all applicable securities or banking laws relating to the transaction;

K. Any Foreign Affiliate is a registered broker-dealer or bank subject to regulation by a governmental agency, as described in Section III, B, and is in compliance with all applicable rules and regulations thereof in connection with any transaction covered by the exemption;

L. Any Foreign Affiliate, in connection with any transaction covered by the exemption, is in compliance with the requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act, and Securities and Exchange Commission (SEC) interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements;

M. Prior to any transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions. In this regard, the Foreign Affiliate must (i) agree to submit to the jurisdiction of the United States; (ii) agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent); and (iii) consent to service of process on the Process Agent;

N. The Applicant maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction, such records as are necessary to enable the persons described in Paragraph O, below, to determine whether the conditions of the exemption have been met, except that —

(1) A party in interest with respect to a Plan, other than the Applicant, shall not 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 by Paragraph O; and

(2) This record-keeping condition shall not be violated if, due to circumstances beyond the Applicant's control, such records are lost or destroyed prior to the end of the six year period; and

O. Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the Applicant makes the records referred to in Paragraph N, above, unconditionally available within the United States during normal business hours at their customary location to the following persons or a duly authorized representative thereof: (1) The Department, the Internal Revenue Service, or the SEC; (2) any fiduciary of a Plan; (3) any contributing employer to a Plan; (4) any employee organization any of whose members are covered by a Plan; and (5) any participant or beneficiary of a Plan. However, none of the persons described in Items (2) through (5) of this subsection is authorized to examine the trade secrets of the Applicant, or commercial or financial information which is privileged or confidential.

Section III—Definitions

A. The term ''Goldman'' means Goldman, Sachs & Co. and its current and future affiliates, including the Foreign Affiliates (as defined in Paragraph C, below); each domestic affiliate must be one of the following: (i) A broker-dealer registered under the 1934 Act; (ii) a reporting dealer who makes primary markets in securities of the United States Government or of any agency of the United States Government (''Government securities'') and reports daily to the Federal Reserve Bank of New York its positions with respect to Government securities and borrowings thereon; or (iii) a bank supervised by the United States or a State. Goldman, including its current and future affiliates (including the Foreign Affiliates), are collectively referred to herein as ''the Applicant.''

B. The term ''affiliate'' shall include: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; (2) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such person; and (3) any corporation or partnership of which such person is an officer, director or partner. For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

C. The term ''Foreign Affiliate'' means an affiliate of Goldman that is subject to regulation as a broker-dealer or bank by: (1) The Securities and Futures Authority or the Financial Services Authority in the United Kingdom, (2) the Federal Authority for Financial Services Supervision, *i.e.*, der Bundesanstalt fuer Finanzdienstleistungsaufsicht (the BAFin) in Germany, (3) the Ministry of Finance and/or the Tokyo Stock Exchange in Japan, (4) the Ontario Securities Commission and/or the Investment Dealers Association, or the Office of the Superintendent of Financial Institutions, in Canada, (5) the Swiss Federal Banking Commission in Switzerland, or (6) the Australian Prudential Regulation Authority or the Australian Securities & Investments Commission, and/or the Australian Stock Exchange Limited, in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

D. The term ''security'' shall include equities, fixed income securities, options on equity or fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term ''security'' does not include swap agreements or other notional principal contracts.

E. The term ''index'' means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if

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

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

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

(iii) A public securities exchange or association of securities dealers;

(2) The index is created and maintained by an organization independent of the Applicant; and

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

F. The term ''Index Fund'' means any investment fund, account, or portfolio trusteed or managed by the Applicant, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile, and other characteristics of an independently maintained securities index (as ''index'' is defined in Paragraph E, above) by either (i) replicating the same

combination of securities that compose such index, or (ii) sampling the securities that compose such index based on objective criteria and data;

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

(3) That contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (*see* 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and

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

G. The term ''Model-Driven Fund'' means any investment fund, account, or portfolio trusteed or managed by the Applicant, in which one or more investors invest, and—

(1) Which is composed of securities, the identity of which and the amount of which, are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of the Manager, to transform an Index (as defined in Paragraph E, above);

(2) Which contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (*see* 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund, or the utilization of any specific objective criteria, that is intended to benefit the Applicant or any party in which the Applicant may have an interest.

H. The term ''Plan'' means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act.

I. The term ''Independent Fiduciary'' means a fiduciary of a Plan who is unrelated to, and independent of, the Applicant. For purposes of the exemption, a Plan fiduciary will be deemed to be unrelated to, and independent of, the Applicant if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant and represents that such fiduciary shall advise the Applicant if those facts change.

(1) Notwithstanding anything to the contrary in this Section III, I, a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Applicant;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from the Applicant for his or her own personal account in connection with any transaction described in the exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant, responsible for the transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Plan sponsor or the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director of the Plan sponsor or the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's broker-dealer or bank executing the transactions covered herein, and (B) the decision to authorize or terminate authorization for transactions described in Section I, then Section III, I(1)(iii) shall not apply.

(2) 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 the entity.

J. The term ''directed trustee'' means a Plan trustee whose powers and duties with respect to any assets of the Plan involved in the portfolio liquidation or restructuring are limited to (i) the provision of nondiscretionary trust services to the Plan, and (ii) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term ''nondiscretionary trust services'' means custodial services and services ancillary to custodial services, none of which services is discretionary. For purposes of the exemption, a person who is otherwise a directed trustee will not fail to be a directed trustee solely by reason of having been delegated, by the sponsor of a master or prototype Plan, the power to amend such Plan.

EFFECTIVE DATE: This exemption is effective as of February 6, 2003.

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 April 16, 2003 at 68 FR 18698.

Written Comments

The Department received one written comment with respect to the notice of proposed exemption (the Proposal). The comment was submitted by the Applicant, who requested clarification of a certain statement in Item 3 of the Summary of Facts and Representations in the Proposal. The Applicant wished to revise the first full sentence in the first column of 68 FR at 18701 as follows (note bracketed deletions and italicized additions):

> The Applicant [delete ''believes''] *is concerned that some of its Plan clients may believe* that the principal transactions at issue may fall outside the scope of relief provided by PTE 75–1 (40 FR 50845, October 31, 1975), Part II,[footnote 32] because that class exemption is unavailable where the broker-dealer's affiliate is the trustee of a Plan, even if only a directed trustee, *and is unavailable where the broker-dealer or an affiliate thereof is otherwise a fiduciary with respect to the Plan, such as an asset manager.*

The Department acknowledges the Applicant's clarification to the record.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng 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 1st day of July, 2003.

Ivan Strasfeld,

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

[FR Doc. 03–17095 Filed 7–7–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. San Juan Coal Company

[Docket No. M–2003–047–C]

San Juan Coal Company, 1001 Pennsylvania Avenue, NW, Washington, DC 20004–2595 has filed a petition to modify the application of 30 CFR 75.321(a)(1) (Air quality) to its San Juan South Underground Mine (MSHA I.D. No. 29–02170) located in San Juan County, New Mexico. The petitioner requests a modification of the existing standard to permit oxygen levels below 19.5% in the tailgate entry adjacent to the last shield on the longwall face in the San Juan South Underground Mine to eliminate air quality, and rib and roof fall hazards to the miners in lieu of adjusting ventilation controls in the affected area if less than 19.5% oxygen is detected there. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miner and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Snyder Coal Company

[Docket No. M–2003–048–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.381 (Escapeways; anthracite mines) to its Rattling Run Slope (MSHA I.D. No. 36–08713) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit two separate travelable passageways designated as escapeways in lieu of two travelable passageways designated as escapeways that must be on distinct air courses. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Drummond Company, Inc.

[Docket No. M–2003–049–C]

Drummond Company, Inc., PO Box 10246, Birmingham, Alabama 35202 has filed a petition to modify the application of 30 CFR 75.507 (Power connection points) to its Shoal Creek Mine (MSHA I.D. No. 01–02901) located in Jefferson County, Alabama. The petitioner proposes to use 4,160-volt, three-phase, alternating current deepwell submersible pumps in boreholes in it Shoal Creek Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before August 7, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, VA, this 30th day of June 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–17138 Filed 7–7–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–079)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Bigelow Development Aerospace Division, LLC, having offices in Las Vegas, Nevada, has applied for an exclusive license to practice the inventions described and claimed in U.S. Patent No. 6,231,010, entitled ''Advanced Structural and Inflatable Hybrid Spacecraft Module,'' and U.S. Patent No. 6,547,189, entitled ''Inflatable Vessel and Method.'' Each of the above-listed patents is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Johnson Space Center. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by July 23, 2003.

FOR FURTHER INFORMATION CONTACT: James Cate, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452; telephone (281) 483–1001.

Dated: June 26, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–17219 Filed 7–7–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–080)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Brandywine Optics, Inc. of West Chester, Pennsylvania, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,880,834, entitled ''Convex Diffraction Grating Imaging Spectrometer,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the NASA Management Office-JPL.

DATES: Comments to this notice must be received by July 23, 2003.

FOR FURTHER INFORMATION CONTACT: Patent Counsel, NASA Management Office-JPL, 4800 Oak Grove Drive, Mail Station 180–801, Pasadena, CA 91109–8099, telephone (818) 354–7770.

Dated: June 26, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–17220 Filed 7–7–03; 8:45 am]

BILLING CODE 7510–01–P