

than two business days after receipt of such fees by Fifth Third as provided in Section II(d) of the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 24, 2003 at 68 FR 37539 (the Proposed Exemption).

Written Comment

The Department received one written comment and no requests for a public hearing. In a letter dated August 5, 2003, Fifth Third (the Applicant) requested a clarification with regard to the "Summary of Facts and Representations" (the Summary) in the Proposed Exemption. Although the term "Fifth Third" as defined in the proposed exemption itself includes Fifth Third Bank, a Michigan banking corporation, and its affiliates, the Applicant believed that the definition of the same term in item 1 of the Summary did not include the Fifth Third Bank affiliates. The Department notes that the term "Fifth Third" does include Fifth Third Bank, a Michigan banking corporation, and its affiliates in both the proposed exemption and the Summary of the Proposed Exemption.

After giving full consideration to the entire record, including the written comment noted above, the Department has decided to grant the exemption.

For information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D-11101) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy McColough of the Department, telephone (202) 693-8561. This is not a toll-free number.

**RBC Dain Rauscher, Inc. (RBC-DR)
Located in Minneapolis, Minnesota**

[Prohibited Transaction Exemption 2003-31; Exemption Application No. D-11189]

Exemption

I. Transactions

A. Effective for transactions occurring on or after April 18, 2003, the restrictions of section 406(a) and 407(a)

of the Employee Retirement Income Security Act of 1974, as amended (the Act), and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986, as amended (the Code), by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan, by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.¹

B. Effective for transactions occurring on or after April 18, 2003, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an affiliate or a person described in (a); if

(i) The plan is not an Excluded Plan; (ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired

by persons independent of the members of the Restricted Group, and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Securities does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in a Issuer containing assets sold or serviced by the same entity.² For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in an Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective for transactions occurring on or after April 18, 2003, the restrictions of sections 406(a), 406(b) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975 (c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of an Issuer, including the use of any Eligible Swap transaction; or the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they

¹ Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

² For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.