

allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. "Eligible Yield Supplement Agreement" means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not "leveraged" as described in subsection III.EE.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.II.(1)–(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either:

(i) The principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

The Department notes that this proposed exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at (see 60 FR 35932).

**Effective Date:** This exemption is effective for all transactions described herein which occurred on or after April 18, 2003.

### Summary of Facts and Representations

1. RBC–DR is a Minnesota corporation organized on December 29, 1981 and is a wholly-owned subsidiary of RBC Dain Rauscher Corporation which is a wholly-owned subsidiary of Royal Bank of Canada. RBC–DR is a registered broker-dealer, a registered investment adviser and a member of the New York Stock Exchange, the National Association of Securities Dealers, Inc.,

and other major securities exchanges, as well as the Securities Investor Protection Corporation. RBC–DR engages in the purchase and sale of securities for the account of its customers, which include individual and institutional accounts. It also purchases and sells securities for its own proprietary trading accounts and for the accounts of its affiliates. RBC–DR engages in trading mortgage-related and other securities, including pass-through certificates issued by the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC), callable agency debt, and collateralized mortgage obligations for the account of its customers and for its own accounts. RBC–DR similarly trades certificates of deposit issued by banks, the deposits of which are insured by the Bank Insurance Fund. Through its division "RBC Capital Markets," RBC–DR also conducts similar business.

RBC–DR maintains its principal office at 60 South Sixth Street, Minneapolis, Minnesota 55402–4422. It maintains branch sales offices in 39 states and the District of Columbia.

2. RBC Mortgage Company (RBC Mortgage) is an Illinois corporation organized on June 22, 1992 and is a wholly-owned subsidiary of Royal Bank of Canada, the ultimate parent corporation to the RBC–DR. RBC Mortgage, formerly known as Prism Mortgage Company, is engaged primarily in the mortgage banking business, and originates, purchases, sells and services prime mortgage loans, sub-prime mortgage loans and home equity loans. It originates mortgage loans through a retail branch system and through mortgage loan brokers and purchases loans originated by correspondents nationwide. It also conducts this business through its affiliated entities Lenders Mortgage Services, LLC (Illinois), Mortgage Market Inc. (Oregon), and Pacific Guaranty Mortgage Corporation (California). It sells substantially all loans that it originates or purchases. In the calendar year ending 2001, RBC Mortgage originated over \$17 billion in loans. The principal executive offices of RBC Mortgage are located at 440 North Orleans, Chicago, Illinois 60610. RBC Mortgage may participate as an issuer or servicer in securitizations underwritten by RBC–DR or one of its Affiliates.

3. RBC Centura Bank (RBC Centura) is a state chartered banking corporation organized under the laws of North Carolina on February 14, 1990. It is a wholly-owned subsidiary of Royal Bank of Canada. RBC Centura offers financial

services, including deposit accounts, investments and mutual funds, financial advice, credit and debit cards, business and personal loans, insurance, residential and commercial mortgages. Its deposits are insured by the Federal Deposit Insurance Corporation (FDIC). RBC Centura offers personal and commercial customers banking services through more than 240 banking centers located in five Southeastern states. Through its division, RBC Builder Finance ("RBC–BF"), headquartered in Houston, Texas, RBC Centura engages in lending activity designed to fund single-family construction loans, residential land acquisition and development loans, including finished lot facilities, and participating debt loans. The RBC–BF division targets professional, middle-market, residential homebuilders and developers in major metropolitan markets throughout the United States. Loan production offices are located in the District of Columbia and 16 states, primarily in the South and West. RBC Centura (including its division RBC–BF) may participate as an issuer, servicer or trustee in securitizations underwritten by RBC–DR or one of its Affiliates.

4. **Other Affiliates.** For purposes of this application, the term "Affiliate" shall mean any U.S.-domiciled corporation, partnership, or other business entity controlled by Royal Bank of Canada. The term "Applicant" herein shall be used to denote RBC–DR and its Affiliates.

5. RBC–DR seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts;<sup>10</sup> (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.<sup>11</sup> For purposes of the

<sup>10</sup> PTE 83–1 (48 F.R. 895, January 7, 1983), a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. RBC–DR requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure, and because the relief in PTE 83–1 is narrower than that in the requested exemption. However, RBC–DR may still avail itself of the exemptive relief provided by PTE 83–1.

<sup>11</sup> Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by GNMA, FHLMC, or FNMA. The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not,