

(3) That contains "plan assets" subject to the Act, pursuant to the Department's regulations (*see* 29 CFR 2510.3-101, Definition of "plan assets"—plan investments); and

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund that is intended to benefit the Applicant or any party in which the Applicant may have an interest.

G. The term "Model-Driven Fund" means any investment fund, account, or portfolio trustee or managed by the Applicant, in which one or more investors invest, and—

(1) Which is composed of securities, the identity of which and the amount of which, are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of the Manager, to transform an Index (as defined in Paragraph E, above);

(2) Which contains "plan assets" subject to the Act, pursuant to the Department's regulations (*see* 29 CFR 2510.3-101, Definition of "plan assets"—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund, or the utilization of any specific objective criteria, that is intended to benefit the Applicant or any party in which the Applicant may have an interest.

H. The term "Plan" means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act.

I. The term "Independent Fiduciary" means a fiduciary of a Plan who is unrelated to, and independent of, the Applicant. For purposes of the proposed exemption, a Plan fiduciary will be deemed to be unrelated to, and independent of, the Applicant if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant and represents that such fiduciary shall advise the Applicant if those facts change.

(1) Notwithstanding anything to the contrary in this Section III, I, a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Applicant;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from the Applicant

for his or her own personal account in connection with any transaction described in the proposed exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant, responsible for the transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Plan sponsor or the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director of the Plan sponsor or the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's broker-dealer or bank executing the transactions covered herein, and (B) the decision to authorize or terminate authorization for transactions described in Section I, then Section III, I(1)(iii) shall not apply.

(2) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

J. The term "directed trustee" means a Plan trustee whose powers and duties with respect to any assets of the Plan involved in the portfolio liquidation or restructuring are limited to (i) the provision of nondiscretionary trust services to the Plan, and (ii) duties imposed on the trustee by any provision or provisions of the Act or the Code.

The term "nondiscretionary trust services" means custodial services and services ancillary to custodial services, none of which services is discretionary. For purposes of the proposed exemption, a person who is otherwise a directed trustee will not fail to be a directed trustee solely by reason of having been delegated, by the sponsor of a master or prototype Plan, the power to amend such Plan.

Summary of Facts and Representations

1. Deutsche Bank Securities Inc. (*i.e.*, DBSI) is an indirect wholly-owned subsidiary of Deutsche Bank AG, a German banking corporation regulated by the BAFin. DBSI, a Delaware corporation, is a full-service broker-dealer, providing research, sales and trading, investment banking, retail, investment advisory services, and prime brokerage services. DBSI is registered as a U.S. broker-dealer under Section 15 of the 1934 Act, as amended, and is a member of the New York Stock Exchange, American Stock Exchange, Chicago Board of Options Exchange,

and the Chicago Stock Exchange, among others, and DBSI is a member of the National Association of Securities Dealers.

DBSI's affiliate, Deutsche Bank Trust Company Americas (DBT), is a wholly-owned subsidiary of Deutsche Bank Trust Corporation, which, in turn, is an indirectly wholly-owned subsidiary of Deutsche Bank AG. DBT, a New York State banking corporation, is supervised by the Federal Reserve Bank of New York.

2. DBSI also has several foreign affiliates which are broker-dealers or banks. Those covered by the proposed exemption (*i.e.*, the Foreign Affiliates) include but are not limited to:

(a) United Kingdom—Morgan Grenfell & Co., Ltd., Bankers Trust International PLC, and the London Branch of Deutsche Bank;

(b) Germany—Deutsche Bank AG;

(c) Japan—Japan Bankers Trust Ltd., Deutsche Bank Securities Limited, Tokyo Branch, and Deutsche Trust Bank Limited;

(d) Canada—Deutsche Bank Canada and Deutsche Bank Securities Limited;

(e) Switzerland—Deutsche Bank (Suisse) S.A.; and

(f) Australia—Deutsche Bank Securities Australia, Limited and the Sydney Branch of Deutsche Bank.

The Applicant requests an individual exemption for DBSI and its current and future affiliates, including the Foreign Affiliates identified above, which would permit principal transactions with employee benefit plans (*i.e.*, the Plans), as described herein.

The Applicant represents that the Foreign Affiliates are subject to regulation by a governmental agency in the foreign country in which they are located. The Applicant states that registration of a foreign broker-dealer or bank with the governmental agency in these cases addresses regulatory concerns similar to those addressed by registration of a broker-dealer with the SEC under the 1934 Act. The rules and regulations set forth by the above-referenced agencies and the SEC share a common objective: The protection of the investor by the regulation of securities markets. The foreign regulatory regimes have been described in detail in numerous other exemptions previously granted by the Department [*see, e.g.*, PTE 99-50 (65 FR 534, January 5, 2000), granted to Bankers Trust Company, now known as Deutsche Bank Trust Company Americas].

Further, the Applicant represents that, in connection with the transactions covered by the proposed exemption, the Foreign Affiliates' compliance with any applicable requirements of Rule 15a-6