

the quantity and price paid or received by the Plan, and the manner of execution (agency or principal). The Applicant states that such disclosure is meaningful because it can be verified against objective prices obtainable through independent pricing services available to the public.

Only Plans with total assets in excess of \$100 million are covered by the proposed exemption. However, for purposes of the net assets test, where a group of Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the \$100 million net assets requirement may be met by aggregating the assets of such Plans, if the assets are pooled for investment purposes in a single master trust.

9. Finally, the Applicant notes that many Plans have expanded their investment portfolios in recent years to include foreign securities. With respect to the Foreign Affiliates covered by the proposed exemption, the Applicant represents that Rule 15a-6 of the 1934 Act provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "major U.S. institutional investor," provided that the foreign broker-dealer, among other things, enters into these principal transactions through a U.S. registered broker or dealer intermediary.

The term "U.S. institutional investor," as defined in Rule 15a-6(b)(7), includes an employee benefit plan within the meaning of the Act if:

(a) The investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or

(b) The employee benefit plan has total assets in excess of \$5 million, or

(c) The employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors," as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended.

The term "major U.S. institutional investor," as defined in Rule 15a-6(b)(4), includes a U.S. institutional investor that has total assets in excess of \$100 million.<sup>40</sup> The Applicant represents that the intermediation of the

U.S. registered broker or dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

The Applicant represents that under Rule 15a-6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance with Rule 15a-6 must, among other things:

(a) Provide written consent to service of process for any civil action brought by or proceeding before the SEC or a self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker or dealer through which the principal transactions with the U.S. institutional and major U.S. institutional investors are effected, among other things, for:

(1) Effecting the transactions, other than negotiating their terms;

(2) Issuing all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker or dealer, extending or arranging for the extension of any credit in connection with the transactions;

(4) Maintaining required books and records relating to the transactions, including those required by Rules 17a-3 (Records to be Made by Certain Exchange Members) and 17a-4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act;<sup>41</sup>

(5) Receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3-3 (Customer Protection—Reserves and Custody of Securities) of the 1934 Act;<sup>42</sup> and

<sup>41</sup> The Applicant represents that all such requirements relating to record-keeping of principal transactions would be applicable for any Foreign Affiliate in a transaction that would be covered by the proposed exemption.

<sup>42</sup> Under certain circumstances described in the April 9, 1997 No-Action Letter (e.g., clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and a Foreign Affiliate. Please note that in such situations (as in the other situations covered by Rule 15a-6), the U.S. broker-dealer will not be

(6) Participating in all oral communications (e.g., telephone calls) between the foreign associated person and the U.S. institutional investor, other than a major U.S. institutional investor. Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. institutional investor. (See April 9, 1997 No-Action Letter.)

10. Prior to any transaction, the Foreign Affiliate will enter into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions. In this regard, the Foreign Affiliate must (i) agree to submit to the jurisdiction of the United States; (ii) agree to appoint a Process Agent for service of process in the United States; and (iii) consent to service of process on the Process Agent.

11. In summary, the Applicant represents that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) Permitting the Applicant to engage in principal transactions where its affiliate is the directed trustee of a Plan will provide Plans with additional expert broker-dealers experienced at transition services from which Plans may choose as service providers;

(b) Permitting the Applicant to engage in principal transactions, as described herein, will provide Plans with more predictable and verifiable pricing and enable transitions to occur in dealer markets in a timely and efficient manner, by transferring to the broker-dealer the risk of adverse execution;

(c) An Independent Fiduciary will give prior approval for the principal transactions and will monitor the prices received by the Plan through independent, verifiable means; and

(d) An Independent Fiduciary will ensure that securities assembled for either an Index or Model-Driven Fund or actively managed portfolio by a transition broker-dealer affiliated with the destination manager are consistent with the Plan's investment guidelines and objectives.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karin Weng of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a-6.

<sup>40</sup> The Department notes that the categories of entities that qualify as "major U.S. institutional investors" has been expanded by an SEC No-Action letter. See No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (the April 9, 1997 No-Action Letter).