

Assuming that this proposed exemption is granted, the Taxable Bond proceeds would be released by the Bond Trustee and used by the Partnership to help finance a portion of the costs of the construction of the Project. During the duration of the Letter of Credit, the Bond Trustee would make timely payments of draws against the Taxable Bonds. As a condition to the conversion of the Tax-Exempt Bond Financing to long-term financing upon the Project's achievement of certain leasing criteria, the Taxable Bonds (which will not convert into long-term financing) will be fully redeemed by Bank of America pursuant to the Letter of Credit, and the Plan would become obligated to fund its \$7,115,000 capital contribution to the Partnership. The Partnership would then use the Plan's capital contribution to reimburse Bank of America for the draw on the Letter of Credit. The Plan's capital contribution will be used by the Partnership for the exclusive purpose of reimbursing Bank of America for the draw on the Letter of Credit.

8. The Plan desires to participate in the Project as it is expected to earn an attractive investment and it fits well within the Plan's investment objectives. With respect to the issuance of the Taxable Bonds and the ultimate repayment of the bondholders with the Plan's capital contribution, the contemplated arrangement will allow the Partnership to take advantage of over \$7 million in construction financing at a very favorable interest rate. Such favorable financing would not be available but for the fact that the Project involves the construction of low income housing units.

If the proposed exemption is not granted, the Partnership will not be able to take advantage of the favorable interest rates available to it as an incentive for constructing low income housing. If this proposed exemption is denied, the proceeds of the Taxable Bonds will be returned by the Bond Trustee from the Indenture Account to the Issuer (together with interest) and neither the Partnership nor the Plan will have any further obligation with respect thereto. The Plan would then fund its \$7,115,000 to the Partnership for Project budget costs once the proceeds of the Tax-Exempt Bonds and the Co-General Partners' capital contribution were fully disbursed. This, of course, will result in an overall lower return to the Plan on its investment in the Partnership than if the arrangement with respect to the Taxable Bonds were allowed to proceed.

9. In summary, the applicant states that the transaction has satisfied the statutory criteria of section 408(a) of the Act because: (a) The Plan's investment

in the Partnership is on terms no less favorable to the Plan than those which the Plan could obtain in arm's length transactions with unrelated parties; (b) the decisions on behalf of the Plan to invest in the Partnership and consent to the terms of the Reimbursement Agreement in favor of the Bank are made by fiduciaries, which are not included among, and are independent of and unaffiliated with, the Bank; (c) the investment in the Partnership represents no more than 20% of the total assets of the Plan; (d) the general partners of the Partnership are independent of the Plan and of the Bank of America; (e) The Plan shall have no obligation to fund its capital contribution unless and until (i) all conditions imposed by the construction lender regarding disbursement to the Partnership of \$25,950,000 of the tax-exempt bond construction financing proceeds have been satisfied by the Partnership; and (ii) the Department grants the proposed exemption; and (f) The Plan's capital contribution will be used solely for the purpose of reimbursing Bank of America for the draw on the Letter of Credit.

Effective Date: This exemption, if granted, is effective as of October 17, 2002.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Khalif I. Ford of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

Bank of America, N.A., Located in Charlotte, North Carolina

[Exemption Application No. D-11147].

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reasons of section 4975(c)(1)(A) through (D) of the Code, shall not apply, as of January 1, 2003, to:

(A) the granting to Bank of America, N.A. (Bank), either as an agent (the

Agent) for a group of financial institutions (Lender(s)), or as a sole Lender, that will fund a so-called "credit facility" (Credit Facility) providing credit to certain investment funds (Fund(s)), by the Fund of a security interest in and lien on the capital commitments (Capital Commitments), reserve amounts, and capital contributions (Capital Contributions) of certain investors, including employee benefit plans (a Covered Plan, as defined in Section III (A)), investing in the Fund;

(B) any collateral assignment and pledge by the Fund to the Agent, or to the Bank as sole Lender, of its security interest in each Investor's equity interest, including a Covered Plan's equity interest, in the Fund;

(C) the granting by the Fund to the Agent, or to the Bank as sole Lender, of a security interest in a Borrower Collateral Account to which all Capital Contributions in the Fund will be deposited when paid (except in certain limited circumstances);¹

(D) the granting by the Fund to the Agent, or to the Bank as sole Lender, of its right to make calls on Investors for Capital Contributions (Capital Call), which shall be in cash, under the operative Fund Agreements (as defined in Section III (C)), enforce the Capital Calls, collect the Capital Contributions, and apply them to any amount due under the Credit Facility;

(E) the execution by a Covered Plan of an agreement (Investor Consent) consenting to the Fund's assignment to the Agent, or to the Bank as sole Lender, of the Fund's right to make Capital Calls, which may contain: (i) An acknowledgment by the Covered Plan of the Fund's assignment to the Agent, or to the Bank as sole Lender, of the right to make Capital Calls upon the Covered Plan, enforce the Capital Calls, collect the Capital Contributions, and apply them to any amount due under the Credit Facility; (ii) a consent (as either part of the Fund Agreements or as a separate agreement) by the Covered Plan to make Capital Contributions to the Fund without counterclaim, setoff, or defense, for the purpose of repayment of the Credit Facility; (iii) a representation that the Covered Plan has no knowledge of claims, offsets or defenses that would adversely affect its obligation to fund Capital Contributions under the Fund Agreements; and (iv) an agreement that the Covered Plan will fund Capital

¹ In most cases, all Investors will make Capital Contributions into the Borrower Collateral Account. However, in some cases, investors that are not plans may be directed to make Capital Contributions to the Agent, for the benefit of the Lenders, after an event of default, in some other manner.