

management services whereby foreign currency left with an affiliated subcustodian will be either: (1) Swept into the deposits of the global custodian (or branch of subsidiary thereof); or (2) left in a non-interest bearing account with the subcustodian. According to the Applicant, "idle" foreign currency may be swept to the global custodian for several reasons. For example, the global custodian may offer a better interest rate and/or have a better credit rating than banks that are not parties in interest with respect to such plan. By comparison, "idle" foreign currency may remain with the subcustodian in situations where the movement of the currency outside the subcustodial bank would be too costly. Finally, "idle" foreign currency may remain in the account of a client of the subcustodian in situations involving, among other things, late trades and unpredicted cash flows.

6. Accordingly, the Applicant seeks an exemption to permit the investment of Plan assets in deposits of Deutsche Bank and its non-U.S. banking branches and subsidiaries, either directly or through cash management programs. The Applicant states that this exemption, if granted, is intended to cover only those Plan investments in bank deposits that are temporary in nature.

The Applicant cites a lack of applicable statutory relief with respect to deposits in branches or subsidiaries of foreign banks affiliated with a custodian or a trustee when such foreign banks are not supervised by the U.S. or a state.⁶ In addition, the Applicant cites a lack of administrative relief with respect to the investment of plan assets in overnight deposits by a plan sponsor who is not an in-house asset manager (*i.e.*, an INHAM as described in PTE 96-23 (61 FR 15975 (Apr. 10 (1996))) or by an investment manager who is not a qualified professional asset manager (*i.e.*, a QPAM as described in PTE 84-14 (49 FR 9494 (Mar. 13, 1984) and corrected at 50 FR 41430 (Oct. 10 1985))).

7. Specifically, the Applicant states that DBTCA is a global custodian that offers a cash management program (the

DBTCA Program)⁷ to every account for which it acts either as a custodian or trustee.⁸ Such Program, the Applicant states, is comprised of two parts: One that relates to domestic portfolios (*i.e.*, assets that are invested in the U.S.) and another that relates to global portfolios. In this regard, the Applicant states that with respect to domestic-only portfolios, upon opening an account, the Plan fiduciary responsible for choosing DBTCA as the Plan's trustee or custodian also selects a sweep vehicle for cash left temporarily uninvested (Idle Cash) by the Plan's portfolio manager (which may or may not be DBTCA or an affiliate). The Applicant represents that the sweep vehicle is often a collective trust for short-term investments managed by DBTCA or an affiliate although, at the election of the fiduciary, the cash sweep vehicle may also be a mutual fund affiliated with DBTCA or a fund managed by, for example, an investment manager not affiliated with DBTCA. The Applicant states that Plans investing in DBTCA's collective funds are informed, as part of the disclosure that accompanies these investments, of the sweep vehicle used.

For global investments, the Applicant states that each Client Plan fiduciary and each Bank Plan fiduciary is provided detailed disclosure, including the types of overnight investments utilized by the global cash management program and the fees related to the program. ERISA clients investing globally that have uninvested U.S. dollars have access to the types of "cash sweep" vehicles described above.

According to the Applicant, Idle Cash is invested pursuant to the DBTCA cash management program in one of two ways. First, Idle Cash denominated as sweep currencies⁹ are deposited in the London Branch of DBTCA (the London

Branch) in the same currency in which it is maintained (although some residual amounts, in the same currency, may remain in the deposits of the local subcustodian). For all other currencies, the Applicant states, Idle Cash remains in deposits of the local subcustodian.

The Applicant states that, with respect to all currencies that are part of the sweep to the London Branch, the amount of interest paid equals the deposit rate less a cash management fee. In this regard, the deposit rate is the higher of the London Branch overnight deposit rate for such currency (generally, a weekly or monthly average, depending on the currency) or the subcustodian's rate. According to the Applicant, the cash management fees differ by currency and are disclosed in advance to an independent fiduciary for each Client Plan and an appropriate Bank Plan fiduciary for each Bank Plan. The Applicant notes that Plan fiduciaries are informed that they will earn interest at the calculated rate on the entire contractual cash balances¹⁰ without any action necessary on their part and without any minimum balance requirements. In addition, the Applicant states that Plan fiduciaries are informed that their respective Plans will receive the specified rate on all cash that is part of the Plan's contractual cash balance, regardless of whether their contractual cash balance exceeds their actual balance.

Second, for all currencies that are not swept,¹¹ the Idle Cash will remain in deposits of the local subcustodian. Deutsche Bank represents that with respect to these currencies, Deutsche Bank earns a cash management fee. In markets where individual client accounts are maintained with the subcustodian due to local regulations, Plans will receive interest on actual balances with no minimum rate guaranteed. In these currencies, no fee

⁷ According to Applicant, the DBTCA is currently the only cash management program offered by Deutsche Bank containing the types of transactions described herein.

⁸ The Applicant states that Deutsche Bank is not seeking relief pursuant to this proposed exemption with respect to the Bankers Trust Program itself or, to the extent relevant, any other cash management program. Rather, the Applicant states that if this proposed exemption is granted, the Bankers Trust Program, and any future program involving the types of transactions provided relief herein, will comply with the statutory exemption contained in 408(b)(6) of ERISA. Accordingly, the Department is not providing any relief herein with respect to the Bankers Trust Program or any other cash management offered by Deutsche Bank AG.

⁹ The Applicant represents that, as of January 29, 2000, the Australian Dollar, British Pound Sterling, Canadian Dollar, Danish Krone, EMU Euro, Hong Kong Dollar, Norwegian Krone, South African Rand, Swedish Krona, Swiss Franc, and the U.S. Dollar are considered sweep currencies. Pursuant to the Bankers Trust Program, U.S. Dollars are swept to the U.S. and put in collective trusts.

¹⁰ A contractual balance, Deutsche Bank notes, is the cash, securities and other investments that the Client Plan would expect to have on a given date, assuming all transactions have settled in a timely fashion. Thus, assuming that an investment manager executed a sale of a security to settle trade date plus 3 days (T+3), and the investment manager did not execute a trade using those sales proceeds until a date two days hence, the proceeds would be swept to a deposit pursuant to the sweep program regardless of whether such proceeds are received on the third day.

¹¹ In this regard, as of January 29, 2000, the currencies on which interest is credited, but are not swept to the London Branch are: the Argentine Peso, Czech Koruna, Greek Drachma, Hungarian Forint, Indonesian Rupiah, Israeli Shekel, Japanese Yen, Jordanian Dinar, Korean Won, Mexican Peso, New Taiwan Dollar, New Zealand Dollar, Philippine Peso, Polish Zloty, Singapore Dollar, Slovak Koruna, Thai Baht, and Turkish Lira.

⁶ The Applicant states that where the global custodian is a U.S. or state supervised bank or trust company, relief for the investment in bank deposits by a plan is provided by section 408(b)(4) of ERISA. In addition, the applicant states that in situations where the foreign subcustodian is not affiliated with the global custodian, the global custodian may rely on PTE 84-14 to exempt the extension of credit and the use of plan assets by the foreign subcustodian party in interest inherent in the investment in that subcustodian's deposits.