

section III(g), with respect to such Plan; and

(d) In situations where Deutsche Bank AG, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank AG does not average, over any six month period, more than 5% of the total amount of the plan's assets managed by such investment manager.

#### Section II—Prospective Relief

Effective after June 10, 2003, the restrictions of section 406(a) and (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 investment of the assets of a Plan in deposits of Deutsche Bank AG, its current or future branches, and/or its current or future subsidiaries, if—

(a) Deutsche Bank AG is supervised by the Deutsche Bundesbank and/or the BAFin, and, in the case of a subsidiary of Deutsche Bank AG, is also supervised by similar local government authorities;

(b) The deposit bears a rate of interest that is reasonable, as defined in section III(f);

(c) Prior to: (i) an investment of Plan assets in bank deposits; or (ii) the commencement of any Deutsche Bank AG program that invests Plan assets in such deposits, an independent fiduciary (other than with respect to a Bank Plan) receives a written disclosure describing:

(A) The circumstances pursuant to which Plan assets will be invested in deposits of Deutsche Bank AG or its subsidiaries or branches; and

(B) A description of the applicable sovereign regulatory authority/authorities governing the activities of Deutsche Bank AG;

(d) A fiduciary independent of Deutsche Bank AG and its affiliates (other than with respect to a Bank Plan) receives, upon request, copies of the most recent financial statement of Deutsche Bank AG and/or its subsidiaries;

(e) Immediately after any material adverse change in the financial

condition of Deutsche Bank AG, Deutsche Bank AG will notify each Plan fiduciary of such material adverse change and will not use its authority to continue the program of deposits with respect to the Plans without the consent of a Bank Plan fiduciary or an independent Client Plan fiduciary;

(f) In situations where Deutsche Bank AG, or any of its affiliates that are banks or registered investment advisors, acts as an investment manager on behalf of a Plan, the amount of such Plan's assets invested in the deposits of Deutsche Bank AG does not average, over any six month period, more than 1% of the total amount of the plan's assets managed by such investment manager;

(g) Deutsche Bank AG—

(1) Agrees to submit to the jurisdiction of the United States;

(2) Agrees to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Consents to service of process on the Process Agent;

(4) Agrees that it may be sued in the United States Courts in connection with the transactions described in this proposed exemption;

(5) Agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank AG; and

(6) Agrees to comply with, and be subject to, all relevant provisions of the Act.

(h) The investment is:

(i) Made by a Bank Plan and authorized by a Bank Plan fiduciary; or

(ii) Made by a Client Plan and authorized by an independent fiduciary with respect to such Client Plan. Notwithstanding (h)(i) and (h)(ii) above, authorization for the investment by a Plan in the deposits of Deutsche Bank AG may be presumed notwithstanding that Deutsche Bank AG does not receive any response from such Plan pursuant to two written requests by Deutsche Bank AG (one request by a certified mailing that contains only such request) for the authorization, provided that: (A) with respect to Plans that invest in the deposits of Deutsche Bank AG prior to June 10, 2003, the first request occurs not later than July 25, 2003, and the second request occurs within 30 days thereafter; and (B) with respect to Plans that invest in the deposits of Deutsche Bank AG following June 10, 2003, the first request occurs at least 45 days prior to such investment and the second request occurs within 30 days thereafter;

(i) Investments in the deposits of a subsidiary of Deutsche Bank AG will be backed by the full faith and credit of Deutsche Bank AG;

(j) Short-term debt issued by Deutsche Bank AG is rated in one of the three highest categories by an independent rating agency such as Standard & Poors, Moody's or a similar institution;

(k) Deutsche Bank AG maintains or causes to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described below in paragraph (l) of this exemption to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Deutsche Bank AG, the records are lost or destroyed prior to the end of the six-year period; and

(l)(1) Except as provided in paragraph (2) of this section (l) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (k) are unconditionally available at their customary location in the United States for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of a Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Plan or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraphs (l)(1)(ii) and (iii) shall be authorized to examine trade secrets of Deutsche Bank AG, or commercial or financial information that is privileged or confidential.

#### Section III—Definitions

(a) The term “bank” means a bank supervised by the United States, a state, or a sovereign government.

(b) An “affiliate” of a person includes:

(1) Any person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual.

herein; and (2) the negotiation of the terms of such an arrangement, including, among other things, the specific terms by which Plan assets will be invested in the deposits of Deutsche Bank AG. The Department further emphasizes that it expects plan fiduciaries, prior to allowing or authorizing the transactions described herein, to fully understand the benefits and risks associated with such transactions, following disclosure by Deutsche Bank AG of all relevant information. In addition, the Department notes that such plan fiduciaries must periodically monitor, and have the ability to so monitor, the services provided by Deutsche Bank AG.