NOTICE TO INTERESTED PARTIES

Cortview Capital Securities LLC (the Applicant) has filed an application with the United States Department of Labor (the Department) to allow the Applicant to participate as an underwriter and/or placement or selling agent in transactions which may involve investment by employee benefit plans in securities which represent fractional undivided interests in the following categories of issuers: (i) single and multi-family residential, manufactured housing or commercial mortgage investment; (ii) motor vehicle receivable investment issuers; (iii) consumer or commercial receivable investment issuers; or (iv) guaranteed governmental mortgage pool certificate investment issuers.

The transactions described herein are the subject of EXPRO Application No. E-00671 submitted to the Department on July 19, 2011, pursuant to Prohibited Transaction Exemption (PTE) 96-62 (61 FR 39988, July 31, 1996, as amended by 67 FR 44622, July 3, 2002). The submission has met the requirements for tentative authorization under PTE 96-62. Any sale of these securities to employee benefit plans will only take place following the date of final authorization by the Department for the transactions.

Reference is made to one prior exemption and one Final Authorization that are substantially similar to the transaction under consideration and provide relief from the same restrictions: (i) FAN 2011-05E (Cantor Fitzgerald & Co.) (June 6, 2011) and (ii) PTE 2009-31 (amending PTE 96-22 and PTE 2002-19), 74 FR 59003 (November 16, 2009). FAN 2011-05E referenced one prior exemption and one Final Authorization: PTE 2009-31 and FAN 2009-12E (Amherst Securities Group, L.P.) (September 14, 2009).

The conditions for relief set forth in EXPRO Application No. E-00671, which the Applicant has represented it has satisfied or will satisfy, are essentially identical to those set forth in FAN 2011-05E and PTE 2009-31. Such conditions are more fully described in Attachments I and II appended to this Notice to Interested Parties and are summarized below:

1. The trustee of the issuer must not be an affiliate of any other member of the restricted group, other than the underwriter;

2. The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of securities must represent not more than reasonable compensation for underwriting or placing the securities;

3. The consideration received by the sponsor as a consequence of the assignment of obligations (or interests therein) to the issuer must represent no 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;

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

5. The rights and interests evidenced by the securities are not subordinated to the rights and interests evidenced by other securities of the same issuer, unless the securities are issued in certain designated transactions;

6. The securities acquired by a plan have received a rating from a rating agency at the time of the acquisition that it is in one of the three (or in the case of certain designated transactions, four) highest generic rating categories;

7. Any plan investing in such securities must be 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, as amended;

8. If the obligations used to fund an issuer have not all been transferred to the issuer on the closing date, certain additional obligations may be transferred to the issuer during the pre-funding period in exchange for amounts credited to the pre-funding account, provided that: (i) the pre-funding limit is not exceeded; (ii) any additional obligations that are transferred meet the same terms and conditions for determining the eligibility of the original obligations used to create the issuer and which have been approved by a rating agency; (iii) the transfer of the additional obligations to the issuer during the pre-funding period does not result in the securities receiving a lower credit 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 securities by the issuer; (iv) the weighted average annual percentage interest rate for all of the obligations held by the issuer 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 issuer on the closing date; (v) the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider independent of the sponsor, or an independent accountant retained by the sponsor; (vi) the pre-funding period is described in the prospectus or private placement memorandum provided to investing plans; and (vii) the trustee of the issuer is a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under ERISA;

9. The legal documents establishing an issuer which is not a REMIC, FASIT or grantor trust will contain certain restrictions in order to ensure that the assets of the issuer may not be reached by creditors of the sponsor in the event of the bankruptcy or other insolvency of the sponsor and also will include a legal opinion prior to the issuance by the issuer of any securities which states that either: (i) a "true sale" of the assets being transferred to the issuer by the sponsor has occurred and that the transfer is not being made pursuant to a financing of the assets by the sponsor; or, (ii) in the event of insolvency or receivership of the sponsor, the assets transferred to the issuer will not be part of the estate of the sponsor;

10. Any swap transaction relating to securities that are covered by the Tentative Authorization must satisfy the several investor-protective conditions applicable to "Eligible Swaps" and must be entered into by the issuer with an "Eligible Swap Counterparty." Also, any class of securities to which one or more swap agreements entered into by the issuer applies may be acquired or held by plans in reliance upon the Tentative Authorization only if such plans are represented by "Qualified Plan Investors"; and

11. Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the issuer's assets.

As a person who may be affected by the transactions described herein, you have the right to comment on the Application. Written comments should be submitted to the Department no later than October 4, 2011, and should be addressed to:

U.S. Department of Labor
Office of Exemption Determinations
Employee Benefits Security Administration
200 Constitution Avenue, N.W.
Room N-5700
Washington, D.C. 20210
Attention: Angelena Le Blanc

Comments can also be submitted by fax to (202) 219-0204 or e-mail to LeBlanc.Angelena@dol.gov. Any comment should note that it relates to EXPRO Application No. E-00671.

Attachment I

Tentative Authorization

I. Transactions

A. Effective for transactions occurring on or after the date this EXPRO application is authorized by the Department of Labor, the restrictions of sections 406(a) and 407(a) of the Employee Retirement Income Security Act of 1974 (ERISA, or the Act) and the taxes imposed by sections 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

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

(3) The continued holding of Securities 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 of the Act for the acquisition or holding of a Security 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.[1]

B. Effective for transactions occurring on or after the date this EXPRO application is authorized by the Department of Labor, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 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 Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a); if:

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[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act and regulation 29 CFR § 2510.3–21(c).

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities 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 Issuer is acquired by persons independent of the Restricted Group;

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

(iv) Immediately after the acquisition of the Securities, 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 Securities representing an interest in an Issuer containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in an Issuer if it is merely a Subservicer of that Issuer;

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

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

C. Effective for transactions occurring on or after the date this EXPRO application is authorized by the Department of Labor, the restrictions of sections 406(a), 406(b), and 407(a) of the Act and the taxes imposed by sections 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 an Issuer, including the use of any Eligible Swap transaction; or the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(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 Securities issued by the Issuer;[3] and

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[2] For purposes of this Tentative Authorization, 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.

[3] 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 securities were made in a

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

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 Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

D. Effective for transactions occurring on or after date this EXPRO application is authorized by the Department of Labor, 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 Code section 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 Securities.

II. General Conditions

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

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

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories.

(4) The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter. For purposes of this requirement:

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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 Securities are offered to investors.

(a) 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; and

(b) Subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as a result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that:

(i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the date such Servicer became an Affiliate of the Trustee; and

(ii) Such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer 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 Securities 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 an Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations as specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), 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 vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit 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 Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the Issuer 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 Issuer 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 either be 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 Trustee) 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 on 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 or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act.

(8) In order to ensure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A "true sale" of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent or a Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon the Department's Authorization only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

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 Securities, shall be denied the relief provided under section I., if the provision of subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, 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 Securities) 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).

III. Definitions

For purposes of the Tentative Authorization:

A. "Security" means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. "Issuer" means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be 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 the corpus or assets of which 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); 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/or commercial real property (including obligations secured by leasehold interest on residential or 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; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR § 2510.3-101(i)(2)[4]; and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this subsection B.(1).[5]

Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that (i) the rights and interests

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[4] In ERISA Advisory Opinion 99–05A (February 22, 1999), the Department expressed its view that mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR § 2510.3-101(i)(2).

[5] It is the Department's view that the definition of "Issuer" contained in section III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the Underwriter Exemptions generally provide relief only for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

evidenced by Securities issued in such Designated Transactions (as defined in section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) The outstanding principal balance due under the obligation which is held by the Issuer and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.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 securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement, and/or

(c) Cash transferred to the Issuer 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 paragraphs (a)-(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to securityholders 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: (i) Are either (x) 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 (y) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in section III.B.(1).

Notwithstanding the foregoing, the term "Issuer" does not include any investment pool unless: (i) the assets of the type described in paragraphs (a)-(f) of subsection III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the

case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this Tentative Authorization, and (iii) Securities 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 Securities pursuant to this Tentative Authorization.

C. "Underwriter" means:

(1) The Applicant;

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

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

D. "Sponsor" means the entity that organizes an Issuer by depositing obligations therein in exchange for Securities.

E. "Master Servicer" means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. "Servicer" means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. "Trust" means an Issuer, which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. "Trustee" means the Trustee of any Trust, which issues Securities, and also includes an Indenture Trustee. "Indenture Trustee" means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the Servicer.

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

K. "Obligor" means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer 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 Issuer, or subject to any lease securing an obligation included in the Issuer.

L. "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.

M. "Restricted Group" with respect to a class of Securities 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 Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

(8) Any Affiliate of a person described in subsections III.M.(1)-(7).

N. "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.

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

P. 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 assets of such person.

Q. "Sale" includes the entrance into a Forward Delivery Commitment, 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 Tentative Authorization applicable to sales are met.

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

S. "Reasonable Compensation" has the same meaning as that term is defined in 29 CFR § 2550.408c–2.

T. "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 subsection III.T.(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 Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. "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 Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as the Issuer would have if the equipment note were secured only by the equipment and not the lease.

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

(1) The Issuer owns or holds a security interest in the lease;

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

(3) The Issuer's security interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. "Pooling and Servicing Agreement" means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. "Pooling and Servicing Agreement" also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. "Rating Agency" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.; Moody's Investors Service, Inc.; Fitch Ratings; DBRS Limited or DBRS, Inc.; or any successors thereto.

Y. "Capitalized Interest Account" means an Issuer account: (i) which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the interest rate payable under the Securities; and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

Z. "Closing Date" means the date the Issuer is formed, the Securities are first issued and the Issuer'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 Issuer.

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

BB. "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 Securities being offered, which is less than or equal to 25 percent.

CC. "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.

DD. "Designated Transaction" means a securitization transaction in which the assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or

leasehold interests therein. For purposes of this section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. "Ratings Dependent Swap" means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a "Non-Ratings Dependent Swap." With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. "Eligible Swap" means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g., LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of Securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF.(1) through (4) without the consent of the Trustee.

GG. "Eligible Swap Counterparty" means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemptions, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating

Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. "Qualified Plan Investor" means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the Tentative Authorization, such a fiduciary is either:

(1) A "qualified professional asset manager" (QPAM),[6] as defined under Part V(a) of Prohibited Transaction Exemption (PTE) 84-14, 49 FR 9494, 9506, (March 13, 1984), as amended by 70 FR 49305, August 23, 2005);

(2) An "in-house asset manager" (INHAM),[7] as defined under Part IV(a) of PTE 96-23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. "Excess Spread" means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. "Eligible Yield Supplement Agreement" means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

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[6] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g., banks, insurance companies, registered investment advisers with total client assets under management in excess of $85 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[7] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not "leveraged" as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)-(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

Attachment II

Cortview Capital Securities LLC
Richmond, Virginia

Description of the Exemption Transactions

I. Background

A. The Applicant

Cortview Capital Securities LLC is a limited liability company organized under the laws of the state of New York on June 15, 2000. The Applicant is a registered broker-dealer in securities, principally trading in corporate, government, mortgage backed and municipal securities, and financial futures.

Cortview is a registered broker-dealer with the Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority and the Securities Investor Protection Corporation. The corporation offers brokerage, financial advisory and related products and services to customers. Cortview maintains its principal office in Richmond, Virginia.

Cortview's commercial real estate finance group's leadership team is comprised of seasoned professionals with in excess of 115 years of commercial real estate finance experience. The group is lead by William Green who serves as a Managing Director and the Head of the Commercial Real Estate Group at Cortview. Mr. Green has 26 years of commercial real estate finance experience and served as a Managing Director and Head of Wachovia's Global Real Estate Capital Markets Group. Mr. Green is one of a number of former Wachovia executives now employed at Cortview, including William Cohane, Scott Fuller, Brett Smith, and Christopher Troutman. Mr. Cohane is a Managing Director and the Head of CMBS Securitization at Cortview. Cohane has 20 years of commercial real estate finance experience and served as a Managing Director and co-Head of Wachovia's Real Estate Capital Markets platform for Europe, Africa and the Middle East. Mr. Fuller is a Managing Director and Head of CMBS Trading at Cortview. Fuller served as a Managing Director and Head CMBS Trader for Wachovia's Real Estate Capital Markets Group. Mr. Smith is a Managing Director and Head of Commercial Real Estate Originations at Cortview. Smith has 23 years of commercial real estate finance experience and served as a Managing Director and Head of Originations for Wachovia's Real Estate Capital Markets Group. Mr. Troutman is a Managing Director and Chief Investment Officer at Cortview. Troutman has 20 years of commercial real estate finance experience and served as a Managing Director in Wachovia's Real Estate Capital Markets Group at various times focusing on CMBS and principal investments in commercial real estate debt and equity. Richard Katzenstein is a Managing Director and Head of Northeast Commercial Real Estate Originations at Cortview. Katzenstein has 27 years for commercial real estate finance experience and served as the Senior Managing Director for MMA Realty Capital of Baltimore, Maryland. Prior to joining Cortview, Mssrs. Green, Cohane, Smith and Troutman were co-

founders and executives at Tannery Brook Partners, LLC, a Charlotte, North Carolina based advisory firm which was acquired by Cortview Capital Securities.

Cortview is in the process of becoming active in the underwriting and placement of structured asset securitization transactions. Such transactions will include commercial mortgage-backed securitizations where Cortview will serve as lead underwriter or as co-lead underwriter with other underwriters. It expects to serve as co-lead underwriter or co-manager with respect to the securitization of approximately $2 billion of commercial mortgage loans in 2011. Cortview will sell securities to both institutional and accredited investors such as investment managers, pension funds, insurance companies, depositories and other broker-dealers. As of December 31, 2010, Cortview had total assets of approximately $146,486,444 and net capitalization of approximately $18,905,863.

Pursuant to Prohibited Transaction Exemption (PTE) 96-62, the Applicant requests the approval of the Department of Labor (the Department) to engage in transactions described in the Underwriter Exemptions, a group of individual exemptions granted by the Department that provide substantially identical relief for the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (Plans) of certain asset-backed pass-through certificates representing interests in those trusts. These exemptions provide relief from certain of the prohibited transaction restrictions of sections 406(a), 406(b) and 407(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986, as amended (the Code), by reason of certain provisions of section 4975(c)(1) of the Code. The Underwriter Exemptions permit Plans to invest in pass-through securities representing undivided interests in asset-backed or mortgage-backed investment pools (Securities). The Securities generally take the form of certificates issued by a trust (Trust) or similar issuer (Issuer) which have been rated by a credit rating agency (Rating Agency). The Underwriter Exemptions also permit transactions involving a Trust, including the servicing, management and operation of the Trust. For purposes of the following discussion, the terms "Trust" or "Issuer" include partnerships, special purpose corporations or limited liability companies. The terms "certificate" or "Security" include a security which is either a pass-through certificate or a security denominated as a debt security that is issued by one of the above-enumerated entities.

The Applicant seeks exemptive relief to permit Plans to invest in pass-through certificates representing undivided interests in the following categories of trusts:[8] (1) single and multi-family residential or commercial mortgage investment trusts;[9] (2) motor vehicle

[8] The Department stated in the 1997 Proposed Amendment to the Underwriter Exemptions, 62 FR 28502 (May 23, 1997), that a given trust may include receivables of the type described in one or more of the categories under the definition of Trust.

[9] The Department notes that PTE 83-1, 48 FR 895 (January 7, 1983), a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single family residential mortgages, provided that the applicable conditions of PTE 83-1 are met. The Applicant requests relief for single family residential mortgages in this exemption because it would prefer one exemption for all trusts of

receivables investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[10] This relief is available only if certain conditions are met. The acquisition of Securities by a Plan must be on terms (including the Security price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party. Unless the Securities are issued in a Designated Transaction (defined below), the rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer and the Securities have received a rating from a Rating Agency at the time of such acquisition that is in one of the three highest generic rating categories.

B. Underwriter Exemption Amendments

All of the Underwriter Exemptions were amended by PTE 97-34, 62 FR 39021 (July 21, 1997), PTE 2000-58, 65 FR 67765 (November 13, 2000), and PTE 2007-05, 72 FR 13130 (March 20, 2007), Technical Correction at 72 FR 16385 (April 4, 2007). Certain of the Underwriter Exemptions were amended by PTE 2002-41, 67 FR 54487 (August 22, 2002). For a more complete statement of the facts and representations supporting the Department's decisions to amend the Underwriter Exemptions, refer to the respective notice of the proposed exemptions or amendments and the grants as published in the Federal Register.

PTE 97-34 (The 1997 Amendment) modified the definition of "Trust" to include a Pre-Funding Account (PFA) and a Capitalized Interest Account (CIA) as part of the corpus of the Trust. The PFA and the CIA consist of cash or temporary investments that permit the Trust to acquire a specific portion of its receivables during a set interim period that is no more than three months after the closing date of the Trust under the Pooling and Servicing Agreement or trust agreement. The definition of Trust was amended to include Eligible Yield Supplement Agreements which obligate the Sponsor, Master Servicer or another party specified in the Pooling and Servicing Agreement to supplement the interest rates otherwise payable on the obligations held in the Trust, provided that such arrangements do not involve swap agreements or other notional principal contracts. The definition of "certificate" included a debt instrument that represents an interest in a Financial Asset Securitization Investment Trust (FASIT). FASITs were created to facilitate the securitization of debt obligations such as credit card receivables, home equity loans, and auto loans, and allowed certain features such as revolving pools of assets, trusts containing unsecured receivables and certain hedging types of investments. The Underwriter Exemptions

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similar structure. However, the Applicant may still avail itself of the exemptive relief provided by PTE 83-1.

[10] Guaranteed governmental mortgage pool certificates are mortgage backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 C.F.R. § 2510.3 101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The Applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in such trusts may be plan assets.

only covered those FASITs which were passive in nature. FASITs were rarely used and the Internal Revenue Code special rules for FASITs were repealed on Jan. 1, 2005.

PTE 2000-58 (the 2000 Amendment) permitted plans to invest in Designated Transactions, which are certain investment-grade[11] mortgage-backed securities (MBS) and asset-backed securities(ABS) (collectively, Securities) involving categories of transactions which are either senior or subordinated, and/or in certain cases, permit the entity issuing such Securities (Issuer) to hold receivables with high loan-to-value property ratios (HLTV ratios) in excess of 100%. Specifically, the amendment exempted transactions involving senior or subordinated Securities rated 'AAA,' 'AA,' 'A' or 'BBB' by at least one Rating Agency and issued by Issuers whose assets are comprised of the following categories of receivables: (i) motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. The collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

The Department noted that its determination to expand the Underwriter Exemptions to permit the offering of "investment grade" asset backed securities, which may be senior or subordinated, should not be viewed as an endorsement by the Department of the suitability of specific securities for a particular Plan. It is the responsibility of the Plan fiduciary to act prudently with respect to the selection of suitable investments. Plan fiduciaries would be liable for any losses to the plan resulting from a decision to purchase asset backed securities or other debt securities if such purchase was not prudent.

Residential and commercial mortgage investment trusts may include mortgages secured by ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure commercial leasehold mortgages will in all cases be at least ten years longer than the terms of such mortgages.[12]

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[11] The term "investment grade" refers to Securities which are rated at the time of issuance in one of the four highest generic rating categories by at least one Rating Agency. The designations "AAA," "AA," "A" and "BBB" are used herein to refer to the generic rating categories used by Standard & Poor's Ratings Services, a division of The McGraw Hill Companies Inc. and Fitch Ratings, Inc. and are deemed to include the equivalent generic category rating designations such as "Aaa, "Aa," "A" and "Baa" used by Moody's Investors Service, Inc. or any equivalent rating designations used by Rating Agencies and successors thereto.

[12] Trust assets may also include obligations that are secured by leasehold interests on residential real property. But see PTE 90-32 involving Prudential Bache Securities, Inc., 55 FR 23147, 23150 (June 6, 1990). The Department received one comment from an affiliate of the applicant with respect to the notice of proposed exemption for PTE 90-32. The comment requested clarification that the definition of trust in

Residential and home equity loan receivables which are issued in certain Designated Transactions, may be less than fully secured, provided that: (1) the rights and interests evidenced by the Securities issued in such Designated Transactions are not subordinated to the rights and interests evidenced by the Securities of the same Issuer; (2) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (3) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (a) the outstanding principal balance due under the obligation which is held by the Issuer; and (b) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

The 2000 Amendment further provided that the Security may either be an equity or debt security issued by any permissible type of Issuer. The types of entities issuing securities that would be eligible for coverage under the exemption were expanded to include owner trusts, special purpose corporations, limited partnerships, and limited liability companies. The 2000 Amendment permitted the inclusion of certain types of derivatives designed to protect Plan investors against the risks of interest rate fluctuations (i.e., interest rate swaps and interest rate cap agreements, both Ratings Dependent and Non Ratings Dependent Swaps) under certain circumstances described below. The amendment also permitted the inclusion of yield supplement arrangements with notional principal amounts, effective April 7, 1998. Finally, the Notice of Proposed Amendment for the 2000 Amendment, 65 FR 51454, at 51466 (August 23, 2000) (Proposed 2000 Amendment) noted that as the result of legal constraints applicable to certain mergers and acquisitions (e.g., confidentiality requirements), it is often difficult before the merger or acquisition is consummated to cross check all relationships between the Affiliates of the entities involved in the transaction in order to determine whether or not any of the new affiliations will violate the Restricted Group condition of the Underwriter Exemptions. In response, the Department revised subsection II.A.(4) of the Underwriter Exemptions to provide that this condition will not be considered to be violated for transactions occurring on or after January 1, 1998, merely by reason of a Servicer becoming an Affiliate of the Trustee as the result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which

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section III.B. would include trusts containing certain obligations secured by leasehold interests on residential real property (Residential Leasehold Mortgages or RLMs). The comment noted that RLMs are originated in jurisdictions such as Hawaii in which they are a "necessary alternative to mortgages secured by fee simple interests" and that these RLMs are "in essence, the same as, and provide substantially the same degree of security to investors as, mortgages secured by fee simple interests."

The comment represented that both the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae) have purchase programs for these RLMs and that such RLMs included in pools underlying mortgage pass-through certificates would "generally conform" with either Freddie Mac or Fannie Mae leasehold guidelines. In this regard, the term of the leasehold underlying such RLMs would extend for at least five years beyond the term of the RLM. The comment noted that the affiliate of the applicant would "comply with the requirement under the Freddie Mac and Fannie Mae leasehold guidelines that such mortgages constitute obligations secured by real property or an interest in real estate." In PTE 90-32, the Department concurred with the views expressed by the affiliate of the applicant that the definition of trust includes RLMs as described in the comment.

occurs after the initial issuance of the Securities, provided that: (i) such Servicer ceases to be an Affiliate of the Trustee no later than six months after the date such Servicer became an Affiliate of the Trustee; and (ii) such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee.

PTE 2002-41 (the 2002 Amendment) permitted the Trustee of the issuing Trust to be affiliated with an Underwriter of Securities issued by the Trust. The applicants represented that there is no incentive for the Trustee in a structured finance transaction to take or fail to take actions which might benefit the affiliated Underwriter to the detriment of plan investors. The Underwriter has no interest in the deal after it is sold. The Trustee's role in these structured finance transactions is essentially ministerial and strictly governed by contract. Additionally, unlike trustees for corporate or municipal debt, there is no need for Trustees in structured finance transactions to assume discretionary functions in order to protect the interests of debt holders in the event of default or bankruptcy, because the structured finance entities are bankruptcy remote vehicles.

PTE 2007-05 (the 2007 Amendment) added DBRS Limited and DBRS, Inc. to the group of credit rating agencies included in the definition of "Rating Agency" in section III.X of the Underwriter Exemptions.

II. The Transactions

A. Issuer Structure

Each Trust or other Issuer is established under a Pooling and Servicing Agreement or an equivalent agreement among a Sponsor, a Servicer and a Trustee. Generally, prior to the Closing Date under the Pooling and Servicing Agreement, the Sponsor and/or the Servicer of an Issuer establishes the Issuer, designates an independent entity as Trustee for the Issuer, and, except to the extent a Pre-Funding Account will be used, selects receivables from the classes of assets described in section III.B.(1)(a)-(f) to be included in the Issuer. The assets are receivables, which may have been originated by a Sponsor or Servicer of the Issuer, an Affiliate of the Sponsor or Servicer, or by an unrelated lender and subsequently acquired by the Issuer, Sponsor or Servicer.

Typically, on or prior to the Closing Date, the Sponsor acquires legal title to all assets selected for the Issuer. In some cases, legal title to some or all of such assets continues to be held by the originator of the receivable until the Closing Date. On the Closing Date, the Sponsor and/or the originator of the receivables conveys to the Issuer legal title to the assets, and the Trustee issues Securities representing fractional undivided interests in the Issuer's assets.

The 2000 Proposed Amendment to the Underwriter Exemptions, 65 FR 51454, at 51456 (August 23, 2000) (the 2000 Proposed Amendment) contains a discussion of the legal structure, bankruptcy status and taxation of each securitization vehicle. It also explains why debt is issued in certain transactions instead of equity and the relative rights of both types of securities. The 2000 Proposed Amendment applicant noted that the principal factors in the choice of securitization vehicle and whether equity or debt securities are issued are not economic but

involve a combination of tax, accounting and ERISA considerations and that the choice of securitization entity or type of security does not significantly affect Plan investors either from a legal rights, credit risks or tax perspective. Where the Issuer is not a Trust, equity will not be sold to Plans pursuant to the Underwriter Exemptions.

While the permissible types of Issuers under the requested exemption include Issuers which are not required under the tax rules to be passive entities,[13] in order for a transaction to qualify for exemptive relief, each of the applicable requirements of the Underwriter Exemptions must be met. This would mean, for example, that only transactions involving Issuers holding assets which are comprised of secured receivables (unless the assets are residential and home equity loans in a Designated Transaction) and which do not allow revolving pools of assets or hedging investments (unless specifically authorized) are permissible under the Underwriter Exemptions. Specifically, the Issuer must be maintained as an essentially passive entity, and, therefore, both the Sponsor's discretion and the Servicer's discretion with respect to assets included in an Issuer must be severely limited both as to those assets transferred on the Closing Date and those acquired during any Pre-Funding Period. Pooling and Servicing Agreements provide for the substitution of Issuer receivables by the Sponsor only in the event of breaches of representations and warranties or defects in documentation discovered within a short time after the issuance of Securities (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable. In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to securityholders.

The Underwriter Exemptions require that, in connection with the original issuance of Securities, all transactions for which the Underwriter seeks exemptive relief will be governed by the Pooling and Servicing Agreement, the principal provisions of which are described in the prospectus or private placement memorandum which will be furnished to the investing Plans and is made available to Plan fiduciaries for their review prior to the Plan's investment in Securities. At or about the time distributions are made to securityholders, a report will be delivered to the Trustee as to the status of the Issuer and its assets, including underlying obligations. Such report also will be delivered to or made available to the Rating Agency or Agencies that have rated the Securities. In addition, promptly after each distribution date, securityholders will receive a statement prepared by the Servicer, paying agent or Trustee summarizing information regarding the Issuer and its assets.

B. Classes of Securities

The Applicant notes that some of the Securities will be multi-class Securities. The Applicant requests exemptive relief for two types of multi-class Securities: "strip" Securities and "senior/subordinate" (also sometimes referred to as "fast pay/slow pay") Securities. Strip Securities are a type of security in which the stream of interest payments on receivables is split

[13] Grantor trusts and REMICs are required under the tax rules to be passive entities with limited asset substitution rights, but other types of Issuers are not so restricted.

from the flow of principal payments and separate classes of Securities are established, each representing rights to disproportionate payments of principal and interest.[14]

"Fast-pay/slow-pay" Securities involve the issuance of classes of Securities having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying Issuer's assets are distributed first to the class of Securities having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of Securities has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of Securities.

Distributions on Securities having later stated maturities will proceed in like manner until all the securityholders have been paid in full. The only difference between this multi-class arrangement and a single-class arrangement is the order in which distributions are made to securityholders. In each case, securityholders will have a beneficial ownership interest in the underlying Issuer's assets or a security interest in the collateral securing such assets. Except as permitted in a Designated Transaction, the rights of a Plan purchasing Securities will not be subordinated to the rights of another securityholder in the event of default on any of the underlying obligations. In particular, unless the Securities are issued in a Designated Transaction, if the amount available for distribution to securityholders is less than the amount required to be so distributed, all senior securityholders will share in the amount distributed on a pro rata basis.[15]

C. Interest Rate Swaps

Interest rate swaps are used in securitization transactions where the index used to calculate interest payments on the receivables is different than the index used to calculate interest payments on the securities issued by the Trust. For example, many securities bear interest based upon the London Interbank Offered Rate for dollar deposits of a specified maturity (LIBOR). However, the assets being securitized often bear interest at fixed rates or rates based upon U.S. Treasury securities, the prime rate or other indices that may not move in tandem with LIBOR. The swap helps assure that the Trust will have sufficient funds to make full payments of interest on the securities.

The Applicant states that a class of Securities in a securitization may have the benefit of an interest rate swap agreement entered into between the Issuer and a bank or other financial institution acting as a swap counterparty. Pursuant to the swap agreement, the swap counterparty

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[14] It is the Department's understanding that when a Plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the Plan as a result of such investment may be considered unrelated business taxable income to the Plan, which is subject to federal income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require Plan fiduciaries to carefully consider this and other tax consequences prior to causing Plan assets to be invested in certificates pursuant to this exemption.

[15] If an Issuer issues subordinated Securities, holders of such subordinated Securities may not share in the amount distributed on a pro rata basis. The Department notes that this exemption does not provide relief for Plan investment in such subordinated Securities, unless the Securities are issued in a Designated Transaction.

would pay a certain rate of interest to the Issuer in return for a payment of a rate of interest by the Issuer, from collections allocable to the relevant class of Securities, to the swap counterparty. The Applicant represents that the credit rating provided to a particular class of Securities by the relevant Rating Agency may or may not be dependent upon the existence of a swap agreement. Thus, in some instances, the terms and conditions of the swap agreements will not affect the credit rating of the class of Securities to which the swap relates (i.e., a Non-Ratings Dependent Swap).

The Applicant requests relief for both ratings dependent and non-ratings dependent swaps as described in PTE 98-13 and PTE 98-14 (the Credit Card Exemptions), subject to the same terms and conditions regarding interest rate swaps contained in those exemptions. Consistent with the conditions of the Credit Card Exemptions, the Applicant has included the swap counterparty as a member of the Restricted Group. However, two revisions regarding interest rate swaps are necessary in order to make the swap provisions compatible with fixed asset pool transactions.

First, the Credit Card Exemptions require that a ratings dependent swap include as an early payout event the withdrawal or reduction by a Rating Agency of the swap counterparty's credit rating where the Servicer has failed to meet its obligations under the Pooling and Servicing Agreement relating to obtaining a replacement swap agreement or causing the swap counterparty to post collateral. The early payout causes principal to be paid out for the benefit of securityholders instead of being used to purchase additional credit card receivables. In contrast, all principal and interest payments received by the Issuer in non-revolving pool transactions are used to make payments to either the securityholders, the swap counterparty or to pay servicing fees or other expenses; none are used to purchase additional obligations for deposit into the Issuer. Accordingly, the concept of an early payout event is not relevant for the non-revolving pools of assets which are covered under the Underwriter Exemptions. Instead, the Applicant is proposing that if the swap counterparty's rating is downgraded, and the Servicer fails to obtain an acceptable replacement swap or to cause the swap counterparty to post collateral or make other arrangements satisfactory to the Rating Agency, the plan certificateholders would be notified in the immediately following Trustee's periodic report and would have sixty days thereafter to dispose of the Certificates before the exemptive relief under section I.C. of the Underwriter Exemptions with respect to the servicing, management and operation of the Issuer would prospectively cease to be available. The party responsible for such notification may be the Sponsor, the Trustee, a third-party administrator or any other party designated in the Pooling and Servicing Agreement and/or servicing agreement to give periodic reports to the securityholders.

Second, the Credit Card Exemptions use the term "Excess Finance Charge Collections" which is not relevant to non-credit card ABS/MBS transactions. Accordingly, the Applicant has substituted the term "Excess Spread" which is the functionally equivalent term and best suited to the types of transactions covered by the Underwriter Exemptions. The term "excess spread" applies to both ratings dependent and non-ratings dependent swaps and is defined as the amount, as of any given day funds are distributed from the issuer, by which the interest allocated to the securities exceeds the amount necessary to pay interest to the securityholders, servicing fees and issuer expenses. This term is defined in section III.II. of the Tentative Authorization.

The Applicant believes that allowing the use of interest rate swaps is beneficial to plan investors as it helps to protect them from the risk of interest rate fluctuations. The conditions the Department has imposed in PTE 98-13 and PTE 98-14, which will be met with respect to any interest rate swap used in transactions covered by the requested exemption, will further protect the interest of plans. Accordingly, the Applicant represents that whether or not the credit rating of a particular class of Securities is dependent upon the terms and conditions of one or more interest rate swap agreements entered into by the Issuer (i.e., a "Ratings Dependent Swap" or a "Non-Ratings Dependent Swap"), each particular swap transaction will be an "Eligible Swap" as defined in the Tentative Authorization.

In this regard, an Eligible Swap will be a swap transaction:

1. Which is denominated in U.S. Dollars;

2. Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the applicable class of Securities, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g. LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and being obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

3. Which has a notional amount that does not exceed either: (i) the principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3) of the Tentative Authorization;

4. Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in item (2) above and the difference between the products thereof, calculated on a one-to-one ratio and not on a multiplier of such difference);

5. Which has a final termination date that is the earlier of the date on which the Issuer terminates or the related class of Securities is fully repaid; and

6. Which does not incorporate any provision which could cause a unilateral alteration in any provision described in items (1) through (5) above without the consent of the Trustee.

In addition, any Eligible Swap entered into by the Issuer must be with an "Eligible Swap Counterparty," which is defined as a bank or other financial institution with a rating at the date of issuance of the Securities by the Issuer which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish its eligibility, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by

the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

Under any termination of a swap, the Issuer will not be required to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor.

With respect to a Rating Dependent Swap, the Servicer shall either cause the Eligible Counterparty to establish certain collateralization or other arrangements satisfactory to the Rating Agencies in the event of a rating downgrade of such swap counterparty below a level specified by the Rating Agency (which will be no lower than the level which would make such counterparty an Eligible Swap Counterparty), or the Servicer shall obtain a replacement swap with an Eligible Swap Counterparty acceptable to the Rating Agencies with substantially the same terms. If the Servicer fails to do so, the plan securityholders will be notified in the immediately following Trustee's periodic report to securityholders and will have a 60-day period thereafter to dispose of the Securities, at the end of which period the exemptive relief provided under section I.C. of the Underwriter Exemption (relating to the servicing, management and operation of the Issuer) would prospectively cease to be available. With respect to Non-Ratings Dependent Swaps, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into the swap transactions with the Eligible Counterparty will not affect the rating of the Securities, even if such counterparty is no longer an Eligible Counterparty and the swap is terminated.[16]

Any class of Securities to which one or more swap agreements entered into by the Issuer applies will be acquired or held only by Qualified Plan Investors. Qualified Plan Investors are defined as Plan investors represented by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction relating to the class of Securities to be purchased and the effect such swap would have upon the credit rating of the Securities to which the swap relates.

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[16] In the course of considering applications for exemptive relief under PTE 98-13 and PTE 98-14, the Department received representations from the Rating Agencies that certain classes of Securities issued by an Issuer holding receivables will have Securities ratings that are not dependent on the existence of a swap transaction entered into by the Issuer. Therefore, a downgrade in the swap counterparty's credit rating would not cause a downgrade in the rating established by the Rating Agency for the Securities. These Rating Agency representations stated that in such instances, there will be more credit enhancements (e.g., "excess spread," letters of credit, cash collateral accounts) for the class to protect the securityholders than there would be in a comparable class where the Issuer enters into a so called Ratings Dependent Swap. Non Ratings Dependent Swaps are generally used as a convenience to enable the Issuer to pay certain fixed interest rates on a class of Securities. However, the receipt of such fixed rates by the Issuer from the counterparty is not a necessity for the Issuer to be able to make its fixed rate payments to the securityholders.

For purposes of the Underwriter Exemptions, the qualified independent fiduciary will be either:

(a) A "qualified professional asset manager" (QPAM), as defined under Part V(a) of PTE 84–14, 49 FR 9494, 9506, (March 13, 1984), as amended by 70 FR 49305, August 23, 2005);

(b) An "in-house asset manager" (INHAM), as defined under Part IV(a) of PTE 96-23, 61 FR 15975, 15982 (April 10, 1996); or

(c) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

D. Yield Supplement Agreements

A yield supplement agreement is a contract under which the issuer makes a single cash payment to the contract provider in return for the contract provider promising to make certain payments to the issuer in the event of market fluctuations in interest rates. For example, if a class of securities promises an interest rate which is the greater of 7% or LIBOR and LIBOR increases significantly, the yield supplement agreement might obligate the contract provider pay to the issuer the excess of LIBOR over 7%. In some circumstances, the contract provider's obligation may be capped at a certain aggregate maximum dollar liability under the contract. Alternatively, a cap could be placed on the supplemental interest that would be paid to a securityholder from monies paid under the yield supplement agreement. For example, the yield supplement agreement would provide the difference between LIBOR and 7% but only to the extent that the securityholder would be paid a total of 9%. The interest to be paid by the contract provider to the issuer under the yield supplement agreement is usually calculated based on a notional principal balance which may mirror the principal balances of those classes of securities to which the yield supplement agreement relates or some other fixed amount. This notional amount will not exceed either: (i) the principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3) of the Tentative Authorization. In all cases, the issuer makes no payments other than the fixed purchase price for the yield supplement agreement and may, therefore, be distinguished from an interest rate swap agreement, notwithstanding that both types of agreements may use an ISDA form of contract.

The 1997 Amendment included within the definition of "Trust" 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 provided that such arrangements do not involve swap agreements or other notional principal contracts. However, in the Proposed 2000 Amendment, the applicant noted that the Credit Card Exemptions (PTE 98-13 and PTE 98-14) permit interest rate swaps which clearly feature notional principal amounts. In addition to requesting exemptive relief for "plain vanilla" interest rate swaps, the applicant requested relief for yield supplement arrangements that do not involve interest rate payments by the Trustee, even if they have a notional principal amount.

The applicant's request for relief under the 2000 Amendment covered only the type of interest rate cap agreements which were then currently covered under the Underwriter Exemptions. The only change requested was to clarify that agreements which have a notional principal balance and/or are set forth on International Swaps and Derivatives Association, Inc. (ISDA) forms will be permitted. The applicant noted that no "plan assets" within the meaning of the Plan Asset Regulation (under 29 CFR § 2510.3-101) are utilized in the purchase of the cap agreement, as the Sponsor or some other third party funds such arrangement with an up-front single-sum payment. The Issuer's only obligation is to receive payments from the counterparty if interest rate fluctuations require them under the terms of the contract and to pass them through to securityholders. The Rating Agencies examine the creditworthiness of the counterparty in a ratings dependent yield supplement agreement. The applicant suggested that the relief for yield supplement agreements should be subject to the same conditions as for interest rate swaps found in the Credit Card Exemptions (PTE 98-13 and PTE 98-14), to the extent relevant. These conditions would include that the yield supplement agreement must be denominated in U.S. dollars, the agreement must not be leveraged, any changes in these conditions must be subject to the consent of the Trustee, and the counterparty must be subject to the same eligibility requirements as an interest rate swap counterparty.

E. Pre-Funding Accounts

While in many cases all of the receivables to be held in the Issuer are transferred to the Issuer on or prior to the Closing Date,[17] it is also common for other transactions to be structured using a Pre-Funding Account and/or a Capitalized Interest Account as described below. If pre-funding is used, some portion of the receivables will be transferred after the Closing Date during an interim Pre-Funding Period. The Pre-Funding Period for any Issuer will be defined as the period beginning on the Closing Date and ending on the earliest to occur of: (i) the date on which the amount on deposit in the Pre-Funding Account is less than a specified dollar amount, (ii) the date on which an event of default occurs under the related Pooling and Servicing Agreement[18] or (iii) the date which is the later of three months or ninety days after the Closing Date. If pre-funding is used, cash sufficient to purchase the receivables to be transferred after the Closing Date will be transferred to the Issuer by the Sponsor or originator on the Closing Date. During the Pre-Funding Period, such cash and temporary investments, if any, made therewith will be held in a Pre-Funding Account and used to purchase the additional receivables, the characteristics of which will be substantially similar to the characteristics of the receivables

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[17] The Department is of the view that the term "Issuer" under the Underwriter Exemptions would include an Issuer: (a) the assets of which, although all specifically identified by the Sponsor or originator as of the Closing Date, are not all transferred to the Issuer on the Closing Date for administrative or other reasons but will be transferred to the Issuer shortly after the Closing Date, or (b) with respect to which Securities are not purchased by plans until after the end of the Pre-Funding Period at which time all receivables are contained in the Issuer.

[18] The minimum dollar amount is generally the dollar amount below which it becomes too uneconomical to administer the Pre-Funding Account. An event of default under the Pooling and Servicing Agreement generally occurs when: (i) a breach of a covenant or a breach of a representation and warranty concerning the Sponsor, the Servicer or certain other parties occurs which is not cured, (ii) there occurs a failure to make required payments to securityholders or (iii) the Servicer becomes insolvent.

transferred to the Issuer on the Closing Date. Certain specificity and monitoring requirements described below will be met which will be disclosed in the Pooling and Servicing Agreement and/or the prospectus[19] or private placement memorandum.

For a transaction involving an Issuer using pre-funding, on the Closing Date, a portion of the offering proceeds will be allocated to the Pre-Funding Account generally in an amount equal to the excess of: (i) the principal amount of Securities being issued over (ii) the principal balance of the receivables being transferred to the Issuer on such Closing Date. In certain transactions, the aggregate principal balance of the receivables intended to be transferred to the Issuer may be larger than the total principal balance of the Securities being issued. In these cases, the cash deposited in the Pre-Funding Account will equal the excess of the principal balance of the total receivables intended to be transferred to the Issuer over the principal balance of the receivables being transferred on the Closing Date.

On the Closing Date, the Sponsor transfers the receivables to the Issuer in exchange for the Securities. The Securities are then sold to an Underwriter for cash or to the securityholders directly if the Securities are sold through a placement agent. The cash received by the Sponsor from the securityholders (or the Underwriter) from the sale of the Securities issued by the Issuer in excess of the purchase price for the receivables and certain other Issuer expenses, such as underwriting or placement agent fees and legal and accounting fees, constitutes the cash to be deposited in the Pre-Funding Account. Such funds are either held in the Issuer and accounted for separately, or are held in a sub-account or sub-trust. In either event, these funds are not part of assets of the Sponsor.

Generally, the receivables are transferred at par value, unless the interest rate payable on the receivables is not sufficient to service both the interest rates to be paid on the Securities and the transaction fees (i.e., servicing fees, Trustee fees and fees to credit support providers). In such cases, the receivables are sold to the Issuer at a discount, based on an objective, written, mechanical formula which is set forth in the Pooling and Servicing Agreement and agreed upon in advance between the Sponsor, the Rating Agency and any credit support provider or other Insurer. The proceeds payable to the Sponsor from the sale of the receivables transferred to the Issuer may also be reduced to the extent they are used to pay transaction costs. In addition, in certain cases, the Sponsor may be required by the Rating Agencies or credit support providers to set up Issuer reserve accounts to protect the securityholders against credit losses.

The exemptive relief provided under the 1997 Amendment for pre-funding is limited so that the percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered (the Pre-Funding Limit), does not exceed 25% effective for transactions occurring on or after May 23, 1997 and did not exceed 40% effective for transactions occurring on or after January 1, 1992, but prior to May 23, 1997. The Pre-Funding Limit (which may be expressed as a ratio or as a stated percentage or as a combination thereof) will be specified in the prospectus or the private placement memorandum.

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[19] References to the term "prospectus" herein shall include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

Any amounts paid out of the Pre-Funding Account are used solely to purchase receivables and to support the interest rate payable on the Securities (as explained below). Amounts used to support the interest rate are payable only from investment earnings and are not payable from principal. However, in the event that, after all of the requisite receivables have been transferred into the Issuer, any funds remain in the Pre-Funding Account, such funds will be paid to the securityholders as principal prepayments. Upon termination of the Issuer, if no receivables remain in the Issuer and all amounts payable to the securityholders have been distributed, any amounts remaining in the Issuer would be returned to the Sponsor.

A dramatic change in interest rates on the receivables held in an Issuer using a Pre-Funding Account would be handled as follows. If the receivables (other than those with adjustable or variable rates) had already been originated prior to the Closing Date, no action would be required as the fluctuations in market interest rates would not affect the receivables transferred to the Issuer after the Closing Date. In contrast, if interest rates fall after the Closing Date, receivables originated after the Closing Date will tend to be originated at lower rates, with the possible result that the receivables will not support the interest rate payable on the Securities. In such situations, the Sponsor could sell the receivables into the Issuer at a discount and more receivables will be used to fund the Issuer in order to support the interest rate. In a situation where interest rates drop dramatically and the Sponsor is unable to provide sufficient loans at the requisite interest rates, the pool of receivables would be closed. In this latter event, under the terms of the Pooling and Servicing Agreement, the securityholders would receive a repayment of principal from the unused cash held in the Pre-Funding Account. In transactions where the interest rates payable on the Securities are variable or adjustable, the effects of market interest rate fluctuations are mitigated. In no event will fluctuations in interest rates payable on the receivables affect the interest rate payable on fixed rate Securities.

The cash deposited into the Issuer and allocated to the Pre-Funding Account is invested in certain permitted investments (see below), which may be commingled with other accounts of the Issuer. The allocation of investment earnings to each Issuer account is made periodically as earned in proportion to each account's allocable share of the investment returns. As Pre-Funding Account investment earnings are required to be used to support (to the extent authorized in the particular transaction) the amounts of interest payable to the securityholders with respect to a periodic distribution date, the Trustee is necessarily required to make periodic, separate allocations of the Issuer's earnings to each Issuer account, thus ensuring that all allocable commingled investment earnings are properly credited to the Pre-Funding Account on a timely basis.

F. The Capitalized Interest Account

In certain transactions where a Pre-Funding Account is used, the Sponsor and/or originator may also transfer to the Issuer additional cash on the Closing Date, which is deposited in a Capitalized Interest Account and used during the Pre-Funding Period to compensate the securityholders for any shortfall between the investment earnings on the Pre-Funding Account and the interest rate payable on the Securities.

The Capitalized Interest Account is needed in certain transactions since the Securities are supported by the receivables and the earnings on the Pre-Funding Account, and it is unlikely that

the investment earnings on the Pre-Funding Account will equal the interest rates payable on the Securities (although such investment earnings will be available to pay interest on the Securities). The Capitalized Interest Account funds are paid out periodically to the securityholders as needed on distribution dates to support the interest rate. In addition, a portion of such funds may be returned to the Sponsor from time to time as the receivables are transferred into the Issuer and the need for the Capitalized Interest Account diminishes. Any amounts held in the Capitalized Interest Account generally will be returned to the Sponsor and/or originator either at the end of the Pre-Funding Period or periodically as receivables are transferred and the proportionate amount of funds in the Capitalized Interest Account can be reduced. Generally, the Capitalized Interest Account terminates no later than the end of the Pre-Funding Period. However, there may be some cases where the Capitalized Interest Account remains open until the first date distributions are made to securityholders following the end of the Pre-Funding Period.

In other transactions, a Capitalized Interest Account is not necessary because the interest paid on the receivables exceeds the interest payable on the Securities at the applicable interest rate and the fees payable by the Issuer. Such excess is sufficient to make up any shortfall resulting from the Pre-Funding Account earning less than the interest rate payable on the Securities. In certain of these transactions, this occurs because the aggregate principal amount of receivables exceeds the aggregate principal amount of Securities.

G. Pre-Funding Account and Capitalized Interest Account Payments and Investments

Pending the acquisition of additional receivables during the Pre-Funding Period, it is expected that amounts in the Pre-Funding Account and the Capitalized Interest Account will be invested in certain permitted investments or will be held uninvested. Pursuant to the Pooling and Servicing Agreement, all permitted investments must mature prior to the date the actual funds are needed. The permitted types of investments in the Pre-Funding Account and Capitalized Interest Account are 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 on the investment has been rated) in one of the three highest generic rating categories by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. (S&P's); Moody's Investors Service, Inc. (Moody's); Fitch Ratings (Fitch); DBRS Limited; or DBRS, Inc.; or any successors thereto (each a Rating Agency or collectively, the Rating Agencies) as set forth in the Pooling and Servicing Agreement and as required by the Rating Agencies. The credit grade quality of the permitted investments is generally no lower than that of the Securities. The types of permitted investments will be described in the Pooling and Servicing Agreement.

The ordering of interest payments to be made from the Pre-Funding Account and Capitalized Interest Accounts is pre-established and set forth in the Pooling and Servicing Agreement. The only principal payments which will be made from the Pre-Funding Account are those made to acquire the receivables during the Pre-Funding Period and those distributed to the securityholders in the event that the entire amount in the Pre-Funding Account is not used to acquire receivables. The only principal payments which will be made from the Capitalized Interest Account are those made to securityholders if necessary to support the Security interest

rate or those made to the Sponsor either periodically as they are no longer needed or at the end of the Pre-Funding Period when the Capitalized Interest Account is no longer necessary.

H. The Characteristics of the Receivables Transferred During the Pre-Funding Period

In order to ensure that there is sufficient specificity as to the representations and warranties of the Sponsor regarding the characteristics of the receivables to be transferred after the Closing Date during the Pre-Funding Period:

1. All such receivables will meet the same terms and conditions for eligibility as those of the original receivables used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency. However, the terms and conditions for determining the eligibility of a receivable may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;[20]

2. The transfer of the receivables acquired during the Pre-Funding Period will not result in the Securities receiving a lower credit rating from the Rating Agency upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

3. The weighted average annual percentage interest rate (the average interest rate) for all of the receivables in the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points ("bps") lower than the average interest rate for the receivables which were transferred to the Issuer on the Closing Date;

4. 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 Issuer activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the receivables in the Issuer or the holder of a security interest in the receivables, will enforce all the rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act.

In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to receivables that were acquired as of the Closing

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[20] In some transactions, the Insurer and/or credit support provider may have the right to veto the inclusion of receivables, even if such receivables otherwise satisfy the underwriting criteria. This right usually takes the form of a requirement that the Sponsor obtain the consent of these parties before the receivables can be included in the Issuer. The Insurer and/or credit support provider may, therefore, reject certain receivables or require that the Sponsor establish certain Issuer reserve accounts as a condition of including these receivables. Virtually all Issuers which have Insurers or other credit support providers are structured to give such veto rights to these parties. The percentage of Issuers that have Insurers and/or credit support providers, and accordingly feature such veto rights, varies.

Date, the Applicant represents that for transactions occurring on or after May 23, 1997,[21] the characteristics of the subsequently acquired receivables will either be 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 Agencies, the Underwriter and the Trustee) stating whether or not the characteristics of the additional receivables acquired after the Closing Date conform to the characteristics of the receivables 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 receivables which were transferred as of the Closing Date.

Each prospectus, private placement memorandum and/or Pooling and Servicing Agreement will set forth the terms and conditions for eligibility of the receivables to be held by the Issuer as of the related Closing Date, as well as those to be acquired during the Pre-Funding Period, which terms and conditions will have been agreed to by the Rating Agencies which are rating the applicable Securities as of the Closing Date. Also included among these conditions is the requirement that the Trustee be given prior notice of the receivables to be transferred, along with such information concerning those receivables as may be requested. Each prospectus or private placement memorandum will describe the amount to be deposited in, and the mechanics of, the Pre-Funding Account and will describe the Pre-Funding Period for the Issuer.

I. Parties to the Transactions

The originator of a receivable is the entity that initially lends money to a borrower (Obligor), such as a homeowner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a Sponsor. Originators of receivables held by the Issuer will be entities that originate receivables in the ordinary course of their business including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each Issuer may hold assets of one or more originators. The originator of the receivables may also function as the Sponsor or Servicer.

The Sponsor will be one of three entities: (i) a special-purpose or other corporation unaffiliated with the Servicer, (ii) a special-purpose or other corporation affiliated with the Servicer, or (iii) the Servicer itself. Where the Sponsor is not also the Servicer, the Sponsor's role will generally be limited to acquiring the receivables to be held by the Issuer, establishing the Issuer, designating the Trustee, and assigning the receivables to the Issuer.

The Trustee of a Trust (or the Issuer, if it is not a Trust) is the legal owner of the obligations held by the Issuer and would hold a security interest in the collateral securing such obligations. The Trustee is also a party to or beneficiary of all the documents and instruments

[21] May 23, 1997, was the date the proposed 1997 Amendment to the Underwriter Exemption was published in the FEDERAL REGISTER.

transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of securityholders, including those rights arising in the event of default by the servicer.

Generally, the Trustee will be an independent entity. However, the Trustee may be affiliated with the Underwriter of the Securities issued by the Issuer[22] but it will be unrelated to the Sponsor or the Servicer or any other member of the Restricted Group or their affiliates. The Applicant represents that the Trustee will be a substantial financial institution or trust company experienced in trust activities. The Trustee receives a fee for its services, which will be paid by the Servicer, Sponsor or out of the Issuer's assets. The method of compensating the Trustee will be specified in the Pooling and Servicing Agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the Securities.

The rights and obligations of the Indenture Trustee are no different than those of the Trustee of an Issuer which is a Trust. The Indenture Trustee is obligated to oversee and administer the activities of all of the ongoing parties to the transaction and possesses the authority to replace those entities, sue them, liquidate the collateral and perform all necessary acts to protect the interests of the debt holders. If debt is issued in a transaction, there may not be a pooling and servicing agreement. Instead, there is a sales agreement and servicing agreement (or these two agreements are sometimes combined into a single agreement). The agreement(s) set(s) forth, among other things, the duties and responsibilities of the parties to the transaction relating to the administration of the Issuer. The Indenture Trustee is often a party to these agreements. At a minimum, the Indenture Trustee acknowledges its rights and responsibilities in these agreements or they are contractually set forth in the indenture agreement pursuant to which the Indenture Trustee is appointed.

The Servicer of an Issuer administers the receivables on behalf of the securityholders. The Servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and transferred to an Issuer, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of Securities. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local Subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central Master Servicer who collects payments from the local Subservicers and pays them to securityholders.

A Servicer's default is treated in the same manner whether or not the Issuer is a Trust. The original Servicer is replaced. The entity replacing the Servicer varies from transaction to transaction. In certain cases, it may be the Trustee (or Indenture Trustee if the Issuer is not a Trust) or may be a third party satisfactory to the Rating Agencies. In addition, there are transactions where the Trustee or Indenture Trustee will assume the Servicer's responsibilities on

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[22] See the 2002 Amendment, which permits the Trustee to be an Affiliate of the Underwriter of the securities.

a temporary basis until the permanent replacement takes over. In all cases, the replacement entity must be capable of satisfying all of the duties and responsibilities of the original Servicer and must be an entity that is satisfactory to the Rating Agencies.

As noted above, the Underwriter Exemptions currently require that the Trustee not be an Affiliate of any member of the Restricted Group, other than an Underwriter. Thus, if a Servicer of receivables held by an Issuer which has issued Securities in reliance upon the Underwriter Exemptions (or an Affiliate thereof) merges with or is acquired by (or acquires) the Trustee of such Trust (or an Affiliate thereof), exemptive relief would cease to be available under the Underwriter Exemptions. This condition will not be considered to be violated for transactions occurring on or after January 1, 1998, merely by reason of a Servicer becoming an Affiliate of the Trustee as the result of a merger or acquisition between or among the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that: (i) such Servicer ceases to be an Affiliate of the Trustee no later than six months after the date such Servicer became an Affiliate of the Trustee; and (ii) such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee.

The Underwriter will be a registered broker-dealer that acts as Underwriter or placement agent with respect to the sale of Securities. Public offerings of Securities are generally made on a firm commitment or agency basis. Private placement of Securities may be made on a firm commitment or agency basis. It is anticipated that the lead or co-managing Underwriters will make a market in Securities offered to the public.

In some cases, the originator and servicer of receivables to be held by an Issuer and the Sponsor of the Issuer (though they themselves may be related) will be unrelated to the Underwriter. In other cases however, Affiliates of the Underwriter may originate or service receivables held by an Issuer or may sponsor an Issuer.

J. Security Price, Interest Rate and Fees

In some cases, the Sponsor will obtain the receivables from various originators or other secondary market participants pursuant to existing contracts with such originators or other secondary market participants under which the Sponsor continually buys receivables. In other cases, the Sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of Securities. In other cases, the Sponsor will originate the receivables itself.

As compensation for the receivables transferred to the Issuer, the Sponsor receives Securities representing the entire beneficial interest in the Issuer and/or debt Securities representing the Issuer's obligations to debt securityholders, or the cash proceeds of the sale of such Securities. If the Sponsor receives Securities from the Issuer, the Sponsor sells some or all of these Securities for cash to investors or securities underwriters.

The price of the Securities, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the interest rate payable on the Securities in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of the underlying receivables, and expectations as to the likelihood of timely payment.

The interest rate payable on the Securities is equal to the interest rate on receivables included in the Issuer minus a specified servicing fee.[23] This rate is generally determined by the same market forces that determine the price of a Security. The price of a Security and its interest, or coupon, rate, together determine the yield to investors. If an investor purchases a Security at less than par, that discount augments the stated interest rate; conversely, a Security purchased at a premium yields less than the stated coupon.

As compensation for performing its servicing duties, the Servicer (who may also be the Sponsor or an Affiliate thereof, and receive fees for acting as Sponsor) will retain the difference between payments received on the receivables held by the Issuer and payments (payable at the interest rate) to securityholders, except that in some cases a portion of the payments on the receivables may be paid to a third party, such as a fee paid to a provider of credit support. The Servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the Servicer and the time they are due to the Issuer (which time is set forth in the Pooling and Servicing Agreement). The Servicer typically will be required to pay the administrative expenses of servicing the Issuer, including in some cases the Trustee's fee, out of its servicing compensation.

The Servicer is also compensated to the extent it may provide credit enhancement to the Issuer or otherwise arranges to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the income received on the receivables in the Issuer in excess of the interest rate or paid in a lump sum at the time the Issuer is established.

The Servicer may be entitled to retain certain administrative fees paid by a third party, usually the Obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the Servicer will be set forth or referred to in the Pooling and Servicing Agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the Securities.

Payments on receivables held by the Issuer may be made by Obligors to the Servicer at various times during the period preceding any date on which interest payments to the Issuer are

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[23] The interest rate payable on Securities representing interests in Issuers holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

due. In some cases, the Pooling and Servicing Agreement may permit the Servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the Servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the payment date on the Securities. Commingled payments may not be protected from the creditors of the Servicer in the event of the Servicer's bankruptcy or receivership. In those instances when payments from receivables are held in non-interest bearing accounts or are commingled with the Servicer's own funds, the Servicer is required to deposit these payments by a date specified in the Pooling and Servicing Agreement into an account from which the Issuer makes payments to securityholders.

The Underwriter will receive a fee in connection with the underwriting or private placement of Securities. In a firm commitment underwriting, this fee would normally consist of the difference between what the Underwriter receives for the Securities that it distributes and what it pays the Sponsor for those Securities. In a private placement, the fee normally takes the form of an agency commission paid by the Sponsor. In a best efforts underwriting in which the Underwriter would sell Securities in a public offering on an agency basis, the Underwriter would receive an agency commission rather than a fee based on the difference between the price at which the Securities are sold to the public and what it pays the Sponsor. In some private placements, the Underwriter may buy Securities as principal, in which case its compensation would be the difference between what the Underwriter receives for the Securities and what it pays the Sponsor for these Securities.

K. Purchase of Receivables by the Servicer

The Applicant represents that as the principal amount of the receivables held by an Issuer is reduced by payments, the cost of administering the Issuer generally increases, making the servicing of the receivables prohibitively expensive at some point. Consequently, the Pooling and Servicing Agreement generally provides that the Servicer may purchase the receivables remaining in the Issuer when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually between 5 and 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the Pooling and Servicing Agreement and will be at least equal to either: (1) the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the Servicer, or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of an Issuer which is not a REMIC.

L. Designated Transactions

The Proposed 2000 Amendment, 65 FR 51454, at 51468, addressed the request for relief submitted by Morgan Stanley & Co. Incorporated with input from members of The Bond Market Association (the 2000 Applicant) for the offering of Designated Transactions, certain investment-grade mortgage-backed securities (MBS) and asset-backed securities (ABS) which are either senior or subordinated, and/or in certain cases, permit the Issuer to hold receivables

with loan-to-value property ratios (LTV ratios) in excess of 100%. The Department provided limited relief for high LTV loans as acceptable assets of the Issuer only in residential and/or home equity transactions where such loans are secured by collateral whose fair market value on the Closing Date of the securitization transaction is at least equal to 80% of the sum of the outstanding principal balance due under the loan which is held as an asset of the Issuer and that of other loans if any, of higher priority (whether or not held by the Issuer) which are secured by the same collateral. This modification also addressed the situation where a residential or home equity pool of assets contains a de minimis number of undercollateralized loans.

Additional safeguards for high LTV receivables included the conditions that: (i) the rights and interests evidenced by the Securities issued in such Designated Transactions involving residential and/or home equity transactions with high LTV loans are not subordinated to the rights and interests evidenced by Securities of the same Issuer, and (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories.

The 2000 Applicant believed that it was appropriate at that time for the Department to provide relief for three principal reasons. First, that such ABS/MBS had proven to be extremely safe investments with superior credit performance and investment return. Defaults on investment-grade ABS/MBS had occurred in only isolated instances, despite significant down-market cycles experienced during the financial history of such securities. In addition, comparably rated corporate bonds had historically experienced more downgrades and a much greater number of defaults. Second, allowing a broader range of ABS/MBS to be purchased by Plan investors as an alternative to corporate bonds would be beneficial to Plan participants and their beneficiaries because it allows greater diversification of investments by plans without sacrificing the safety and credit quality of those investments. It also would give Plan investors the flexibility of being able to structure a portfolio of fixed income securities with varying maturities and cash flow characteristics that can be tailored to the unique requirements of each Plan. Third, most ABS/MBS, unlike corporate bonds whose performance is dependent on the financial condition of one obligor, constitute interests in a discrete pool of financial assets which can be evaluated by Plan fiduciaries who have available to them a large body of historical data as to the performance of various types of ABS/MBS issued by many different issuers. Fiduciaries would also be able to monitor the performance of the pool of assets supporting payments on the ABS/MBS on a contemporaneous basis, as investors are given monthly reports on collections, account balances, credit support levels and the status of the receivables. All of these points were discussed in greater detail in the Proposed 2000 Amendment.

III. Rating Agencies

A. Ratings

The Securities in transactions which are not Designated Transactions will have received one of the three highest generic ratings available from a Rating Agency. Insurance or other credit support (such as surety bonds, letters of credit, guarantees or overcollateralization) will be obtained by the Sponsor to the extent necessary for the Securities to attain the desired rating. The amount of this credit support is set by the Rating Agencies at a level that is typically a multiple of the worst historical net credit loss experience for the types of obligations included in

the Issuer. For information on how the ratings on a class of Securities are an evaluation by the Rating Agency of the credit, structural and legal risks of a transaction, which is made to help predict the probability of an investor receiving timely payment of interest and payment of principal by the maturity date of the Securities, see the section on the rating process in the Proposed 2000 Amendment, 65 FR 51454, at 51470.

In support for the requested extension of relief to subordinated ABS/MBS and high LTV receivables, the 2000 Applicant noted that the Department already had permitted securities with ratings of 'A' or better to be eligible for relief under the Underwriter Exemptions, although, in particular transactions, the credit quality of the borrowers who are obligated on the loans held as Trust assets may be less than A.[24] Many securities issued in securitization transactions receive 'AAA' ratings even if the borrowers on the loans have B and C credit. This risk is addressed by requiring greater credit support using conservative stress tests. The 2000 Applicant asserted that subordinated securities and higher LTV ratio collateral for transactions in those rating and asset categories already approved by the Department would be equally as protective of plan investors as those transactions currently permitted with non-subordinated and lower LTV ratios. Additionally, that granting this relief would also address the anomaly which existed where an 'A' rated senior security was eligible for exemptive relief, but an 'AAA' rated subordinated security or a senior security issued by a Trust with less than fully secured loans was not. The 2000 Applicant believed that the ratings quantify the credit risk of a transaction at various rating levels, and any deficiencies in the credit quality of the assets, the credit of the borrowers, the strength of the parties to the transaction or the structure are factored into the credit support requirements, with the result that every rating of the same letter designation represents the same credit quality of a security without regard to the particular features of any single transaction.

The 2000 Applicant stated that the need for flexibility is nowhere better exemplified than in the inclusion of subordinated securities in the type of securities eligible for exemptive relief. Transactions in the 1980s typically did not feature investment-grade subordinated securities. In contrast, the market has now evolved to the point where ABS/MBS offerings typically include multiple tranches of senior and subordinated investment-grade securities. In common market terminology, in transactions where there are two or more subordinated classes of securities, 'AAA' rated ABS/MBS classes are described as "senior" classes, 'AA' through 'BBB' subordinated classes are described as "mezzanine" classes, and sub-investment-grade classes are described as "subordinated" classes. In other transactions, the 'AAA' and 'AA' classes may be referred to as senior, and the 'BBB' class or classes may be referred to as either mezzanine or subordinated, depending on the number of classes and the structure. In contrast, before the 2000 Amendment to the Underwriter Exemptions, all classes of ABS/MBS below the most senior 'AAA' class are regarded as subordinated.

The subordination of a security, while factored into the evaluation made by the Rating Agencies in their assessment of credit risk, is not indicative of whether a security is more or less

[24] The 2000 Applicant noted that borrowers are frequently categorized by originators as being of A, B, C or D credit quality, although other designations may be used.

safe for investors. In fact, there are 'AAA' rated subordinated securities.[25] Subordination is simply another form of credit support. The Rating Agencies, after determining the level of credit support required to achieve a given rating level, are essentially indifferent as to how these credit support requirements are implemented – whether through subordination or other means. If subordination is used, however, the subordinated class will have no greater credit risks or fewer legal protections in comparison with other credit-supported classes that possesses the same rating.

According to the 2000 Applicant, there is much benefit to plan investors in having subordinated securities eligible for exemptive relief. First, credit support provided through third-party credit providers is more expensive than an equal amount of credit support provided through subordination. As a result, the ability to use subordinated tranches to provide credit support for the more senior classes (which may or may not themselves be subordinated) creates economic savings for all the parties to the transaction which, in turn, can allow greater returns to investors. In addition, if the credit rating of a third-party credit support provider is downgraded, the rating of the securities is also downgraded. Second, the yields available on subordinated securities are often higher than those paid on comparably rated non-subordinated securities because investors expect to receive higher returns for subordinated securities. Third, subordinated securities are usually paid after other more senior securities, which results in their having longer terms to maturity. This is appealing to many investors who are looking for medium-term fixed income investments to diversify their portfolios. The combination of these factors benefits investors by making available securities which can provide higher yields for longer periods. It should be noted that as the rating of a security generally addresses the probability of all interest being timely paid and all principal being paid by maturity under various stress scenarios, the Rating Agencies are particularly concerned with the ability of the pool to generate sufficient cash flow to pay all amounts due on subordinated tranches, and several features of the credit support mechanisms discussed below are designed to protect subordinated classes of securities.

The 2000 Applicant observed that corporate bonds may be purchased by benefit plan investors without triggering prohibited transactions pursuant to a number of prohibited transaction class exemptions based on the identity of the plan investor or the fiduciary making the investment decision on behalf of the plan (Investor-Based Exemptions).[26] Equity investments in any type of corporate stocks (which can be highly speculative and have certainly experienced significant losses) are also not restricted by the prohibited transaction rules because of the operating company exception under the Plan Asset Regulation, set forth at 29 CFR § 2510.3-101(c).

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[25] For example, a transaction may have two classes of 'AAA' rated securities and one is subordinated to the other. The subordinated class would be required to have more credit support to qualify for the 'AAA' rating than the more senior 'AAA' rated class.

[26] These exemptions include (a) PTE 84-14, regarding transactions negotiated by qualified professional asset managers; (b) PTE 90-1, regarding investments by insurance company pooled separate accounts; (c) PTE 91-38, regarding investments by bank collective investment funds; (d) PTE 95-60, regarding investments by insurance company general accounts; and (e) PTE 96-23, regarding investments determined by in house asset managers.

The 2000 Applicant believed that investment-grade ABS/MBS are an attractive investment alternative to plan fiduciaries. This is because in most ABS/MBS transactions, credit risk is spread across many Obligors instead of just one corporate borrower as would be the case with the issuance of a corporate bond. At least one reason for this is that if the Obligor on a corporate bond defaults, the bond holder will not be paid in full, whereas in a securitization, even if a number of the underlying obligations go into default, the holder of an investment-grade security is still likely to receive payment because of the size of the asset pool and/or credit support features of the transaction. In addition, the returns on ABS/MBS are generally higher than those paid on corporate debt instruments in comparable rating categories in order to compensate investors for prepayment risk (i.e., the risk that an investor may receive a return of the principal it invested earlier than anticipated).

The 2000 Applicant believed that allowing a greater proportion of ABS/MBS to be eligible for relief under the Underwriter Exemptions is of considerable benefit to plan participants and their beneficiaries because it increases the access plans have to fixed income investments with high credit quality as an alternative to corporate bonds and other forms of investments. Plan fiduciaries have available to them a significant amount of statistical data as to the historical performance of ABS/MBS by asset type, investment rating and originator which can assist them in evaluating the pool of assets being securitized. Plan investors are also able to contemporaneously monitor the performance of ABS/MBS because they are provided periodic reports in which they receive, in general, the following information: the amount of principal and source of principal (e.g., from regular loan principal payments, prepayments or reserve accounts), the amount of interest, the status of the payments on the underlying mortgages (e.g., are any 30, 60 or 90 days in arrears) and the status of the credit support (e.g., overcollateralization levels and reserve account balances).

B. Rating Agencies' Due Diligence with Respect to Parties Involved in Transactions

The Applicant states that the due diligence performed by the Rating Agencies with respect to the parties to the transaction, such as the Sponsor, Servicer, Trustee and Insurer, and their requirements regarding these parties are generally common to all securitizations and are more fully described in the Proposed 2000 Amendment at 65 FR 51472.

The Servicer is required to service the receivables held by an Issuer. The Rating Agencies, therefore, perform a thorough evaluation of the Servicer as part of their evaluation of the general credit risk of a particular transaction. A complete review of the Servicer is conducted beginning with its formation.

The evaluation of the Servicer usually involves an on-site visit, including a meeting with management to discuss procedures, methodology, past history and future financial outlook. High-quality servicing provides investor protection which is required in order for a high rating of the Securities and, conversely, low-quality servicing could lower a rating.

The Servicer will usually be in the asset servicing business and may, therefore, have responsibility for the assets of many securitization transactions. Often operating efficiencies require that payments be made to one source and then be allocated to the individual Issuers. This central collection feature causes short-term commingling of assets. Accordingly, unless the

Servicer is highly rated, the Rating Agencies will require the servicer to transfer all collections it receives in the course of its acting as a servicer for different issuers to segregated accounts for each issuer which are held at highly rated banks within two to three days of receipt. The Rating Agencies also examine the effect that bankruptcy or other insolvency would have on the Servicer's ability to service the loans or advance funds to pay securityholders or pay other required fees.

As part of its servicing responsibilities, the Servicer may also be required to provide two payment support features to the securityholders. The first is a liquidity facility or monthly advance requirement, and the second is a "compensating interest" feature. The overall credit quality of the Servicer affects the Servicer's ability to perform these functions. Accordingly, if a Servicer provides financial support, the Rating Agencies prefer that such Servicer have a rating which is not lower than the rating to be assigned to the Securities. If the Servicer's rating is lower, additional protections may be required, such as requiring the Servicer to obtain a surety bond, letter of credit or other rated credit support for its financial support.

Where advancing is required, the Servicer is generally required to advance funds to the Issuer in an amount equal to delinquent payments of interest and, in some transactions principal, to the extent that the Servicer believes that these amounts may be recovered from subsequent payments and collections. If an Obligor is late in making payments, the Servicer will advance the funds to the Issuer. The Servicer is entitled to a return of these funds from future collections. The Servicer is essentially making an interest-free loan to the Issuer, but it is the Issuer that bears the ultimate risk of loss. An alternative to Servicer advancing is an advance claims payment provision. An advance claims payment provision is an insurance policy that guarantees timeliness of payments to the securityholders. In addition, the Rating Agencies require errors and omissions insurance in at least the amount of the maximum cash balance anticipated to be in the Issuer's accounts held by the Servicer, Issuer, paying agent or other agent covering potential losses arising from errors and omissions of officers, directors and employees of such transaction participants to the extent they have access to Issuer funds.

When an Obligor on a mortgage loan or other prepayable asset makes a prepayment (either full or partial) on the obligation, interest is only required to be paid that month up until the date of the prepayment, but the securityholder is entitled to a full month's interest on that loan. The Servicer may be required to fund the difference between a full month's interest on such prepaid loan and the interest actually received from the Obligor. The Servicer is generally only required to make such compensating interest payments in amounts that will not exceed its servicing compensation for that month.

Transaction documents will provide for the appointment of a successor Servicer if the original Servicer is deemed unable to perform its required duties. Typically, a Trustee with an acceptable rating may act as a back-up Servicer by assuming an obligation to perform the servicing function in the event of a default by the Servicer. However, a Servicer is not permitted to resign voluntarily until a replacement is appointed. Servicing compensation is also set at a level so that a successor Servicer will be adequately compensated for assuming such servicing responsibilities. Transaction documentation may also allow the Servicer to subcontract some or all of its servicing obligations to qualified Subservicers. While these Subservicers may perform the actual servicing work on a selected portion of the pool of assets, the Servicer remains

responsible for the ultimate performance of the servicing activities and is liable for any failure to adequately perform the required servicing duties. Prior to the transfer of servicing responsibilities to a successor Servicer and prior to a merger or consolidation affecting the Servicer, the parties to the transaction must obtain the Rating Agency's written confirmation that the rating of the rated Securities in effect immediately prior to the transfer of servicing responsibilities will not be qualified, downgraded or withdrawn as a result of such resignation, merger or other transfer. Typically, a Servicer may voluntarily resign only upon a determination that the performance of its servicing duties under the servicing agreement is no longer permissible under applicable law and appointment by the Trustee or securityholders of, and acceptance by, a successor Servicer.

A Servicer may be forced to resign by the Trustee or securityholders if the continuation of the Servicer's servicing responsibilities would result in the qualification, downgrade or withdrawal of the rating assigned to the Securities or in the event of a default of the Servicer's obligations under the Pooling and Servicing Agreement.

The Servicer will be responsible for preparing periodic reports on the performance of the pool of assets containing such information as: beginning principal balance, ending principal balance, the allocation of payments received between interest and principal, scheduled principal payments, prepayments received, delinquencies and status of various categories of delinquent accounts (e.g., number of accounts 30-59 days, 60-89 days and 90 or more days delinquent), defaults, foreclosures, if any, and other relevant information for the related Trustee. The Trustee will utilize this data in preparing the reports to securityholders.

The Trustee is also examined by the Rating Agencies to ensure that credit problems of the Trustee do not affect the Issuer. Monies received by the Issuer from the Servicer must be immediately deposited into segregated accounts earmarked for the Issuer so that no commingling occurs in the hands of the Trustee. If these funds are to be invested, they only may be invested in instruments that have been rated at a level specified by the Rating Agency as acceptable for the rating given to such Securities (a "Rating Condition"). Transaction documentation will specify a list of permitted investments acceptable to the applicable Rating Agencies. Typical examples of permitted investments include the following: (a) direct obligations or obligations guaranteed by the United States or an agency or instrumentality thereof; (b) demand or time deposits, federal funds or bankers' acceptances issued by banks or trust companies that are subject to federal and/or state banking authorities (subject to the Rating Condition or FDIC insurance); (c) repurchase obligations with respect to (a) and (b) above; (d) discount or interest-bearing Securities issued by United States corporations that meet the applicable Rating Condition; (e) commercial paper meeting the applicable Rating Condition; and (f) money market funds or common trust funds that meet the applicable Rating Condition.

The Trustee must be capable of performing the duties of the Servicer in case the Servicer cannot perform its duties and a successor has not been appointed. Transaction documentation will usually specify minimum capital and surplus requirements for a Trustee and any successor. As with the Servicer, adequate compensation for the services performed by the Trustee will be provided for in the governing documents. The Trustee is examined for its ability to administer transactions; its ability to assume successor Servicer responsibilities (or hire another entity to do

so); its plan to assume successor servicing, if necessary, and whether its computer systems are compatible with the Servicer's systems.

In transactions using third-party credit support, the rating of Securities normally can be no higher than that of the claims-paying ratings of the credit support provider. For this reason, selection of an insurance company to provide advance claims payment insurance, Security or bond insurance, pool insurance, mortgage insurance or special hazard insurance is an important element in the structuring of a securitization transaction. In assessing the credit of mortgage insurance companies, the Rating Agencies make a number of determinations as part of their review. The review includes a determination of standing with the applicable state insurance commission, adequacy of surplus and contingency reserves, historic underwriting performance and operating profitability, quality of investment portfolio, quality in management and internal control and secondary support, such as reinsurance policies. Similar factors are considered in the assessment of the claims-paying ability of Security or bond insurance providers.

C. Types of Credit Support

Credit support consists of two general varieties: external credit support and internal credit support. The Applicant notes that the choice of the type of credit support depends on many factors. Internal credit support which is generated by the operation of the Issuer is preferred because it is less expensive than external credit support which must be purchased from outside third parties. In addition, there are a limited number of appropriately rated third-party credit support providers available. Further, certain types of credit support are not relevant to certain asset types. For example, there is generally little or no excess spread available in residential or CMBS transactions because the interest rates on the obligations being securitized are relatively low. Third, the Ratings Agencies may require certain types of credit support in a particular transaction. In this regard, the selection of the types and amounts of the various kinds of credit support for any given transaction are usually a product of negotiations between the Underwriter of the securities and the Ratings Agencies. For example, the Underwriter might propose using excess spread and subordination as the types of credit support for a particular transaction and the Rating Agency might require cash reserve accounts funded up front by the Sponsor, excess spread and a smaller sized subordinated tranche than that proposed by the Underwriter. In addition, market forces can affect the types of credit support. For example, there may not be a market for subordinated tranches because the transaction cannot generate sufficient cash flow to pay a high enough interest rate to compensate investors for the subordination feature, or the market may demand an insurance wrap on a class of securities before it will purchase certain classes of securities. All of these considerations interact to dictate which particular combination of credit support will be used in a particular transaction.

1. External Credit Support - In the case of external credit support, credit enhancement for principal and interest repayments is provided by a third party so that if required collections on the pooled receivables fall short due to greater than anticipated delinquencies or losses, the credit enhancement provider will pay the securityholders the shortfall. Examples of

such external credit support features include: insurance policies from 'AAA' rated monoline[27] insurance companies (referred to as "wrapped" transactions), corporate guarantees, letters of credit and cash collateral accounts. In the case of wrapped or other credit supported transactions, the Insurer or other credit provider will usually take a lead role in negotiating with the Sponsor concerning levels of overcollateralization and selection of receivables for inclusion into the pool as it is the Insurer or credit provider that will bear the ultimate risk of loss. As mentioned above, one disadvantage of insurance, corporate guarantees and letters of credit is that they are relatively expensive in comparison with other types of credit support. Also, if the credit rating of the insurance company or other credit provider is downgraded, the rating of the Securities is correspondingly downgraded because the Rating Agencies will only rate the Securities as highly as the credit rating of the credit support provider. In any event, credit support providers require that each class of Securities they insure be "shadow rated" no lower than 'BBB.' A shadow rating is the rating that the Securities would have received from the Rating Agency if the class of Securities had not been wrapped, and the Rating Agency will provide a letter addressed solely to the credit support provider verifying such rating. However, there are only a handful of 'AAA' monoline insurance providers, and investors do not want to have too high a concentration of Securities which are backed by such Insurers. There are also few providers of letters of credit or corporate guarantees that have sufficiently high long-term debt credit ratings. These disadvantages are some of the reasons why subordination is often used as an alternative form of credit support. Cash collateral accounts include reserve accounts which are funded, usually by the Sponsor, on the Closing Date and are available to cover principal and/or interest shortfalls as provided in the documents.

2. Internal Credit Support - Internal credit support relies upon some combination of utilization of excess interest generated by the receivables, specified levels of overcollateralization and/or subordination of junior classes of Securities. Transactions that look almost exclusively to the underlying pooled assets for cash payments (or "senior/subordinated" transactions) will contain multiple classes of Securities, some of which bear losses prior to others and, therefore, support more senior Securities. A subordinate Security will absorb realized losses from the asset pool, and have its principal amount "written down" to zero, before any losses will be allocated to the more senior classes. In this way, the more senior classes will receive higher rating classifications than the more subordinate classes. However, the Rating Agencies require cash flow modeling of all senior/subordinated structures. These cash flows must be sufficient so that all rated classes, including the subordinated classes, will receive timely payment of interest and ultimate repayment of principal by the maturity date. The cash flow models are tested assuming a variety of stressed prepayment speeds, declining weighted average interest payments and loss assumptions. Other structural mechanisms to assure payment to subordinated classes are to allow collections held in the reserve account for the next payment date to be used if necessary to pay current interest to the subordinated class or to create a separate interest liquidity reserve. The collections held in the reserve account are from principal and interest paid on the underlying mortgages or other receivables held in the Issuer and are not from the securities

[27] The term "monoline" is used to describe such insurance companies because writing these types of insurance policies is their sole business activity.

issued by the Issuer.[28] Also, some structures allow both principal and interest to be applied to all payments to securityholders, and in others, principal can be used to pay interest to the subordinate tranches.

Interest which is received but is not required to make monthly payments to securityholders (or to pay servicing or other administrative fees or expenses) can be used as credit support. This excess interest is known as "excess spread" or "excess servicing" ("Excess Spread") and may be paid out to holders of certain Securities, returned to the Sponsor or used to build up overcollateralization or a loss reserve. The credit given to Excess Spread is conservatively evaluated to ensure sufficient cash flow at any one point in time to cover losses. The Rating Agencies reduce the credit given to Excess Spread as credit support to take into account the risk of higher coupon loans prepaying first, higher than expected total prepayments, timing mismatching of losses with Excess Spread collections and the amounts allowed to be returned to the Sponsor once minimum overcollateralization targets are met (thereby reducing the amounts available for credit support).

"Overcollateralization" is the difference between the outstanding principal balance of the pool of assets and the outstanding principal balance of the Securities backed by such pool of assets. This results in a larger principal balance of underlying assets than the amount needed to make all required payments of principal to investors. In all senior/subordinated transactions, the requisite level of overcollateralization and the amount of principal that may be paid to holders of the more subordinated Securities before the more senior Securities are retired (since once such amounts are paid, they are unavailable to absorb future losses) is determined by the Rating Agencies and varies from transaction to transaction, depending on the type of assets, quality of the assets, the term of the Securities and other factors.

The senior/subordinated structure often combines the use of subordinated tranches with overcollateralization that builds over time from the application of excess interest to pay principal on more senior classes. This is often referred to as a "turbo" structure. The credit enhancement for each more senior class is provided by the aggregate dollar amount of the respective subordinated classes, plus overcollateralization that results from the payment of principal to the more senior classes using excess spread prior to payment of any principal to the more subordinated classes. As overcollateralization grows, the pool of loans can withstand a larger

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[28] A collections reserve account is established for almost all transactions to hold interest and principal payments on the mortgages or receivables as they are collected until the necessary amounts are paid to securityholders on the next periodic distribution date. In some transactions, the Rating Agencies or other interested parties may require, in order to protect the interests of the securityholders, that excess interest in amount(s) equal to a specified number of future period anticipated collections be retained in the collection account. This protects both senior and subordinated securityholders in situations where there are shortfalls in collections on the underlying obligations because it provides an additional source of funds from which these securityholders can be paid their current distributions before the holders of the residual or more subordinated securities receive their periodic distributions, if any. Accordingly, any reference to "collections" from principal and interest paid on the mortgages is intended to describe such excess interest or principal not required to cover current payments to the senior and subordinated class eligible to be purchased by plans. Thus, this mechanism is not harmful to the interests of senior securityholders.

dollar amount of losses without resulting in losses on the senior Securities. This also has the effect of increasing the amount of funds available to pay the more subordinated classes as an ever-decreasing portion of the principal cash flow is needed to pay the more senior classes. Excess interest is used to pay down the more senior Security balances until a specific dollar amount of overcollateralization is achieved. This is referred to as the overcollateralization target amount required by the Rating Agencies. Typically, the targeted amount is set to ensure that even in a worst-case loss scenario commensurate with the assigned rating level, all securityholders, including holders of subordinated classes, will receive timely payment of interest and ultimate payment of principal by the applicable maturity date. In these transactions, the targeted amount is usually set as a percentage of the original pool balance. It may be reduced after a fixed number of years after the Closing Date, subject to the satisfaction of certain loss and delinquency triggers. These triggers ensure that overcollateralization continues to be available if pool performance begins to deteriorate. In a senior/subordinated structure, every investment-grade class (whether or not subordinated) is protected by either a lower rated subordinated class or classes or other credit support.

D. Provision of Credit Support through Servicer Advancing

In some cases, the Master Servicer, or an Affiliate of the Servicer, may provide credit support to the Issuer (i.e., act as an Insurer). In these cases, the Servicer will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the Obligors, (b) from the credit support provider (which may be the Master Servicer or an Affiliate Servicer) or, (c) in the case of an Issuer that issues subordinated Securities, from amounts otherwise distributable to holders of subordinated Securities, and the Master Servicer will advance such funds in a timely manner. When the Servicer is a provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the Trustee, or on its own initiative on behalf of the Trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the Servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as Insurer. Moreover, a Master Servicer typically can recover advances either from the provider of credit support or from the future payments on the affected receivables.

If the Master Servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the Trustee would be required and would be able to enforce the securityholders' rights as both a party to the Pooling and Servicing Agreement and the owner of the Trust estate where the Issuer is a Trust (or as the holder of the security interest in the receivables), including rights under the credit support mechanism. Therefore, the Trustee, who is independent of the Servicer, will have the ultimate right to enforce the credit support arrangement.

When a Master Servicer advances funds, the amount so advanced is recoverable by the Master Servicer out of future payments on receivables held by the Issuer to the extent not covered by credit support. However, where the Master Servicer provides credit support to the Issuer, there are protections, including those described below, in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines

proportionally with the decrease in the principal amount of the obligations held by the Issuer as payments on receivables are passed through to investors. These protective safeguards include:

1. There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

2. The Master Servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The Pooling and Servicing Agreement will require the Master Servicer to follow its normal servicing guidelines and will set forth the Master Servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

3. As frequently as payments are due on the receivables held by the Issuer, as set forth in the Pooling and Servicing Agreement (typically monthly, quarterly or semi-annually), the Master Servicer is required to report to the independent Trustee the amount of all payments which are past due more than a specified number of days and the amount of all Servicer advances, along with other current information as to collections on the assets and draws upon the credit support. Further, the Master Servicer is required to deliver to the Trustee annually a certificate of an executive officer of the Master Servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the Servicer has fulfilled all of its obligations under the Pooling and Servicing Agreement or, if the Master Servicer has defaulted under any of its obligations, specifying any such default. The Master Servicer's reports are reviewed at least annually by independent accountants to ensure that the Master Servicer is following its normal servicing standards and that the Master Servicer's reports conform to the Master Servicer's internal accounting records. The results of the independent accountant's review are delivered to the Trustee; and

4. The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the Issuer, whether due to Servicer advances or any other cause. Once the floor amount has been reached, the Servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed-dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the Issuer, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed-dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

IV. Remaining Provisions

A. Description of Designated Transactions

The Applicant requests relief for senior and/or subordinated investment-grade securities issued by Issuers with respect to a limited number of asset categories: motor vehicles, residential/home equity, manufactured housing and CMBS. The 2000 Applicant provided the Department with detailed, separate profiles of a typical transaction for each asset category. Each profile in the Proposed 2000 Amendment at 65 FR 51476 describes specifically how each type of

transaction generally is structured, the due diligence that the Rating Agencies conduct before assigning a rating to a particular class of such securities, the calculations that are performed to determine projected cash flows, loss frequency and loss severity and the manner in which credit support requirements are determined for each rating class. The motor vehicle, residential/home equity, manufactured housing and commercial ABS/MBS transactions, as described in this section are collectively be referred to as "Designated Transactions"[29] and these profiles are incorporated into this Tentative Authorization by reference to the Proposed 2000 Amendment.

Each of the four types of Designated Transactions was already encompassed within the preexisting asset categories. Specifically:

(i) Automobile and other motor vehicle ABS would principally fall within category III.B.(1)(d) obligations that are secured by motor vehicles or equipment but could also be covered under category III.B.(1)(a) secured consumer receivables or III.B.(1)(b) secured credit investments between business entities, depending on the factual situation.

(ii) Home equity and residential ABS/MBS would fall within categories III.B.(1)(a) which specifically refers to home equity loans and III.B.(1)(c) which specifically refers to single-family residential real property.

(iii) Manufactured housing would fall within category III.B.(1)(a) if the manufactured housing is considered to be personal property under local law, or within category III.B.(1)(c) if the manufactured housing is considered real property under local law.

(iv) CMBS would fall within category III.B.(1)(c) which specifically refers to multi-family residential and commercial real property.

B. Disclosure

In connection with the original issuance of Securities, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the Securities, including:

1. Information concerning the payment terms of the Securities, the rating of the Securities, any material risk factors with respect to the Securities and the fact that principal amounts left in the Pre-Funding Account at the end of the Pre-Funding Period will be paid to securityholders as a repayment of principal.

2. A description of the Issuer as a legal entity and a description of how the Issuer was formed by the seller/Servicer or other Sponsor of the transaction;

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[29] The modifications requested with respect to the type of securitization vehicle (i.e., both Trust and non Trust) and type of security (both debt and equity securities) or the use of interest rate swaps or yield supplement agreements with notional principal amounts are applicable to both Designated Transactions and all other types of asset categories currently permitted under the Underwriter Exemptions.

3. Identification of the independent Trustee;

4. A description of the receivables contained in the Issuer, including the types of receivables, the diversification of the receivables, their principal terms and their material legal aspects, and a description of any Pre-Funding Account used or Capitalized Interest Account used in connection with a Pre-Funding Account;

5. A description of the Sponsor and Servicer;

6. A description of the Pooling and Servicing Agreement, including a description of the Sponsor's principal representations and warranties as to the Issuer's assets, including the terms and conditions for eligibility of any receivables transferred during the Pre-Funding Period and the Trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; a description of permitted investments for any Pre-Funding Account or Capitalized Interest Account; identification of the servicing compensation and a description of any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the Trustee, and provided or made available to investors by the Issuer; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the Trustee's and the investors' remedies incident thereto;

7. A description of the credit support;

8. A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the Securities by a typical investor;

9. A description of the Underwriter's plan for distributing the Securities to investors;

10. Information about the scope and nature of the secondary market, if any, for the Securities; and

11. A statement as to the duration of any Pre-Funding Period and the Pre-Funding Limit for the Issuer.

Reports indicating the amount of payments of principal and interest are provided to securityholders at least as frequently as distributions are made to securityholders. Securityholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

In the case of an Issuer that offers and sells Securities in a registered public offering, the Issuer, the Servicer or the Sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although previously, some Issuers that offered Securities in a public offering filed quarterly reports on Form 10-Q and Annual Reports on Form 10-K, many Issuers obtained, by application to the Securities and Exchange Commission (SEC), relief from the requirement to file quarterly reports on Form 10-Q and a modification of the

disclosure requirements for annual reports on Form 10-K. If such relief was obtained, these Issuers normally continued to have the obligation to file current reports on Form 8-K to report material developments concerning the Issuer and the Securities and copies of the statements sent to securityholders.

After the adoption of Regulation AB (All ABS issuances commencing after December 31, 2005 were subject to the new regulatory requirements), the SEC adopted a new report, Form 10-D, which is a monthly reporting form that is specific to issuers of asset-backed securities. The Form 10-Q described in prior Underwriter Exemptions is no longer used in connection with issuances of asset-backed securities. In addition, issuers of asset-backed securities may be required to make filings on Form 8-K to report certain material developments concerning the issuer and the securities. While the SEC's interpretation of the periodic reporting requirements remains subject to change, periodic reports concerning an Issuer will be filed to the extent required under the Securities Exchange Act of 1934.

At or about the time distributions are made to securityholders, a report will be delivered to the Trustee as to the status of the Issuer and its assets, including underlying obligations. Such report will typically contain information regarding the Issuer's assets (including those purchased by the Issuer from any Pre-Funding Account), payments received or collected by the Servicer, the amount of prepayments, delinquencies, Servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the Servicer. Such report also will be delivered to or made available to the Rating Agency or Agencies that have rated the Securities.

In addition, promptly after each distribution date, securityholders will receive a statement prepared by the Servicer, paying agent or Trustee summarizing information regarding the Issuer and its assets. Such statement will include information regarding the Issuer and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

C. Secondary Market Transactions

It is the Applicant's normal policy to attempt to make a market for Securities for which it is lead or co-managing Underwriter, and it is the Applicant's intention to make a market for any Securities for which the Applicant is a lead or co-managing Underwriter. At times, the Applicant will facilitate sales by investors who purchase Securities if the Applicant has acted as agent or principal in the original private placement of the Securities and if such investors request the Applicant's assistance.

D. Coverage by PTE 95-60

The Department notes that this Tentative Authorization is substantially similar to the exemptions that are included within the meaning of the term "Underwriter Exemption" as it is defined in section V(h) of PTE 95-60, 60 FR 35925 at 35932 (July 12, 1995), a class exemption for certain transactions involving insurance company general accounts. PTE 95-60 includes relief for insurance company general accounts investing in asset-backed securities in accordance

with the conditions of the relevant Underwriter Exemption and "any other exemption providing similar relief to the extent that the Department expressly determines, as part of the proceeding to grant such exemption, to include the exemption within this definition." Since the Tentative Authorization requested by the Applicant is substantially similar to those specified in section V(h) of PTE 95-60, the Applicant requests the Department to take the actions contemplated by PTE 95-60 to extend the relief afforded by PTE 95-60 to transactions to be entered into pursuant to this request for Tentative Authorization.

V. Summary

In summary, the Applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

A. The Issuers contain "fixed pools" of assets. There is little discretion on the part of the Sponsor to substitute receivables contained in the Issuer once the Issuer has been formed;

B. In the case where a Pre-Funding Account is used, the characteristics of the receivables to be transferred to the Issuer during the Pre-Funding Period must be substantially similar to the characteristics of those transferred to the Issuer on the Closing Date thereby giving the Sponsor and/or originator little discretion over the selection process, and compliance with this requirement will be assured by the specificity of the characteristics and the monitoring mechanisms contemplated under the exemptive relief proposed. In addition, certain cash accounts will be established to support the Security interest rate and such cash accounts will be invested in short-term, conservative investments; the Pre-Funding Period will be of a reasonably short duration; a pre-funding limit will be imposed; and any Internal Revenue Service requirements with respect to pre-funding intended to preserve the passive income character of the Issuer will be met. The fiduciary of the plans making the decision to invest in Securities is thus fully apprised of the nature of the receivables which will be held in the Issuer and has sufficient information to make a prudent investment decision;

C. Securities in which plans invest will have been rated in one of the three highest generic rating categories (or four in the case of Designated Transactions) by a Rating Agency. The Rating Agency, in assigning a rating to such Securities, will take into account the fact that Issuers may hold interest rate swaps or yield supplement agreements with notional principal amounts or, in Designated Transactions, Securities may be issued by Issuers holding residential and home equity loans with LTV ratios in excess of 100%. Credit support will be obtained to the extent necessary to attain the desired rating;

D. Securities will be issued by Issuers whose assets will be protected from the claims of the Sponsor's creditors in the event of bankruptcy or other insolvency of the Sponsor, and both equity and debt securityholders will have a beneficial or security interest in the receivables held by the Issuer. In addition, an independent Trustee will represent the securityholders' interests in dealing with other parties to the transaction;

E. All transactions for which the Underwriter seeks exemptive relief will be governed by the Pooling and Servicing Agreement, the principal provisions of which are

described in the prospectus or private placement memorandum and which is made available to plan fiduciaries for their review prior to the plan's investment in Securities;

F. Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

G. The Underwriter has made, and anticipates that it will continue to make, a secondary market in Securities.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

1. The fact that a transaction is the subject of an authorization pursuant to PTE 96-62, as amended, does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the authorization does not apply, and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her 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 requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

2. Before individual exemptive relief may be authorized pursuant to PTE 96-62, as amended, the Department must find that the tentative authorization is administratively feasible, in the interest of the plans and their participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plans;

3. The tentative authorization, if finalized, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or final authorization is not dispositive of whether the transaction is in fact a prohibited transaction; and

4. The tentative authorization, if finalized, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption or authorization.