

4. Finally, regarding Section III.C. of the Proposal (68 FR 6189, center column), the Applicant noted that, in foreign jurisdictions, the authority to regulate securities transactions may change from agency to agency, from time to time, or the legal name of the appropriate regulator may change.

Thus, Section III.C. has been revised by adding the italicized language at the end of clause (6):

C. The term "Foreign Affiliate" means an affiliate of DBSI that is subject to regulation as a broker-dealer or bank by: (1) * * *, or (6) * * *, and/or the Australian Stock Exchange Limited, in Australia, *or any governmental regulatory authority that is a successor in interest to any such regulator.*

The Department concurs in the Applicant's requested changes to the operative language of this final exemption. Accordingly, based upon the information contained in the entire record, the Department has determined to grant the proposed exemption as modified herein.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

**Arizona Machinery Group, Inc. (AMG)
Located in Avondale, Arizona**

[Prohibited Transaction Exemption 2003-21;
Exemption Application No. D-11142]

Exemption

Section I. Transactions Covered

The restrictions of sections 406(a), (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (a) The acquisition by the Arizona Machinery Group Employees' Profit Sharing Retirement Plan (the Plan) of customer notes acquired from the Plan sponsor, AMG, or from any successor employer which sponsors the Plan at the time of the acquisition of such customer note, or from any other employer which at the time of the acquisition of such customer note has adopted the Plan (including employers which adopt the Plan subsequent to the date of this exemption) and which generates customer notes as defined herein in Section III (B), or from any affiliate of any such employer; (b) the Plan's holding of the customer notes, if the notes acquired and held by the Plan are guaranteed by the respective employer or affiliate, which accepted and held the customer notes prior to their acquisition by the Plan, as well as by AMG (when the customer note was accepted and

held by an employer other than AMG); and (c) the repurchase of customer notes from the Plan by the employer or affiliate which initially transferred those notes to the Plan; provided that, with respect to each such transaction, the conditions set forth below in Section II are met.

Section II. Conditions

(a) The transaction is on terms that are at least as favorable to the Plan as an arm's-length transaction with an unrelated party.

(b) Prior to the consummation of a transaction described in section I of this exemption, the transaction is approved on behalf of the Plan by a qualified fiduciary who is independent of any of the sponsoring or adopting employers or affiliates of the employer(s) (an Independent Fiduciary), upon a determination made by such Independent Fiduciary that the other conditions of this exemption will be satisfied. The Independent Fiduciary shall acknowledge his or her plan fiduciary status under the Act in writing with respect to the transactions. For purposes of this paragraph, a person is independent of an employer even though he or she was selected by AMG or an adopting employer (or by a person with an interest in such employer) if he or she has no other interest in the transaction for which an exemption is sought that might affect his or her best judgment as a fiduciary under the Act.

(c) The Plan's continuing rights under the terms and conditions of the acquired customer notes, and under this exemption, shall be monitored and enforced on behalf of the Plan by the same or another Independent Fiduciary who is independent of any of the sponsoring or adopting employers and who has acknowledged his or her fiduciary status and liability as described in paragraph (B) of this section. The Independent Fiduciary shall be responsible for taking all appropriate actions necessary to protect the Plan's rights with regard to the safety and collection of the notes purchased by the Plan. These actions shall include, but not be limited to, ascertaining that payments are received timely, diligently pursuing the receipt of delinquent payments and enforcing the employer's or affiliates' guarantees to repurchase delinquent notes, with accrued interest, as described in paragraph (e) of this section.

(d) The acquisition of a customer note from AMG, an adopting employer, or an affiliate, shall not cause the Plan to hold immediately following the acquisition: (i) more than twenty-five percent (25%), in the aggregate, of the current value (as

defined in section 3(26) of the Act) of Plan assets in customer notes of AMG, adopting employers or affiliates, or (ii) more than five percent (5%) of the current value of Plan assets in the notes of any one customer who is the obligor under such notes.

(e) An employer or affiliate from which the Plan acquires a customer note, as well as AMG (when the customer note was acquired from an employer other than AMG), guarantees in writing the immediate repayment of the outstanding balance of the notes and accrued interest in the event that the note is more than 60 days in arrears or if other events occur that, in the opinion of the Independent Fiduciary referred to in paragraph (b) and (c) of section II, impair the safety of the note as a Plan investment. The Independent Fiduciary may, at his or her discretion, grant an additional 30-day extension before repurchase of the note by an employer or affiliate is necessary upon a petition by the employer or affiliate, if the fiduciary determines, after consultation with the employer or affiliate, that such an extension is in the best interests of the participants and beneficiaries of the Plan. The other events (of impairment) referred to above include, but are not limited to, the following:

(1) The obligor on the note fails to comply with any terms or conditions of the note;

(2) The obligor becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors or a liquidating agent, offers a composition or extension to creditors or makes a bulk sale;

(3) Any proceeding, suit or action at law, in equity, or under any of the provisions of Title 11 of the United States Bankruptcy Code [11 U.S.C. 101 *et seq.*] or amendments thereto for reorganization, composition, extension, arrangements, receivership, liquidation or dissolution is begun by or against the obligor;

(4) A receiver of any property of the obligor is appointed under any jurisdiction at law or in equity; or

(5) The obligor fails to take proper care of or abandons the property being financed by the note.

(f) The Plan receives adequate security for the note. For purposes of this exemption, the term "adequate security" means that the note is secured by a perfected security interest in the property purchased by the obligor on the note so that if the security is foreclosed upon, or otherwise disposed of, in default of repayment of the loan, the value and liquidity of the security is such that it may reasonably be