

receiving notice of the space becoming available to notify the Fund whether it will take such space and then proceed to negotiate the rental rate. The applicant represents that both the renewal option and the right of first refusal option features in the Lease are advantageous to the Fund because they provide a potential captive market for space in the building as it becomes available without the Fund having to advertise for another tenant, negotiate a new lease, incur legal fees and closing costs or risk periods of vacancy.

4. In connection with CGF's election to renew its option to extend the term of the Lease beyond February 28, 2004, it may elect to negotiate for an amendment of the Lease to permit: (a) A shorter renewal term than the current five-year term, (b) additional renewal option period(s), (c) the lease of less square footage than the current square footage covered under the Lease and/or (d) the lease of more such square footage. The rent paid by CGF for any time periods after February 28, 2009, under any newly granted renewal option, 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. Similarly, any square footage leased in excess of the current square footage would also be leased at 100% of fair rental value. (As a practical matter, any such space necessarily would become available from space given up from other tenants, so would be subject to the terms of CGF's right of first refusal which provides for rent at 100% of fair rental value.)

CGF may, in the course of electing to review its option to extend the term of the Lease beyond February 28, 2004, elect to negotiate with the independent fiduciary for other amendments to the Lease. Examples of the anticipated type of amendments to the Lease include using a "base year" under the Lease (upon which certain periodic increases such as taxes are calculated) updated to 2004 and allowing CGF to install shatter-proof glass in the space it leases.

5. The predecessor of CGF, Mutual Fund Service Company (MSFC), originally negotiated the Lease. The primary business of MSFC was to act as a third-party service provider to 401(k) plans, providing customer service personnel to answer questions to plan participants about their investment funds in 401(k) plans sponsored by their employers. MSFC also generated computerized monthly and quarterly statements as well as mailings to their customers. MSFC moved in September of 1993 and occupied the space rent free for six months, paying rent beginning on

March 1, 1994. In 1997, CGF purchased the assets of MSFC, and the Fund consented to assumption of the Lease by CGF. After the purchase, CGF retained the personnel and business activities of MSFC. Thus, the applicant represents that the original Lease was negotiated by a party unrelated to both the Trustee and CGF.

6. The applicant represents that Aon Fiduciary Counselors, Inc. (AFC) is an independent fiduciary which has been retained by the Trustee on behalf of the Fund and the Plans. AFC is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940. AFC has acknowledged its duties, responsibilities and obligations to the Fund and the Plans' participants and beneficiaries as a fiduciary under the Act. AFC acts primarily as independent fiduciary for large pension plans. Nell Hennessy, President of AFC, will lead the project. Ms. Hennessy has been involved in a variety of transactions involving pension plan investment in real estate, including acquisition of individual properties, creation of real estate holding companies, and obtaining prohibited transaction exemptions for real estate syndications designed for pension plan investors. Ms. Hennessy represents that AFC is independent of J.P. Morgan Chase & Co. and its affiliates and the sponsors of the Plans. Ms. Hennessy further represents that AFC has never previously performed any services for J.P. Morgan Chase & Co. or its affiliates, and, as of the date of the applicant's submission, AFC's affiliates derived less than 1% of their annual gross income from J.P. Morgan Chase & Co. and its affiliates. Ms. Hennessy represents that no more than 5 percent of AFC's annual gross revenue in its prior tax year will be paid by JPMCB and its affiliates in AFC's current tax year. The applicant represents that AFC will remain on retainer for the entire term of the Lease; additionally, in the event that AFC terminates its services as independent fiduciary, the applicant will notify the Department, and any successor will be as independent, of equal experience, and have responsibilities similar to those of AFC and will assume its responsibilities prior to AFC's departure.

The applicant represents that AFC, as the independent fiduciary, will:

(a) Confirm that when the Lease was originally entered into, and as modified to date, all the terms and conditions of the Lease, including those relating to the renewal option and any 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;

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

(c) 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 AFC as independent fiduciary; and

(d) Represent the Fund and the Plans' participants as independent fiduciary in any circumstances in addition to those described immediately 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.

The Letters of Credit

7. The applicant represents that prior to the Merger, The Chase Manhattan Bank issued a series of letters of credit (the Letters of Credit) to guarantee rent payment obligations of unrelated third-party tenants of buildings owned by the Fund. The tenants were not affiliates of J.P. Morgan & Co., Incorporated or The