

DEPARTMENT OF LABOR**Employee Benefits Security Administration**

[Application No. D-11170, et al.]

Proposed Exemptions; Liberty Media 401(k) Savings Plan (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions 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).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: "moffitt.betty@dol.gov", or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). 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 requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations. Liberty Media 401(k) Savings Plan (the Plan)
Located in Englewood, Colorado
[Application No. D-11170].

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective November 25, 2002, to (1) The acquisition of certain stock rights (the Rights) by the Plan in connection with a Rights offering by Liberty Media Corporation (LMC), a party in interest with respect to the Plan; (2) the holding of the Rights by the Plan during the subscription period of the offering; and (3) the exercise of the Rights by the Plan, provided that the following conditions were met:

(a) The Rights were acquired pursuant to Plan provisions for individually-directed investment of such accounts;

(b) The Plan's receipt of the Rights occurred in connection with the Rights offering made available to all shareholders of common stock of LMC;

(c) All decisions regarding the holding and disposition of the Rights by the Plan were made, in accordance with the Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received the Rights in connection with the offering;

(d) The Plan's acquisition of the Rights resulted from an independent act of LMC as a corporate entity, and all holders of the Rights, including the Plan, were treated in the same manner with respect to the acquisition; and

(e) The Plan received the same proportionate number of the Rights as other owners of Liberty Media Series A and Series B common stock (the Stock).

This exemption, if granted, will be effective as of November 25, 2002.

Summary of Facts and Representations

1. The Plan is a defined contribution plan that is intended to satisfy the requirements of Code Sections 401(a) and 401(k). As of December 31, 2001, the Plan had approximately 3,466 participants and total assets of \$104,044,000. The shares of LMC common stock held by the Plan were valued at \$46,265,000 as of December 31, 2001, and comprised approximately 44.8% percent of the total assets in the Plan.

The Plan permits participants to contribute a portion of their respective annual compensation to the Plan as a salary reduction contribution under Code Section 401(k). LMC makes a matching contribution to the Plan, which differs for different groups of employees. Participant salary reduction contributions are immediately 100% vested. The matching contributions are vested according to a schedule based on the years of service each participant has completed. The stock received from exercising the Rights will be vested according to the Plan vesting schedule.

2. The trustee of the Plan is Fidelity Management Trust Company (the Trustee). The Trustee acts as the custodian of Plan assets, holding legal title to the assets, and executing investment directions in accordance with the participants' written instructions. The Plan Administrative Committee is the fiduciary responsible for Plan matters. The Plan allows participants to direct investments of their 401(k) contributions into one of 18 investment categories, including the

Liberty Media Common Stock Fund. Matching contributions always are invested in the Liberty Media Common Stock Fund.

LMC owns interests in a broad range of video programming, broadband distribution, interactive technology services and communications businesses. LMC and its affiliated companies operate in the United States, Europe, South America, and Asia.

3. LMC announced a special rights offering. Holders of record of the Stock on October 31, 2002 (the Record Date), each received 0.04 of a transferable subscription Right for each share of Series A and Series B common stock held. Each whole Right entitled the holder to purchase one share of Series A common stock at a subscription price determined by a special pricing committee of LMC's board of directors, which was determined to be \$6.00 per share.

LMC stock is traded on the New York Stock Exchange. Series A common stock is traded under the symbol L and Series B common stock is traded under the symbol LMC.B.

The Plan was a holder of record of the Stock on the Record Date. The Plan established two temporary investment funds under a separate trust called the "Liberty Media Rights Trust" (the Rights Trust). The Rights Holding Fund is a separate fund established under the Rights Trust to hold the Rights when they are issued. Rights were credited to participants' accounts based on their respective balances in the Liberty Media Common Stock Fund on October 31, 2002. The second fund, the "Liberty Media Receivable Fund" (the Receivable Fund), following the exercise of Rights as directed by the Plan participants, reflected the approximate value of the Liberty Media Series A shares due from the subscription agent.

With respect to Rights allocated to their accounts, Plan participants either may elect to (1) exercise the Rights or (2) sell the Rights. These elections apply to both Stock held in the participant's account attributable to 401(k) contributions and to matching contributions (including vested and unvested matching contributions). Due to securities law restrictions, certain Participants who are reporting persons under Rule 16(b) will not have the right to instruct Fidelity to either Sell or Exercise the Rights credited to their account. Liberty Media provided Fidelity with a list of those Participants. Fidelity established the appropriate restrictions to prevent these participants from exercising or selling the Rights credited to their accounts. As provided by the Plan, Fidelity sold the Rights

credited to these Rule 16(b) participant accounts as soon as administratively feasible after the receipt and allocation of the Rights to the participant accounts.¹

4. With the exception of those reporting persons under Rule 16(b) as described above, each participant in the Plan may elect to exercise any percentage of the Rights granted on the participant's Stock allocated to the participant's account in the Plan. Under the offering, a participant of the Plan could elect to exercise a Right by speaking to a Fidelity representative at any time prior to 4 p.m. Eastern Time, November 25, 2002, (the Election Close-Out Date). Participants had the opportunity prior to the Election Close-Out Date to revoke or change instructions to exercise by (1) electing a new percentage; (2) by placing an order to sell; or (3) a combination of both.

The dollar amount required to exercise the Rights were exchanged from other investments in the participant's account into the Receivable Fund established under the Rights Trust. The required dollar amount equals the percentage of Rights to be exercised (as elected by the participant) multiplied by the number of Rights credited to the participant's account and multiplied by the exercise price for the Rights offering. The dollar amount was exchanged from the other investment categories in which the account is invested on a proportional basis by source. The Liberty Media Stock Fund was not included unless insufficient funds did not exist in the other investment categories under the participant's account. For those individuals with insufficient funds to permit exercise of the entire elected amount, Fidelity exercised as many rights as the account balance permitted.

On or about November 29, 2002, the Rights to be exercised and necessary funds were submitted to the subscription agent for the purchase of shares. Participant's balances in the Rights Holding Fund were reduced by the number of Rights exercised on a participant's behalf. Fidelity sold all remaining Rights on the open market between November 29, 2002, and December 2, 2002, at which time the Rights expired. Upon receipt of the new shares, the Receivable Fund was closed and the newly received shares were transferred into the Liberty Media Stock Fund and allocated to the participant's accounts.

¹ The Rights issued to the Plan that were sold from the Plan were sold to unrelated third parties on the open market. Those Rights were traded on the New York Stock Exchange under the symbol "LMC.RT".

For any Rights sold by the Plan, a commission of 3.4 cents per Right was charged to the Plan account from which the Right was sold. The commission was not paid to LMC but to the broker dealer, National Financial Services (NFS) for the sale transaction. NFS is an affiliate of Fidelity Management Trust Company, which serves as a non-discretionary Trustee for the Plan. The discretionary fiduciary for the Plan is the Plan Administrative Committee appointed by the Board of Directors of LMC. The Administrative Committee determined, after reasonable consideration of the alternatives, that the use of NFS was in the best interests of the Plan.²

Those participants who elected to exercise only a portion of their Rights later could elect to exercise additional Rights if sufficient time existed prior to the Election Close-Out Date. The Election Close-Out Date was established to permit sufficient time for the Trustee to liquidate the other assets in an orderly manner so that the necessary cash would be available to exercise the Rights before the Rights offering expiration date (December 2, 2002). All Rights were exercised or sold prior to the end of the Rights offering period, no Rights held by the Plan expired. A participant may have elected to sell rather than exercise the Rights allocated to his or her account. In order to do so, the participant was required to (1) contact the Fidelity representative; and (2) specify the percentage (in whole amounts) of the Rights he desired to sell. The selling period for participants ran from November 8, 2002, through November 25, 2002.

Participants in the Plan will be in a like position with other shareholders who are receiving the Rights with the sole exception that the Plan participants were not entitled to participate in the oversubscription privilege described in the prospectus. No expense will be incurred by the Plan from the Rights offering, and full disclosure of the Rights offering was made in the public documents filed with the SEC. The Rights offering and the resulting transactions were in the best interests of and beneficial to the Plan and its participants and beneficiaries. The rights of the participants and beneficiaries of the Plan were protected in the Rights offering and subsequent transactions. All involved participants were notified in advance of the Rights offering of the procedure for instructing the Trustee of the participant's desires

² The Department provides no opinion as to whether the selection of the broker dealer meets the conditions set forth under section 408(b)(2).

for exercise or sale under the Rights offering, and all instructions given by the involved participants to the Trustee were properly executed.

All actions by the Trustee with respect to the Rights offering were made pursuant to express instructions except when the involved participant failed to act or acted in violation of the published procedures, in which case the Rights were placed on the open market for sale and any unsold rights were allowed to expire unexercised. These instructions as to the disposition of the Rights upon the failure of the involved participant to act or to give valid instructions were fully disclosed in the procedural instructions given to the involved participants. These instructions are consistent with the nature of participant-directed investments under the Plan.

5. In summary, it is represented that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The Rights were acquired pursuant to Plan provisions for individually-directed investment of such accounts;

(b) The Plan's receipt of the Rights occurred in connection with the Rights offering made available to all shareholders of common stock of LMC;

(c) All decisions regarding the holding and disposition of the Rights by the Plan were made, in accordance with the Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received the Rights in connection with the offering;

(d) The Plan's acquisition of the Rights resulted from an independent act of LMC as a corporate entity; and

(e) The Plan received the same proportionate number of the Rights as other owners of the Stock.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the Employer and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Khalif Ford of the Department, telephone (202) 219-8883 (this is not a toll-free number).

RBC Dain Rauscher, Inc. (RBC-DR)
Located in Minneapolis, Minnesota
[Application No. D-11189]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act,

and section 4975 of the Code, in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

I. Transactions

A. Effective for transactions occurring on or after April 18, 2003, the restrictions of section 406(a) and 407(a) of the Employee Retirement Income Security Act of 1974, as amended (the Act), and the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986, as amended (the Code), by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan, by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.³

B. Effective for transactions occurring on or after April 18, 2003, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or

receivables contained in the Issuer, or (b) an affiliate or a person described in (a); if (i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the Restricted Group, and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Securities does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in a Issuer containing assets sold or serviced by the same entity.⁴ For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in an Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective for transactions occurring on or after April 18, 2003, the restrictions of sections 406(a), 406(b) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of an Issuer, including the use of any Eligible Swap transaction; or the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

⁴ For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

³ Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer;⁵ and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by the Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a "Qualified Administrative Fee."

D. Effective for transactions occurring on or after April 18, 2003, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

II. General Conditions

A. The relief provided under section I is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the

plan as such terms would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories.

(4) The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter. For purposes of this requirement:

(a) The Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) Subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as a result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities provided that:

(i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the date such Servicer became an Affiliate of the Trustee; and

(ii) Such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's

reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission (SEC) under the Securities Act of 1933; and

(7) In the event that the obligations used to fund an Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations as specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency.

Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency, upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional

⁵ In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the Securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred on the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of such Issuer, including employee benefit plans subject to the Act;

(8) In order to insure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates;

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding

until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A "true sale" of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall

within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon this Underwriter Exemption only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer, nor any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under Part I, if the provision in subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation of each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in section II.A.(6).

III. Definitions

For purposes of this proposed exemption:

A. "Security" means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such Trust; or

(2) A Security which is denominated as a debt instrument that is issued by and is an obligation of an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. "Issuer" means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consist solely of:

(1)(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and/or commercial real property (including obligations secured by leasehold interests on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR § 2510.3-101(1)(2)⁶ and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B.(1);⁷

Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that (i) the rights and interests evidenced by the Securities issued in such Designated Transactions are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) The outstanding principal balance due under the obligation which is held by the Issuer and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection I.A.(9) or pursuant to any Eligible Yield Supplement Agreement, and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)–(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to securityholders occurring after the end of the Pre-Funding Period.

For purposes of this clause (c) of subsection III.B.(3), the term "permitted investments" means investments which are either (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States, or (ii) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; are described in the Pooling and Servicing Agreement; and are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in section III.B.(1).

Notwithstanding the foregoing, the term "Issuer" does not include any investment pool unless: (i) The assets of the type described in paragraphs (a)–(f) of subsection III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to this exemption.

C. "Underwriter" means.

(1) RBC-DR;

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

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

D. "Sponsor" means the entity that organizes an Issuer by depositing

⁶ In Advisory Opinion 99-05A (Feb. 22, 1999), the Department expressed its view that mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation ("Farmer Mac") meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR 2510.3-101(i)(2).

⁷ It is the Department's view that the definition of "Issuer" contained in section III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the exemption generally provides relief for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

obligations therein in exchange for Securities.

E. "Master Servicer" means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. "Servicer" means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. "Trust" means an Issuer which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. "Trustee" means the trustee of any Trust which issues Securities and also includes an Indenture Trustee.

"Indenture Trustee" means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Trust, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the servicer.

J. "Insurer" means the insurer or guarantor of, or provider of other credit support for, an Issuer. Notwithstanding the foregoing, a person is not an Insurer solely because it holds securities representing an interest in an Issuer which are of a class subordinated to Securities representing an interest in the same Issuer.

K. "Obligor" means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes secured by Leases, "Obligor" shall also include any owner of property subject to any Lease included in the Issuer, or subject to any Lease securing an obligation included in the Issuer.

L. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

M. "Restricted Group" with respect to a class of Securities means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

(8) Any Affiliate of a person described in (1)–(7) above.

N. "Affiliate" of another person includes:

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

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

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

O. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be "independent" of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to assets of such person.

Q. "Sale" includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

R. "Forward Delivery Commitment" means a contract for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and

optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. "Reasonable Compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

T. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. "Qualified Equipment Note Secured by a Lease" means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as would be the case if the equipment note were secured only by the equipment and not the lease.

V. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The Issuer owns or holds a security interest in the lease;

(2) the Issuer owns or holds a security interest in the leased motor vehicle; and

(3) the Issuer's security interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. "Pooling and Servicing Agreement" means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. "Pooling and Servicing Agreement" also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. "Rating Agency" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., Moody's Investors Service, Inc., Fitch, Inc. or any successors thereto.

Y. "Capitalized Interest Account" means an Issuer account (i) which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-

Funding Account and the pass-through rate payable under the Securities; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Z. "Closing Date" means the date the Issuer is formed, the Securities are first issued and the Issuer's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection III.A.(7)) are transferred to the Issuer.

AA. "Pre-Funding Account" means an Issuer account (i) which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)-(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

BB. "Pre-Funding Limit" means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered which is less than or equal to 25 percent.

CC. "Pre-Funding Period" means the period commencing on the Closing Date and ending no later than the earliest to occur of (i) the date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement; or (iii) the date which is the later of three months or 90 days after the Closing Date.

DD. "Designated Transaction" means a securitization transaction in which the assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this section III.CC., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. "Ratings Dependent Swap" means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency

to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap". With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. "Eligible Swap" means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g., the London Interbank Offered Rate (LIBOR) or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.EE.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.EE.(1) through (4) without the consent of the Trustee.

GG. "Eligible Swap Counterparty" means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating

categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap Counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemption, such swap Counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap Counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap Counterparty.

HH. "Qualified Plan Investor" means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemption, such a fiduciary is either:

(1) A "qualified professional asset manager" (QPAM),⁸ as defined under Part V(a) of PTE 84-14, 49 FR 9494, 9506 (March 13, 1984);

(2) An "in-house asset manager" (INHAM),⁹ as defined under part IV(a) of PTE 96-23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least \$100 million at the time of the acquisition of such Securities.

II. "Excess Spread" means, as of any day funds are distributed from the Issuer, the amount by which the interest

⁸ PTE 84-14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of \$50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

⁹ PTE 96-23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of \$50 million.

allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. "Eligible Yield Supplement Agreement" means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not "leveraged" as described in subsection III.EE.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.II.(1)–(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either:

(i) The principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

The Department notes that this proposed exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at (see 60 FR 35932).

Effective Date: This exemption is effective for all transactions described herein which occurred on or after April 18, 2003.

Summary of Facts and Representations

1. RBC–DR is a Minnesota corporation organized on December 29, 1981 and is a wholly-owned subsidiary of RBC Dain Rauscher Corporation which is a wholly-owned subsidiary of Royal Bank of Canada. RBC–DR is a registered broker-dealer, a registered investment adviser and a member of the New York Stock Exchange, the National Association of Securities Dealers, Inc.,

and other major securities exchanges, as well as the Securities Investor Protection Corporation. RBC–DR engages in the purchase and sale of securities for the account of its customers, which include individual and institutional accounts. It also purchases and sells securities for its own proprietary trading accounts and for the accounts of its affiliates. RBC–DR engages in trading mortgage-related and other securities, including pass-through certificates issued by the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC), callable agency debt, and collateralized mortgage obligations for the account of its customers and for its own accounts. RBC–DR similarly trades certificates of deposit issued by banks, the deposits of which are insured by the Bank Insurance Fund. Through its division "RBC Capital Markets," RBC–DR also conducts similar business.

RBC–DR maintains its principal office at 60 South Sixth Street, Minneapolis, Minnesota 55402–4422. It maintains branch sales offices in 39 states and the District of Columbia.

2. RBC Mortgage Company (RBC Mortgage) is an Illinois corporation organized on June 22, 1992 and is a wholly-owned subsidiary of Royal Bank of Canada, the ultimate parent corporation to the RBC–DR. RBC Mortgage, formerly known as Prism Mortgage Company, is engaged primarily in the mortgage banking business, and originates, purchases, sells and services prime mortgage loans, sub-prime mortgage loans and home equity loans. It originates mortgage loans through a retail branch system and through mortgage loan brokers and purchases loans originated by correspondents nationwide. It also conducts this business through its affiliated entities Lenders Mortgage Services, LLC (Illinois), Mortgage Market Inc. (Oregon), and Pacific Guaranty Mortgage Corporation (California). It sells substantially all loans that it originates or purchases. In the calendar year ending 2001, RBC Mortgage originated over \$17 billion in loans. The principal executive offices of RBC Mortgage are located at 440 North Orleans, Chicago, Illinois 60610. RBC Mortgage may participate as an issuer or servicer in securitizations underwritten by RBC–DR or one of its Affiliates.

3. RBC Centura Bank (RBC Centura) is a state chartered banking corporation organized under the laws of North Carolina on February 14, 1990. It is a wholly-owned subsidiary of Royal Bank of Canada. RBC Centura offers financial

services, including deposit accounts, investments and mutual funds, financial advice, credit and debit cards, business and personal loans, insurance, residential and commercial mortgages. Its deposits are insured by the Federal Deposit Insurance Corporation (FDIC). RBC Centura offers personal and commercial customers banking services through more than 240 banking centers located in five Southeastern states. Through its division, RBC Builder Finance ("RBC–BF"), headquartered in Houston, Texas, RBC Centura engages in lending activity designed to fund single-family construction loans, residential land acquisition and development loans, including finished lot facilities, and participating debt loans. The RBC–BF division targets professional, middle-market, residential homebuilders and developers in major metropolitan markets throughout the United States. Loan production offices are located in the District of Columbia and 16 states, primarily in the South and West. RBC Centura (including its division RBC–BF) may participate as an issuer, servicer or trustee in securitizations underwritten by RBC–DR or one of its Affiliates.

4. *Other Affiliates.* For purposes of this application, the term "Affiliate" shall mean any U.S.-domiciled corporation, partnership, or other business entity controlled by Royal Bank of Canada. The term "Applicant" herein shall be used to denote RBC–DR and its Affiliates.

5. RBC–DR seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts;¹⁰ (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.¹¹ For purposes of the

¹⁰ PTE 83–1 (48 F.R. 895, January 7, 1983), a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. RBC–DR requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure, and because the relief in PTE 83–1 is narrower than that in the requested exemption. However, RBC–DR may still avail itself of the exemptive relief provided by PTE 83–1.

¹¹ Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by GNMA, FHLMC, or FNMA. The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not,

following discussion, the term “trust” includes partnerships, special purpose corporations or limited liability companies. The term “certificate” includes a security which is either a pass-through certificate or a security denominated as a debt security that is issued by one of the above-enumerated entities.

Securitization transactions in which the assets of the securitization vehicle reflect the following categories of receivables (all of which are also described in more detail below) are referred to herein as “Designated Transactions”: (1) Automobile and other motor vehicle loans, (2) residential and home equity loans (which may have high loan-to value (HLTV) ratios in excess of 100%), (3) manufactured housing loans and (4) commercial mortgages.

Trust Structure

6. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. Prior to the closing date under the pooling and servicing agreement, the sponsor or servicer of a trust establishes the trust, designates an entity as trustee, and, except to the extent a pre-funding account, as described below, will be used, selects assets to be included in the trust. The assets are receivables, which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

Typically, on or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust. In some cases, legal title to some or all of such assets continues to be held by the originator of the receivable until the closing date. On the closing date, the sponsor and/or the originator of the receivables conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. RBC-DR, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. RBC-DR currently anticipates that the public offerings of certificates will be underwritten by it on a firm commitment basis. In addition, RBC-DR anticipates that it may privately place certificates on both a firm commitment and an agency basis. RBC-DR may also act as the lead or co-

managing underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities (*i.e.*, permissible investments), which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month.

Furthermore, in those cases where distributions are made semiannually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to, or made available to, each rating agency that has rated the certificates.

The trust may elect to be treated as a real estate mortgage investment conduit (“REMIC”) or a financial asset securitization investment trust (“FASIT”), or may be treated as a grantor trust or a partnership, for federal income tax purposes.

7. Some of the certificates will be multi-class certificates. RBC-DR requests exemptive relief for two types of multi-class certificates: “strip” certificates and “senior/subordinate” (also sometimes referred to as “fast pay/slow pay”) certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each

representing rights to disproportionate payments of principal and interest.¹²

“Senior/subordinate” certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. Except as permitted in a Designated Transaction, the rights of a plan purchasing a certificate will not be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, unless the certificates are issued in a Designated Transaction, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.¹³

8. For tax reasons, the trust will be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a

¹² When a plan invests in REMIC “residual” interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to federal income tax under the Code. The prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

¹³ If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the proposed exemption does not provide relief for plan investments in such subordinated certificates, unless such certificates are issued in a Designated Transaction.

solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The Applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in such trusts may be plan assets.

short time after the issuance of investor certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed-through to certificateholders.

Interest Rate Swaps

9. RBC-DR requests relief for both ratings dependent and non-ratings dependent swaps as described in Prohibited Transaction Exemption 2000-58 (65 FR 67765, November 13, 2000) (PTE 2000-58), subject to the same terms and conditions regarding interest rate swaps contained in that exemption.

Conditions to Interest Rate Swaps

10. Any class of certificates to which one or more swap agreements entered into by the trust applies will be acquired or held only by qualified plan investors. Qualified plan investors will be plan investors represented by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction relating to the class of certificates to be purchased and the effect such swap would have upon the credit rating of the certificates to which the swap relates.

Yield Supplement Agreements

11. A yield supplement agreement is a contract under which the trust makes a single cash payment to the contract provider in return for the contract provider promising to make certain payments to the trust in the event of market fluctuations in interest rates. For example, if a class of certificates promises an interest rate which is the greater of 7% per annum or LIBOR and LIBOR increases significantly, the yield supplement agreement might obligate the contract provider to pay to the trust the excess of LIBOR over 7% per annum. In some circumstances, the contract provider's obligation may be capped at a certain aggregate maximum dollar liability under the contract. Alternatively, a cap could be placed on the supplemental interest that would be paid to a securityholder from monies paid under the yield supplement agreement. For example, the yield supplement agreement would provide the difference between LIBOR and 7% but only to the extent that the

securityholder would be paid a total of 9% per annum. The interest to be paid by the contract provider to the trust under the yield supplement agreement is usually calculated based on a notional principal balance which may mirror the principal balances of those classes of certificates to which the yield supplement agreement relates or some other fixed amount. This notional amount will not exceed either: (i) The principal balance of the class of certificates to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the trust referred to in subsections III.B. (1), (2) and (3) of the proposed exemption. In all cases, the trust makes no payments other than the fixed purchase price for the yield supplement agreement and may, therefore, be distinguished from an interest rate swap agreement, notwithstanding that both types of agreements may use an International Swaps and Derivatives Association, Inc. ("ISDA") form of contract.

The Applicant notes that no "plan assets" within the meaning of the plan asset regulation (under 29 CFR 2510-3-101) are utilized in the purchase of the yield supplement agreement, as the sponsor or some other third party funds such arrangement with an up-front single-sum payment. The trust's only obligation is to receive payments from the counterparty if interest rate fluctuations require them under the terms of the contract and to pass them through to securityholders. The rating agencies examine the creditworthiness of the counterparty in a ratings dependent yield supplement agreement. The Applicant suggests that the relief for yield supplement agreements should be subject to the same conditions as for interest rate swaps, to the extent relevant. These conditions would include that the yield supplement agreement must be denominated in U.S. dollars, the agreement must not be leveraged, any changes in these conditions must be subject to the consent of the trustee, and the counterparty must be subject to the same eligibility requirements as an interest rate swap counterparty.

Pre-Funding Accounts

12. Although many transactions occur as described above, it is also common for other transactions to be structured using a pre-funding account and/or a capitalized interest account as described below.

The pre-funding period for any trust will be defined as the period beginning on the closing date and ending on the

earliest to occur of (i) The date on which the amount on deposit in the pre-funding account is less than a specified dollar amount, (ii) the date on which an event of default occurs under the related pooling and servicing agreement¹⁴ or (iii) the date which is the later of three months or ninety days after the closing date. If pre-funding is used, the sponsor or originator will transfer to the trust on the closing date cash sufficient to purchase the receivables to be transferred after the closing date. During the pre-funding period, such cash and temporary investments, if any, made therewith will be held in a pre-funding account and used to purchase the additional receivables, the characteristics of which will be substantially similar to the characteristics of the receivables transferred to the trust on the closing date. Certain specificity and monitoring requirements must be met and will be disclosed in the pooling and servicing agreement and/or the prospectus¹⁵ or private placement memorandum.¹⁶

Capitalized Interest Accounts

13. When a pre-funding account is used, the sponsor and/or originator may also transfer to the trust additional cash on the closing date, to be deposited in a capitalized interest account and used during the pre-funding period to compensate the certificateholders for any shortfall between the investment earnings on the pre-funding account and the pass-through interest rate payable under the certificates.

Because the certificates are supported by the receivables in the trust and the earnings on the pre-funding account, the capitalized interest account is needed when the investment earnings on the pre-funding account and the interest paid on the receivables are less than the interest payable on the certificates. The capitalized interest account funds are paid out periodically to the certificateholders as needed on distribution dates to support the pass-through rate. In addition, a portion of such funds may be returned to the

¹⁴ The minimum dollar amount is generally the dollar amount below which it becomes too uneconomical to administer the pre-funding account. An event of default under the pooling and servicing agreement generally occurs when: (i) A breach of a covenant or a breach of a representation and warranty concerning the sponsor, the servicer, or certain other parties occurs which is not cured; (ii) a required payment to certificateholders is not made; or (iii) the servicer becomes insolvent.

¹⁵ References to the term "prospectus" herein shall include any prospectus supplement related thereto, pursuant to which certificates are offered to investors.

¹⁶ See the Proposal to PTE 2000-58 (August 23, 2000, 65 FR 51454, at page 51463) for a fuller explanation of pre-funding accounts.

sponsor from time to time as the receivables are transferred into the trust and the need for the capitalized interest account diminishes. Any amounts held in the capitalized interest account generally will be returned to the sponsor and/or originator either at the end of the pre-funding period or periodically as receivables are transferred and the proportionate amount of funds in the capitalized interest account can be reduced. Generally, the capitalized interest account terminates no later than the end of the pre-funding period. However, there may be some cases where the capitalized interest account remains open until the first date distributions are made to certificateholders following the end of the pre-funding period.

In other transactions, a capitalized interest account is not necessary because the interest paid on the receivables exceeds the interest payable on the certificates at the applicable interest rate and the fees payable by the issuer. Such excess is sufficient to make up any shortfall resulting from the pre-funding account earning less than the interest rate payable on the certificates. In certain of these transactions, this occurs because the aggregate principal amount of receivables exceeds the aggregate principal amount of certificates.

Pre-Funding Account and Capitalized Interest Account Payments and Investments

14. Pending the acquisition of additional receivables during the pre-funding period, it is expected that amounts in the pre-funding account and the capitalized interest account will be invested in certain permitted investments or will be held uninvested. Pursuant to the pooling and servicing agreement, all permitted investments must mature prior to the date the actual funds are needed. The permitted types of investments in the pre-funding account and capitalized interest account are investments which either: (i) Are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories (or four, in the case of Designated Transactions) by a rating agency, as set forth in the pooling and servicing agreement and as required by the rating agencies. The credit grade quality of the permitted investments is generally no lower than that of the

certificates. The types of permitted investments will be described in the pooling and servicing agreement.

The ordering of interest payments to be made from the pre-funding and capitalized interest accounts is pre-established and set forth in the pooling and servicing agreement. The only principal payments which will be made from the pre-funding account are those made to acquire the receivables during the pre-funding period and those distributed to the certificateholders in the event that the entire amount in the pre-funding account is not used to acquire receivables. The only principal payments which will be made from the capitalized interest account are those made to certificateholders if necessary to support the certificate pass-through rate or those made to the sponsor either periodically as they are no longer needed or at the end of the pre-funding period when the capitalized interest account is no longer necessary.

The Characteristics of the Receivables Transferred During the Pre-Funding Period

15. In order to ensure that there is sufficient specificity as to the representations and warranties of the sponsor regarding the characteristics of the receivables to be transferred after the closing date:

- (i) The pre-funding limit will not be exceeded;
- (ii) All such receivables will meet the same terms and conditions for eligibility as those of the original receivables used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. However, the terms and conditions for determining the eligibility of a receivable may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by a rating agency;¹⁷
- (iii) The transfer to the trust of the receivables acquired during the pre-

funding period will not result in the certificates receiving a lower credit rating from the rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(iv) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date; and

(v) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under ERISA. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to ERISA.

In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to receivables that were acquired as of the closing date, the characteristics of the additional obligations subsequently acquired will either be monitored by a credit support provider or other insurance provider which is independent of the sponsor or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations acquired after the closing date conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date.

Each prospectus, private placement memorandum and/or pooling and servicing agreement will set forth the terms and conditions for eligibility of the receivables to be included in the trust as of the related closing date, as well as those to be acquired during the pre-funding period, which terms and conditions will have been agreed to by the rating agencies which are rating the applicable certificates as of the closing date. Also included among these conditions is the requirement that the

¹⁷ In some transactions, the insurer and/or credit support provider may have the right to veto the inclusion of receivables, even if such receivables otherwise satisfy the underwriting criteria. This right usually takes the form of a requirement that the sponsor obtain the consent of these parties before the receivables can be included in the trust. The insurer and/or credit support provider may, therefore, reject certain receivables or require that the sponsor establish certain trust reserve accounts as a condition of including these receivables. Virtually all trusts which have insurers or other credit support providers are structured to give such veto rights to these parties. The percentage of trusts that have insurers and/or credit support providers, and accordingly feature such veto rights, varies.

trustee be given prior notice of the receivables to be transferred, along with such information concerning those receivables as may be requested. Each prospectus or private placement memorandum will describe the amount to be deposited in, and the mechanics of, the pre-funding account and will describe the pre-funding period for the trust.

Parties to Transactions

16. The originator of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor. Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. The originator of the receivables may also function as the trust sponsor or servicer. Each trust may contain assets of one or more originators.

17. The sponsor will be one of three entities: (i) A special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

18. The trustee of a trust (or the issuer if it is not a trust) is the legal owner of the obligations in the trust and would hold a security interest in the collateral securing such obligations. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders. The trustee generally will be an independent entity, although that the trustee may be related to the Applicant.¹⁸ The Applicant represents

that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid from cash flows in the trust. The method of compensating the trustee, which is specified in the pooling and servicing agreement, will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

The rights and obligations of the indenture trustee are no different than those of the trustee of an issuer which is a trust. The indenture trustee is obligated to oversee and administer the activities of all of the ongoing parties to the transaction and possesses the authority to replace those entities, sue them, liquidate the collateral and perform all necessary acts to protect the interests of the debt holders. If debt is issued in a transaction, there may not be a pooling and servicing agreement. Instead, there is a sales agreement and servicing agreement (or these two agreements are sometimes combined into a single agreement). The agreement(s) set(s) forth, among other things, the duties and responsibilities of the parties to the transaction relating to the administration of the Issuer. The indenture trustee is often a party to these agreements. At a minimum, the indenture trustee acknowledges its rights and responsibilities in these agreements or they are contractually set forth in the indenture agreement pursuant to which the indenture trustee is appointed.

19. The servicer of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, the receivables may be "subserviced" by their respective originators and a single entity may "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

A servicer's default is treated in the same manner whether or not the issuer is a trust. The original servicer can be replaced, and the entity replacing the servicer varies from transaction to transaction. In certain cases, it may be the trustee (or indenture trustee if the issuer is not a trust) or it may be a third party satisfactory to the rating agencies and/or credit support provider. In addition, there are transactions where the trustee or indenture trustee will assume the servicer's responsibilities on a temporary basis until the permanent replacement takes over. In all cases, the replacement entity must be capable of satisfying all of the duties and responsibilities of the original servicer and must be an entity that is satisfactory to the rating agencies.

If, after the initial issuance of certificates, a servicer of receivables held by a trust which has issued certificates in reliance upon the Underwriter Exemptions (or an affiliate thereof) merges with or is acquired by (or acquires) the trustee of such trust (or an affiliate thereof), and thereby becomes an affiliate of the trustee, the requirement that the trustee not be an affiliate of the restricted group (other than the underwriter) will not be violated, provided that: (i) Such servicer ceases to be an affiliate of the trustee no later than six months after the date such servicer became an affiliate of the trustee; and (ii) such servicer did not breach any of its obligations under the pooling and servicing agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the servicer ceased to be an affiliate of the trustee.

20. The underwriter will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placements of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

In most cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to RBC-DR. In other cases, however, affiliates of RBC-DR may originate or service receivables included in a trust or may sponsor a trust.

¹⁸ See Prohibited Transaction Exemption 2002-41 (67 FR 54487, August 22, 2002), an amendment to the prior individual exemptions granted for mortgage-backed and other asset-backed securities (the Underwriter Exemptions), which permits the trustee of the trust to be an affiliate of the underwriter of the certificates.

Certificate Price, Interest Rate and Fees

21. As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

22. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the specified interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The interest rate for certificates is typically equal to the interest rate on receivables included in the trust minus a specified servicing fee.¹⁹ This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its interest, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated interest rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

23. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the interest rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

24. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

25. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

26. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter

would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Certificate Ratings

27. The certificates for which exemptive relief is requested will have received one of the three highest ratings (four, in the case of Designated Transactions) available from the rating agency. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Subordination

28. The market has now evolved to the point where asset-backed securities/mortgage-backed securities ("ABS/MBS") offerings typically include multiple tranches of senior and subordinated investment-grade securities. The Applicant believes that rating agencies can rate subordinated classes of securities with a high level of expertise, thereby ensuring the safety of these investments for plans through the use of other credit support (including increased levels of non-investment-grade securities). The subordination of a security, while factored into the evaluation made by the rating agencies in their assessment of credit risk, is not indicative of whether a security is more or less safe for investors. In fact, there are "AAA" rated subordinated securities.²⁰ Subordination is simply another form of credit support. The rating agencies, after determining the level of credit support required to achieve a given rating level, are essentially indifferent as to how these credit support requirements are implemented— whether through

¹⁹ The interest rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate. Certificates issued by trusts that are classified as REMICs for federal income tax purposes may use different formulas for setting the specified interest rate with respect to certificates.

²⁰ For example, a transaction may have two classes of "AAA" rated securities and one is subordinated to the other. The subordinated class would be required to have more credit support to qualify for the "AAA" rating than the more senior "AAA" rated class.

subordination or other means. If subordination is used, however, the subordinated class will have no greater credit risks or fewer legal protections in comparison with other credit-supported classes that possesses the same rating.

There is much benefit to plan investors in having subordinated securities eligible for exemptive relief. First, credit support provided through third-party credit providers is more expensive than an equal amount of credit support provided through subordination. As a result, the ability to use subordinated tranches to provide credit support for the more senior classes (which may or may not themselves be subordinated) creates economic savings for all the parties to the transaction which, in turn, can allow greater returns to investors. In addition, if the credit rating of a third-party credit support provider is downgraded, the rating of the securities is also downgraded. Second, the yields available on subordinated securities are often higher than those paid on comparably rated non-subordinated securities because investors expect to receive higher returns for subordinated securities. Third, subordinated securities are usually paid after other more senior securities, which results in their having longer terms to maturity. This is appealing to many investors who are looking for medium-term fixed income investments to diversify their portfolios. The combination of these factors benefits investors by making available securities which can provide higher yields for longer periods. It should be noted that as the rating of a security generally addresses the probability of all interest being timely paid and all principal being paid by maturity under various stress scenarios, the rating agencies are particularly concerned with the ability of the pool to generate sufficient cash flow to pay all amounts due on subordinated tranches, and several features of the credit support mechanisms discussed below are designed to protect subordinated classes of securities.

Types of Credit Support

29. Credit support consists of two general varieties: external credit support and internal credit support. The Applicant notes that the choice of the type of credit support depends on many factors. Internal credit support which is generated by the operation of the Issuer is preferred because it is less expensive than external credit support which must be purchased from outside third parties. In addition, there is a limited number of appropriately rated third-party credit support providers available. Further,

certain types of credit support are not relevant to certain asset types. For example, there is generally little or no excess spread available in residential or CMBS transactions because the interest rates on the obligations being securitized are relatively low. Third, the ratings agencies may require certain types of credit support in a particular transaction. In this regard, the selection of the types and amounts of the various kinds of credit support for any given transaction are usually a product of negotiations between the underwriter of the securities and the ratings agencies. For example, the underwriter might propose using excess spread and subordination as the types of credit support for a particular transaction and the rating agency might require cash reserve accounts funded up front by the sponsor, excess spread and a smaller sized subordinated tranche than that proposed by the underwriter. In addition, market forces can affect the types of credit support. For example, there may not be a market for subordinated tranches because the transaction cannot generate sufficient cash flow to pay a high enough interest rate to compensate investors for the subordination feature, or the market may demand an insurance wrap on a class of securities before it will purchase certain classes of securities. All of these considerations interact to dictate which particular combination of credit support will be used in a particular transaction.

External Credit Support

30. In the case of external credit support, credit enhancement for principal and interest repayments is provided by a third party so that if required collections on the pooled receivables fall short due to greater than anticipated delinquencies or losses, the credit enhancement provider will pay the securityholders the shortfall. Examples of such external credit support features include: insurance policies from "AAA" rated monoline²¹ insurance companies (referred to as "wrapped" transactions), corporate guarantees, letters of credit and cash collateral accounts. In the case of wrapped or other credit supported transactions, the Insurer or other credit provider will usually take a lead role in negotiating with the sponsor concerning levels of overcollateralization and selection of receivables for inclusion into the pool as it is the Insurer or credit

provider that will bear the ultimate risk of loss.

Internal Credit Support

31. Internal credit support relies upon some combination of utilization of excess interest generated by the receivables, specified levels of overcollateralization and/or subordination of junior classes of certificates. Transactions that look almost exclusively to the underlying pooled assets for cash payments (or "senior/subordinated" transactions) will contain multiple classes of certificates, some of which bear losses prior to others and, therefore, support more senior certificates. A subordinate certificate will absorb realized losses from the asset pool, and have its principal amount "written down" to zero, before any losses will be allocated to the more senior classes. In this way, the more senior classes will receive higher rating classifications than the more subordinate classes. However, the rating agencies require cash flow modeling of all senior/subordinated structures. These cash flows must be sufficient so that all rated classes, including the subordinated classes, will receive timely payment of interest and ultimate repayment of principal by the maturity date. The cash flow models are tested assuming a variety of stressed prepayment speeds, declining weighted average interest payments and loss assumptions. Other structural mechanisms to assure payment to subordinated classes are to allow collections held in the reserve account for the next payment date to be used if necessary to pay current interest to the subordinated class or to create a separate interest liquidity reserve. The collections held in the reserve account are from principal and interest paid on the underlying mortgages or other receivables held in the trust and are not from the securities issued by the issuer.²² Also, some structures allow

²¹ The term "monoline" is used to describe such insurance companies because writing these types of insurance policies is their sole business activity.

²² A collections reserve account is established for almost all transactions to hold interest and principal payments on the mortgages or receivables as they are collected until the necessary amounts are paid to securityholders on the next periodic distribution date. In some transactions, the rating agencies or other interested parties may require, in order to protect the interests of the securityholders, that excess interest in amount(s) equal to a specified number of future period anticipated collections be retained in the collection account. This protects both senior and subordinated securityholders in situations where there are shortfalls in collections on the underlying obligations because it provides an additional source of funds from which these securityholders can be paid their current distributions before the holders of the residual or more subordinated securities receive their periodic distributions, if any. Accordingly, any reference to "collections" from principal and interest paid on the mortgages is intended to describe such excess

both principal and interest to be applied to all payments to securityholders and, in others, principal can be used to pay interest to the subordinate tranches.

Interest which is received but is not required to make monthly payments to securityholders (or to pay servicing or other administrative fees or expenses) can be used as credit support. This excess interest is known as "excess spread" or "excess servicing" and may be paid out to holders of certain securities, returned to the sponsor or used to build up overcollateralization or a loss reserve. The credit given to excess spread is conservatively evaluated to ensure sufficient cash flow at any one point in time to cover losses. The rating agencies reduce the credit given to excess spread as credit support to take into account the risk of higher coupon loans prepaying first, higher than expected total prepayments, timing mismatching of losses with excess spread collections and the amounts allowed to be returned to the sponsor once minimum overcollateralization targets are met (thereby reducing the amounts available for credit support).

"Overcollateralization" is the difference between the outstanding principal balance of the pool of assets and the outstanding principal balance of the certificates backed by such pool of assets. This results in a larger principal balance of underlying assets than the amount needed to make all required payments of principal to investors. In all senior/subordinated transactions, the requisite level of overcollateralization and the amount of principal that may be paid to holders of the more subordinated certificates before the more senior securities are retired (since once such amounts are paid, they are unavailable to absorb future losses) is determined by the rating agencies and varies from transaction to transaction, depending on the type of assets, quality of the assets, the term of the certificates and other factors.

The senior/subordinated structure often combines the use of subordinated tranches with overcollateralization that builds over time from the application of excess interest to pay principal on more senior classes. This is often referred to as a "turbo" structure. The credit enhancement for each more senior class is provided by the aggregate dollar amount of the respective subordinated classes, plus overcollateralization that results from the payment of principal to the more senior classes using excess

spread prior to payment of any principal to the more subordinated classes. As overcollateralization grows, the pool of loans can withstand a larger dollar amount of losses without resulting in losses on the senior certificates. This also has the effect of increasing the amount of funds available to pay the more subordinated classes as an ever-decreasing portion of the principal cash flow is needed to pay the more senior classes. Excess interest is used to pay down the more senior certificate balances until a specific dollar amount of overcollateralization is achieved. This is referred to as the overcollateralization target amount required by the rating agencies. Typically, the targeted amount is set to ensure that even in a worst-case loss scenario commensurate with the assigned rating level, all securityholders, including holders of subordinated classes, will receive timely payment of interest and ultimate payment of principal by the applicable maturity date. In these transactions, the targeted amount is usually set as a percentage of the original pool balance. It may be reduced after a fixed number of years after the closing date, subject to the satisfaction of certain loss and delinquency triggers. These triggers ensure that overcollateralization continues to be available if pool performance begins to deteriorate. In a senior/subordinated structure, every investment-grade class (whether or not subordinated) is protected by either a lower rated subordinated class or classes or other credit support.

Provision of Credit Support Through Servicer Advancing

32. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust. In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) Out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates; and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases,

however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors.²³

Description of Designated Transactions

33. The Applicant requests relief for senior and/or subordinated investment-grade certificates with respect to a limited number of asset categories: Motor vehicles, residential/home equity, manufactured housing and commercial mortgage backed securities. Accordingly, set forth below are separate profiles of a typical transaction for each asset category. Each profile describes specifically how each type of transaction generally is structured. Information on the due diligence that the rating agencies conduct before assigning a rating to a particular class of such securities, the calculations that are performed to determine projected cash flows, loss frequency and loss severity and the manner in which credit support requirements are determined for each rating class is not included because such information has been provided previously to the Department in connection with PTE 2000-58. The

interest or principal not required to cover current payments to the senior and subordinated class eligible to be purchased by plans. Thus, this mechanism is not harmful to the interests of senior securityholders.

²³ See the Proposal to PTE 2000-58 (August 23, 2000, 65 FR 51454, at page 51475) for a fuller explanation of these safeguards.

motor vehicle, residential/home equity, manufactured housing and commercial mortgage backed transactions, as described in this section, are collectively referred to herein as "Designated Transactions."

Motor Vehicle Loan Transactions

34. In a typical motor vehicle transaction, "AAA" rated senior certificates are issued that might represent approximately 90% or more of the principal balances of the certificates, with "A" rated subordinated certificates issued that might represent the remaining 10% or less of the principal balance of the certificates. The total level of credit enhancement from all sources, including excess spread, typically averages approximately 7% of the initial principal balance of certificates issued by prime issuers and 14% for subprime issuers in order to obtain an "AAA" rated certificate. Credit support equaling 3% for prime issuers is usually required in order to obtain an "A" or better rating on the subordinated certificates. Typical types of credit support used in auto transactions are subordination, reserve accounts, excess spread and financial guarantees from "AAA" rated monoline insurance companies. Transactions with subprime sponsors generally use surety bonds as credit enhancement, so there is no subordinated class.

Residential/Home Equity Mortgage Transactions

35. In a typical prime residential mortgage transaction, "AAA" rated senior Securities might be issued which represent approximately 95% of the principal balances of the Securities; "AA" rated subordinated Securities might comprise 2%; "A" rated subordinated 1%; "BBB" rated subordinated 1% and junior subordinated Securities might constitute 1%. The total level of credit enhancement from all sources averages about 4% in order to obtain "AAA" rated Securities, 2% for an "AA" rating, 1.5% for an "A" rating and 1% for a "BBB" rating. Subordination is the predominant type of credit support used in traditional prime residential mortgage transactions.

In a typical "B&C home/equity loan" transaction (loans made primarily to B and C quality borrowers for consolidating credit card and other consumer debt or refinancing mortgage loans), "AAA" rated senior certificates might be issued which represent 80% of the principal balances of the certificates; "AA" rated subordinated certificates might comprise 11%; "A" rated subordinated 6%; "BBB" or lower rated

subordinated certificates might constitute 3%. The total level of credit enhancement from all sources averages about 13% in order to obtain "AAA" rated certificates, 10% for an "AA" rating, 7% for an "A" rating and 3% for a "BBB" rating.

In a typical HLTV ratio (*i.e.*, above 100%) second-lien loan transaction, "AAA" rated senior certificates might be issued which represent approximately 76% of the principal balances of the certificates; "AA" rated subordinated certificates might comprise 10%; "A" rated subordinated 3%; "BBB" rated subordinated 4% and junior subordinated certificates might constitute 7%. The total level of credit enhancement from all sources averages about 24% in order to obtain "AAA" rated certificates, 14% for an "AA" rating, 10% for an "A" rating and 7% for a "BBB" rating. Typical types of credit support used in home equity transactions are subordination, reserve accounts, excess spread, overcollateralization and in transactions which do not use subordination, financial guarantees from "AAA" rated monoline insurance companies or highly rated sponsors.

Manufactured Housing Transactions

36. In a typical manufactured housing transaction, "AAA" rated senior certificates might be issued which represent approximately 80% of the principal balances of the certificates; "AA" rated subordinated certificates might comprise 6%; "A" rated subordinated 5%; "BBB" rated subordinated 5% and junior subordinated certificates might constitute 4%. The total level of credit enhancement from all sources including excess spread averages about 15%–16% in order to obtain "AAA" rated certificates, 10%–11% for an "AA" rating, 7.5%–8.5% for an "A" rating and 3.5%–9% for a "BBB" rating. Typical types of credit support used in manufactured housing transactions are subordination, reserve accounts, excess spread, overcollateralization and financial guarantees from "AAA" rated monoline insurance companies or highly rated sponsors. Overcollateralization is also used as credit support for the subordinated certificates once the seniors have been paid. Because the coupon rate on manufactured housing loans is substantially higher than that charged on traditional residential mortgages, there is a large amount of excess spread (typically more than 300 bps) that can be used for credit support of both senior and subordinated tranches. In other structures, the excess spread is trapped

into a reserve fund which provides the credit support for the subordinated tranches. In still other cases, credit support is provided to an investment-grade subordinated tranche through a junior subordinated tranche which receives principal only after the more senior subordinated tranches are paid. Sponsor guarantees are also used as credit support.

Commercial Mortgage-Backed Securities (CMBS)

37. In a typical CMBS transaction, two classes of "AAA" rated certificates might be issued which represent approximately 78% of the principal balances of the certificates (one such "AAA" class will be issued with a shorter, and the other "AAA" class with a longer, expected maturity); "AA" rated subordinated certificates might represent 5%; "A" rated subordinated 5%; "BBB" rated subordinated 5% and junior subordinated certificates 7%. The total level of credit enhancement from all sources averages about 23% in order to obtain "AAA" rated certificates, 18% for an "AA" rating, 13% for an "A" rating and 7% for a "BBB" rating. Subordination is generally the only type of credit support used in CMBS transactions.

The servicer function in a CMBS transaction is particularly important because not only does the servicer or servicers fulfill the normal functions of collecting and remitting loan payments from borrowers to securityholders and advancing funds for such purposes, but the servicer may also become responsible for activities relating to defaulted or potentially defaulting loans (which are more likely to be restructured than in non-commercial transactions where the loans are usually liquidated). If a servicer advances funds, its credit rating cannot be more than one rating category below the highest rated tranche in the securitization and no less than "BBB" unless it has a qualifying back-up advancer. All entities servicing CMBS transactions must be approved by the rating agencies.

An additional responsibility of the servicer is ensuring that insurance is maintained by each borrower covering each mortgaged property in accordance with the applicable mortgage documents. Insurance coverage typically includes, at a minimum, fire and casualty, general liability and rental interruption insurance but may include flood and earthquake coverage depending on the location of a particular mortgaged property. If a borrower fails to maintain the required insurance coverage or the mortgaged property defaults and becomes an asset

of the trust, the servicer is obligated to obtain insurance which, in pool transactions, may be provided by a blanket policy covering all pool properties. Generally, the blanket policy must be provided by an insurance provider with a rating of at least "BBB."

Each servicer, special servicer and subservicer is required to maintain a fidelity bond and a policy of insurance covering loss occasioned by the errors and omissions of its officers and employees in connection with its servicing obligations unless the rating agency allows self-insurance. All fidelity bonds and policies of errors and omissions insurance must be issued in favor of the trustee or other issuer by insurance carriers which are rated by the rating agency with a claims-paying ability rating no lower than two categories below the highest rated certificates in the transaction but no less than "BBB." Subservicers may not make important servicing decisions (such as modifications of the mortgage loans or the decision to foreclose) without the involvement of the master servicer or special servicer, and the trustee or any successor servicer may be permitted to terminate the subservicing agreement without cause and without cost or further obligation to the issuer or the holders of the rated certificates.

Loans secured by credit tenant leases require special analysis. Credit enhancement for credit tenant loans is based on an analysis of the probability that the lessee will file bankruptcy, and the likelihood that the lessee will disaffirm the lease and loan structures that may present a risk other than that of the lessee filing bankruptcy.

Environmental reports for each property are generally required. A reserve is usually required for any reported remediation costs, and any actions covenanted must be completed within a specified period. Risks that cannot be quantified or that have not been mitigated through either remediation or reserves are assumed to pose a risk to the trust and are reflected in the credit enhancement requirements. Properties with certain types of asbestos problems, or those that are assumed to have such problems given their date of construction, are assumed to have higher losses due to the clean-up costs and increased difficulty or cost in leasing or selling the asset. Seasoned or acquired pools that may not have current reports for each property are also assumed to have higher environmental losses.

In general, although there are other types of credit support available, subordination is the only type of credit support used in CMBS. However,

protection is also provided to subordinated classes through the concept of a "directing class" which has evolved to give those holders of rated subordinated certificates in the first loss position some control over the servicing and realization on defaulted mortgage loans. In a typical transaction, the servicer might be required to obtain the consent of the directing class before proceeding with any of the following: any modification, consent or forgiveness of principal or interest with respect to a defaulted mortgage loan; any proposed foreclosure or acquisition of a mortgaged property by deed-in-lieu of foreclosure; any proposed sale of a defaulted mortgage loan and any decision to conduct environmental clean up or remediation. The directing class might also have the right to remove a servicer, with or without cause, subject to the rating agency's confirmation that appointment of the successor servicer would not result in a qualification, withdrawal or downgrade of the then-applicable rating assigned to the rated certificates, compliance with the terms and conditions of the pooling and servicing agreement and payment by the directing class of any and all termination or other fees relating to such removal. Holders of CMBS enjoy additional protection, in that the master servicer or servicer occupies a first-loss position and usually holds an equity stake in the offering, which gives it an incentive to maximize recoveries on defaulted loans. The master servicer and servicer are in a first loss position because they hold the most subordinated equity position interest(s) in the trust. Accordingly, they absorb losses before any other classes of securityholders.

Additional cash flow stability is created through call protection features on the commercial mortgages held in the trust. Call protection prevents the borrowers from prepaying the mortgage loans during a fixed "lock-out period." In certain transactions, under the terms of the mortgage agreement, the borrower is only allowed to prepay the loan at the end of the lock-out period if it provides "yield maintenance"²⁴ whereby it is required to contribute a cash payment derived from a formula which is calculated based on current interest rates and is intended to offset the borrower's refinancing incentive. This amount also effectively compensates the

trust for the loss of interest payable on the mortgage loan.

Another mechanism, referred to as "defeasance", assures stability of cash flow and operates as follows. If a borrower wishes to have the mortgage lien released on the property (for example, where it is being sold), the original obligation either remains an asset of the trust and is assumed by a third party, or a new obligation with the same outstanding principal balance, interest rate, periodic payment dates, maturity date and default provisions is entered into with such third party. The new obligation replicates the cash flows over the remaining term of the original obligor's obligation. In either case, the property or assets originally collateralizing the obligation are replaced by collateral consisting of United States Treasury securities or any other security guaranteed as to principal and interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States (referred to herein as "government securities").

Defeasance generally operates so that, pursuant to an assumption and release or similar arrangement valid under applicable state law, the original obligor is replaced with a new obligor.

The new obligor is generally a bankruptcy-remote special purpose entity (SPE), the assets of which consist of government securities. In the defeasance of a mortgage loan held in a CMBS pool, a new entity must be created (the SPE) which becomes the obligor on the mortgage loan and holds the government securities being substituted for the original collateral securing the mortgage loan. This newly formed entity is required by the rating agencies to be an SPE in order to assure that the owner of the securities to be pledged has no liabilities or creditors other than the CMBS pool trustee, has no assets or business other than the ownership of the government securities and is not susceptible to substantive consolidation with the original mortgage borrower in the event of the original mortgage borrower's bankruptcy. Such an SPE is purely passive and does not engage in any activities other than the ownership of securities. Although there is no prescribed market requirement as to ownership of the SPE, the securitization sponsor (e.g., the original mortgage lender) is usually its owner, except that in certain circumstances the original mortgage borrower may own the SPE for a variety of reasons; e.g., to be entitled to any excess value of securities pledged as collateral at maturity of the new defeasance note over the amount

²⁴ The Applicant represents that the yield maintenance provision in the mortgage agreement would meet the definition of a "yield supplement agreement" currently permitted under section III.B.(3)(b) of the Underwriter Exemptions.

due at such time. As a condition to defeasance, all fees and expenses are paid at the substitution of the government securities for the mortgage lien.

Mechanically, the government securities are transferred to a custodian which holds them as collateral for the securitization trust. The payments on the government securities are actually made directly to the trust so that the SPE does not receive any payments or make any payments.

Whether the original mortgage obligation is replaced with a new securitized obligation or the original obligation remains an asset of the trust, is usually dictated by how the transaction is treated for mortgage recording tax purposes under state law. Both call protection and defeasance are intended to protect investors from the risk of prepayments of the loans.

Disclosure

38. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates.²⁵

Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file periodic reports in the form and to the extent required under the Securities Exchange Act of 1934 and current interpretations thereof.

At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets (including those purchased by the trust from any pre-funding account), payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any

payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer, paying agent or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

39. To date, no forward delivery commitments have been entered into by RBC-DR in connection with the offering of any certificates, but RBC-DR may contemplate entering into such commitments. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and RBC-DR may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

40. It is the Applicant's normal policy to attempt to make a market for certificates for which it is lead or co-managing underwriter, and it is the Applicant's intention to make a market for any certificates for which the Applicant is a lead or co-managing underwriter, although it will have no obligation to do so. At times the Applicant will facilitate sales by investors who purchase certificates if the Applicant has acted as agent or principal in the original private placement of the certificates and if such investors request the Applicant's assistance.

Retroactive Relief

41. RBC-DR represents that it has not assumed that retroactive relief would be granted prior to the date of its application, and therefore has not engaged in transactions related to mortgage-backed and asset-backed securities based on such an assumption. However, RBC-DR requests the exemptive relief granted to be retroactive to the date of its application, and would like to rely on such retroactive relief for transactions entered

into prior to the date exemptive relief may be granted.

Summary

42. In summary, the Applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The Issuers contain "fixed pools" of assets. There is little discretion on the part of the sponsor to substitute receivables contained in the Issuer once the Issuer has been formed;

(b) In the case where a pre-funding account is used, the characteristics of the receivables to be transferred to the Issuer during the pre-funding period must be substantially similar to the characteristics of those transferred to the Issuer on the closing date thereby giving the sponsor and/or originator little discretion over the selection process, and compliance with this requirement will be assured by the specificity of the characteristics and monitoring mechanisms contemplated under the exemptive relief proposed. In addition, certain cash accounts will be established to support the certificate interest rate and such cash accounts will be invested in short-term, conservative investments; the pre-funding period will be of a reasonably short duration; a pre-funding limit will be imposed; and any Internal Revenue Service requirements with respect to pre-funding intended to preserve the passive income character of the Issuer will be met. Thus, the fiduciary of the plans making the decision to invest in securities will be fully apprised of the nature of the receivables which will be held in the Issuer and will have sufficient information to make a prudent investment decision;

(c) Securities for which exemptive relief is requested will have been rated in one of the three highest rating categories (or four in the case of Designated Transactions) by a rating agency. The rating agency, in assigning a rating to such securities, will take into account the fact that Issuers may hold interest rate swaps or yield supplement agreements with notional principal amounts or, in Designated Transactions, securities may be issued by Issuers holding residential and home equity loans with LTV ratios in excess of 100%. Credit support will be obtained to the extent necessary to attain the desired rating;

(d) Securities will be issued by Issuers whose assets will be protected from the claims of the sponsor's creditors in the event of bankruptcy or other insolvency of the sponsor, and both equity and debt securityholders will have a beneficial or

²⁵ See the Proposal to PTE 2000-58 (August 23, 2000, 65 FR 51454, at page 51486) for a description of types of disclosure.

security interest in the receivables held by the Issuer. In addition, an independent trustee will represent the securityholders' interests in dealing with other parties to the transaction; and

(e) All transactions for which RBC-DR seeks exemptive relief will be governed by the pooling and servicing agreement, which is summarized in the prospectus or private placement memorandum and distributed to plan fiduciaries for their review prior to the plan's investment in securities.

Notice to Interested Persons: RBC-DR represents that any securities offered in reliance upon the proposed exemption prior to the date the final exemption is published in the **Federal Register** shall disclose in the offering memorandum or prospectus: (a) The availability of the proposed exemption; (b) the right of potentially interested plan fiduciaries to comment on the proposed exemption; and (c) information on how an interested plan fiduciary can obtain a copy of the proposed exemption (once it is available) from RBC-DR. Once this proposed exemption is granted, a copy of the exemption published in the **Federal Register** shall be distributed to any current or prospective plan investor in a security offered in reliance upon the exemption upon request of such investor. Each offering memorandum or prospectus offering securities in reliance upon the exemption shall describe and

disclose the availability of the exemption.

Comments and requests for a hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 693-8546. (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 of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, 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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

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

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

Signed at Washington, DC, this 11th day of August, 2003.

Ivan Strasfeld,

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

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