

(h) the term “plan” means a plan maintained by the DBIM or an affiliate of the DBIM.

Effective Date of Exemption: The effective date of this exemption is April 8, 2002.

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 (the Notice) published on March 21, 2003 at 68 FR 13960.

Written Comments

The Department received thirty one written comments and three requests for a public hearing from interested persons in response to the Notice. The Department forwarded copies of the comments to Deutsche Bank and requested that Deutsche Bank address in writing the various concerns raised by the commentators. Many of the comments fell into broad categories to which Deutsche Bank responded collectively. Where a single commentator raised a unique issue, such issue was responded to individually. The comments and Deutsche Bank’s responses are summarized below.

Several commentators questioned whether the proposed exemption reduces or eliminates their benefits under their Deutsche Bank plans. Deutsche Bank responded that the proposed exemptions does not address, much less reduce or eliminate, benefits under the plans.

One commentator asked what safeguards are in place under the proposed exemption. Deutsche Bank responded that protective conditions for the proposed exemption are described in the Notice. Those conditions are essentially the same as the protective conditions found in PTE 96–23, 61 Fed. Reg. 15975 (Apr. 10, 1996), which provides relief with respect to in-house asset managers that is substantially similar to the relief provided in the proposed exemption. Deutsche Bank represented that it will comply with all such conditions.

One commentator expressed concern about the proposed exemption to the extent it allows a bank supervised under the laws of Germany to act as an in-house investment manager, asserting that current economic pressures will distract German authorities from adequately regulating such banks. Deutsche Bank responded that the Department has implicitly recognized the present capability of German authorities to adequately supervise banks subject to German law by recently granting exemptive relief (in many

different contexts) where the affected bank or other person is subject to supervision under German law. *See, e.g.,* PTE 2003–20, 68 Fed. Reg. 40689 (July 8, 2003); PTE 2003–12, 68 Fed. Reg. 34648 (June 10, 2003); PTE 2003–11, 68 Fed. Reg. 34646 (June 10, 2003); PTE 2002–48, 67 Fed. Reg. 62827 (Oct. 8, 2002); PTE 2002–31, 67 Fed. Reg. 42072 (June 20, 2002). Additionally, Deutsche Bank responded that the German authorities are actively focused on banking regulation. Last year, Germany adopted its Law on Integrated Financial Services Supervision (Gesetz ueber die integrierte Finanzaufsicht—FinDAG), pursuant to which the Federal Authority for Financial Services Supervision (Bundesanstalt fuer Finanzdienstleistungsaufsicht—BAFin) was established. The functions of the former offices for banking supervision (Gundesaufsichtsamt fuer das Kreditwesen—BAKred), insurance supervision (Bundesaufsichtsamt fuer das Versicherungswesen—BAV), and securities supervision (Bundesaufsichtsamt fuer den Wertpapierhandel—BAWe) have been combined in this single state regulator that supervises banks, financial services institutions, and insurance undertakings across the entire financial market and comprises all the key functions of consumer protection and solvency supervision. The BAFin was created to ensure a consistent regulation and supervision of the financial services and markets in Germany through one single authority.

Several commentators asked whether ERISA will continue to govern the plans and their in-house investment managers if the proposed exemption is granted. Deutsche Bank responded that ERISA will continue to govern its plans, that the in-house investment managers to which the proposed exemption applies will be subject to the same rules and regulations under ERISA that govern the plan currently, and that any foreign in-house managers can be sued in the United States. Deutsche Bank represented that it will fully comply with all laws respecting its plans.

Some commentators questioned whether the exemption is in the interest of plan participants. Deutsche Bank responded that, as reflected in the Notice, the exemption allows plans to take greater advantage of the investment management expertise and experience of Deutsche Bank, the world’s largest bank in terms of assets and one of the world’s largest asset managers, which will provide investment management services to the plans without a fee.

Several commentators requested general clarification of the proposed

exemption, and others expressed concern about conflicts of interest arising from in-house investment management. In response, Deutsche Bank stated that, under PTE 96–23, the Department has essentially granted the relief with respect to in-house asset managers that is provided in the proposed exemption. The only substantial difference between PTE 96–23 and the proposed exemption is that the proposed exemption allows the in-house adviser to be a bank supervised under the laws of the United States, a State, or Germany, rather than a registered investment adviser. Although such banks are not subject to registration under the Investment Advisers Act of 1940, they are experienced investment advisers and subject to adequate regulations by competent government authorities. Deutsche Bank also responded that the proposed exemption does not negate the legal protections of ERISA, including the requirement that investment managers discharge their duties with respect to the plans solely in the interest of the participants and beneficiaries.

Several commentators expressed concern, asked questions, or made recommendations with respect to their benefits, plan administration, or plan design. While these comments do not relate to the terms of the proposed exemption, Deutsche Bank represents that it will contact those commentators and attempt to address their issues.

One commentator requested that the exemption not be granted, but provided no basis for his position. Since the commentator provided no basis for his position, the Department believes that no response is necessary.

With respect to the requests for a hearing, the Department has determined that a public hearing is not necessary in this case because none of the interested persons requesting a hearing provided any substantive information justifying such request. In addition, the Department is satisfied that the exemption contains adequate independent safeguards to protect the interests of the plans and their participants and beneficiaries.

The Department has determined to modify section IV(h) of the final exemption as follows in order to provide consistency with PTE 96–23:

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Accordingly, after giving full consideration to the entire record, including the comments by the commentators, and the responses of Deutsche Bank, the Department has determined to grant the exemption as