

reasonable, determinable by reference to, among other things, short-term rates available to other customers of Deutsche Bank, those offered by other banks, and those available from money market funds. The Applicant notes that in situations where the deposit is with a branch or subsidiary of Deutsche Bank that acts as a local subcustodian, no interest may be paid with respect to such deposit to the extent that: no interest is paid to similarly situated custody clients of the global custodian, and, prospectively, Deutsche Bank discloses to the appropriate Plan fiduciary that no interest may be paid pursuant to such an arrangement. In addition, no interest may be paid in situations where local law is changed to preclude the payment of interest and Deutsche Bank discloses such fact to the appropriate Plan fiduciary as soon as reasonably possible.

Retroactively, a Client Plan must authorize an investment in the deposits of Deutsche Bank pursuant to a provision of such Plan or the trust thereof (unless the investments were expressly authorized by an independent fiduciary). Prospectively, investments in the deposits of Deutsche Bank must be: (i) Made by a Bank Plan and authorized by an Bank Plan fiduciary; or (ii) made a Client Plan and authorized by an independent fiduciary with respect to such Client Plan. In this regard, Notwithstanding, authorization for the investment by a Plan in the deposits of Deutsche Bank AG may be presumed notwithstanding that Deutsche Bank does not receive any response from such Plan pursuant to two written requests by Deutsche Bank (one request by a certified mailing that contains only such request) for the authorization, provided that: (A) With respect to Plans that invest in the deposits of Deutsche Bank prior to the date this proposed exemption is granted, the first request occurs not later than 45 days after the date the proposed exemption is granted and the second request occurs within 30 days thereafter; and (B) with respect to Plans that invest in the deposits of Deutsche Bank following the date this proposed exemption is granted, the first request occurs at least 45 days prior to such investment and the second request occurs within 30 days thereafter.

Further, Deutsche Bank has been and will continue to be supervised by the Deutsche Bundesbank and/or the BAFin, and, in the case of a subsidiary of Deutsche Bank, by similar local government authorities.

11. With respect to the prospective portion of this proposed exemption, the Applicant represents that Plans will be further protected in that Deutsche Bank

will furnish to each Plan certain relevant information including its most recent available audited and unaudited financial statements and will give prompt notice of any material adverse changes in its financial condition that occur prior to the date of such statements. Upon giving this notice, the Applicant states, Deutsche Bank AG will not use its authority to continue the program of deposits with respect to the Plans without the consent of a Bank Plan fiduciary or an independent Client Plan fiduciary.

In addition, with respect to the deposit cash management program described herein, Deutsche Bank, and its branches and subsidiaries, will comply with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404b-1(a)(2)(i)(A).¹⁶ Further, Deutsche Bank: (a) Agrees to submit to the jurisdiction of the courts of the United States; (b) agrees to appoint a Process Agent for service of process in the United States, which may be an affiliate; (c) consents to service of process on the Process Agent; (d) agrees that it may be sued in the courts of the United States in connection with transactions described in this proposed exemption; (e) agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank; and (f) agrees to comply with, and be subject to, all relevant provisions of the Act.

The Applicant states that the deposits described herein will be in safe, well-capitalized financial institutions. In this regard, the proposal prospectively requires that short-term debt issued by Deutsche Bank must be rated in one of the three highest categories by an independent rating agency such as Standard & Poors, Moody's or a similar institution.

12. The Applicant represents that the proposed exemption would be administratively feasible since the transactions would be transparent to Client Plan fiduciaries and no action on the part of the government or plan sponsors would be necessary to effectuate such transactions, other than the grant of the exemption and an initial authorization by a Client Plan fiduciary that is independent of Deutsche Bank (*i.e.*, an independent fiduciary) or an appropriate Bank Plan fiduciary.

13. In summary, the Applicant represents that, retroactively, the described transactions satisfy the

statutory criteria for an exemption under section 408(a) of the Act since, among other things:

(a) Deutsche Bank was supervised by the Deutsche Bundesbank and/or the BAFin, and, in the case of a subsidiary of Deutsche Bank, was also supervised by similar local government authorities;

(b) The deposits provided each affected Plan with a rate of interest that was reasonable; and

(c) In situations where Deutsche Bank, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank does not average, over any six month period, more than 5% of the total amount of the assets managed by such investment manager.

14. The Applicant represents that, prospectively, the described transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act since, among other things:

(a) Prior to either: An investment of Plan assets in bank deposits; or the commencement of any Deutsche Bank AG program that invests Plan assets in such deposits, an independent fiduciary (other than with respect to a Bank Plan) receives a written disclosure describing:

(i) The circumstances pursuant to which Plan assets will be invested in deposits of Deutsche Bank or its subsidiaries or branches; and

(ii) A description of the applicable sovereign regulatory authority/ authorities governing the activities of Deutsche Bank;

(b) Immediately after any material adverse change in the financial condition of Deutsche Bank, Deutsche Bank will notify each Plan fiduciary of such material adverse change and will not use its authority to continue the program of deposits with respect to the Plans without the consent of the appropriate Bank Plan fiduciary or an independent Client Plan fiduciary;

(c) Deutsche Bank—

(1) Agrees to submit to the jurisdiction of the United States;

(2) Agrees to appoint the Process Agent;

(3) Consents to service of process on the Process Agent;

(4) Agrees that it may be sued in the United States Courts in connection with the transactions described in this proposed exemption;

(5) Agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank; and

(6) Agrees to comply with, and be subject to, all relevant provisions of the Act.

¹⁶ The Department is expressing no opinion as to whether the requirements of ERISA section 404(b) and the regulations promulgated thereunder have been met.