

Tube from Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on July 26, 2000).

In accordance with 19 CFR § 201.35(d)(2), interested parties are hereby notified that the Commission has determined that Commission business requires removal of the above agenda item from the meeting of Monday, June 12, 2000 at 2:00 p.m. No earlier announcement of such change was possible.

Issued: June 9, 2000.

By order of the Commission.

**Donna R. Koehnke,**  
Secretary.

[FR Doc. 00-14996 Filed 6-9-00; 2:10 pm]

BILLING CODE 7020-02-U

## DEPARTMENT OF JUSTICE

### Office of Justice Programs; Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review; (reinstatement, without change, of a previously approved collection for which approval has expired) Juvenile Residential Facility Census.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until August 14, 2000.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Joseph Moone, 202-616-3634, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, N.W., Washington, DC 20531. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

### Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Juvenile Residential Facility Census Bravery.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* The form number is CJ-15, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal public juvenile justice facilities, private juvenile facilities. *Other:* none.

This collection will gather information necessary to routinely monitor the types of facilities into which the juvenile justice system places young persons and the services available in these facilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,500 respondents will complete a 2-hour questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the questionnaire is 7,000 annual burden hours. The survey will be conducted biennially.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania, NW, Washington, D.C..

Dated: June 7, 2000.

**Brenda E. Dyer,**

Department Deputy Clearance Officer,  
Department of Justice.

[FR Doc. 00-14816 Filed 6-12-00; 8:45 am]

BILLING CODE 4410-18-M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2000-30; Exemption Application No. D-10188, et al.

### Grant of Individual Exemptions; Barclays Bank PLC and Its Affiliates (Collectively, Barclays)

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, 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 proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### Barclays Bank PLC and its Affiliates (Collectively, Barclays), Located in London, England;

[Prohibited Transaction Exemption 2000-30; Application No. D-10188]

#### Exemption

Section I—Retroactive Exemption for the Acquisition, Holding and Disposition of Barclays PLC Stock

The restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply, as of December 31, 1995 until June 13, 2000, to the acquisition, holding and disposition of the common stock of Barclays PLC (the Barclays PLC Stock) by Index and Model-Driven Funds managed by Barclays, provided that the following conditions and the general conditions in Section III are met:

(a) The acquisition or disposition of the Barclays PLC Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Barclays PLC Stock which is intended to benefit Barclays or any party in which Barclays may have an interest.

(b) All aggregate daily purchases of Barclays PLC Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for the Barclays PLC Stock occurring on the applicable exchange and automated trading system (as described in paragraph (c) below) for the previous five (5) business days, or

(2) 15 percent of the trading volume for Barclays PLC Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best

available information for the trades occurring on that date.

(c) All purchases and sales of Barclays PLC Stock occur either (i) on the London Stock Exchange, a recognized securities exchange as defined in Section IV(k) below, (ii) through an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Barclays that is subject to regulation and supervision by the Securities and Futures Authority of the United Kingdom (pursuant to the applicable securities laws) that provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) in a direct, arms-length transaction entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Barclays and is either registered under the Securities Exchange Act of 1934 (the "34 Act), and thereby subject to regulation by the U.S. Securities and Exchange Commission (SEC), or subject to regulation and supervision by the Securities and Futures Authority of the United Kingdom (UK).

(d) No transactions by a Fund involve purchases from, or sales to, Barclays (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(e) No more than five (5) percent of the total amount of Barclays PLC Stock issued and outstanding at any time is held in the aggregate by Index and Model-Driven Funds managed by Barclays.

(f) Barclays PLC Stock constitutes no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(g) A plan fiduciary independent of Barclays authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Barclays PLC Stock, pursuant to the procedures described in the notice of proposed exemption published on March 14, 2000<sup>1</sup> (see Paragraph 11 of the Summary of Facts and Representations regarding portfolio management services provided for particular plans), other than in the case of an employee benefit plan sponsored or maintained by Barclays PLC and/or

an Affiliate for its own employees (a Barclays Plan).

(h) A fiduciary independent of Barclays directs the voting of the Barclays PLC Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Barclays PLC Stock are required or permitted to vote.

(i) No more than ten (10) percent of the assets of any Fund that acquires and holds Barclays PLC Stock is comprised of assets of any Barclays Plan(s) for which Barclays exercises investment discretion.

### Section II—Prospective Exemption for the Acquisition, Holding and Disposition of Barclays Stock

The restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, section 8477(c)(2)(A) and (B) of FERSA, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding and disposition of Barclays PLC Stock or the common stock of an Affiliate of Barclays PLC (Barclays PLC Affiliate Stock) by Index and Model-Driven Funds managed by Barclays, provided that the following conditions and the general conditions in Section III are met:

(a) The acquisition or disposition of Barclays PLC Stock or Barclays PLC Affiliate Stock (collectively, Barclays Stock) is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the Barclays Stock which is intended to benefit Barclays or any party in which Barclays may have an interest.

(b) Whenever Barclays Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of Barclays Stock necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

<sup>1</sup> See 65 FR 13836.

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous five (5) business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of Barclays Stock occur either (i) on a recognized securities exchange (as defined in Section IV(k) below), (ii) through an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Barclays that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the Securities and Futures Authority of the UK or another applicable regulatory authority, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(j) below) that is operated by a recognized securities exchange (as defined in Section IV(k) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of Barclays Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Barclays Stock, Barclays appoints a fiduciary which is independent of Barclays to design acquisition procedures and monitor Barclays' compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of Barclays Stock to its specified weighting in the index or model pursuant to the restrictions described in paragraph (b) above, all aggregate daily purchases of Barclays Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for the Barclays Stock occurring on the applicable exchange and automated trading system (as defined below) for the previous five (5) business days, or

(2) 15 percent of the trading volume for Barclays Stock occurring on the applicable exchange and automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in Barclays Stock not otherwise described in paragraph (b) above are either: (i) Entered into on a principal basis in a direct, arms-length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Barclays and is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the Securities and Futures Authority of the UK (SFA-UK) or another applicable regulatory authority, (ii) effected on an automated trading system (as defined in Section IV(j) below) operated by a broker-dealer independent of Barclays that is subject to regulation by either the SEC, SFA-UK, or another applicable regulatory authority, or an automated trading system operated by a recognized securities exchange (as defined in Section IV(k) below) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized securities exchange (as defined in Section IV(k) below) so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, Barclays (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(f) No more than five (5) percent of the total amount of either Barclays PLC Stock or any Barclays PLC Affiliate Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by Barclays.

(g) Barclays Stock constitutes no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A plan fiduciary independent of Barclays authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or

holds Barclays Stock, pursuant to the procedures described in the notice of proposed exemption published on March 14, 2000 (see Paragraph 11 of the Summary of Facts and Representations regarding portfolio management services provided for particular plans), other than in the case of a Barclays Plan.

(i) A fiduciary independent of Barclays directs the voting of the Barclays Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Barclays Stock are required or permitted to vote.

(j) No more than ten (10) percent of the assets of any Fund that acquires and holds Barclays Stock is comprised of assets of any Barclays Plan(s) for which Barclays exercises investment discretion.

### Section III—General Conditions

(a) Barclays maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Barclays, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than Barclays shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (b) shall be authorized to examine trade secrets of Barclays or commercial or financial information which is considered confidential.

#### Section IV—Definitions

(a) The term “Index Fund” means any investment fund, account or portfolio sponsored, maintained, trustee, or managed by Barclays, in which one or more investors invest, and—

(1) which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities Index, as described in Section IV(c) below, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) for which Barclays does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(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 which is intended to benefit Barclays or any party in which Barclays may have an interest.

(b) The term “Model-Driven Fund” means any investment fund, account or portfolio sponsored, maintained, trustee, or managed by Barclays, 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 Barclays, to transform an independently maintained Index, as described in Section IV(c) below;

(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 which is intended to benefit Barclays or any party in which Barclays may have an interest.

(c) The term “Index” means a securities index that represents the investment performance of a specific segment of the public market for equity

or debt securities in the United States and/or foreign countries, but only if—

(1) the organization creating and maintaining the index is—

(A) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) a publisher of financial news or information, or

(C) a public stock exchange or association of securities dealers; and,

(2) the index is created and maintained by an organization independent of Barclays; and,

(3) the index is a generally accepted standardized index of securities which is not specifically tailored for the use of Barclays.

(d) The term “opening date” means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term “Buy-up” means an acquisition of Barclays Stock by an Index or Model-Driven Fund in connection with the initial addition of such Stock to an independently maintained index upon which the Fund is based or the initial investment of a Fund in such Stock.

(f) The term “Barclays” refers to Barclays PLC and its Affiliates, as defined below in paragraph (g), including Barclays Global Investors, N.A. (BGI), Barclays Global Fund Advisors, Barclays Global Investors Services, Barclays Global Investors International, Inc., Barclays Global Investors Asset Risk Management Limited, Barclays Bank PLC (London), Barclays Bank of Canada, Barclays Bank Zimbabwe, Barclays Bank of Kenya, and Barclays Bank of Botswana, Ltd.

(g) The term “Affiliate” means, with respect to Barclays PLC, an entity which, directly or indirectly, through one or more intermediaries, is controlled by Barclays PLC;

(h) An “affiliate” of Barclays includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(i) The term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(j) The term “automated trading system” means an electronic trading system that functions in a manner

intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an “alternative trading system” within the meaning of the SEC’s Reg. ATS [17 CFR part 242.300], as such definition may be amended from time to time, or an “automated quotation system” as described in Section 3(a)(51)(A)(ii) of the ‘34 Act [15 USC 78c(a)(51)(A)(ii)].

(k) The term “recognized securities exchange” means a U.S. securities exchange that is registered as a “national securities exchange” under Section 6 of the ‘34 Act (15 USC 78f), or a designated offshore securities market, as defined in Regulation S of the SEC [17 CFR part 230.902(b)], as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (e.g., 17 CFR part 240.3b–16).

**EFFECTIVE DATE:** This exemption is effective as of December 31, 1995, for those transactions described in Section I above, and as of the date the exemption is published in the **Federal Register** for those transactions described in Section II above.

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 March 14, 2000, at 65 FR 13836.

#### Written Comments:

The applicant (*i.e.*, Barclays) submitted written comments with respect to the notice of proposed exemption (the Proposal). These comments, and the Department’s responses thereto, are summarized below.

**1. Volume Limitations.** With respect to the percentage limitations on the volume of trading that aggregate daily purchases of Barclays Stock by the Funds may represent, sections I(b), II(b)(5), and II(c) of the Proposal state that such purchases may not exceed 15 percent of the average daily trading volume “\* \* \* occurring on the applicable exchange or automated trading system.” The Applicant stated that the volume limitation should refer to the aggregate trading volume in Barclays Stock, rather than the trading volume on a particular trading system on which the Barclays Stock may have been traded. Barclays noted that the language of the Proposal may prove overly restrictive and present difficulties in gathering the required daily volume data for a particular

automated trading system. Therefore, Barclays requested that the conditions relating to the volume limitation be modified to state that aggregate daily purchases not exceed 15% of the total trading volume of the Barclays Stock (regardless of where it is traded).

In consideration of this comment, the Department has revised the language of sections I(b)(1) and (2), II(b)(5), and II(c)(1) and (2) of the exemption by deleting the word "or" and substituting the word "and" in its place, so that the operative phrase in each of the subsections now reads "\* \* \* occurring on the applicable exchange and automated trading system." [emphasis added]

*2. Investments by Affiliated Plans.* The applicant represented that certain employee benefit plans established or maintained by an Affiliate of Barclays PLC for its own employees (*i.e.*, a Barclays Plan) have invested, and may continue to invest, in Index Funds or Model-Driven Funds that invest in Barclays Stock. Since December 31, 1995, and currently, three of these Barclays Plans have invested in a Fund which held or holds Barclays PLC Stock. These three Barclays Plans are: (i) The Barclays Global Investors 401(k) Savings Plan; (ii) the Barclays Global Investors Retirement Plan; and (iii) the Barclays Bank PLC USA Pension Trust. The applicant stated that at all times since December 31, 1995, the holdings of these three Barclays Plans together have comprised less than ten (10) percent of the assets of the Fund. In this regard, Barclays stated that a Barclays Plan should not be required to have an independent fiduciary authorize the investment of such a Plan's assets in an Index or Model-Driven Fund that includes Barclays Stock in its portfolio, especially since such Stock may only represent a small portion of the index on which the investments of the Fund are based. Therefore, the applicant requested that the requirements contained in section I(g) and II(h) of the Proposal be modified accordingly.

In consideration of the applicant's comment, the Department has modified sections I(g) and II(h) herein by inserting the phrases "\* \* \* other than in the case of an employee benefit plan sponsored or maintained by Barclays PLC and/or an Affiliate for its own employees (a Barclays Plan)" and "\* \* \* other than in the case of a Barclays Plan" respectively at the end of those subsections.

In addition, with the applicant's consent, the Department has added a condition (see sections I(i) and II(j) above) which requires that no more than ten (10) percent of the assets of any

Fund that acquires and holds Barclays Stock shall be comprised of assets of any Barclays Plan(s) for which Barclays exercises investment discretion.

*3. Changes in Names and Status of Certain Entities.* The Applicant noted that in section III(f) of the Proposal, and in Paragraph 1 of the Summary of Facts and Representations in the Proposal (the Summary), reference is made to several entities whose name has changed since the date the exemption application was filed. In this regard, the Applicant represented the following: BZW Barclays Global Investors, N.A., is now Barclays Global Investors, N.A.; BZW Barclays Global Fund Advisors is now Barclays Global Fund Advisors; BZW Barclays Global Investors Services is now Barclays Global Investors Services; BZW Investment Management, Inc. is now Barclays Global Investors International Inc.; and BZW Asset Risk Management Limited is now Barclays Global Investors Asset Risk Management Limited. The Applicant noted further that Barclays Global Investors Asset Risk Management Limited is no longer registered as an investment adviser under the Investment Advisers Act of 1940.

Therefore, the Department has modified the information contained in the definition of the term "Barclays" in section IV(f) of the exemption to refer to these entities as stated above.

*4. Exclusion of Barclays Stock from Certain Funds.* The Applicant noted that in Paragraph 5 of the Summary, reference is made to the exclusion of Barclays Stock, since December 31, 1995, from the portfolios of any new Index or Model-Driven Funds established by Barclays, even though such Stock is included in indexes upon which such Funds are based. Barclays wished to clarify that there have been Index and Model-Driven Funds established since December 31, 1995, that have purchased Barclays Stock. However, Barclays represented that these Funds were not subject to the fiduciary responsibility provisions of the Act at the time the "buy-up" of Barclays Stock by the Funds occurred.

The Department acknowledges the applicant's clarification to the information contained in Paragraph 5 of the Summary.

*5. Weight of Barclays PLC Stock in Certain Indexes.* The applicant noted that in Paragraph 10 of the Summary, reference is made to the weight of Barclays PLC Stock in certain indexes. In this regard, Barclays represented that as of April 25, 2000, Barclays PLC Stock represented 2.05% of the MSCI UK Index and 1.75% of the FTSE 100 Index.

The Department acknowledges the applicant's additional information and notes that the data provided is consistent with the requirements of the exemption (see section I(f) above).

*6. Transactions with Parties in Interest.* The applicant noted that in Sections I(d) and II(e) of the Proposal, Barclays Stock cannot be acquired from, or sold to, a Barclays entity (including officers, directors or employees thereof) or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund. With respect to the latter portion of these restrictions, the applicant requested that the Department clarify that principal transactions by a Fund with such parties in interest should be permitted, if such transactions would otherwise be subject to an applicable exemption.

In such transactions, Barclays Stock would be acquired or sold by the Fund along with a "basket" of other securities. The Fund would enter into a principal transaction with a party in interest that is a broker-dealer that is either registered under the '34 Act, and thereby subject to regulation by the SEC, or subject to regulation and supervision by the SFA-UK or another applicable regulatory authority (see Section II(d)(i) of the exemption). The applicant stated that such a transaction could be exempt under another exemption, if the applicable conditions of that exemption were met. For example, Prohibited Transaction Exemption (PTE) 91-38, 56 FR 31966 (July 12, 1991) permits bank collective investment funds, in which employee benefit plans have an interest, to engage in certain transactions with parties in interest (including fiduciaries of investing plans), provided that the specified conditions required therein are met. However, Section I(a) of PTE 91-38 does not provide an exemption for any violations of section 406(b)(1) of the Act which may occur as a result of such transactions. Section 406(b)(1) states, in pertinent part, that a fiduciary for a plan shall not deal with the assets of the plan in his own interest or for his own account.

In consideration of these comments, the Department has modified the language of Sections I(d) and II(e) of the exemption by adding the following parenthetical phrase at the end of those subsections:

"\* \* \* (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption)."

In this regard, the Department is providing no opinion as to whether such principal transactions would be covered by any existing exemptions.

Finally, the applicant stated that there is a pending merger of the London Stock Exchange and the German Bourse, a recognized securities exchange as defined in Section IV(k) above.

Therefore, the applicant requested that Section II(b)(6) and II(d)(i) and (ii) be amended to refer to applicable foreign regulatory authorities other than the SFA-UK.

In response to this comment, the Department has modified Section II(b)(6) and II(d)(i) and (ii) by adding the phrase “\* \* \* or another applicable regulatory authority” following the reference to the SFA-UK in those subsections.

No other comments, and no requests for a hearing, were received by the Department. Accordingly, the Department has determined to grant the exemption as modified herein.

**FOR FURTHER INFORMATION CONTACT:** Mr. E.F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

**H. Ray McPhail (Mr. McPhail) and the H. Ray McPhail Profit Sharing Plan (the Plan), Located in Atlanta, Georgia**

[Prohibited Transaction Exemption 2000-31; Exemption Application No. D-10678]

*Exemption*

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) of four parcels of unimproved real property (the Property) and loan (the Loan) from the Plan to Mr. McPhail,<sup>2</sup> a disqualified person with respect to the Plan, provided that the following conditions are met:

(1) With respect to the Sale:

(A) The terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(B) The Sale will occur at a price (the Sale Price) which includes the greater of \$270,000 or the Property's fair market value as established by a qualified, independent appraiser;

(C) In addition, the Sale Price will include a premium of \$30,000 (the Assemblage Value) due to Mr. McPhail's ownership of unimproved real property located adjacent to the Property;

(D) The Plan will pay no fees or commissions with respect to the Sale; and

(E) Mr. McPhail will pay \$60,000 or 20% of the Sale Price in cash with the balance paid for by the Loan; and

(2) With Respect to the Loan:

(A) The interest rate on the Loan (the Interest Rate) will be 7%, a rate set by the Macon Bank for a real estate loan having terms similar to the Loan;

(B) The Loan terms are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(C) The Loan is secured by a first security interest on certain real property, which has been appraised by a qualified, independent appraiser to have a fair market value not less than 150% of the principal amount of the Loan;

(D) The outstanding balance of the Loan will never exceed 20% of the assets of the Plan throughout the duration of the Loan; and

(E) The fair market value of the collateral remains at least equal to 150% of the outstanding principal balance plus accrued but not unpaid interest, throughout the duration of the Loan; and

(3) Should any employee of the Plan Sponsor become eligible for Plan participation, the new participant will be enrolled in another qualified retirement plan or the Loan will be immediately repaid.

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 April 7, 2000 at 65 FR 18354.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Martin Jara of the Department, telephone (202) 219-8883 (this is not a toll free number).

**Triumph Capital Group, Inc., Located in Boston, MA;**

[Prohibited Transaction Exemption 2000-32; Exemption Application No. D-10708]

*Exemption*

The restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective July 22, 1997, to the making, by an employee benefit plan subject to the Act (the Plan), of capital contributions to any private equity fund (the Triumph Fund) that is organized, sponsored and/or managed by Triumph Capital Group, Inc. and/or any of its affiliates (collectively, Triumph) pursuant to a

contractual obligation by a Plan having an interest in the Triumph Fund.<sup>3</sup>

This exemption is subject to the following conditions:

a. At the time the Plan undertakes the obligation to make such capital contributions (the Determination Date), the Triumph Fund is not a party in interest with respect to the Plan.

b. The decision to make a capital contribution to a Triumph Fund is made on behalf of the Plan by a Plan fiduciary which is independent of and unrelated to Triumph and the portfolio company whose interest is acquired by the Triumph Fund.

c. Triumph does not otherwise provide investment advice as a fiduciary to the Plan, within the meaning of the Department's regulations at 29 CFR 2510.3-21(c), with respect to such Plan's assets that are invested in the Triumph Fund.

d. At the Determination Date, the Plan has aggregate assets that are in excess of \$50 million; provided, however, that in the case of:

(1) Two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are invested in a Triumph Fund through a group trust, an insurance company pooled separate account or any other form of entity the assets of which are “plan assets” under the Department's regulations at 29 CFR 2510.3-101 (the Plan Asset Regulation), the foregoing \$50 million requirement shall be satisfied if such trust, separate account, or other entity has aggregate assets which are in excess of \$50 million, provided further that the fiduciary responsible for making the investment decision on behalf of such group trust, insurance company pooled separate account, or other entity has—

i. Full investment responsibility<sup>4</sup> with respect to the plan assets invested therein; and

ii. Total assets under its management and control, exclusive of the assets invested in the Triumph Fund, which are in excess of \$100 million, for Triumph Funds established after April 7, 2000 (*i.e.*, the date the notice of proposed exemption was published in the **Federal Register**).

(2) Two or more Plans which are maintained by the same employer,

<sup>3</sup> Triumph Funds are generally expected to be organized as venture capital operating companies that are managed by Triumph.

<sup>4</sup> For purposes of this exemption, the term “full investment responsibility” means that the fiduciary responsible for making the investment decision has and exercises discretionary management authority over all of the assets of the group trust or other plan assets entity.

<sup>2</sup> Since Mr. McPhail is the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

controlled group of corporations or employee organization (the Related Plans), whose assets are invested in a Triumph Fund through a master trust or any other entity the assets of which are "plan assets" under the Plan Asset Regulation, the \$50 million requirement shall in any event be satisfied if such trust or other entity has aggregate assets which are in excess of \$50 million, provided, further, that, in the case of a Triumph Fund established after the date the notice granting the exemption is published in the **Federal Register**, in addition to the \$50 million requirement, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, then such fiduciary has total assets under its management and control, exclusive of the assets invested in the Triumph Fund, which are in excess of \$100 million.

e. The Triumph Fund is a party in interest with respect to the Plan solely by reason of a relationship to a portfolio company which is a service provider to a Plan, as described in Section 3(14)(H) or (I) of the Act, including a fiduciary with respect to such Plan.

f. The capital commitment of the Plan (together with the capital commitments of any other Plans maintained by the same employer, controlled group of corporations or employee organization) with respect to the Triumph Fund, does not exceed 15 percent of the total capital commitments made by all investors with respect to such Triumph Fund, determined at the later of (i) the Determination Date or (ii) the date on which the Triumph Fund first becomes a party in interest with respect to such Plan.

g. At the Determination Date, the percentage of the Plan's assets committed to be invested in the Triumph Fund does not exceed 5 percent of the Plan's total assets.

h. At the Determination Date, a Plan's aggregate capital commitment to all Triumph Funds does not exceed 25 percent of the Plan's total assets.

i. The Plan receives the following initial and ongoing disclosures with respect to the Triumph Fund:

(1) A copy of the private placement memorandum applicable to the Triumph Fund or another comparable document containing substantially the same information;

(2) A copy of the limited partnership or other agreement establishing the Triumph Fund;

(3) A copy of the subscription agreement applicable to the Triumph Fund, if any;

(4) Copies of the proposed and final exemption, once such documents are published in the **Federal Register**; and

(5) Periodic, but no less frequently than annually, reports relating to the overall financial position and operational results of the Triumph Fund, including copies of the Triumph Fund's annual financial statements.

j. With respect to capital contributions made to a Triumph Fund by a Plan after the date this exemption is published in the **Federal Register**, Triumph maintains or causes to be maintained, for a period of six (6) years from the date of the transaction, the records necessary to enable the persons described in paragraph (k) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of Triumph, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than Triumph, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (k).

k. (1) Except as provided in paragraph (k)(2) and notwithstanding any provisions of subsection (a) (2) and (b) of section 504 of the Act, the records referred to in paragraph (j) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan which has an interest in the Triumph Fund and has the authority to acquire or dispose of the interest of the Plan in the Triumph Fund, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of any Plan which has an interest in the Triumph Fund, or duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraph (k)(1)(B) and (k)(1)(C) shall be authorized to examine trade secrets of Triumph or commercial or financial information which is privileged or confidential.

*Effective Date:* This exemption is effective as of July 22, 1997.

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 April 7, 2000, at 65 FR 18356.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

**McDonald Investments Inc. (McDonald), Located in Cleveland, Ohio**

[Prohibited Transaction Exemption 2000-33; Exemption Application No. D-10857]

### *Exemption*

#### *I. Transactions*

A. Effective January 4, 2000, the restrictions of sections 406(a) 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)(1)(A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

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

(3) The continued holding of certificates 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 for the acquisition or holding of a certificate 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.<sup>5</sup>

B. Effective January 4, 2000, 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 certificates in the initial issuance of certificates between the sponsor or underwriter and a plan

<sup>5</sup> Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 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).

when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;  
 (ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates 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 trust is acquired by persons independent of the Restricted Group;

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

(iv) immediately after the acquisition of the certificates, 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 certificates representing an interest in a trust containing assets sold or serviced by the same entity.<sup>6</sup> For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

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

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

C. Effective January 4, 2000, 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 a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement; and

(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 purchase certificates issued by the trust.<sup>7</sup>

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective January 4, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

## II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating from a Rating Agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

<sup>7</sup> In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to "prospectus" include any related prospectus supplement thereto, pursuant to which certificates are offered to investors.

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B.(1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a Rating Agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificateholders or by a Rating Agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit

<sup>6</sup> 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.



rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will be either monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the Rating Agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private

placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

### III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code; and

(b) that is issued by, and is an obligation of, a trust; with respect to certificates defined in (1) and (2) above for which McDonald or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T); and/or

(c) Obligations that bear interest or are purchased at a discount and which are

secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U); and/or

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3-101(i)(2); and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) property which had secured any of the obligations described in subsection B.(1);

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) Cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)–(g) of subsection II.A.(7) are met and/or;

(ii) are credited to a capitalized interest account (as defined in section III.X.); and

(iii) are held in the trust for a period ending no later than the first distribution date to certificateholders occurring after the end of the pre-funding period.

For purposes of this clause (c) of subsection III.B.(3), the term "permitted investments" means investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and

servicing agreement; and are permitted by the rating agency; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

- (1) McDonald;
- (2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with McDonald; or
- (3) Any member of an underwriting syndicate or selling group of which McDonald or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services obligations contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services obligations contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

- (1) each underwriter;
- (2) each insurer;
- (3) the sponsor;
- (4) the trustee;
- (5) each servicer;
- (6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or
- (7) any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

- (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;
- (2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and
- (3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

- (1) such person is not an affiliate of that other person; and
- (2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or

renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

- (1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;
- (2) the servicer may not charge the fee absent the act or failure to act referred to in (1);
- (3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and
- (4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

- (1) which is secured by equipment which is leased;
- (2) which is secured by the obligation of the lessee to pay rent under the equipment lease; and
- (3) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

- (1) the trust owns or holds a security interest in the lease;

(2) the trust owns or holds a security interest in the leased motor vehicle; and

(3) the trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. "Rating Agency" means Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D&P) or Fitch IBCA, Inc. (Fitch) or their successors;

X. "Capitalized Interest Account" means a trust account: (i) which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. "Closing Date" means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. "Pre-Funding Account" means a trust account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)-(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. "Pre-Funding Limit" means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. "Pre-Funding Period" means the period commencing on the closing date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. "McDonald" means McDonald Investments Inc. and its affiliates.

The Department notes that this exemption is included within the

meaning of the term "Underwriter Exemption" as it is defined in section V(h) of Prohibited Transaction Exemption 95-60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at (see 60 FR 35932).

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 April 7, 2000 at 65 FR 18365.

**FOR FURTHER INFORMATION CONTACT:** Gary Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### *General Information*

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of June, 2000.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration,  
Department of Labor.*

[FR Doc. 00-14809 Filed 6-12-00; 8:45 am]

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## **DEPARTMENT OF LABOR**

### **Pension and Welfare Benefits Administration**

**[Application No. D-10758, et al.]**

#### **Proposed Exemptions; Goldman, Sachs & Co.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

#### **Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. \_\_\_\_, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638,