

deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

(f) Exemption Audit. An "exemption audit" of a plan must consist of the following:

(1) A review of the written policies and procedures adopted by the DBIM pursuant to Section I(g) for consistency with each of the objective requirements of this exemption (as described in Section IV(g)).

(2) A test of a representative sample of the plan's transactions in order to make findings regarding whether the DBIM is in compliance with (i) the written policies and procedures adopted by the DBIM pursuant to section I(g) of the exemption and (ii) the objective requirements of the exemption.

(3) A determination as to whether the DBIM has satisfied the definition of an DBIM under the exemption; and

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings.

(g) For purposes of section IV(f), the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by the DBIM to assure compliance with each of these requirements:

(1) The definition of an DBIM in section IV(a).

(2) The requirements of Part I and section I(a) regarding the discretionary authority or control of the DBIM with respect to the plan assets involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the plan to enter into the transaction.

(3) That any procedure for approval or veto of the transaction meets the requirements of section I(a).

(4) For a transaction described in section I:

(A) That the transaction is not entered into with any person who is excluded from relief under section I(e)(1), section I(e)(2), to the extent such person has discretionary authority or control over the plan assets involved in the transaction, or section I(f), and

(B) That the transaction is not described in any of the class exemptions listed in section I(b).

(5) For a transaction described in Part II:

(A) If the transaction is described in section II(a),

(i) That the transaction is with a party described in section II(a);

(ii) That the transaction occurs under the circumstances described in section II(a)(1) and (2);

(iii) That the transaction does not extend beyond the period of time described in section II(a)(3); and

(iv) That the percentage test in section II(a)(4) has been satisfied or

(B) If the transaction is described in section II(b),

(i) That the transaction is with a party described in section II(b)(1);

(ii) That the transaction is not entered into with any person excluded from relief under section II(b)(2) to the extent such person has discretionary authority or control over the plan assets involved in the lease transaction or section II(b)(3); and

(iii) That the percentage test in section II(b)(5) has been satisfied.

(h) The term "plan" means a plan maintained by the DBIM or an affiliate of the DBIM which is an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code. Notwithstanding the foregoing, the term "plan" includes a plan maintained by any entity in which the DBIM, or an affiliate of the DBIM (as defined in section IV(b) of the proposal), holds more than a 20 percent equity interest, provided that such plan's assets are commingled for investment purposes in an entity the assets of which are plan assets under 29 CFR 2510.3-101 and 50 percent or more of the units of beneficial interest in such entity are held by plans maintained by the DBIM or affiliates of the DBIM.

Effective Date of Exemption: The effective date of this exemption is April 8, 2002.

Summary of Facts and Representations

1. The affected plans will consist of employee benefit plans that are covered under the provisions of Title I of the Act, as amended, and/or subject to section 4975 of the Code and that are sponsored by the applicant or its affiliates.

2. Deutsche Bank, a German banking corporation and a leading commercial bank, provides a wide range of banking, fiduciary, record keeping, custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors worldwide. Deutsche Bank has a physical presence worldwide. Deutsche Bank is currently one of the largest financial institutions in the world in terms of assets. As of 2001, total assets of Deutsche Bank were 928,994 million Euros. Shareholders equity equaled 43,683 million Euros. Deutsche Bank manages over \$585 billion in assets either through collective trusts, separately managed accounts or mutual funds.

Under PTE 84-14, which provides conditional relief for transactions with a plan that are managed by a qualified professional asset manager (QPAM), the Department explicitly provided for banks to act as QPAMs.⁸ Deutsche Bank, which is in the business of managing assets, and supervised in that business by a variety of governmental regulators, including the German banking authorities, the Federal Reserve Board and other foreign local bank regulators, may manage the assets of its own plans, and those of its affiliates, and, therefore, seeks section 406(a) relief for dealing with parties in interest to its own plans, other than parties affiliated with it.

3. Outside the United States, Deutsche Bank, as a whole, is not supervised by a state or by the United States. However, Deutsche Bank is regulated and supervised globally by the Bundesanstalt für Finanzdienstleistungsaufsicht—BAFin (BAFin) in cooperation with the Deutsche Bundesbank, (Bundesbank).⁹

The BAFin is a federal institution with ultimate responsibility to the German Ministry of Finance.¹⁰ The Deutsche Bundesbank is the central bank of the Federal Republic of Germany and an integral part of the European Central Banks. The BAFin supervises the operations of banks, banking groups, financial holding groups and foreign bank branches in Germany, and has the authority to (a) issue and withdraw banking licenses, (b) issue regulations on capital and liquidity requirements of banks, (c) request information and conduct

⁸ See Section V(a)(1) of PTE 84-14, 49 FR at 9506.

⁹ In addition, Deutsche Bank, New York Branch, is regulated and supervised by the New York State Banking Department. Certain activities of Deutsche Bank's New York branch are also regulated and supervised by the Federal Reserve Bank of New York. Bankers Trust Company, an indirect wholly owned subsidiary of Deutsche Bank, is a New York State bank and a member of the Federal Reserve System.

¹⁰ Following the adoption on April 22, 2002 of the Law on Integrated Financial Services Supervision (Gesetz über die integrierte Finanzaufsicht—FinDAG), the German Financial Supervisory Authority, BAFin was established on May 2002. The functions of the former offices for banking supervision (Bundesaufsichtsamt für das Kreditwesen—BAKred), insurance supervision (Bundesaufsichtsamt für das Versicherungswesen—BAV) and securities supervision (Bundesaufsichtsamt für den Wertpapierhandel—BAWe) have been combined in a single state regulator that supervises banks, financial services institutions and insurance undertakings across the entire financial market and comprises all the key functions of consumer protection and solvency supervision. The BAFin is a federal institution governed by public law that belongs to the portfolio of the Federal Ministry of Finance and as such, has a legal personality. Its two offices are located in Bonn and Frankfurt/Main. The BAFin supervises about 2,700 banks, 800 financial services institutions and over 700 insurance undertakings.