

Attention: Application No. \_\_\_\_\_, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: [moffittb@pwba.dol.gov](mailto:moffittb@pwba.dol.gov), or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

#### Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemption was requested in an application filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). 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 requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The application contains representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations.

#### Deutsche Bank Securities Inc. and Its Affiliates Located in New York, NY

[Application No. D-10988]

#### 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 32847, August 10, 1990).

#### Section I—Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) of the Act and the sanctions resulting from application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any purchase or sale of securities, in the context of a portfolio liquidation or restructuring, between (i) Deutsche Bank Securities Inc. (DBSI) and its current and future affiliates, including certain foreign broker-dealers or banks (the Foreign Affiliates, as defined in Section III below), (collectively, the Applicant) and (ii) employee benefit plans (the Plans) with respect to which the Applicant is a party in interest, provided that the conditions set forth in Section II are satisfied.

#### Section II—Conditions

A. The Applicant customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank;

B. Neither the Applicant nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets.

Notwithstanding the foregoing, the Applicant may be a directed trustee (as defined in Section III below) with respect to the Plan assets involved in the transaction.

In addition, this condition will be deemed satisfied if the Applicant is being terminated as a manager of the plan assets involved in the transaction, the termination is effective prior to the commencement of the portfolio liquidation or restructuring, and the Applicant has not used its discretion to appoint the transition broker-dealer.

Lastly, a transaction will not fail to meet the requirements of this section solely because the Applicant is being retained as an investment manager with respect to the Plan assets involved in the transaction, provided that: (i) The Applicant has not used its discretion to appoint the transition broker-dealer; (ii) the plan assets are to be managed as an Index or Model-Driven Fund; or (iii) the investment manager of such assets supplies a list of securities to be purchased, which list is prepared without regard to the identity of the broker-dealer and without reference to the portfolio being liquidated or restructured (*i.e.*, the list is substantially

the same as would be provided to other similarly situated investors with similar objectives or consists of substantially the same securities as those in other existing investment portfolios managed in the same style);

C. The transaction is a purchase or sale, for no consideration other than cash;

D. The terms of any transaction are at least as favorable to the Plan as those obtainable in a comparable arm's length transaction with an unrelated party;

E. An Independent Fiduciary has given prior approval for the transaction, specifying (solely in the case where the price for any principal transaction is not based on an objective measure) whether the transaction is to be agency or principal, either on a security-by-security basis, or based on the whole portfolio or an identifiable part of the portfolio (such as all debt securities, all equity securities, all domestic securities, or the like);

F. All purchases and sales are effected within two days following the Independent Fiduciary's direction to purchase or sell a given security—except that, with the approval of the Independent Fiduciary, the Applicant may extend such initial period for a time not exceeding two additional days;

G. Prior to any transaction, the Independent Fiduciary agrees that the purchase or sale of a security, which must be one that is publicly traded, may be effectuated through a principal transaction at a price that—

(1) In the case of an equity security, is specified in advance by the Independent Fiduciary and is a stated dollar amount, or is based on an objective measure (as of a specified date or dates), including, but not limited to, the closing price, the opening price, or the volume-weighted average price; or

(2) In the case of a fixed income security, is a stated dollar amount, or is within the bid and asked spread, as of the close of the relevant market (on a specified date or dates), as reported by an independent third party reporting service or a publicly available electronic exchange;

H. The Independent Fiduciary is furnished with confirmations including the relevant information required under Rule 10b-10 of the Securities Exchange Act of 1934 (the 1934 Act), as well as a report, within five business days of the transaction, containing the following information with respect to each security:

- (1) The identity of the security;
- (2) The date on which the transaction occurred;
- (3) The quantity and price of the securities involved; and