

highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager, the Affiliated Broker-Dealer or the Affiliated Trustee and represents that such fiduciary shall advise the Asset Manager if those facts change.

(2) Notwithstanding anything to the contrary in this section II(g), a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Asset Manager, the Affiliated Broker-Dealer or the Affiliated Trustee;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from the Asset Manager, the Affiliated Broker-Dealer or the Affiliated Trustee for his or her own personal account in connection with any transaction described in this exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager, responsible for the transactions described in section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Client Plan sponsor or of the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in section I. However, if such individual is a director of the Client Plan sponsor or of the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser and (B) the decision to authorize or terminate authorization for transactions described in section I, then section II (g)(2)(iii) shall not apply.

(3) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(4) In the case of existing Client Plans in a Pooled Fund, at the time the Asset Manager provides such Client Plans with initial notice pursuant to this exemption, the Asset Manager will notify the fiduciaries of such Client Plans that they must advise the Asset Manager, in writing, if they are not independent, within the meaning of this section II (g).

(h) The term "security" shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a-2(36)(1996)). For purposes of this exemption, mortgage-backed or other asset-backed securities rated by a

Rating Organization will be treated as debt securities.

(i) The term "Eligible Rule 144A Offering" shall have the same meaning as defined in SEC rule 10f-3(a)(4) (17 CFR 270.10f-3(a)(4)) under the 1940 Act.

(j) The term "qualified institutional buyer" or "QIB" shall have the same meaning as defined in SEC rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(k) The term "Rating Organizations" means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors.

(l) The term "Affiliated Trustee" means the Applicants and any bank or trust company affiliate of the Applicants (as "affiliate" is defined in paragraph (c)(1)) that serves as trustee of a trust that issues securities which are asset-backed securities or as indenture trustee of securities which are either asset-backed securities or other debt securities that meet the requirements of this proposed exemption. For purposes of this proposed exemption, other than section I(t), performing services as custodian, paying agent, registrar or in similar ministerial capacities is also considered serving as trustee or indenture trustee.

Preamble

This document contains a notice of pendency before the Department of a proposed individual exemption which, if granted, would amend: PTE 2000-25, issued to Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management, Inc. (65 FR 35129, June 1, 2000), PTE 2000-27, issued to the Chase Manhattan Bank (65 FR 35129, June 1, 2000), and FAN 2001-19E, issued to DB and its Affiliates (June 23, 2001), pursuant to EXPRO. The exemptions, and EXPRO authorization, respectively, permit purchases of securities by the Applicants' asset management affiliate on behalf of employee benefit plans for which such asset management affiliate is a fiduciary, from underwriting or selling syndicates where the Applicants' broker-dealer affiliate participates as a manager or syndicate member. If granted, this proposed amendment would permit a plan's asset manager to acquire securities, on behalf of the plan, in an initial public offering (IPO) when it or its affiliate is the trustee, indenture trustee or a similar functionary for the trust which issued the securities. Thus, the relief requested is designed to cover acquisitions of asset-backed securities by plans where the plans' asset manager is affiliated with such a trustee for an

issuing trust, as described herein. If adopted, this proposed amendment would affect the participants and beneficiaries of the plans involved in such transactions and the fiduciaries with respect to such plans.

Summary of Facts and Representations

The facts and representations contained in the applications are summarized below. Interested persons are referred to the applications on file with the Department (*see* D-11004 and D-11106) for the complete representations of the Applicants.

1. DB is a German banking corporation and a leading commercial bank, with total assets of 928,994 million euros and shareholders equity of 43,683 million euros, as of 2001. DB and its Affiliates (including the New York Branch of Deutsche Bank (DBNY)) provide 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. DB is regulated by the Bundesanstalt fuer Finanzdienstleistungsaufsicht (the "BAFin") in Germany.

2. Deutsche Bank Trust Company Americas ("DBTCA") is a New York banking corporation and member bank of the U.S. Federal Reserve System. Deutsche Asset Management, Inc. ("DeAM Inc.") is an investment adviser registered under the Investment Advisors Act of 1940. Both DBTCA and DeAM Inc. are indirect wholly-owned subsidiaries of DB. DBTCA and DeAM Inc., among other DB Affiliates, provide investment management and investment advisory services to plans covered by the Act. Hereinafter, DB, DBTCA, and DeAM Inc., and their other current and future asset management affiliates, shall be collectively referred to as the "Asset Manager" when discussing DB's activities relating to investment management or investment advisory services. Collectively, assets under management by DB and its Affiliates through collective trusts, separately managed accounts, and mutual funds currently exceed \$585 billion.

3. Deutsche Banc Securities, Inc., a wholly-owned subsidiary of DB, is a registered broker-dealer (hereinafter, collectively with any other current and future broker-dealer affiliates, the "Affiliated Broker-Dealer") and regulated by the United States Securities & Exchange Commission ("SEC") under Section 15 of the Securities Exchange Act of 1934. The Affiliated Broker-Dealer serves, and engages in