

DEPARTMENT OF LABOR**Employee Benefits Security Administration**

[Prohibited Transaction Exemption 2003–24; Exemption Application No. D–11004]

Grant of Individual Exemptions; Deutsche Bank AG (DB), Located in Germany, with Affiliates in New York, New York and Other Locations; and JPMorgan Chase Bank, Located in New York, New York; (collectively, with their Affiliates, the Applicants)

AGENCY: Employee Benefits Security Administrator, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The applicant has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836,

32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Deutsche Bank AG (DB), Located in Germany, with Affiliates in New York, New York and Other Locations; and JPMorgan Chase Bank, Located in New York, New York; (collectively, with their Affiliates, the Applicants)

[Prohibited Transaction Exemption 2003–24; Exemption Application Nos. D–11004 and D–11106]

Exemption

Under the authority of section 408(a) of the Employees Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32,836, 32,847, August 10, 1990), the Department amends the following individual prohibited transaction exemptions (PTEs) and authorization made pursuant to PTE 96–62 (61 FR 39988, July 31, 1996—referred to herein as “EXPRO”): PTE 2000–25 (65 FR 35129, June 1, 2000), issued to Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management, Inc., and PTE 2000–27, issued to the Chase Manhattan Bank (65 FR 35129, June 1, 2000), and Final Authorization Number (FAN) 2001–19E, issued to DB and its Affiliates (June 23, 2001).¹ Such PTEs and EXPRO authorization are hereby replaced by the following exemption.

Section I—Transactions

The restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the purchase of any securities by the Asset Manager (as

defined in Section II(a)) on behalf of employee benefit plans (Client Plans), including Client Plans investing in a pooled fund (Pooled Fund), for which the Asset Manager acts as a fiduciary, from any person other than the Asset Manager or an affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such securities, where the Affiliated Broker-Dealer is a manager or member of such syndicate (an “affiliated underwriter transaction” (AUT)), and/or where an Affiliated Trustee serves as trustee of a trust that issued the securities (whether or not debt securities) or serves as indenture trustee of securities that are debt securities (an “affiliated trustee transaction” (ATT)), provided that the following conditions are satisfied:

(a) The securities to be purchased are—

(1) either:

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a *et seq.*) or, if exempt from such registration requirement, are (A) issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, (B) issued by a bank, (C) exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or (D) are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and the issuer of which has been subject to the reporting requirements of section 13 of that Act (15 U.S.C. 78m) for a period of at least 90 days immediately preceding the sale of securities and has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding 12 months; or

(ii) part of an issue that is an “Eligible Rule 144A Offering,” as defined in SEC Rule 10f–3 (17 CFR 270.10f–3(a)(4)). Where the Eligible Rule 144A Offering is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities, except that—

(i) If such securities are offered for subscription upon exercise of rights, they may be purchased on or before the

¹ See also PTE 2000–26 (65 FR 35129, June 1, 2000), issued to Goldman, Sachs & Co., and its Affiliates; PTE 2000–28, (65 FR 35129, June 1, 2000), issued to Citigroup, Inc. and its Affiliates; PTE 2000–29 (65 FR 35129, June 1, 2000), issued to Morgan Stanley Dean Witter & Co. and its Affiliates; FAN 2001–24E (October 6, 2001), issued to Barclays Global Investors N.A., Barclays Capital, Inc. and their Affiliates; and FAN 2002–09E (September 14, 2002), issued to The TCS Group, Inc., and its Affiliates. The Department will separately consider similar amendments to those exemptions and authorizations upon the receipt of applications or submissions relating thereto from such entities.