

(d) A "Client Plan" refers to an employee benefit plan as described in section 3(3) with respect to which Deutsche Bank AG acts as a trustee or custodian.

(e) A "Bank Plan" means a plan sponsored or maintained by: (1) Deutsche Bank AG or any person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, Deutsche Bank AG or; (2) any entity in which Deutsche Bank AG holds more than a ten percent equity interest.

(f) A "reasonable" rate of interest means a rate of interest determinable by reference to short-term rates available to other customers of the bank, those offered by other banks, those available from money market funds, those applicable to short-term instruments such as repurchase agreements, or by reference to a benchmark such as sovereign short term debt (e.g., in the U.S., treasury bills), all in the jurisdiction where the rate is being evaluated. The requirement that an interest rate be "reasonable" does not preclude the payment of no interest in situations where the deposit is with a branch or subsidiary of Deutsche Bank AG that acts as a local subcustodian and no interest is paid to similarly situated custody clients of the global custodian so long as, prior any investment in deposits that pays no interest, Deutsche Bank AG discloses to the appropriate Plan fiduciary that no interest may be paid with respect to an arrangement described above. Notwithstanding the foregoing, no interest may be paid if local law is changed to preclude the payment of interest, and Deutsche Bank AG discloses such fact to the appropriate Plan fiduciary as soon as reasonably possible.

(g) An "independent fiduciary" means a fiduciary independent of Deutsche Bank AG and its affiliates who has the authority to make the investments described herein, or to instruct the trustee or other fiduciary with respect to such investments, and who has no interest in the transaction which may affect the exercise of such authorizing fiduciary's best judgment as a fiduciary so as to cause such authorization to constitute an act described in section 406(b) of the Act.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 3, 2003, at 68 FR 10035.

FOR FURTHER INFORMATION CONTACT:
Christopher Motta of the Department,

telephone (202) 693-8544. (This is not a toll-free number.)

Deutsche Bank AG (Deutsche Bank), located in Germany, with Affiliates in New York, New York and other locations.

[Prohibited Transaction Exemption 2003-12; Exemption Application Number D-11055]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective December 11, 2001, to the following foreign exchange transactions between Deutsche Bank or a foreign affiliate thereof that is a bank or broker-dealer (collectively, DBAG), and an employee benefit plan with respect to which DBAG is a trustee, custodian, fiduciary or other party in interest, pursuant to a standing instruction, if the conditions set forth in section II below are met:

- (1) An income item conversion; or
- (2) A *de minimis* purchase or sale transaction.

Section II. Conditions

(a) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's-length foreign exchange transactions between unrelated parties.

(b) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms afforded by DBAG in comparable arm's-length foreign exchange transactions involving unrelated parties.

(c) DBAG does not have any discretionary authority or control with respect to the investment of the plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to the investment of those assets.

(d) DBAG maintains at all times written policies and procedures regarding the handling of foreign exchange transactions for plans with respect to which DBAG is a trustee, custodian, fiduciary or other party in interest or disqualified person which assure that the person acting for DBAG knows that he or she is dealing with a plan.

(e) The covered transaction is performed under a written authorization executed in advance by a fiduciary of

the plan whose assets are involved in the transaction, which plan fiduciary is independent of DBAG. The written authorization must specify:

(1) The identities of the currencies in which covered transactions may be executed; and

(2) That the authorization may be terminated by either party without penalty on no more than 10 days notice.

(f)(1) Income item conversions are executed within no more than one business day from the date of receipt of notice by DBAG that such items are good funds, and a foreign custodian which is an affiliate of DBAG, provides such notice to DBAG within "one business day" of its receipt of good funds;

(2) *De minimis* purchase and sale transactions are executed within no more than one business day from the date that either DBAG receives notice from a foreign custodian that the proceeds of a sale of foreign securities dominated in foreign currency are good funds, or the direction to acquire foreign currency was received by DBAG and a foreign custodian which is an affiliate of DBAG provides such notice to DBAG within one business day of its receipt of good funds from a sale.

(g)(1) At least once each day, at the time(s) specified in its written policies and procedures, DBAG establishes either a rate of exchange or a range of rates to be used for income item conversions and *de minimis* purchase and sale transactions covered by this exemption.

(2) Income item conversions are executed at the next scheduled time for conversions following receipt of notice by DBAG from the foreign custodian that such funds are good funds. If it is the policy of DBAG to aggregate small amounts of foreign currency until a specified minimum threshold amount is received, then the conversion may take place at a later time but in no event more than 24 hours after such receipt of notice.

(3) *De minimis* purchase and sale transactions are executed at the next scheduled time for such transactions following receipt of either notice that the sales proceeds denominated in foreign currency are good funds, or a direction to acquire foreign currency. If it is the policy of DBAG to aggregate small transactions until a specified threshold amount is received, then the execution may take place at a later time but in no event more than 24 hours after receipt of either notice that the sales proceeds have been received by the foreign custodian as good funds, or a direction to acquire foreign currency.