

Notwithstanding the foregoing, the Applicant may be a directed trustee (as defined in Section III below) with respect to the Plan assets involved in the transaction.

In addition, although the Applicant does not have discretionary authority or control over such Plan assets at the time of the transaction and has not used its discretion to appoint the transition broker-dealer, it may act as a fiduciary with respect to the Plan assets involved in the transaction, solely as: (i) The investment manager of such assets to be managed as an Index or Model-Driven Fund; or (ii) the investment manager of such assets who supplies a list of securities or other investments to be purchased, which list is prepared without regard to the identity of the broker-dealer and without reference to the portfolio being liquidated or restructured, and is substantially the same list that would be provided to other similarly situated investors with substantially similar investment guidelines and objectives, or is substantially similar to the investments in existing portfolios managed in the same style.

Lastly, a transaction will not fail to meet the requirements of this section if the Applicant is being terminated as a manager of the Plan assets involved in the transaction, its investment discretion is terminated prior to the commencement of the portfolio liquidation or restructuring, and the Applicant has not used its discretion to appoint the transition broker-dealer;

C. The transaction is a purchase or sale, for no consideration other than cash;

D. The terms of any transaction are at least as favorable to the Plan as those obtainable in a comparable arm's length transaction with an unrelated party;

E. An Independent Fiduciary has given prior approval that the transaction may be effectuated as a principal transaction and at a price that—

(1) For an equity security, is specified in advance by the Independent Fiduciary and is a stated dollar amount, or is based on an objective measure (as of a specified date or dates), including, but not limited to, the closing price, the opening price, or the volume-weighted average price; or

(2) For a fixed income security, is a stated dollar amount, or is within the bid and asked spread, as of the close of the relevant market (or another predetermined time on a specified date or dates), as reported by an independent third party reporting service or a publicly available electronic exchange or trading system;

F. In the case where the price for any transaction is not based on an objective measure, the Independent Fiduciary has given prior approval for the transaction, specifying whether the transaction is to be agency or principal, either on a security-by-security basis, or based on the whole portfolio or an identifiable part of the portfolio (such as all debt securities, all equity securities, all domestic securities, or the like);

G. All purchases and sales executed on a principal basis are effected within two days following the Independent Fiduciary's direction to purchase or sell a given security—except that, with the approval of the Independent Fiduciary, the Applicant may extend such initial period for a time not exceeding two additional days, on the same terms;

H. The Independent Fiduciary is furnished with confirmations including the relevant information required under Rule 10b-10 of the Securities Exchange Act of 1934 (the 1934 Act), to the extent required under Rule 10b-10, as well as a report, within five business days after the transaction is completed, containing the following information with respect to each security:

(1) The identity of the security;

(2) The date on which the transaction occurred;

(3) The quantity and price of the securities involved; and

(4) Whether the transaction was executed with the Applicant as principal or agent;

I. Each Plan shall have total net assets with a value of at least \$100 million. 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;

J. The Applicant complies with all applicable securities or banking laws relating to the transaction;

K. Any Foreign Affiliate is a registered broker-dealer or bank subject to regulation by a governmental agency, as described in Section III, B, and is in compliance with all applicable rules and regulations thereof in connection with any transaction covered by the exemption;

L. Any Foreign Affiliate, in connection with any transaction covered by the exemption, is in compliance with the requirements of Rule 15a-6 (17 CFR 240.15a-6) of the 1934 Act, and Securities and Exchange Commission (SEC) interpretations thereof, providing for foreign affiliates a

limited exemption from U.S. broker-dealer registration requirements;

M. Prior to any transaction, the Foreign Affiliate enters 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 an agent for service of process in the United States, which may be an affiliate (the Process Agent); and (iii) consent to service of process on the Process Agent;

N. The Applicant maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction, such records as are necessary to enable the persons described in Paragraph O, below, to determine whether the conditions of the exemption have been met, except that—

(1) A party in interest with respect to a Plan, other than the Applicant, shall not be subject to a civil penalty under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by Paragraph O; and

(2) This record-keeping condition shall not be violated if, due to circumstances beyond the Applicant's control, such records are lost or destroyed prior to the end of the six year period; and

O. Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the Applicant makes the records referred to in Paragraph N, above, unconditionally available within the United States during normal business hours at their customary location to the following persons or a duly authorized representative thereof:

(1) The Department, the Internal Revenue Service, or the SEC; (2) any fiduciary of a Plan; (3) any contributing employer to a Plan; (4) any employee organization any of whose members are covered by a Plan; and (5) any participant or beneficiary of a Plan. However, none of the persons described in Items (2) through (5) of this subsection is authorized to examine the trade secrets of the Applicant, or commercial or financial information which is privileged or confidential.

Section III—Definitions

A. The term "DBSI" means Deutsche Bank Securities Inc. DBSI and its domestic affiliates must be one of the following: (i) A broker-dealer registered under the 1934 Act; (ii) a reporting