

independent fiduciary from JPMCB in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision and (3) more than 5 percent of such fiduciary's annual gross revenue in its prior tax year will be paid by JPMCB and its affiliates in the fiduciary's current tax year.

(B) The term "affiliate" means:

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

(2) Any officer, director, employee, relative or partner in any such person; and

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

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

Effective Date: The exemption, if granted, will be effective as of December 31, 2000.

Summary of Facts and Representations

1. The applicant, JPMorgan Chase Bank (JPMCB), is a subsidiary of J.P. Morgan Chase & Co. and is based in New York, NY. J.P. Morgan Chase & Co. is the resulting company from a merger (the Merger) of J.P. Morgan & Co. Incorporated and The Chase Manhattan Corporation, effective as of December 31, 2000. As of the date of the Merger, which was accounted for as a pooling of interests, J.P. Morgan Chase & Co. became the second largest banking institution in the United States, with approximately \$715 billion in assets and \$42 billion in stockholders' equity. J.P. Morgan Chase & Co. is now a global financial services firm with operations in over 60 countries. Prior to November 10, 2001, it had as its principal subsidiaries: The Chase Manhattan Bank and Morgan Guaranty Trust Company (MGT), each a New York banking corporation headquartered in New York City, and Chase Manhattan Bank USA, National Association, headquartered in Delaware. On November 10, 2001, MGT merged into The Chase Manhattan Bank and changed its name to JPMorgan Chase Bank.

J.P. Morgan Chase & Co. is internally organized for management reporting purposes into five major business groups: (i) Investment banking, (ii) Treasury and securities services, (iii) J.P. Morgan Partners (a private equity investment firm), (iv) retail and middle-market banking and (v) investment

management and private banking. Only the fifth business group is relevant to the applicant's exemption request.

2. JPMCB serves as trustee (the Trustee) to the Commingled Pension Trust Fund (Strategic Property) of JPMorgan Chase Bank (the Fund).¹ The Fund has net assets of approximately \$4.5 billion invested in 74 developed real estate properties, primarily office buildings, industrial parks, multi-family properties and retail properties. The applicant represents that approximately 126 employee benefit plans have invested in the Fund, both employee benefit plans subject to Title I of ERISA and section 4975 of the Code (Plans) and those not so subject, such as governmental plans within the meaning of section 3(32) of ERISA. The average investment per Plan is approximately \$35.3 million. Currently, no Plan has an interest exceeding 10% of the Fund. The applicant represents that one pension plan invested in the Fund is sponsored by JPMCB and its investment represents 2.2% of the Fund's interests as of December 31, 2002.

The applicant represents that prior to December 31, 2000, in order to avoid triggering prohibited transactions under section 406 of the Act or section 4975 of the Code, the trustee, as the ERISA fiduciary of the Fund, relied on Prohibited Transaction Exemption (PTE) 84-14 (49 FR 9494, March 13, 1984) or Prohibited Transaction Exemption (PTE) 91-38 (56 FR 31966, July 12, 1991), as the circumstances dictated, in order to conduct the real estate activities of the Fund. The applicant represents that the Fund is a bank collective investment fund within the meaning of PTE 91-38, and an investment fund within the meaning of PTE 84-14. The applicant further represents that the Trustee, JPMCB, is a "bank" maintaining the Fund within the meaning of PTE 91-38 and meets the definition of a qualified professional asset manager (QPAM) under PTE 84-14.

As a result of the Merger, the applicant represents that the Trustee's ability to rely on PTE 84-14 and PTE 91-38 was affected with respect to two transactions discussed herein (the Lease Transaction and the Letters of Credit), as entities which may be parties in interest with respect to Plans became affiliates of the Trustee. Therefore, the applicant represents that conditions in both exemptions requiring that the party in interest involved in the transaction not be related to the qualified professional asset manager (QPAM) of the investment fund in the case of PTE 84-

14, or the trustee of the bank collective investment fund in the case of PTE 91-38, could no longer be met.

With respect to the JPMCB plan invested in the Fund, the applicant represents that JPMCB has been, and is, operating the Fund in accordance with the conditions of PTE 91-38 except for the conditions it is unable to meet due to the Merger.

The Lease Transaction

3. The applicant represents that the Fund owns a rehabilitated office building located at 73 Tremont Street in Boston, Massachusetts (the Property). The Property represents 1.92% of the net asset value of the Fund. Chase Global Funds Service Company (CGF) is currently the largest tenant, occupying 136,010 square feet or 44.75% of the Property, pursuant to a lease (the Lease) executed on December 31, 1992, with a predecessor of CGF. The current Lease term commenced on March 1, 1994. CGF pays rent of \$24.50 per square foot on 131,469 square feet and \$20.50 per square foot on the remaining 4,541 square feet. CGF reimburses the Fund for a prorated share of common area maintenance, real estate taxes and property insurance over a 1994 "base year," including its share of any increases for those costs over the base year. CGF is separately metered for electricity which is not included in the rent. If CGF sublets the space, any profits earned are split 50/50 with the Fund.

The Lease currently expires on February 28, 2004, and CGF gave notice on or before December 31, 2002 of its intent to renew the Lease for a period of five years which would begin on March 1, 2004, and end on February 28, 2009, at a rent of "95% of fair market rent." The applicant represents that while the Lease renewal rate is expressed in terms of "95% of fair market rent," this rate constitutes fair market rental value for space leased pursuant to a renewal option when the terms of the original Lease were negotiated as a package. The 5% discount is intended to reflect the cost savings to the Fund for not having to grant the normal concessions to the tenant that are typically given for initial free rent, so-called "workout allowances," and the costs saved by the Fund for not having to advertise for a new tenant and pay real estate brokers. The Lease also provides that if any other space in the building occupied by another tenant becomes available, the Fund has the obligation to offer such space to CGF at the then fair market rent but otherwise pursuant to the terms of the Lease. CGF has five days from

¹ Prior to December 31, 2000, MGT served as trustee of the Fund.