

16. The Applicants state that a decision by an Asset Manager for a Client Plan to invest in particular securities is made on the basis of price, value, and the particular Client Plan's investment criteria, not on whether the Trustee with respect to the securities is, or is affiliated with, the Asset Manager. The Applicants further assert that the Asset Manager has little incentive to make purchases for Client Plans in IPOs involving an ATT that are not in the interests of the Client Plans because the Asset Manager's compensation for its services is generally based upon total assets under its management. If the assets under its management do not perform well, the Asset Manager will receive less compensation and could lose the Client Plan's future business.

According to the Applicants, the proposed exemption would be in the interest of a Client Plan's participants and beneficiaries because it will increase investment opportunities for such plans in ABS or other securities. Failure to grant the exemption will unnecessarily restrict the investment opportunities available to Client Plans in fixed-income securities.

17. In summary, the Applicants represent that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Client Plans will gain access to desirable investment opportunities;

(b) In each offering, the Asset Manager will purchase the securities for its Client Plans from an underwriter or broker-dealer other than the Affiliated Broker-Dealer;

(c) Conditions similar to those of PTE 75-1, part III, will restrict the types of securities that may be purchased, the types of underwriting or selling syndicates and issuers involved, and the price and timing of the purchases;

(d) The amount of securities that the Asset Manager may purchase on behalf of Client Plans will be subject to percentage limitations;

(e) The Affiliated Broker-Dealer will not be permitted to receive, either directly, indirectly, or through designation, any selling concessions with respect to the securities sold to the Asset Manager;

(f) Prior to any purchase of securities, the Asset Manager will make the

required disclosures to an Independent Fiduciary of each Client Plan and obtain written authorization for such transaction (*i.e.*, an ATT);

(g) The Asset Manager will provide regular reporting to an Independent Fiduciary of each Client Plan with respect to all securities purchased pursuant to the exemption, if granted, including all ATTs;

(h) Each Client Plan participating in these transactions will be subject to a minimum size requirement of at least \$50 million (\$100 million for "Eligible Rule 144A Offerings"), with certain exceptions for Pooled Funds;

(i) The Asset Manager must have total assets under management in excess of \$5 billion and shareholders' or partners' equity in excess of \$1 million; and

(j) The Trustee will be unable to subordinate the interests of the investing Client Plans to those of the Asset Manager.

For a complete discussion of the facts and representations supporting the Department's decision to grant the original exemptions for JPMorgan Chase Bank and its Affiliates (*i.e.*, PTEs 2000-25 and 2000-27) for AUTs, interested persons should review the notice of proposed exemption for Morgan Guaranty Trust of New York, *et al.*, published in the **Federal Register** on February 8, 2000 (65 FR 6229).

Copies of all documents relating thereto are available for public inspection and may be obtained by interested persons from the Public Documents Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Interested persons should request File Numbers D-10119 and D-10120, and D-10779 with respect to the application for JPMorgan Chase Bank (formerly, Morgan Guaranty Trust of New York and The Chase Manhattan Bank). With regard to FAN 2001-19E for DB and its Affiliates, interested persons should request File Number E-00226.

Notice to Interested Persons: The Applicants represent that because those potentially interested Client Plans that may invest in securities, involving either an AUT or an ATT (or both), cannot all be identified, the only practical means of notifying such Client Plans of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 693-8546. (This is not a toll-free number). IBEW Local No. 1 Health and Welfare Fund, (the Welfare Fund) and IBEW Local No. 1, Apprenticeship and Training Fund, (the Training Fund; collectively, the Funds or the Applicants), located in St. Louis, MO. (Application Nos. L-11155 and L-11156, respectively.)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) 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 section 406(a) of the Act shall not apply to the lease of certain classroom space and supplemental facilities (the Lease) by the Welfare Fund to the Training Fund, a party in interest with respect to the Welfare Fund.

The proposed exemption is subject to the following conditions:

(1) The terms of the Lease are at least favorable to the Welfare Fund and the Training Fund as those obtainable in an arm's length transaction with an unrelated party.

(2) Qualified, independent appraisers have determined the initial amount of the Lease payments.

(3) A qualified, independent fiduciary, The Philip Company (TPC), has approved the Lease and has agreed to monitor the terms of the exemption, at all times, on behalf of the Welfare Fund.

(4) The independent fiduciary agrees to take whatever actions are necessary and proper to enforce the Welfare Fund's rights under the Lease and to protect the participants and beneficiaries of the Welfare Fund.

(5) The rental payments under the Lease are adjusted once every five years by the independent fiduciary to ensure that such Lease payments are not greater than or less than the fair market rental value of the leased space.

(6) The fair market rental amount for the leased space, at no time, will exceed 25 percent of the assets of either Fund, including any improvements that are constructed thereon.

(7) The independent fiduciary and the Board of Trustees of the Welfare Fund (the Welfare Fund Trustees) have determined that the Lease is an appropriate investment for the Welfare Fund and is in the best interest of the Welfare Fund's participants and beneficiaries.

Asset Manager regarding the acquisition and holding of ABS or other securities in an ATT would be consistent with its fiduciary obligations under part 4 of title I of the Act. In this regard, section 404 of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making decisions on behalf of a plan.