

affiliate with respect to its obligations under a Letter of Credit; and

(c) Future Letters of Credit may be issued by JPMCB or an affiliate only if the following additional conditions are met:

(i) 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;

(ii) The Letter of Credit has objective market drawing conditions;

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

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

(v) 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.

*For Further Information Contact:*  
Karen E. Lloyd of the Department,  
telephone (202) 693-8540. (This is not a toll-free number).

#### **Deutsche Bank AG (Deutsche Bank)**

[Application Nos. D-11086; D-11087; D-11088; D-11089; and D-11090]

#### **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: Basic Transaction**

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of 4975(c)(1)(A) through (D) of the Code, shall not apply to a transaction between a party in interest with respect to a plan (as defined in section (V)(h)) and such plan, provided that the Deutsche Bank In-house Manager (DBIM) (as defined in section IV(a)) has discretionary authority or control with respect to the plan assets involved in the transaction and the following conditions are satisfied:

(a) The terms of the transaction are negotiated on behalf of the plan by, or under the authority and general direction of, the DBIM, and either the DBIM, or (so long as the DBIM retains

full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the DBIM, makes the decision on behalf of the plan to enter into the transaction. Notwithstanding the foregoing, a transaction involving an amount of \$5,000,000 or more, which has been negotiated on behalf of the plan by the DBIM will not fail to meet the requirements of this section I(a) solely because the plan sponsor or its designee retains the right to veto or approve such transaction;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 81-6<sup>4</sup> (relating to securities lending arrangements),

(2) Prohibited Transaction Exemption 83-1<sup>5</sup> (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Exemption 88-59<sup>6</sup> (relating to certain mortgage financing arrangements);

(c) The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest;

(d) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the DBIM, the terms of the transaction are at least as favorable to the plan as the terms generally available in arm's length transactions between unrelated parties;

(e) The party in interest dealing with the plan: (1) Is a party in interest with respect to the plan (including a fiduciary) solely by reason of providing services to the plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of the Act; and (2) does not have discretionary authority or control with respect to the investment of the plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets;

(f) The party in interest dealing with the plan is neither the DBIM nor a person related to the DBIM (within the meaning of section IV(d));

(g) The DBIM adopts written policies and procedures that are designed to assure compliance with the conditions of the exemption;

(h) An independent auditor, who has appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions and so represents in writing,

conducts an exemption audit (as defined in section IV(f)) on an annual basis. Following completion of the exemption audit, the auditor shall issue a written report to the plan presenting its specific findings regarding the level of compliance with the policies and procedure adopted by the DBIM in accordance with section I(g); and

(i) In addition to the above:

(1) The DBIM is a bank that has the power to manage, acquire or dispose of assets of a plan, which bank has, as of the last day of its most recent fiscal year, equity capital in excess of \$1,000,000 and is either supervised by a state or federal agency, or by the German Federal Banking Supervisory Authority, Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) in cooperation with the Deutsche Bundesbank (Bundesbank);

(2) Prior to entering into any transaction described in the exemption, the DBIM agrees in writing:

(A) To submit to the jurisdiction of the United States;

(B) To appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(C) To consent to service of process on the Process Agent;

(D) That it may be sued in the United States courts in connection with the transactions described in this proposed exemption;

(E) To comply with, and be subject to, all relevant provisions of the Act; and

(F) That enforcement of any claim arising between a plan(s) and the DBIM, resulting from a transaction described in the proposed exemption, will occur in the United States courts.

#### **Section II: Leasing of Office Space**

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

(a) The leasing of office or commercial space owned by a plan managed by a DBIM to an employer any of whose employees are covered by the plan or an affiliate of such an employer (as defined in section 407(d)(7) of the Act), if—

(1) The plan acquires the office or commercial space subject to an existing lease with an employer, or its affiliate as a result of foreclosure on a mortgage or deed of trust;

(2) The DBIM makes the decision on behalf of the plan to foreclose on the mortgage or deed of trust as part of the exercise of its discretionary authority;

(3) The exemption provided for transactions engaged in with a plan

<sup>4</sup> 46 FR 7527; January 23, 1981.

<sup>5</sup> 48 FR 895; January 7, 1983.

<sup>6</sup> 53 FR 24811; June 30, 1988.