

lease with an employer, or its affiliate, as a result of foreclosure on a mortgage or deed of trust directed by the INHAM; (3) the leasing of residential space by a plan to a party in interest who is an employee of a covered employer or affiliate thereof, but not an officer, director, or a 10% or more shareholder of the employer or affiliate or a fiduciary with respect to the leased assets; and (4) the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by a plan and managed by an INHAM to a party in interest with respect to the plan, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

One of the requirements of PTE 96-23 is that the INHAM meet the definition of INHAM under section IV(a). In pertinent part, Part IV(a)(2) of PTE 96-23 requires an "INHAM" to be:

An investment adviser registered under the Investment Advisers Act of 1940 that, as of the last day of its most recent fiscal year, has under its management and control total assets attributable to plans maintained by affiliates of the INHAM (as defined in section IV(b)) in excess of \$50 million; provided that if it has no prior fiscal year as a separate legal entity as a result of it constituting a division or group within the employer's organizational structure, then this requirement will be deemed met as of the date during its initial fiscal year as a separate legal entity that responsibility for the management of such assets in excess of \$50 million was transferred to it from the employer.<sup>17</sup>

The registered investment adviser requirement "assure[s] that the INHAM is in the business of investment management and, thus, in a position to develop experience and sophistication in dealing with investment issues."<sup>18</sup> The requirement also assures that the INHAM is subject to government supervision. Registration of the INHAM as an investment adviser assures that the INHAM is subject to regulation under the Investment Advisers Act of 1940 and oversight by the Securities and Exchange Commission. In granting the final PTE 96-23, the Department noted that "oversight by the Securities and Exchange Commission as a result of registration as an investment adviser under the Investment Advisers Act of 1940 provides an important safeguard under the exemption."<sup>19</sup> Additionally, the Department explained that the \$50 million in plan assets requirement provides further protection by ensuring that the INHAM is well qualified:

\* \* \* INHAMs of large plans are more likely to have an appropriate level of expertise in financial and business matters. In this regard, the Department believes that the requirement that the INHAM have a significant dollar amount of assets under its management and control attributable to plans maintained by affiliates which are separately accountable for the operation of their respective plans provides an additional safeguard under the exemption.<sup>20</sup>

Like registered investment advisers, banks may also be experienced investment managers.

Domestic banks, such as Bankers Trust Company, like registered investment advisers, are also subject to government regulation. Bankers Trust Company is a bank supervised by New York State and the Federal Reserve Bank.

In developing the QPAM class exemption, the Department noted that each of the categories of asset manager [e.g., banks] is subject to regulation by Federal or State agencies.<sup>21</sup>

For these reasons, it is represented that the proposed exemption is similar to PTE 96-23. The proposed exemption treats Bankers Trust, Deutsche Bank, or any affiliated bank regulated under the laws of the United States, or Germany as an INHAM under Part IV. To this end, the following subparagraph will replace subparagraphs (1) and (2) of section IV(a) of PTE 96-23:

(1) Deutsche Bank, or a direct or indirect wholly-owned bank or trust company subsidiary of Deutsche Bank, supervised under the laws of the United States, a State, or Germany, (A) has the power to manage, acquire, or dispose of assets of a plan and (B) has, as of the last day of its most recent fiscal year, equity capital (i.e., common and preferred stock, surplus, undivided profits, contingency reserves, group contingency reserves, and other capital reserves) in excess of \$1,000,000.

5. The applicant represents that the proposed exemption would be protective of participants and beneficiaries because it essentially contains the same protective conditions found in PTE 96-23. Additionally, the proposed exemption would be protective because regulation under the laws of Germany is comparable to regulation under the laws of the United States or a State.

6. In summary, it is represented that the subject transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because the proposed exemption: (a) Will benefit in-house plans by ensuring that plans have greater flexibility in choosing

among expert, experienced investment managers; (b) will not be detrimental to plans because banks have proven expertise and experience in managing plan assets and the banking laws and regulations of Germany provide protection and oversight that is comparable to those of the United States or a State; (c) would allow plans to take greater advantage of the investment management expertise and experience of the world's largest bank in terms of assets and one of the world's largest asset managers; and (d) would allow a plan's DBIM to consider existing service providers when seeking goods, services, and facilities, thus increasing the plan's choices (which may afford greater quality at lower costs) and eliminating the compliance costs of ensuring that a counter-party is not a party in interest (i.e., as a service provider or as related to a service provider).

**Notice to Interested Persons:** The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by publication in the **Federal Register**. Therefore, comments and requests for a hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

**For Further Information Contact:** Mr. Khalif I. Ford of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

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Pension & Profit Sharing Plan (the Plan)  
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[Application No. D-11104]

### Proposed Exemption

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, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (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) through (E) of the Code, shall not apply to the proposed sale of unimproved real property (the Property) by the Plan to Mr. Richard Gorman (Mr. Gorman), a trustee of the Plan, and a party in interest with respect to the Plan, provided that the following conditions are satisfied:

<sup>17</sup> 61 FR at 15982.

<sup>18</sup> 60 FR at 15599.

<sup>19</sup> 61 FR at 15980.

<sup>20</sup> 61 FR at 15980.

<sup>21</sup> Preamble to Proposed PTE 84-14, 47 FR 56945, 56947 (Dec. 21, 1982).