

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.

The JPMorgan Chase Bank (Located in New York, New York)

[Application No. D-11062]

Proposed Exemption

Based on the facts and representations set forth in the application, 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).

Section I—Transactions

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A)–(E) of the Code, shall not apply as of December 31, 2000, to:

(A) The continuation of a lease (the Lease), by the Commingled Pension Trust Fund (Strategic Property) of JPMorgan Chase Bank (the Fund) with respect to which JPMorgan Chase Bank (JPMCB) is the trustee (the Trustee), of office space in a certain commercial office building (the Property) to Chase Global Funds Service Company (CGF), a party in interest with respect to employee benefit plans whose assets are invested in the Fund (Plans) and an affiliate of JPMCB; and

(B) the continued and future provision by JPMCB or its affiliates of letters of credit (Letter(s) of Credit) to guarantee the obligations of unrelated third-party tenants to pay rent to the Fund under commercial real estate leases.

This exemption is subject to the conditions set forth in Section II.

Section II—Conditions

(A) The Fund is represented by a fiduciary independent of JPMCB and its affiliates (the independent fiduciary) with respect to the Lease to perform the following functions:

(1) Confirm that when the Lease originally was entered into, and as modified to date, all the terms and conditions of the Lease, including those relating to renewal options and rights of

first refusal, were commercially reasonable and at least as favorable to the Plans as those terms and conditions which could have been obtained at arm's length with an unrelated third party;

(2) Determine, based upon a written appraisal report by a qualified appraiser independent of JPMCB and its affiliates, that the leasing renewal rate the Fund will charge CGF if CGF elects to exercise its renewal options under the Lease, effective in 2004 and thereafter, and that the leasing rate with respect to any space leased by CGF in the Property pursuant to any rights of first refusal CGF has under the Lease, accurately reflect at least fair market rental value;

(3) Negotiate and approve, subject to the appropriate ERISA fiduciary standards, such amendments to the Lease upon renewal(s) as it deems appropriate, including, for example: (i) A shorter renewal term than the current five year term; (ii) additional renewal period(s) (provided that the rent paid in any time periods after February 28, 2009, under any newly granted renewal option(s) would be at 100% of fair rental value, as opposed to the 95% of fair rental value that applies for periods through February 28, 2009); (iii) the lease of less square footage than the current square footage covered under the Lease; (iv) the lease of more square footage than the current square footage covered under the Lease (provided that the rent paid for any square footage in excess of the current square footage would also be leased at 100% of fair rental value, and not 95% of fair rental value); (v) using a "base year" under the Lease (upon which certain periodic increases such as taxes are calculated) updated to the year 2004, and (vi) allowing CGF to install shatter-proof glass in the space it leases; provided that all such amendments are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, as determined by the independent fiduciary; and

(4) Represent the Fund and the participants (Participants) in the Plans as independent fiduciary in any circumstances in addition to those described in subsection (3) above while the Lease (including any periods of renewal) is in effect which would present a conflict of interest for the Trustee, including but not limited to: default by CGF or disagreement on an economic computation under the Lease.

(B) The Fund is represented by an independent fiduciary with respect to any existing or future Letters of Credit to perform the following functions:

(1) Monitor monthly reports of rental payments of tenants utilizing a Letter of Credit issued by JPMCB or any affiliate to guarantee their lease payments;

(2) Confirm whether an event has occurred that calls for the Letter of Credit to be drawn upon; and

(3) Represent the Fund and the Participants as an independent fiduciary in any circumstances with respect to the Letters of Credit which would present a conflict of interest for the Trustee, including but not limited to: the need to enforce a remedy against itself or an affiliate with respect to its obligations under a Letter of Credit.

(C) Future Letters of Credit are issued by JPMCB or an affiliate to guarantee the obligations of third-party tenants to pay rent to the Fund under commercial real estate leases only if the following additional conditions are met:

(1) JPMCB or its affiliate, as the issuer of a Letter of Credit, has at least an "A" credit rating by at least one nationally recognized statistical rating service at the time of the issuance of the Letter of Credit;

(2) The Letter of Credit has objective market drawing conditions and states precisely the documents against which payment is to be made;

(3) JPMCB does not "steer" the Fund's tenants to itself or its affiliates in order to obtain the Letter of Credit;

(4) Letters of Credit are issued only to tenants which are unrelated to JPMCB; and

(5) The terms of any future Letters of Credit are not more favorable to the tenants than the terms generally available in transactions with other similarly situated unrelated third-party commercial clients of JPMCB or its affiliates.

Section III—Definitions

(A) The term "independent fiduciary" means Aon Fiduciary Counselors, Inc. (AFC) or any successor independent fiduciary, provided that AFC or the successor independent fiduciary is: (1) Independent of and unrelated to JPMCB and its affiliates, and (2) appointed to act on behalf of the Fund for the purposes described in conditions II(A) and (B) above. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to JPMCB if: (1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with JPMCB, (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption, except that an independent fiduciary may receive compensation for acting as an