

Notice To Interested Persons

Rothschild Asset Management Inc. and certain affiliates (“Rothschild”) are seeking authorization from the Department of Labor under PTCE 96-62 to engage in certain underwriting transactions with affiliates of Rothschild. Under Prohibited Transaction Class Exemption 96-62, Rothschild has proposed an exemption substantially identical to three previously granted exemptions Prohibited Transaction Exemption (“PTE”) 2003-24, 68 Fed. Reg. 48637 (2003), PTE 2000-27, 65 Fed. Reg. 35129 (2000), as amended by PTE 2003-24 (The Chase Manhattan Bank) and PTE 2000-25, 65 Fed. Reg. 35129 (2000), as amended by PTE 2003-24 (Morgan Guaranty Trust Co. and J.P. Morgan). Under PTE 96-62, after an initial 45 day period of Department of Labor review, Rothschild is required to provide notice of the requested exemption to interested persons. The terms of the requested exemption are included as Attachment I, and a summary of related facts and representations are included as Attachment II.

The transaction involves the investment of plan assets in securities advised by a fiduciary and the receipt of compensation in connection therewith. The exemption is similar to others granted by the Department for the following reasons:

- (a) The Client Plans will gain access to desirable investment opportunities;
- (b) In each offering, the Asset Manager will purchase the securities for its Client Plans from an underwriter or broker-dealer other than the Affiliated Broker-Dealer;
- (c) Conditions similar to those of PTE 75-1, part III, will restrict the types of securities that may be purchased, the types of underwriting or selling syndicates and issuers involved, and the price and timing of the purchases;
- (d) The amount of securities that the Asset Manager may purchase on behalf of Client Plans will be subject to percentage limitations;
- (e) The Affiliated Broker-Dealer will not be permitted to receive, either directly, indirectly, or through designation, any selling concessions with respect to the securities sold to the Asset Manager;
- (f) Prior to any purchase of securities, the Asset Manager will make the required disclosures to an Independent Fiduciary of each Client Plan and obtain written authorization for such transaction;
- (g) The Asset Manager will provide regular reporting to an Independent Fiduciary of each Client Plan with respect to all securities purchased pursuant to the exemption, if granted;
- (h) Each Client Plan participating in these transactions will be subject to a minimum size requirement of at least \$50 million (\$100 million for “Eligible Rule 144A Offerings”), with certain exceptions for Pooled Funds;

(i) The Asset Manager must have total assets under management in excess of \$3.5 billion and shareholders' or partners' equity in excess of \$1 million; and

(j) The Trustee will be unable to subordinate the interests of the investing Client Plans to those of the Asset Manager.

Interested persons can comment until May 1, 2005. All written comments by interested persons can be made to:

Office of Exemption Determinations
U.S. Department of Labor
200 Constitution Ave, N.W.
Room N-5649
Washington, D.C. 20210
Email: bmoiffitt@dol.gov
Fax: 202-219-0204

Any comment should note that it relates to Expro Submission No. E-00434.

The transaction has met the requirements for tentative authorization under PTE 96-62.

Any transaction relying on the relief of the requested exemption will take place only after final authorization with respect to the transaction, which is expected to occur on or after May 7, 2005.

Attachment I

Exemption

Section I -- Transactions

The restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the purchase of any securities by the Asset Manager (as defined in Section II(a)) on behalf of employee benefit plans (Client Plans), including Client Plans investing in a pooled fund (Pooled Fund), for which the Asset Manager acts as a fiduciary, from any person other than the Asset Manager or an affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such securities, where the Affiliated Broker-Dealer is a manager or member of such syndicate (an "affiliated underwriter transaction" (AUT)), and/or where an Affiliated Trustee serves as trustee of a trust that issued the securities (whether or not debt securities) or serves as indenture trustee of securities that are debt securities (an "affiliated trustee transaction" (ATT)), provided that the following conditions are satisfied:

(a) The securities to be purchased are--

(1) either:

- (i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a et seq.) or, if exempt from such registration requirement, are (A) issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, (B) issued by a bank, (C) exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or (D) are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and the issuer of which has been subject to the reporting requirements of section 13 of that Act (15 U.S.C. 78m) for a period of at least 90 days immediately preceding the sale of securities and has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding 12 months; or
- (ii) Part of an issue that is an "Eligible Rule 144A Offering," as defined in SEC Rule 10f-3 (17 CFR 270.10f-3(a)(4)). Where the Eligible Rule 144A Offering is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

- (2) Purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities, except that--
 - (i) If such securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or
 - (ii) If such securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, provided that the interest rates on comparable debt securities offered to the public subsequent to the first day and prior to the purchase are less than the interest rate of the debt securities being purchased; and
- (3) Offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the securities being offered, except if--
 - (i) Such securities are purchased by others pursuant to a rights offering; or
 - (ii) Such securities are offered pursuant to an over-allotment option.
- (b) The issuer of such securities has been in continuous operation for not less than three years, including the operation of any predecessors, unless--
 - (1) Such securities are non-convertible debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, i.e., Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Organizations); or
 - (2) Such securities are issued or fully guaranteed by a person described in paragraph (a)(1)(i)(A) of this exemption; or
 - (3) Such securities are fully guaranteed by a person who has issued securities described in (a)(1)(i)(B), (C), or (D), and who has been in continuous operation for not less than three years, including the operation of any predecessors.
- (c) The amount of such securities to be purchased by the Asset Manager on behalf of a Client Plan does not exceed three percent of the total amount of the securities being offered. Notwithstanding the foregoing, the aggregate amount of any securities

purchased with assets of all Client Plans (including Pooled Funds) managed by the Asset Manager (or with respect to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3-21(c)) does not exceed:

- (1) 10 percent of the total amount of any equity securities being offered;
- (2) 35 percent of the total amount of any debt securities being offered that are rated in one of the four highest rating categories by at least one of the Rating Organizations; or
- (3) 25 percent of the total amount of any debt securities being offered that are rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; and
- (4) If purchased in an Eligible Rule 144A Offering, the total amount of the securities being offered for purposes of determining the percentages for (1)-(3) above is the total of:
 - (i) The principal amount of the offering of such class sold by underwriters or members of the selling syndicate to “qualified institutional buyers” (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus
 - (ii) The principal amount of the offering of such class in any concurrent public offering.
- (d) The consideration to be paid by the Client Plan in purchasing such securities does not exceed three percent of the fair market value of the total net assets of the Client Plan, as of the last day of the most recent fiscal quarter of the Client Plan prior to such transaction.
- (e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or an affiliate.
- (f) If the transaction is an AUT, the Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession or other consideration that is based upon the amount of securities purchased by Client Plans pursuant to this exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation that is attributable to the fixed designations generated by purchases of securities by the Asset Manager on behalf of its client Plans.
- (g) If the transaction is an AUT,
 - (1) The amount the Affiliated Broker-Dealer receives in management, underwriting or other compensation is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated

Broker-Dealer for foregoing any selling concessions for those securities sold pursuant to this exemption. Except as described above, nothing in this paragraph shall be construed as precluding the Affiliated Broker-Dealer from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other consideration that is not based upon the amount of securities purchased by the Asset Manager on behalf of Client Plans pursuant to this exemption; and

- (2) The Affiliated Broker-Dealer shall provide to the Asset Manager a written certification, signed by an officer of the Affiliated Broker-Dealer, stating the amount that the Affiliated Broker-Dealer received in compensation during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with Section I, paragraphs (e), (f), or (g), of this exemption.
- (h) In the case of a single Client Plan, the covered transaction is performed under a written authorization executed in advance by an independent fiduciary (Independent Fiduciary) of the Client Plan.
- (i) Prior to the execution of the written authorization described in paragraph (h) above, the following information and materials (which may be provided electronically) must be provided by the Asset Manager to the Independent Fiduciary of each single Client Plan:
 - (1) A copy of the operative language of the final exemption and the Asset Manager's representations regarding the exemption; and
 - (2) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests.
- (j) Subsequent to an Independent Fiduciary's initial authorization permitting the Asset Manager to engage in the covered transactions on behalf of a single Client Plan, the Asset Manager will continue to be subject to the requirement to provide any reasonably available information regarding the covered transactions that the Independent Fiduciary requests.
- (k) In the case of existing plan investors in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, unless the Asset Manager has provided the written information described below to the Independent Fiduciary of each plan participating in the Pooled Fund. The following information and materials (which may be provided electronically) shall be provided not less than 45 days prior to the Asset Manager's engaging in the covered transactions on behalf of the Pooled Fund pursuant to the exemption:

- (1) A notice of the Pooled Fund's intent to purchase securities pursuant to this exemption and a copy of the notice of proposed exemption and of the final exemption as published in the Federal Register;
- (2) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests; and
- (3) A termination form expressly provided an election for the Independent Fiduciary to terminate the plan's investment in the Pooled Fund without penalty to the plan. Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that the plan has an opportunity to withdraw its assets from the Pooled Fund for a period at least 30 days after the plan's receipt of the initial notice described in subparagraph (1) above and that the failure of the Independent Fiduciary to return the termination form by the specified date shall be deemed to be an approval by the plan of its participation in covered transactions as a Pooled Fund investor. Further, the instructions will identify the Asset Manager and its Affiliated Broker-Dealer and/or Affiliated Trustee and state that this exemption may be unavailable unless the Independent Fiduciary is, in fact, independent of those persons. Such fiduciary must advise the Asset Manager, in writing, if it is not an "Independent Fiduciary," as that term is defined in Section II(g) of this exemption.

For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicants or an affiliate thereof. However, in-house plans must notify the Asset Manager, as provided above.

- (l) In the case of a plan whose assets are proposed to be invested in a Pooled Fund subsequent to implementation of the procedures to engage in the covered transactions, the plan's investment in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary, following the receipt by the Independent Fiduciary of the materials described in subparagraphs (1) and (2) of paragraph (k). For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicants or an affiliate thereof.
- (m) Subsequent to an Independent Fiduciary's initial authorization of a plan's investment in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide any reasonably available information regarding the covered transactions that the Independent Fiduciary requests.
- (n) At least once every three months, and not later than 45 days following the period to which such information relates, the Asset Manager shall:

- (1) Furnish the Independent Fiduciary of each single Client Plan, and of each plan investing in a Pooled Fund, with a report (which may be provided electronically) disclosing all securities purchased on behalf of that Client Plan or Pooled Fund pursuant to the exemption during the period to which such report relates, and the terms of the transactions, including:
 - (i) The type of security (including the rating of any debt security);
 - (ii) The price at which the securities were purchased;
 - (iii) The first day on which any sale was made during this offering;
 - (iv) The size of the issue;
 - (v) The number of securities purchased by the Asset Manager for the specific Client Plan or Pooled Fund;
 - (vi) The identity of the underwriter from whom the securities were purchased;
 - (vii) In the case of an AUT, the spread on the underwriting;
 - (viii) In the case of an ATT, the basis upon which the Affiliated Trustee is compensated;
 - (ix) The price at which any such securities purchased during the period were sold; and
 - (x) The market value at the end of such period of each security purchased during the period and not sold;
- (2) Provide to the Independent Fiduciary in the quarterly report (i) in the case of AUTs, a representation that the Asset Manager has received a written certification signed by an officer of the Affiliated Broker-Dealer, as described in paragraph (g)(2), affirming that, as to each AUT covered by this exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with Section I, paragraphs (e), (f), and (g) of this exemption, and that copies of such certifications will be provided to the Independent Fiduciary upon request, and (ii) in the case of ATTs, a representation of the Asset Manager affirming that, as to each ATT, the transaction was not part of an agreement, arrangement or understanding designed to benefit the Affiliated Trustee;
- (3) Disclose to the Independent Fiduciary that, upon request, any other reasonably available information regarding the covered transaction that the Independent Fiduciary requests will be provided, including, but not limited to:

- (i) The date on which the security were purchased on behalf of the plan;
 - (ii) The percentage of the offering purchased on behalf of all Client Plans and Pooled Funds; and
 - (iii) The identify of all members of the underwriting syndicate;
- (4) Disclose to the Independent Fiduciary in the quarterly report, any instance during the past quarter where the Asset Manager was precluded for any period of time from selling a security purchased under this exemption in that quarter because of its status as an affiliate of the Affiliated Broker-Dealer or of an Affiliated Trustee and the reason for this restriction;
- (5) Provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a single Client Plan, that the authorization to engage in the covered transaction may be terminated, without penalty, by the Independent Fiduciary on more than five days' notice by contacting an identified person; and
- (6) Provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a Client Plan invested in a Pooled Fund, that the Independent Fiduciary may terminate investment in the Pooled Fund, without penalty, by contacting an identified person.
- (o) Each single Client Plan shall have total net assets with a value of at least \$50 million. In addition, in the case of a transaction involving an Eligible Rule 144A Offering on behalf of a single Client Plan, each such Client Plan shall have at least \$100 million in securities, as determined pursuant to SEC Rule 144A (17 CFR 230.144A).¹ In the case of a Pooled Fund, the \$50 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by investors having total net assets with a value of at least \$50 million, or if each Client Plan in the Pooled Fund has total assets of at least \$50 million. For purchases involving an Eligible Rule 144A Offering on behalf of a Pooled Fund, the \$100 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by investors having at least \$100 million in assets, or if each Client Plan in the Pooled fund has total assets of at least \$100 million, and the

¹ SEC Rule 10f-3(a)(4), 17 CFR 270.10f-3(a)(4), states that the term "Eligible Rule 144A Offering" means an offering of securities that meets the following conditions:

- (i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(d)], rule 144A thereunder 230.144A of this chapter], or rules 501-508 thereunder [Sec. Sec. 230.501-230-508 of this chapter];
- (ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in Sec. 230.144A(a)(1) of this chapter; and
- (iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to Sec. 230.144A of this chapter.

Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(1)(i)(F)).

For purposes of the net assets tests described above, where a group of Client Plans is maintained by a single employer or controlled groups of employers, as defined in section 407(d)(7) of the Act, the \$50 million net asset requirement or the \$100 million net asset requirement may be met by aggregating the assets of such Client Plans, if the assets are pooled for investment purposes in a single master trust.

- (p) The Asset Manager qualifies as a “qualified professional asset manager” (QPAM), as that term is defined under Part V(a) of Prohibited Transaction Exemption 84-14 (49 FR 9494, 9506, March 13, 1984) and, in addition, has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of \$5 billion and shareholders' or partners' equity in excess of \$1 million.
- (q) No more than 20 percent of the assets of a Pooled Fund, at the time of a covered transaction, are comprised of assets of employee benefit plans maintained by the Asset Manager, the Affiliated Broker-Dealer, the Affiliated Trustee or an affiliate thereof for their own employees, for which the Asset Manager, the Affiliated Broker-Dealer, or an affiliate exercises investment discretion.
- (r) The Asset Manager, and the Affiliated Broker-Dealer, as applicable, maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (s) of this exemption to determine whether the conditions of this exemption have been met, except that--
 - (1) No party in interest with respect to a Client Plan, other than the Asset Manager and the Affiliated Broker-Dealer or Affiliated Trustee, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by paragraph (s); and
 - (2) This record-keeping condition shall not be deemed to have been violated if, due to circumstances beyond the control of the Asset Manager or the Affiliated Broker-Dealer, or Affiliated Trustee, as applicable, such records are lost or destroyed prior to the end of the six-year period.
- (s) (1) Except as provided in subparagraph (2) of this paragraph (s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) are unconditionally available at their customary location for examination during normal business hours by)-
 - (i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC; or

- (ii) Any fiduciary of a Client Plan, or any duly authorized employee or representative of such fiduciary; or
 - (iii) Any employer of participants and beneficiaries and any employee organizations whose members are covered by a Client Plan, or any authorized employee or representative of these entities; or
 - (iv) Any participant or beneficiary of a Client Plan, or duly authorized employee or representative of such participant or beneficiary;
- (2) None of the persons described in paragraphs (s)(1)(ii)-(iv) shall be authorized to examine trade secrets of the Asset Manager or the Affiliated Broker-Dealer or the Affiliated Trustee, or commercial or financial information which is privileged or confidential; and
- (3) Should the Asset Manager or the Affiliated Broker-Dealer or the Affiliated Trustee refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (s)(2) above, the Asset Manager shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.
- (t) An indenture trustee whose affiliate has, within the prior 12 months, underwritten any securities for an obligor of the indenture securities will resign as indenture trustee if a default occurs upon the indenture securities.

Section II--Definitions

- (a) The term "Asset Manager" means any asset management affiliate of the Applicants (as "affiliate" is defined in paragraph (c)) that meets the requirements of this exemption.
- (b) The term "Affiliated Broker-Dealer" means any broker-dealer affiliate of the Applicants (as "affiliate" is defined in paragraph (c)) that meets the requirements of this exemption. Such Affiliated Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member. The term "manager" means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the securities being offered, or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.
- (c) The term "affiliate" of a person includes:

- (1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;
 - (2) Any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and
 - (3) Any corporation or partnership of which such person is an officer, director, partner, or employee.
- (d) The term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual.
- (e) The term “Client Plan” means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act and whose assets under the management of the Asset Manager, including a plan investing in a Pooled Fund (as “Pooled Fund” is defined in paragraph (f) below).
- (f) The term “Pooled Fund” means a common or collective trust fund or pooled investment fund maintained by the Asset Manager.
- (g) (1) The term “Independent Fiduciary” means fiduciary of a Client Plan who is unrelated to, and independent of, the Asset Manager, the Affiliated Broker-Dealer and the Affiliated Trustee. For purposes of this exemption, a Client Plan fiduciary will be deemed to be unrelated to, and independent of, the Asset Manager, the Affiliated Broker-Dealer and the Affiliated Trustee 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 Asset Manager, the Affiliated Broker-Dealer or the Affiliated Trustee and represents that such fiduciary shall advise the Asset Manager if those facts change.
- (2) Notwithstanding anything to the contrary in this Section II(g), a fiduciary is not independent if:
- (i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Asset Manager, the Affiliated Broker-Dealer or the Affiliated Trustee;
 - (ii) Such fiduciary directly or indirectly receives any compensation or other consideration from the Asset Manager, the Affiliated Broker-Dealer or the Affiliated Trustee for his or her own personal account in connection with any transaction described in this exemption;
 - (iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager,

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 Client Plan sponsor or of 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 Client Plan sponsor or of the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser and (B) the decision to authorize or terminate authorization for transactions described in Section I, then Section II(g)(2)(iii) shall not apply.

- (3) 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.
- (4) In the case of existing Client Plans in a Pooled Fund, at the time the Asset Manager provides such Client Plans with initial notice pursuant to this exemption, the Asset Manager will notify the fiduciaries of such Client Plans that they must advise the Asset Manager, in writing, if they are not independent, within the meaning of this Section II(g).
- (h) The term "security" shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a-2(36) (1996)). For purposes of this exemption, mortgage-backed or other asset-backed securities rated by a Rating Organization will be treated as debt securities.
- (i) The term "Eligible Rule 144A Offering" shall have the same meaning as defined in SEC Rule 10f-3(a)(4) (17 CFR 270.10f-3(a)(4)) under the 1940 Act.
- (j) The term "qualified institutional buyer" or "QIB" shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.
- (k) The term "Rating Organizations" means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors.
- (l) The term "Affiliated Trustee" means the Applicants and any bank or trust company affiliate of the Applicants (as "affiliate" is defined in paragraph (c)(1)) that serves as trustee of a trust that issues securities which are asset-backed securities or as indenture trustee of securities which are either asset-backed securities or other debt securities that meet the requirements of this exemption. For purposes of this exemption, other than Section I(t), performing services as custodian, paying agent, registrar or in similar ministerial capacities is also considered serving as trustee or indenture trustee.

Attachment II

Summary of Facts and Representations

1. The Applicants consist of Rothschild Inc. (“Rothschild”), Rothschild North American Inc. (“RNA”), and Rothschild Asset Management Inc. (“RAM”) and such of their current and future affiliates that are broker-dealers registered under U.S. law, asset managers, trustees, indenture trustees or similar functionaries (collectively, “the Applicants”). The Applicants can be further described as follows:

- RNA is a holding company established to manage the U.S. operations of the Rothschild Group, based in Europe.
- RAM, a wholly-owned subsidiary of RNA, is an investment adviser registered under the Investment Advisors Act of 1940. Hereinafter, RAM, and its other current and future asset management affiliates, shall be collectively referred to as the “Asset Manager” when discussing RAM’s activities relating to investment management or investment advisory services. Collectively, assets under management by RAM and its Affiliates through collective trusts, separately managed accounts, and mutual funds currently exceed \$3.5 billion.
- Rothschild is a registered broker-dealer (hereinafter, collectively with any other current and future broker-dealer affiliates, the “Affiliated Broker-Dealer”) and regulated by the United States Securities and Exchange Commission (“SEC”) under Section 15 of the Securities Exchange Act of 1934 (“the ‘34 Act”).
- Rothschild and ABN AMRO Inc., a registered broker-dealer regulated by the SEC under section 15 of the ‘34 Act, are the two members of ABN AMRO Rothschild, LLC, which is also a registered broker-dealer regulated by the SEC that performs securities underwriting functions.

2. The Applicants seek an exemption to permit purchases of securities by the Applicants’ asset management affiliate on behalf of Client Plans for which such asset management affiliate is a fiduciary, from underwriting or selling syndicates where the Applicants’ broker-dealer affiliate participates as a manager or syndicate member. The Applicants also seek an exemption to permit a plan’s asset manager to acquire securities, on behalf of the plan, in an underwriting transaction when the Applicants or their affiliate is the trustee, indenture trustee, or a similar functionary for the trust which issued the securities.

3. The Applicants represent that where the Affiliated Broker-Dealer is a member of an underwriting or selling syndicate, the Asset Manager makes purchases of securities for its Client Plans in compliance with Prohibited Transaction Exemption (PTE) 75-1 (40 F.R. 50845, October 31, 1975), Part III. PTE 75-1, Part III, provides a class exemption, under certain conditions, for a plan fiduciary to purchase securities from an underwriting or selling syndicate of which the fiduciary or an affiliate is a member.

However, relief under PTE 75-1 is unavailable if the fiduciary or its affiliate is a manager of the underwriting or selling syndicate.

4. Regardless of whether the fiduciary or its affiliate is a manager or member of the underwriting or selling syndicate, PTE 75-1 is also unavailable for the purchase of unregistered securities, including securities that have been purchased by an underwriter for resale to “qualified institutional buyers” (QIBs), pursuant to SEC Rule 144A (17 CFR 230.144A) under the Securities Act of 1933 (the 1933 Act)(Rule 144A Securities). Rule 144A is frequently used for sales of securities of foreign issuers to U.S. investors who are QIBs. The Applicants state that syndicates selling securities pursuant to Rule 144A are functionally equivalent to syndicates selling securities in registered offerings.

5. The Applicants represent that the Affiliated Broker-Dealer is involved in securities offerings as a manager of underwriting or selling syndicates, and may be a manager or member of a syndicate selling Rule 144A Securities. The Applicants further assert that the inability of the Asset Manager to purchase securities for its Client Plans from such syndicates can be detrimental to those accounts because the accounts can lose important investment opportunities.

6. The Applicants represent that there has been considerable consolidation in the nation's financial services industry since 1975, resulting in more situations where a plan fiduciary may be affiliated with the manager of an underwriting syndicate.¹ In addition, many plans have expanded their investment portfolios in recent years to include foreign securities. As a result, the exemption provided in PTE 75-1, Part III, is often unavailable for purchases of certain securities that may be appropriate plan investments.

7. PTE 2000-25, PTE 2000-27 and FAN 2001-19E expanded the relief afforded under PTE 75-1 to, among other things, situations where the Affiliated Broker-Dealer is a manager of the underwriting or selling syndicate. In addition, PTE 2003-24 expanded the relief afforded under PTEs 2000-25 and 2000-27 and FAN 2001-19E to those situations where a fiduciary or its affiliate serves as Trustee with respect to a trust that is the issuer of the securities. Such trusts are normally associated with so-called asset-backed securities (ABS). ABS are usually issued as certificates representing an undivided interest in a trust which holds a portfolio of assets (e.g., secured consumer receivables or credit instruments that bear interest). The exemption covers situations

¹ For further background, see “The Costs Imposed on Pension Plans by ERISA’s Prohibited Transactions Provisions,” December 1998, Anthony Saunders and Ingo Walter. This study, by Professors Saunders and Walter of the Stern School of Business of New York University, discusses the consolidation of the financial services industry. It was privately commissioned by J.P. Morgan (see Application Nos. D-10119 and D-10120). The study estimates the economic loss to plans resulting from their investment managers’ inability to purchase securities from affiliated underwritings by examining the one-day, one-week, and one-month investment returns on various initial public offerings (IPOs) during the years 1991 through 1996. In response to a request by the Department for additional information, Professor Walter explained, in a letter dated August 20, 1999, why short periods were selected for calculating the hypothetical returns: “The fact that IPOs do not have significant excess performance over the long run is well documented in finance and is known to all mutual and pension fund managers. Indeed, long-term relative performance of IPOs (i.e., those held for a period over 3 years) is significantly below market performance as measured by standard indices such as the S&P 500”

where an Asset Manager's Affiliate serves as a trustee, custodian, paying agent, registrar or other similar ministerial capacities (see Definition of "Affiliated Trustee" in Attachment I).

Investments in Offered Securities

8. The Applicants represent that the Asset Manager makes investment decisions on behalf of, or renders investment advice to, its Client Plans in accordance with the governing document of the particular Client Plan or Pooled Fund and the guidelines and objectives established in the investment management or advisory agreement. Since the Client Plans are covered by Title I of the Act, such investment decisions are also subject to the fiduciary responsibility provisions of the Act.

9. The Applicants state, therefore, that a decision to invest in particular securities is made on the basis of price, value, and a Client Plan's investment criteria, not on whether the securities are currently being sold through an underwriting or selling syndicate. The Applicants further assert that the Asset Manager has little incentive to make purchases from offerings for which the Affiliated Broker-Dealer is an underwriter that are not in the interests of the Client Plans because the Asset Manager's compensation for its services is generally based upon assets under management. If the assets under its management do not perform well, the Asset Manager will receive less compensation and could lose clients.

10. The Applicants state that the Asset Manager generally purchases securities in large blocks because the same investments will be made across several of its accounts. If there is a new offering of an equity or fixed income security that the Asset Manager had otherwise intended to purchase, it may be able to purchase the security through the offering syndicate at a lower price than it would pay in the open market, without transaction costs and with a reduced market impact if it is buying a relatively large quantity. This is because a large purchase in the open market can cause an increase in the market price and, consequently, in the cost of the securities. Purchasing from an offering syndicate can thus reduce the costs to the Asset Manager's Client Plans.

11. However, absent an individual exemption, if the Affiliated Broker-Dealer is a manager of the syndicate underwriting the offering, the Asset Manager is currently foreclosed from purchasing any securities from that underwriting syndicate. If the Asset Manager then purchases the same securities in the secondary market, the Client Plans may incur greater costs because the market price is often higher than the offering price, and because of transaction and market impact costs. Alternatively, the Asset Manager may have foregone other investment opportunities because of its decision to purchase in the offering, and these opportunities, if still available, may have become more expensive.

Underwriting of Securities Offerings

12. The Applicants represent that the Affiliated Broker-Dealer may manage and participate in firm commitment underwriting syndicates for registered offerings of both equity and debt securities. While equity and debt underwritings may operate differently

with regard to the actual sales process, the basic structures are the same. In a firm commitment underwriting, the underwriting syndicate acquires the securities from the issuer and then sells the securities to investors.

13. The Applicants represent that while, as a legal matter, the syndicate assumes the risk that the securities might not be distributable, as a practical matter, this risk is reduced, in marketed deals, through “building a book” (i.e., taking indications of interest) prior to pricing the securities. The Applicants assert that, consequently, there is little incentive for the underwriters to use their discretionary accounts (or the discretionary accounts of their affiliates) to buy up the securities as a way to avoid underwriting liabilities.

14. Each syndicate has a lead manager, who is the principal contact between the syndicate and the issuer and who is responsible for organizing and coordinating the syndicate. The syndicate may also have co-managers, who generally assist the lead manager in working with the issuer to prepare the registration statement to be filed with the SEC and in distributing the underwritten securities. While equity syndicates typically include additional members that are not managers, more recently, membership in many debt syndicates has been limited to lead and co-managers.

15. Where more than one underwriter is involved, the lead manager, who has been selected by the issuer, contacts other underwriters, and the underwriters enter into an Agreement Among Underwriters. Most lead managers have a form of agreement. This document is then supplemented for the particular deal by sending an “invitation telex” setting forth particular terms to the other underwriters.

16. The arrangement between the syndicate and the issuer is embodied in an underwriting agreement, which is signed on behalf of the underwriters by one or more of the managers. The underwriting agreement provides, subject to certain closing conditions, that the underwriters are obligated to purchase the underwritten securities from the issuer in accordance with their respective commitments. This obligation is met by using the proceeds received from the buyers of the securities in the offering, although there is a risk that the underwriters will have to pay for a portion of the securities, in the event that not all of the securities are sold.

17. However, the Applicants represent that, generally, the risk that the securities will not be sold is small because the underwriting agreement is not executed until after the underwriters have obtained indications of interest in purchasing the securities from a sufficient number of investors to acquire all the securities being offered. Once the underwriting agreement is executed, the underwriters immediately begin contacting the investors to confirm the sales, first orally and then by written confirmation, and sales are finalized within hours and sometimes minutes. The underwriters are anxious to complete the sales as soon as possible because until they “break syndicate,” they cannot enter the market. In many cases, the underwriters will act as market-makers for the security. A market-maker holds itself out as willing to buy or sell the security for its own account on a regular basis.

18. The Applicants represent that the process of “building a book” or soliciting interest occurs as follows. In an equity offering, after a registration statement is filed with the SEC and while it is under review by the SEC staff, representatives of the issuer and the managers conduct meetings with potential investors, who learn about the company and the securities and receive a preliminary prospectus. The underwriters cannot make any firm sales until the registration statement is declared effective by the SEC. Prior to the effective date, while the investors thus cannot become legally obligated to make a purchase, they indicate whether they have an interest in buying, and the managers compile a “book” of investors who are willing to “circle” a particular portion of the issue. These indications of interest are sometimes referred to as a “soft circle” because investors cannot be legally bound to buy the securities until the registration statement is effective. However, the Applicants represent that investors generally follow through on their indications of interest, and would be expected to do so, barring any sudden adverse developments (in which case it is likely that the offering would be withdrawn), because if they do not follow through, the underwriters will be reluctant to sell to them in future offerings.

19. Assuming that the meetings have produced sufficient indications of interest, the Applicants represent that the issuer and the managers together will set the price of the securities and ask the SEC to declare the registration effective. After the registration statement becomes effective and the underwriting agreement is executed, the underwriters contact those investors who have indicated an interest in purchasing securities in the offering to execute the sales. The Applicants represent that offerings are often oversubscribed, and many have an over-allotment option that the underwriters can exercise to acquire additional shares from the issuer. Where an offering is oversubscribed, the underwriters decide how to allocate the securities among the potential purchasers. However, if an issue is a “hot issue,” i.e., it is selling in the market at a premium above its offering price, the underwriters may not hold this hot issue in their own accounts, nor sell it to their officers and directors. A hot issue may also not be sold to the personal accounts of those responsible for investing for others, such as officers of banks, insurance companies, mutual funds, and investment advisers. (NASD Manual & Notices to Members, IM-2110-1).

20. The Applicants represent that debt offerings may be “negotiated” offerings, “competitive bid” offerings, or “bought deals.” “Negotiated” offerings, which often involve non-investment grade securities, are conducted in the same manner as an equity offering with regard to when the underwriting agreement is executed and how the securities are offered. “Competitive bid” offerings, in which the issuer determines the price for the securities through competitive bidding rather than negotiating the price with the underwriting syndicate, are performed under “shelf” registration statements pursuant to SEC Rule 415 under the 1933 Act (17 C.F.R. 230.415).²

21. In a competitive bid offering, prospective lead underwriters will bid against one another to purchase debt securities, based upon their determinations of the degree of

² Rule 415 permits an issuer to sell debt as well as equity securities under an effective registration statement previously filed with the SEC by filing a post-effective amendment or supplemental prospectus.

investor interest in the securities. Depending on the level of investor interest and the size of the offering, a bidding lead underwriter may bring in co-managers to assist in the sales process. Most of the securities are frequently sold within hours, or sometimes even less than an hour, after the securities are made available for purchase.

22. Because of market forces and the requirements of Rule 415, the competitive bid process is generally available only to issuers of investment-grade securities who have been subject to the reporting requirements of the Securities Exchange Act of 1934 (the 1934 Act) for at least one year.

23. Occasionally, in highly-rated debt issues, underwriters “buy” the entire deal off of a “shelf registration” before obtaining indications of interest. These “bought” deals involve issuers whose securities enjoy a deep and liquid secondary market, such that an underwriter has confidence without pre-marketing that it can identify purchasers for the bonds.

Structure of Diversified Financial Services Firms

24. The Applicants represent that there are internal policies in place that restrict contact and the flow of information between investment management personnel and non-investment management personnel. These policies are designed to protect against “insider trading,” i.e., trading on information not available to the general public that may affect the market price of the securities. Diversified financial services firms must be concerned about insider trading problems because one part of the firm--e.g., the mergers and acquisitions group--could come into possession of non-public information regarding an upcoming transaction involving a particular issuer, while another part of the firm--e.g., the investment management group--could be trading in the securities of that issuer for its clients.³

25. The Applicants state that their business separation policies and procedures are also designed to restrict the flow of any information to or from the Asset Manager that could limit its flexibility in managing client assets, and of information obtained or developed by the Asset Manager that could be used by other parts of the organization, to the detriment of the Asset Manager’s clients.

26. The Applicants state that the Asset Manager deals on a regular basis with broker-dealers that compete with the Affiliated Broker-Dealer. If special consideration were shown to an affiliate, such conduct would likely adversely affect the relationships of the Affiliated Broker-Dealer and of the Asset Manager with firms that compete with that affiliate. Therefore, a goal of the Applicants business separation policy(ies) is to avoid any possible perception of improper flows of information between the Affiliated Broker-

³ The Insider Trading and Securities Fraud Enforcement Act of 1988 required brokers and dealers to maintain and enforce written policies and procedures that are “reasonably designed . . . to prevent the misuse in violation of [the federal securities laws] . . . of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer.” (Section 15(f) of the 1934 Act (15 U.S.C. 780(f)); see also Rules 342 and 351 of the NYSE and SEC Regulation M (17 CFR 242.100(a)(3)).

Dealer and the Asset Manager, in order to prevent any adverse impact on client and business relationships.

Underwriting Compensation

27. The Applicants represent that the underwriters are compensated through the “spread,” or difference, between the price at which the underwriters buy the securities from the issuer and the price at which the securities are sold to the public. The spread is divided into three components.

28. The first component includes the management fee, which generally represents an agreed upon percentage of the overall spread and is allocated among the lead manager and co-managers. Where there is more than one managing underwriter, the way the management fee will be allocated among the managers is generally agreed upon prior to soliciting indications of interest (the process of “building a book”). Thus, according to the Applicants, such management fee allocations are not reflective of the amount of securities that particular managers sell in an offering.

29. The second component is the underwriting fee, which represents compensation to the underwriters (including the non-managers, if any) for the risks they assume in connection with the offering and for the use of their capital. This component of the spread is also used to cover the expenses of the underwriting that are not otherwise reimbursed by the issuer.

30. The first and second components are received without regard to how the underwritten securities are allocated for sales purposes or to whom the securities are sold. The third component of the spread is the selling concession, which generally constitutes 60 percent or more of the spread. The selling concession compensates the underwriters for their actual selling efforts. The allocation of selling concessions among the underwriters follows the allocation of the securities for sales purposes, except to the extent that buyers designate other broker-dealers (who may be other underwriters as well as broker-dealers outside the syndicate) to receive the selling concessions from the securities they purchase.

31. Securities are allocated for sales purposes into two categories. The first and larger category is the “institutional pot,” which is the pool of securities from which sales are made to institutional investors. Selling concessions for securities sold from the institutional pot are generally designated by the purchaser to go to particular underwriters or broker-dealers. When securities are sold from the institutional pot, the managers sometimes receive a portion of the selling concessions, referred to as a “fixed designation,” attributable to securities sold in this category, without regard to who sold the securities or to whom they were sold. For securities covered by this proposed exemption, however, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation that is attributable to the fixed designation generated by purchases of securities by the Asset Manager on behalf of its Client Plans.

32. The second category of allocated securities is “retail,” which are the securities retained by the underwriters for sale to their retail customers. The underwriters receive the selling concessions from their respective retail retention allocations. Securities may be shifted between the two categories based upon whether either category is oversold or undersold during the course of the offering.

32. The Applicants assert that the Affiliated Broker-Dealer’s inability to receive any selling concessions, or any compensation attributable to the fixed designations generated by purchases of securities by the Asset Manager's Client Plans, removes the primary economic incentive for the Asset Manager to make purchases that are not in the interests of its Client Plans from offerings for which the Affiliated Broker-Dealer is an underwriter. The reason is that the Affiliated Broker-Dealer will not receive any additional fees as a result of such purchases by the Asset Manager.

Rule 144A Securities

33. The Applicants represent that a number of the offerings of Rule 144A Securities in which the Affiliated Broker-Dealer may participate represent good investment opportunities for the Asset Manager's Client Plans. Particularly with respect to foreign securities, a Rule 144A offering may provide the least expensive and most accessible means for obtaining the securities. However, PTE 75-1, Part III, does not include a category for Rule 144A Securities, regardless of whether the Affiliated Broker-Dealer is a manager or member of the underwriting or selling syndicate. Therefore, absent an individual exemption, the Asset Manager is foreclosed from purchasing such securities for its Client Plans in offerings in which the Affiliated Broker-Dealer participates.

34. The Applicants state that Rule 144A, which was adopted in 1990, acts as a “safe harbor” exemption from the registration provisions of the 1933 Act for sales of certain types of securities to QIBs. QIBs include several types of institutional entities, such as employee benefit plans and commingled trust funds holding assets of such plans, which own and invest on a discretionary basis at least \$100 million in securities of unaffiliated issuers.

35. Any securities may be sold pursuant to Rule 144A except for those of the same class or similar to a class that is publicly traded in the United States, or certain types of investment company securities. This limitation is designed to prevent side-by-side public and private markets developing for the same class of securities.

36. Buyers of Rule 144A Securities must be able to obtain, upon request, basic information concerning the business of the issuer and the issuer's financial statements, much of the same information as would be furnished if the offering were registered. This condition does not apply, however, to an issuer filing reports with the SEC under the 1934 Act, for which reports are publicly available. The condition also does not apply to a “foreign private issuer” for whom reports are furnished to the SEC under Rule 12g3-2(b) of the 1934 Act (17 C.F.R. 240.12g3-2(b)), or to issuers who are foreign governments or political subdivisions thereof and are eligible to use Schedule B under the 1933 Act

(which describes the information and documents required to be contained in a registration statement filed by such issuers).

37. Sales under Rule 144A, like sales in a registered offering, remain subject to the protections of the anti-fraud rules of federal and state securities laws. These rules include Section 10(b) of the 1934 Act and Rule 10b-5 thereunder (17 C.F.R. 240.10b-5) and Section 17(a) of the 1933 Act (15 U.S.C. 77a). Through these and other provisions, the SEC may use its full range of enforcement powers to exercise its regulatory authority over the market for Rule 144A Securities, in the event that it detects improper practices.

38. The Applicants assert that this potential liability for fraud provides a considerable incentive to the issuer and offering syndicate to ensure that the information contained in a Rule 144A offering memorandum is complete and accurate in all material respects. Among other things, the lead manager typically obtains an opinion from a law firm, commonly referred to as a "10b-5" opinion, stating that the law firm has no reason to believe that the offering memorandum contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, are not misleading.

39. The Applicants represent that Rule 144A offerings generally are structured in the same manner as underwritten registered offerings. The major difference is that a Rule 144A offering uses an offering memorandum rather than a prospectus that is filed with the SEC. The marketing process is the same in most respects, except that the selling efforts are generally limited to contacting QIBs and that there are no general solicitations for buyers (e.g., no general advertising). In addition, the Affiliated Broker-Dealer's role in these offerings has been as a lead or co-manager. While, generally, there are no non-manager members in the syndicate, the Applicants also request relief for situations where the Affiliated Broker-Dealer acts only as a syndicate member, not as a manager.

40. The Applicants represent that one of the policy objectives of Rule 144A was to attract more foreign issuers to the United States, and Rule 144A has been achieving this objective--from April 1990 through December 1993, the first three years of Rule 144A, over \$25.6 billion in foreign securities was sold under Rule 144A, representing more than one-fourth of Rule 144A placements. See SEC Staff Report on Rule 144A (August 18, 1994), [1994-95 Transfer Binder] Fed. Sec. L. Rep. para. 85,428 (Question 1). This figure continued to hold in 1998, at 30.4 percent, so that foreign issuer Rule 144A offerings have kept pace with the rapid growth of Rule 144A offerings overall. (Securities Data Company, Inc.)

41. In summary, the Applicants represent that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

- (a) The Client Plans will gain access to desirable investment opportunities;
- (b) In each offering, the Asset Manager will purchase the securities for its Client Plans from an underwriter or broker-dealer other than the Affiliated Broker-Dealer;

(c) Conditions similar to those of PTE 75-1, part III, will restrict the types of securities that may be purchased, the types of underwriting or selling syndicates and issuers involved, and the price and timing of the purchases;

(d) The amount of securities that the Asset Manager may purchase on behalf of Client Plans will be subject to percentage limitations;

(e) The Affiliated Broker-Dealer will not be permitted to receive, either directly, indirectly, or through designation, any selling concessions with respect to the securities sold to the Asset Manager;

(f) Prior to any purchase of securities, the Asset Manager will make the required disclosures to an Independent Fiduciary of each Client Plan and obtain written authorization for such transaction;

(g) The Asset Manager will provide regular reporting to an Independent Fiduciary of each Client Plan with respect to all securities purchased pursuant to the exemption, if granted;

(h) Each Client Plan participating in these transactions will be subject to a minimum size requirement of at least \$50 million (\$100 million for "Eligible Rule 144A Offerings"), with certain exceptions for Pooled Funds;

(i) The Asset Manager must have total assets under management in excess of \$3.5 billion and shareholders' or partners' equity in excess of \$1 million; and

(j) The Trustee will be unable to subordinate the interests of the investing Client Plans to those of the Asset Manager.