

the review of the operations and returns of the Accounts conducted by interim and permanent Advisory Councils for PRISA and PRISA II;

(8) The Valuation Policy Committee will meet at least quarterly and set valuation policy for the Accounts;

(9) The Valuation Management Firm will be responsible for retaining (and terminating) all appraisal firms which value the properties in the Accounts; reviewing all appraisals generated by such appraisal firms; and collecting, reviewing, and distributing any information needed by such appraisal firms to appraise the properties in the Accounts;

(10) In connection with the determination of enhanced return payments, no upward adjustment will be made by Prudential to the value reported by an external independent appraiser of any Property in PRISA and PRISA II without the concurrence of the Valuation Management Firm;

(11) The Plans invested in the Accounts who receive the enhanced return will incur no additional cost or risk in connection with the transaction;

(12) The transaction is subject to state insurance regulatory approvals;

(13) The calculation of the enhanced return involves a one-time determination of comparative investment returns based upon a recognized real estate industry index that can be readily reviewed and monitored for compliance in all applicable requirements;

(14) The comparative return calculation involves a relatively simple and objective comparison of readily available return information, which can be easily confirmed by the fiduciaries of the Plans invested in the Accounts and by the Department; and

(15) The Plans will receive the same treatment and proportional payment under the enhanced return as any other investor in PRISA and PRISA II.

#### *Notice to Interested Persons*

Those persons who may be interested in the pendency of the proposed exemption include fiduciaries, participants and beneficiaries of the Plans that are invested in one or both of the Accounts. However, it is represented that there are hundreds of thousands of participants in the Plans that invest in one or both of the Accounts. Because of the impracticality of providing notice to all such persons, Prudential proposes to give notice to interested persons by distributing the Notice of Proposed Exemption, as published in the **Federal Register**, together with a supplemental statement in the form set forth in the Department's regulations under 29

C.F.R. 2570.43(b)(2), to the contractholder on behalf of each of the Plans that was invested in PRISA or PRISA II, as of April 1, 1994. It is represented that these contractholders are generally the sponsors of the Plans or the trustees or administrators of the Plans. Distribution of notice will be effected by first-class mail, postage pre-paid, within fifteen (15) days of the date of publication of the Notice of Proposed Exemption in the **Federal Register**.

#### **FOR FURTHER INFORMATION CONTACT:**

Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

#### **First Hawaiian Bank Located Honolulu, HI**

[Application No. D-09877]

#### *Proposed Exemption*

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).<sup>6</sup>

#### *Section I. Exemption for In-Kind Transfer of Assets*

If the exemption is granted, the restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the in-kind transfer to any open-end investment company (the Fund or Funds) registered under the Investment Company Act of 1940 (the '40 Act) to which First Hawaiian Bank or any of its affiliates (collectively, the Bank) serves as investment adviser and may provide other services, of the assets of various employee benefit plans (the Plan or Plans) that are held in certain collective investment funds (the CIF or CIFs) maintained by the Bank or otherwise held by the Bank as trustee, investment manager, or in any other capacity as fiduciary on behalf of the Plans, in exchange for shares of such Funds, provided the following conditions are met:

(a) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, receives advance written notice of the

in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Fund and the disclosures described in paragraph (g) of Section II below.

(b) On the basis of the information described in paragraph (g) of Section II below, the Second Fiduciary authorizes in writing the in-kind transfer of assets of the Plans in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, and the fees received by the Bank in connection with its services to the Fund. Such authorization by the Second Fiduciary to be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(c) No sales commissions are paid by the Plans in connection with the in-kind transfers of asset of the Plans or the CIFs in exchange for shares of the Funds.

(d) All or a pro rata portion of the assets of the Plans held in the CIFs or all or a pro rata portion of the assets of the Plans held by the Bank in any capacities as fiduciary on behalf of such Plans are transferred in-kind to the Funds in exchange for shares of such Funds.

(e) The Plans or the CIFs receive shares of the Funds that have a total net asset value equal in value to the assets of the Plans or the CIFs exchanged for such shares on the date of transfer.

(f) The current market value of the assets of the Plans or the CIFs to be transferred in-kind in exchange for shares is determined in a single valuation performed in the same manner and at the close of business on the same day, using independent sources in accordance with the procedures set forth in Rule 17a-7b (Rule 17a-7) under the '40 Act, as amended from time to time or any successor rule, regulation, or similar pronouncement and the procedures established by the Funds pursuant to Rule 17a-7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day preceding the date of the Plan or CIF transfers determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

(g) Not later than 30 business days after completion of each in-kind transfer of assets of the Plans or the CIFs in

<sup>6</sup>For purposes of this exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

exchange for shares of the Funds, the Bank sends by regular mail to the Second Fiduciary, who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, a written confirmation that contains the following information:

(1) The identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a-7(b)(4) under the '40 Act;

(2) The price of each of the assets involved in the transaction; and

(3) The identity of each pricing service or market maker consulted in determining the value of such assets; and

(h) No later than 90 days after completion of each in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Funds, the Bank sends by regular mail to the Second Fiduciary, who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, a written confirmation that contains the following information:

(1) The number of CIF units held by each affected Plan immediately before the conversion (and the related per unit value and the aggregate dollar value of the units transferred); and

(2) The number of shares in the Funds that are held by each affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

(i) The conditions set forth in paragraphs (d), (e), (f), (o), (p), (q) and (r) of Section II below are satisfied.

#### Section II. Exemption for Receipt of Fees From Funds

If the exemption is granted, the restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) through (F) of the Code shall not apply to the proposed receipt of fees by the Bank from the Funds for acting as the investment adviser, custodian, sub-administrator, and other service provider for the Funds in connection with the investment in the Funds by the Plans for which the Bank acts as a fiduciary provided that:

(a) No sales commissions are paid by the Plans in connection with purchases or sales of shares of the Funds and no redemption fees are paid in connection with the sale of such shares by the Plans to the Funds.

(b) The price paid or received by the Plans for shares in the Funds is the net asset value per share, as defined in

paragraph (e) of Section III, at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither the Bank nor an affiliate, including any officer or director purchases from or sells to any of the Plans shares of any of the Funds.

(d) As to each individual Plan, the combined total of all fees received by the Bank for the provision of services to the Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(e) The Bank does not receive any fees payable, pursuant to Rule 12b-1 under the '40 Act (the 12b-1 Fees) in connection with the transactions.

(f) The Plans are not sponsored by the Bank.

(g) A Second Fiduciary who is acting on behalf of each Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, receives in advance of the investment by the Plan in any of the Funds a full and detailed written disclosure of information concerning such Fund (including, but not limited to, a current prospectus for each portfolio of each of the Funds in which such Plan is considering investing and a statement describing the fee structure).

(h) On the basis of the information described in paragraph (g) of this Section II, the Second Fiduciary authorizes in writing the investment of assets of the Plans in shares of the Funds and the fees received by the Bank in connection with its services to the Funds. Such authorization by the Second Fiduciary is consistent with the responsibilities obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(i) The authorization, described in paragraph (h) of this Section II, is terminable at will by the Second Fiduciary of a Plan, without penalty to such Plan. Such termination will be effected by the Bank selling the shares of the Fund held by the affected Plan within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the termination form (the Termination Form), as defined in paragraph (i) of Section III below, or any other written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional

business day to complete such redemption.

(j) Plans do not pay any Plan-level investment management fees, investment advisory fees, or similar fees to the Bank with respect to any of the assets of such Plans which are invested in shares of any of the Funds. This condition does not preclude the payment of investment advisory fees or similar fees by the Funds to the Bank under the terms of an investment advisory agreement adopted in accordance with section 15 of the '40 Act or other agreement between the Bank and the Funds.

(k) In the event of an increase in the rate of any fees paid by the Funds to the Bank regarding any investment management services, investment advisory services, or fees for similar services that the Bank provides to the Funds over an existing rate for such services that had been authorized by a Second Fiduciary, in accordance with paragraph (h) of this Section II, the Bank will, at least 30 days in advance of the implementation of such increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the increase in fees) to the Second Fiduciary of each of the Plans invested in a Fund which is increasing such fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (i) of Section III below.

(l) In the event of an addition of a Secondary Service, as defined in paragraph (h) of Section III below, provided by the Bank to the Fund for which a fee is charged or an increase in the rate of any fee paid by the Funds to the Bank for any Secondary Service, as defined in paragraph (h) of Section III below, that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by the Bank for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Plan, in accordance with paragraph (h) of this Section II, the Bank will at least 30 days in advance of the implementation of such additional service for which a fee is charged or fee increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the additional service for which a fee is charged or the nature and amount of the increase in fees) to the Second Fiduciary

of each of the Plans invested in a Fund which is adding a service or increasing fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (i) of Section III below.

(m) The Second Fiduciary is supplied with a Termination Form at the times specified in paragraphs (k), (l), and (n) of this Section II, which expressly provides an election to terminate the authorization, described above in paragraph (h) of this Section II, with instructions regarding the use of such Termination Form including statements that:

(1) The authorization is terminable at will by any of the Plans, without penalty to such Plans. Such termination will be effected by the Bank redeeming shares of the Fund held by the Plans requesting termination within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the redemption of shares of such Plans cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption; and

(2) Failure by the Second Fiduciary to return the Termination Form on behalf of a Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees, if such Termination Form is supplied pursuant to paragraphs (k) and (l) of this Section II, and will result in the continuation of the authorization, as described in paragraph (h) of this Section II, of the Bank to engage in the transactions on behalf of such Plan.

(n) The Second Fiduciary is supplied with a Termination Form, annually during the first quarter of each calendar year, beginning with the first quarter of the calendar year that begins after the date the grant of this proposed exemption is published in the **Federal Register** and continuing for each calendar year thereafter; provided that the Termination Form need not be supplied to the Second Fiduciary, pursuant to paragraph (n) of this Section II, sooner than six months after such Termination Form is supplied pursuant to paragraphs (k) and (l) of this Section II, except to the extent required by said paragraphs (k) and (l) of this Section II to disclose an additional Secondary Service for which a fee is charged or an increase in fees.

(o)(1) With respect to each of the Funds in which a Plan invests, the Bank

will provide the Second Fiduciary of such Plan:

(A) At least annually with a copy of an updated prospectus of such Fund;

(B) Upon the request of such Second Fiduciary, with a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to the Bank; and

(2) With respect to each of the Funds in which a Plan invests, in the event such Fund places brokerage transactions with the Bank, the Bank will provide the Second Fiduciary of such Plan at least annually with a statement specifying:

(A) The total, expressed in dollars, brokerage commissions of each Fund's investment portfolio that are paid to the Bank by such Fund;

(B) The total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to the Bank;

(C) The average brokerage commissions per share, expressed as cents per share, paid to the Bank by each portfolio of a Fund; and

(D) The average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to the Bank.

(p) All dealings between the Plans and any of the Funds are on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same class of shares as the Plans.

(q) The Bank maintains for a period of 6 years the records necessary to enable the persons, as described in paragraph (r) of Section II below, to determine whether the conditions of this proposed exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the 6 year period; and

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

(r)(1) Except as provided in paragraph (r)(2) of this Section II and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in

paragraph (q) of Section II above are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service (the Service) or the Securities and Exchange Commission (the SEC);

(ii) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (r)(1)(ii) and (r)(1)(iii) of Section II shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

### Section III. Definitions

For purposes of this proposed exemption,

(a) The term "Bank" means First Hawaiian Bank and any affiliate of the Bank, as defined in paragraph (b) of this Section III.

(b) An "affiliate" of a person includes:

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

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

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

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

(d) The term "Fund or Funds" means any diversified open-end investment company or companies registered under the '40 Act for which the Bank serves as investment adviser, and may also provide custodial or other services as approved by such Funds.

(e) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term "relative" means a "relative" as that term is defined in

section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term "Second Fiduciary" means a fiduciary of a plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of the Bank (or is a relative of such persons);

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of the Bank (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Plan's investment manager/adviser, (ii) the approval of any purchase or redemption by the Plan of shares of the Funds, and (iii) the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of Section III above, shall not apply.

(h) The term "Secondary Service" means a service, other than an investment management, investment advisory, or similar service, which is provided by the Bank to the Funds, including but not limited to custodial, accounting, brokerage, administrative, or any other service.

(i) The term "Termination Form" means the form supplied to the Second Fiduciary, at the times specified in paragraphs (k), (l), and (n) of Section II above, which expressly provides an election to the Second Fiduciary to terminate on behalf of the Plans the authorization, described in paragraph (h) of Section II. Such Termination Form may be used at will by the Second Fiduciary to terminate such authorization without penalty to the Plans and to notify the Bank in writing to effect such termination by redeeming the shares of the Fund held by the Plans requesting termination within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at

the option of the Second Fiduciary, of written notice of such request for termination; provided that if, due to circumstances beyond the control of the Bank, the redemption cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption.

#### Summary of Facts and Representations

##### Description of the Parties

1. The parties or entities that are involved in the subject transactions are described as follows:

a. *The Bank* is state-chartered bank that is incorporated under the laws of Hawaii and maintains its principal office at 1132 Bishop Street, Honolulu, Hawaii. The Bank is a wholly-owned subsidiary of First Hawaiian, Inc., a Delaware holding company.

Over the past seventy years, the Bank and its corporate predecessors have provided asset management services to several types of accounts including personal trusts, guardianship and probate accounts, corporate assets portfolio accounts and employee benefit plans including HR-10 Plans. As of May 1, 1994, the Bank had total assets under management of approximately \$1.5 billion. The Bank serves as trustee with respect to the CIFs and as an investment adviser to the Fund portfolios described herein.

b. *The Plans* consist of retirement plans qualified under section 401(a) of the Code with respect to which the Bank serves or will serve as a trustee or investment fiduciary and that constitute "pension plans" as defined in section 3(2) of the Act and section 4975(e)(1) of the Code. The Plans do not include any plans that are sponsored by the Bank.<sup>7</sup>

c. *The CIFs* consist of separate investment portfolios of the First Hawaiian Bank Collective Investment Trust for Employee Benefit Trusts (the Collective Investment Trust) or similar investment trusts that may be established and maintained by the Bank. The Bank serves as trustee of the Collective Investment Trust.

As of June 30, 1993, the aggregate fair market value of the current CIFs maintained by the Bank was approximately \$165.3 million. Participation in the CIFs is limited to Plans and public retirement funds for which the Bank acts as trustee or co-trustee or agent for the trustee or trustees of such Plan or CIF.

The CIFs that will be involved initially in the subject transactions are the Equity Fund, the HR-10 Equity

Fund and the Pooled Fixed Income Fund.<sup>8</sup> These CIFs will be terminated immediately following the in-kind transfers.<sup>9</sup>

d. *The Funds* are separate portfolios of open-end investment companies registered under the '40 Act. The Funds currently consist of the Bishop Street Funds, a Massachusetts business trust that was established on May 25, 1994. The Bishop Street Funds constitute a no-load, open-end management investment company with four portfolios in existence. The existing Funds include the Equity Fund (corresponding to the Pooled Equity Fund and the HR-10 Equity Fund of the Collective Investment Trust) and the High-Grade Income Fund (corresponding to the Fixed Income Fund of the Collective Investment Trust).

The Bishop Street Funds will issue two classes of shares. Institutional Class A shares will be offered primarily to agency, fiduciary, custodial and advisory clients of the Bank. Retail Class B shares will be offered primarily to individuals. The Bishop Street Funds will be offered and sold exclusively through the use of prospectuses and other materials and will be offered and sold in full compliance with regulations of the SEC.

The Bank will serve as the investment adviser to each of the Bishop Street Funds. As the investment adviser, the Bank will make investment decisions with respect to the assets of each Fund and continuously review, supervise and administer each Fund's investment program. For investment advisory services rendered to the Funds, the Bank will receive an investment advisory fee. The Bishop Street Funds will pay separate fees for services provided to the Funds by the transfer agent, administrator and custodian, all of whom will not be affiliated with the Bank. Neither the Bank nor its affiliates will receive any 12b-1 fees from the Funds.

##### Description of the Transactions

2. Because the Bank recognizes that (a) in-kind transfers to Funds that the Bank services or advises of all or a *pro rata* portion of Plan assets in the CIFs or all or a *pro rata* portion of Plan assets

<sup>8</sup>The Pooled Equity Fund and the HR-10 Equity Fund principally invest in equity securities. The Pooled Fixed Income Fund invests primarily in fixed income securities or other tangible or intangible property or interests in either real or personal property.

<sup>9</sup>A fourth CIF, the Pooled Short-Term Fixed Income Fund, will be terminated at or prior to the time that the other CIFs are converted. At present, the only investor in this CIF is the Pooled Fixed Income Fund.

<sup>7</sup>The Department herein is not proposing relief for transactions afforded relief by Section 404(c) of the Act.

that the Bank otherwise manages, and (b) the approval process for additional services for which a fee is charged and fee increases by the Bank for these services may be outside the scope of Prohibited Transaction Exemption 77-4 (42 FR 18732, April 8, 1977), the Bank has requested relief for the transactions described in Sections I and II. Each of these transactions is discussed more fully herein. The proposed exemption is conditioned on the satisfaction of certain requirements and compliance with various general conditions which are also discussed below. It is the Bank's express intention that the description of these transactions and the conditions of the requested exemption with respect to such transactions will be applicable uniformly to the current Funds and to any of the other Funds for which the Bank serves as the investment advisor and in which the Plans invest.

#### In-Kind Transfers to Funds

3. The Bank has maintained CIFs in which the Plans have invested in accordance with requirements under Hawaiian banking law that apply to CIFs. The Bank has decided to terminate all current CIFs and to offer to the Plans participating in such CIFs appropriate interests in certain Funds as alternative investments. Because interests in CIFs generally must be liquidated or withdrawn to effect distributions, the Bank believes that the interests of the Plans invested in CIFs would be better served by investment in shares of the Funds which can be distributed in-kind. Also, the Bank believes that the Funds offer the Plans numerous advantages as pooled investment vehicles. In this regard, the Plans, as shareholders of a Fund, have the opportunity to exercise voting and other shareholder rights.

The Plans, as shareholders of the Funds, as mandated by the SEC, periodically receive certain disclosures concerning the Funds: (a) A copy of the prospectus which is updated annually; (b) an annual report containing audited financial statements of the Funds and information regarding such Funds' performance (unless such performance information is included in the prospectus of such Funds); and (c) a semi-annual report containing unaudited financial statements. In addition, at the option of the Funds, the Plans may receive other pertinent information.

With respect to the Plans, the Bank reports all transactions in shares of the Funds in periodic account statements provided the Second Fiduciary of each of the Plans. Further, the Bank maintains that the net asset value of the portfolios of the Funds can be

monitored daily from information available in newspapers of general circulation.

In order to avoid the potentially large brokerage expenses that would otherwise be incurred, the Bank proposes that from time to time it may be appropriate for an individual Plan for which the Bank serves as a fiduciary to transfer all or a *pro rata* share of its in-kind assets to any of the Funds in exchange for shares of such Funds. In this regard, for example, in the case of an in-kind exchange between an individual Plan whose portfolio consists of common stock, money market securities and real estate, and a Fund that, under its investment policy, invests only in common stock and money market securities, the exchange would involve all or a *pro rata* share of the common stock and money market securities held by the Plan, if such stock and securities are eligible for purchase by the Fund, and would not involve the transfer or exchange of the real estate holdings of such Plan. A Fund's eligible investments are set forth in its prospectus. No brokerage commission or other fees or expenses (other than customary transfer charges paid to parties other than the Bank or its affiliates) will be charged to the Plans or the CIFs in connection with the in-kind transfers of assets into the Funds and the acquisition of shares of the Funds by the Plans or the CIFs. Thus, the Bank has requested prospective relief for transactions which would involve: (a) The in-kind transfer by the CIFs of all or a *pro rata* portion of the assets of any of the Plans held in such CIFs to the Funds in exchange for shares of the Fund which subsequently are distributed to the Plans; or (b) the in-kind transfer of all or a *pro rata* portion of the assets of any of the Plans held by the Bank in any capacity as fiduciary on behalf of such Plans to the Funds in exchange for shares of such Funds; provided that conditions described in Section I above are satisfied.

The Bank maintains that the in-kind transfers of assets in exchange for shares of the Funds are ministerial transactions performed in accordance with pre-established objective procedures which are approved by the board of trustees of each Fund. Such procedures require that assets transferred to a Fund: (a) Are consistent with the investment objectives, policies, and restrictions of the corresponding portfolios of such Fund, (b) satisfy the applicable requirements of the '40 Act and the Code, and (c) have a readily ascertainable market value. In addition, any assets that are transferred will be liquid and will not be subject to

restrictions on resale. Assets which do not meet these requirements will be sold in the open market through an unaffiliated brokerage firm prior to any transfer in-kind. Further, prior to entering into an in-kind transfer, each affected Plan receives certain disclosures from the Bank and approves such transaction in writing.

Valuation of assets transferred in-kind to the Funds will be established by reference to independent sources. In this regard, for purposes of the transaction, it is represented that all assets transferred in-kind are valued in accordance with the valuation procedures described in Rule 17a-7 under the '40 Act, as amended from time to time or any successor rule, regulation, or similar pronouncement and the procedures established by the Funds pursuant to Rule 17a-7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day preceding the date of the Plan or CIF transfers determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

Further, the Bank represents that within 30 days of the completion of a transfer in-kind, it will provide to Plans written confirmation of the identity of each security valued under Rule 17a-7(b)(4), the price of each security, and the identity of each pricing service or market maker consulted in determining the value of the assets transferred. The securities subject to valuation under Rule 17(a)-7(b)(4) include all securities other than "reported securities," as the term is defined in Rule 11Aa3-1 under the Securities Exchange Act of 1934 (the '34 Act), or those quoted on the NASDAQ system or for which the principal market is an exchange.

The value of the assets transferred in-kind will be equal to the aggregate value of the corresponding portfolios shares of the Fund at the close of business on the date of the transaction. In this regard, it is represented that for all conversion transactions that occur after the date of this proposed exemption, the Bank, no later than 90 days after completion of each in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Funds, will mail to the Second Fiduciary a written confirmation of the

number of CIF units held by each affected Plan immediately before the conversion (and the related per unit value and the aggregate dollar value of the units transferred), and the number of shares in the Funds that are held by each affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

#### The Initial Exemption Transactions

4. The Bank has requested prospective exemptive relief, for the in-kind transfer to the Bishop Street Funds. At the time of such in-kind transfer, all of the assets of the three CIFs described above, which are maintained by the Bank and in which the Plans hold interests, will be transferred to the Bishop Street Funds which have investment objectives and policies substantially identical to those of the CIFs. At the same time, the three CIFs will be terminated and the assets of each, then consisting of shares in portfolios of the Bishop Street Funds, will be distributed in-kind to the Plans participating in such CIFs based on each Plan's *pro rata* share of the assets of the CIFs on the date of the transaction.

The Bank will provide to each affected Plan disclosures that announce the termination of the CIFs, summarize the transaction and otherwise comply with provisions of Section I of the exemption. Based on these disclosures, the Second Fiduciary from each affected Plan will approve in writing the transfer of the CIFs' assets to the corresponding portfolios of the Bishop Street Funds in exchange for shares of the Bishop Street Funds, and the receipt by the Bank of fees for services to the Bishop Street Funds. The assets of Plans that do not approve investment in the Bishop Street Funds will be withdrawn from the CIFs and held or invested in appropriate alternative investments in accordance with the terms of such Plans.

Prior to the transaction, the assets of the three CIFs will be reviewed to confirm that such are appropriate investments for the corresponding portfolios of the Bishop Street Funds into which such assets will be transferred. If any of the assets of the three CIFs are not appropriate for the Bishop Street Funds, the Bank intends to sell such assets in the open market through an unaffiliated brokerage firm prior to the transfer.

The assets transferred by the three CIFs to the Bishop Street Funds will consist entirely of cash and marketable securities. For purposes of the transfer in-kind, the value of the securities in each of the three CIFs will be determined based on market values as of the close of business on the last

business date prior to the transfer (the CIF Valuation Date). The values will be determined in a single valuation using the valuation procedures described in Rule 17a-7 under the '40 Act. In this regard, the "current market price" for specific types of CIF securities involved in the transaction will be determined as follows:

a. If the security is a "reported security" as the term is defined in Rule 11Aa3-1 under the 1934 Act, the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System) for the CIF Valuation Date; or if there are no reported transactions in the Consolidated System that day, the average of the highest independent bid and the lowest independent offer for such security (reported pursuant to Rule 11Ac1-1 under the '34 Act), as of the close of business on the CIF Valuation Date; or

b. If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange on the CIF Valuation Date; or if there is no reported transaction on such exchange that day, the average of the highest independent bid and lowest independent offer on such exchange as of the close of business on the CIF Valuation Date; or

c. If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest independent bid and lowest independent offer reported on Level 1 of NASDAQ as of the close of business on the CIF Valuation Date; or

d. For all other securities, the average of the highest independent bid and lowest independent offer as of the close of business on the CIF Valuation Date, determined on the basis of reasonable inquiry. For securities in this category, the Bank intends to obtain quotations from at least three sources that are either broker-dealers or pricing services independent of and unrelated to the Bank and, where more than one valid quotation is available, use the average of the quotations to value the securities, in conformance with interpretations by the SEC and practice under Rule 17a-7.

The securities received by the corresponding portfolios of the Bishop Street Funds will be valued by such portfolio for purposes of the transfer in the same manner and on the same day as such securities will be valued by the CIFs. The per share value of the shares of each portfolio of the Bishop Street Funds issued to the CIFs will be based on the corresponding portfolio's then current net asset value. As a result of the proposed procedure, the Bank expects that the aggregate value of the shares of the corresponding portfolio of the Bishop Street Funds issued to the CIFs to be equal to the value of the assets (cash and marketable securities) transferred to such portfolio as of the opening of business on next business day following the CIF Valuation Date. The Bank also expects the value of a

Plan's investment in shares of a corresponding portfolio of the Bishop Street Funds as of the opening of business on the date of the transaction will be equal to the value of such Plan's investment in the CIF as of the close of business on the last business day prior to the transaction.

Not later than 30 business days after completion of the transaction, the Bank will send by regular mail a written confirmation of the transaction to each affected Plan. Such confirmation will contain: (a) The identity of each security that is valued in accordance with Rule 17a7(b)(4), as described above; (b) the price of each such security for purposes of the transaction; and (c) the identity of each pricing service or market maker consulted in determining the value of such securities. In accordance with the conditions under Section I of the proposed exemption, similar procedures will occur upon any future in-kind exchanges between CIFs maintained by the Bank or Plans, and the Funds.

#### Receipt of Fees From Funds

5. Under certain conditions, PTE 77-4 permits the Bank to receive fees from the Funds under either of two circumstances: (a) Where a Plan does not pay any investment management, investment advisory, or similar fees with respect to the assets of such Plan invested in shares of a Fund for the entire period of such investment; or (b) where a Plan pays investment management, investment advisory, or similar fees to the Bank based on the total assets of such Plan from which a credit has been subtracted representing such Plan's *pro rata* share of such investment advisory fees paid to the Bank by the Fund. As such, it is represented that there are two levels of fees—those fees which the Bank charges to the Plans for serving as trustee with investment discretion or as investment manager (the Plan-level fees); and those fees the Bank charges to the Funds (the Fund-level fees) for serving as investment advisor, custodian, or service provider.

Plan-level investment management, investment advisory, or fees for similar services provided by the Bank are currently charged in the form of a single asset-based investment management fee. There is also a Plan-level trustee fee for basic administrative services provided by the Bank as well as other specific service fees, such as a cash "sweep" fee. Currently, the annual investment management fee for assets invested in the Pooled Equity Fund and the HR-10 Equity Fund is 0.60 percent of assets under management, based on the daily net asset value of the fund. The fee for

assets invested in the Pooled Fixed Income Fund is 0.40 percent of assets under management, based on the daily net asset value of the fund. Plan-level fees are subject to annual minimums for administration and management expressed as flat dollar amounts and administrative fees are subject to the application of certain "break points." In addition to the Plan-level fees for investment management, investment advisory, or similar services, a one-time fee (also a flat dollar amount) may be charged in connection with the establishment of an account for a Plan, and separate transaction fees may be charged for various administrative transactions, such as for example, a participant loan. Depending on the terms governing documents of the Plan, Plan-level fees are paid to the Bank either by the sponsor of the Plan or from the assets of the Plan. Plan-level fees for investment management, investment advisory or similar investment services will terminate immediately after the execution of the subject transactions described herein.

As mentioned above, the Bank may receive Fund-level fees. Such Fund-level fees can be divided into: (a) Fees paid to the Bank by a Fund for investment management, investment advisory, or similar services provided to such Fund, and (b) fees paid to the Bank for administrative, custodial, transfer, accounting, and other Secondary Services provided either to such Fund or to the distributor of shares of such Funds and its affiliates. The Bank is currently not paid any fees in this category from the Bishop Street Funds. The current fee arrangements between the Bank and the Bishop Street Funds provide for the Bank to receive fees from the Bishop Street Funds only for acting as investment adviser. This compensation paid to the Bank for investment advisory services is in accordance with agreements between the Bishop Street Funds and the Bank. In this regard, it is represented that the Bishop Street Funds' Trustees and the shareholders of the Bishop Street Funds approve the compensation that the Bank receives from the Bishop Street Funds. Also, the Bishop Street Funds' Trustees approve any changes in the compensation paid to the Bank for services rendered to the Bishop Street Funds.

With respect to Plans managed by the Bank that are invested in the Funds, although such Plans will no longer pay a Plan-level investment management fee to the Bank, a Plan-level fee will continue to be charged to the Plans for basic administrative services not

including investment management.<sup>10</sup> Such administrative services would include, among others, the Bank's acting as custodian of the assets of a Plan, maintaining the records of a Plan, preparing periodic reports concerning the status of the Plan and its assets, and accounting for contributions, benefit distributions, and other receipts and disbursements. These functions performed by the Bank on the Plan-level are separate and distinct from those performed on the Fund-level by the Bank.

The Bank will continue to receive Plan-level compensation from the Plans for investment management services provided with respect to assets of the Plans *not* invested in shares of any of the Funds. Since the Plan-level investment management fee for Plans investing in the Funds will terminate, there will be no credit to the Plans their *pro rata* share of the investment advisory fees paid at the Fund-level. Instead, the only compensation received by the Bank for investment advisory services will be that which is paid by the Funds to the Bank for such services rendered to such Funds. In addition, the Bank will retain fees for providing Secondary Services to the Funds.

The Bank believes that this proposed fee arrangement complies with PTE 77-4. However, there is one difference from PTE 77-4 requested by the Bank for which an exemption is required. In this regard, one of the requirements of PTE 77-4 has been that any change in any of the rates of fees would require prior written approval by the Second Fiduciary of the Plans participating in the Funds. The applicant maintains that where many Plans participate in a Fund, the addition of a service or any good faith increase in fees could not be implemented until written approval of such change is obtained from every Second Fiduciary. The Bank proposes an alternative which the Bank believes provides the basic safeguards for the Plans and is more efficient, cost effective, and administratively feasible than those contained in PTE 77-4.

In the event of an increase in the rate of any investment management fees,

<sup>10</sup>The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the fiduciaries of the Plans from the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions the fiduciaries of the Plans investing in the Funds that they have an ongoing duty under section 404 of the Act to monitor the services provided to the Plans to assure that the fees paid by the Plans for such services are reasonable in relation to the value of the services provided. Such responsibilities would include determinations that the services provided are not duplicative and that the fees are reasonable in light of the level of services provided.

investment advisory fees, or similar fees, the addition of a Secondary Service for which a fee is charged, or an increase in the fees for Secondary Services paid by the Funds to the Bank over an existing rate that had been authorized by the Second Fiduciary, the Bank will provide, at least 30 days in advance of the implementation of such additional service or fee increase, to the Second Fiduciary of the Plans invested in such Fund a written notice of such additional service or fee increase, (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the additional service or the nature and amount of the increase in fees). In this regard, such increase in fees for Secondary Services can result either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by the Bank for such fee over that which had been authorized by the Second Fiduciary of a Plan. The Bank believes that notice provided in this way will give the Second Fiduciary of each of the Plans adequate opportunity to decide whether or not to continue the authorization of a Plan's investment in any of the portfolios of the Funds in light of the increase in investment management fees, investment advisory fees, or similar fees, the addition of a Secondary Service for which a fee is charged, or the increase in fees for any Secondary Services. In addition, the Bank represents that such fee increase will be disclosed to the Second Fiduciaries in an amendment of or supplement to the Funds' prospectus or in the Funds' statement of additional information, to the extent necessary to comply with SEC disclosure requirements.<sup>11</sup>

<sup>11</sup>An increase in the amount of a fee for an existing Secondary Service (other than through an increase in the value of the underlying assets in the Funds) or the imposition of a fee for a newly-established Secondary Service shall be considered an increase in the rate of such Secondary Fee. However, in the event a Secondary Fee has already been described in writing to the Second Fiduciary and the Second Fiduciary has provided authorization for the amount of such Secondary Fee, and such fee was waived, no further action by the Bank would be required in order for the Bank to receive such fee at a later time. Thus, for example, no further disclosure would be necessary if the Bank had received authorization for a fee for custodial services from Plan investors and subsequently determined to waive the fee for a period of time in order to attract new investors but later charged the fee. However, reinstating the fee at an amount greater than previously disclosed would necessitate the Bank providing notice of the fee increase and a Termination Form.

#### Authorization Requirements for the Second Fiduciary

6. The written notice of an additional service for which a fee is charged or a fee increase, as described in Representation 5, will be accompanied by a Termination Form, as defined in paragraph (i) of Section III, and by instructions on the use of such form, as described in paragraph (l) of Section II, which expressly provide an election to the Second Fiduciaries to terminate at will any prior authorizations without penalty to the Plans. The Second Fiduciary will be supplied with a Termination Form annually during the first quarter of each calendar year, beginning with the first quarter of the calendar year that begins after the date the grant of this proposed exemption is published in the **Federal Register** and continuing for each calendar year thereafter, regardless of whether there have been any changes in the fees payable to the Bank or changes in other matters in connection with services rendered to the Funds. However, if the Termination Form has been provided to the Second Fiduciary in the event of an increase in the rate of any investment management fees, investment advisory fees, or similar fees, an addition of a Secondary Service for which a fee is charged, or an increase in any fees for Secondary Services paid by the Fund to the Bank, then such Termination Form need not be provided again to the Second Fiduciary until at least six months have elapsed, unless such Termination Form is required to be sent sooner as a result of another increase in any investment management fees, investment advisory fees, or similar fees, the addition of a Secondary Service for which a fee is charged, or an increase in any fees for Secondary Services.

The Termination Form will contain instructions regarding its use which will state expressly that the authorization is terminable at will by a Second Fiduciary, without penalty to any Plan, and that failure to return the form will be deemed to be an approval of the additional Secondary Service or the increase in the rate of any fees and will result in the continuation of all authorizations previously given by such Second Fiduciary. Termination by any Plan of authorization to invest in the Funds will be effected by the Bank redeeming the shares of the Fund held by the affected Plan by the close of business on the day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the Termination Form or any other

written notice of termination. If, due to circumstances beyond the control of the Bank, the redemption cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption.

The rates paid by each of the portfolios of the Funds to the Bank for services rendered may differ depending on the fee schedule for each portfolio and on the daily net assets in each portfolio. The investment advisory fees paid to the Bank by the Funds will be based on the different fee rates of each of the portfolios into which the assets of the Plans are allocated. For example, for services provided to the Equity Fund, the Bank receives from the Bishop Street Funds an annual fee of 0.40 percent based on the Fund's average daily net assets. For services provided to the High-Grade Income Fund, the Bank receives from the Bishop Street Funds an annual fee of 0.25 percent, based on the Fund's average daily net assets. The Bank proposes to allocate the assets of the Plans among the portfolios offered of the Bishop Street Funds and/or among any of the Funds under the terms of this proposed exemption.

The impact of the change in fee structures resulting from the exemptive transactions on the aggregate fees received by the Bank is difficult to determine, according to the applicant, because various factors and variables are unique to each Plan. These factors include the size of the Plan, the extent to which Plan assets are invested in the Funds, usage by the Plans of separate services provided by the Bank and the application of certain "break points" in the schedule of Plan-level fees. Further, the Bank notes that Fund size, the identity of the particular investment portfolio of the Fund into which the Plan assets are allocated and voluntary waivers by the Bank of Fund-level fees are likely to be different in each situation and may affect the aggregate amount of fees received by the Bank. In this regard, the Bank believes that, as to each individual Plan, the combined total of all Plan-level and Fund-level fees received by it for the provision of services to the Plans and to the Funds, respectively, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

#### Conditions for Exemption

7. If granted, this proposed exemption will be subject to the satisfaction of certain general conditions that will further protect the interests of the Plans. For example, the proposed transactions are subject to the prior authorization of a Second Fiduciary, acting on behalf of each of the Plans, who has been

provided with full written disclosure by the Bank. The Second Fiduciary will generally be the administrator, sponsor, or a committee appointed by the sponsor to act as a named fiduciary for a Plan.

With respect to disclosure, the Second Fiduciary of such Plan will receive advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Funds (including a current prospectus for each of the Funds and a statement describing the fee structure).

On the basis of the information disclosed, the Second Fiduciary will authorize in writing the investment of assets of a Plan in shares of the Funds in connection with the transactions set forth herein and the compensation received by the Bank in connection with its services to the Funds. Written authorization will extend to only those investment portfolios of the Funds with respect to which the Plan has received the written disclosures referred to above and which are specifically mentioned in such disclosure described above. Having obtained the authorization of the Second Fiduciary, the Bank will invest the assets of a Plan among the portfolios and in the manner covered by the authorization, subject to satisfaction of the other terms and conditions of this proposed exemption. However, the Bank will not invest assets of a Plan in any portfolio not specifically mentioned in the written disclosure and authorization described above. For example, if the written authorization of the Second Fiduciary covered only one of the portfolios then existing, the Bank could only invest the assets of such Plans in that one portfolio specifically authorized. Further, if a new portfolio were established under any of the Funds, the Bank could invest assets of a Plan in such new portfolio only after providing the required disclosures and obtaining from the Second Fiduciary a separate written authorization which specifically mentions the new portfolio.

In addition to the disclosures provided to the Plan prior to investment in any of the Funds, the Bank represents that it will routinely provide at least annually to the Second Fiduciary updated prospectuses of the Funds in accordance with the requirements of the '40 Act and the SEC rules promulgated thereunder. Further, the Second Fiduciary will be supplied, upon request, with a report or statement (which may take the form of the most recent financial report of such Funds, the current statement of additional information, or some other written

statement) which contains a description of all fees paid by the Fund.

The Bank does not now execute nor in the future intend to execute securities brokerage transactions for the investment portfolios of any of the Funds, except as and to the extent permitted by the '40 Act and applicable rules of the SEC. However, in the event the Bank ever performs brokerage services for which a fee is paid to the Bank by the investment portfolio of any of the Funds, the Bank represents that it will at least 30 days in advance of the implementation of such additional service provide a written notice which explains the nature of such additional brokerage service and the amount of the fees. Further, the Bank represents that it will provide at least annually to the Second fiduciary of any Plan that invests in such Funds with a written disclosure indicating (a) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid to the Bank by such Fund; (b) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to the Bank; (c) the average brokerage commissions per share, expressed as cents per share, paid to the Bank by each portfolio of a Fund; and (d) the average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to the Bank.

The receipt of fees, as described above, is generated in connection with the investment in the Funds by the Plans. These investments are the result of purchases of shares in the Funds and exchanges of assets of the Plans, including those in CIFs, for shares in the Funds.

With respect to such purchases, (a) the Plans and other investors will purchase or redeem shares in the Funds in accordance with standard procedures described in the prospectus for each portfolio of the Funds; (b) the Plans will pay no sales commissions or redemption fees in connection with purchase or redemption of shares in the Funds by the Plans; (c) the Bank will not purchase from or sell to any of the Plans shares of any of the Funds; and (d) the price paid or received by the Plans for shares of the Funds will be the net asset value per share at the time of such purchase or redemption and will be the same price as any other investor would have paid or received at that time. The value of the Bishop Street Funds' shares and the value of each Bishop Street Funds' portfolios are determined on a daily basis. In the case of the non-

money market portfolios, assets are valued at fair or market value, as required by Rule 2a-4 under the '40 Act. In the case of any money market portfolio, the assets are valued based on the amortized cost method authorized by SEC Rule 2a-7, in order to maintain a net asset value of \$1.00 per share. Both the money market portfolios and the non-money market portfolios determine the net asset value per share for purposes of pricing purchases and redemptions by dividing the value of all securities, determined by a method as set forth in the prospectus for each Bishop Street Fund portfolio, and other assets belonging to each of the portfolios, less the liabilities charged to each portfolio, by the number of each portfolio's outstanding shares.

Purchases and redemptions of shares in any of the Funds by the Plans may also occur in connection with daily automated cash "sweep" arrangements. However, agreement to such arrangement is not a condition for the Plan otherwise choosing to invest in shares of the Fund, nor will the reverse be required.

Under the automated cash "sweep" arrangement, a Plan may participate in the "sweep" program only with the initial written approval of the Second Fiduciary and only after certain disclosures have been provided by the Bank. If such approval is given, cash balances of the Plan held from time to time thereafter pending other investment or distribution are invested automatically in shares of the Bishop Street Funds Money Market Fund or other short-term investment vehicle selected by the Second Fiduciary on behalf of a Plan. The automated cash "sweep" arrangement would not involve shares of any non-money market portfolios.

After the Money Market Fund of the Bishop Street Funds has been selected by the Second Fiduciary on behalf of the Plan, otherwise uninvested cash down to the last \$1.00 balance of the Plans may be invested automatically on a nightly basis. The Bank has no discretion with respect to the timing of the "sweep" either into or out of the Bishop Street Funds. Under the automated "sweep" arrangement, the Bank's computerized cash management system automatically scans the accounts of the Plans, as of the end of each business day to determine whether such accounts have positive or negative net cash balances. Based on this information, the system automatically invests the case of the Plans having positive balances in shares of the Money Market Fund. In the case of a Plan having a negative cash balance, the

system automatically liquidates the Bishop Street Fund shares as necessary to eliminate such negative balance.

Plans may terminate their participation in the automated cash "sweep" arrangement and withdraw at any time by notifying the Bank. Such termination will be effected by the Bank redeeming the shares of the Bishop Street Funds held by the Plan requesting termination by the close of the business day following the date of receipt by the Bank, either by mail, hand delivery, facsimile, or other available means of written communication at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination. However, if due to circumstances beyond the control of the Bank, the redemption of shares of such Plan cannot be executed within one business day, the Bank would complete the redemption within one additional business day.

No fee, charge or penalty of any kind is charged in connection with a termination by a Plan of participation in the automated cash "sweep" arrangement in the Bishop Street Funds or in any of the Funds. The Bank currently charges a Plan-level cash sweep fee for sweep services in connection with the investment of cash balances in short-term investment vehicles managed by unaffiliated entities. This fee will be terminated for Plans that elect to use the Money Market Fund as their cash management vehicle. The Bank does not charge separate or additional fees to Plans in order to participate in the daily automated cash "sweep" arrangement through the Bishop Street Funds, nor is such additional compensation contemplated by the proposed exemption.<sup>12</sup>

<sup>12</sup>The Department in a letter, dated August 1, 1986, to Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, addressed the application of section 408(b)(2) of the Act to arrangements involving "sweep services." In that letter, the Department set forth several examples to illustrate various circumstances under which violations of section 406(b) of the Act would arise with respect to such arrangements. Conversely, the letter provided that, if a bank provides "sweep" services without the receipt of additional compensation or other consideration (other than reimbursement of direct expenses properly and actually incurred in the performance of such services), then the provision of "sweep" services by the bank would not, in itself, constitute a violation of section 406(b) of the Act. Moreover, including "sweep" services under a single fee arrangement for investment management services which is calculated as a percentage of the market value of the total assets under management would not, in itself, constitute an act described in section 406(b)(1), because the bank would not be exercising its fiduciary authority or control to cause a plan to pay an additional fee.

In addition, the letter also discusses the applicability of the statutory exemptions under

8. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Neither the Plans nor the CIFs will pay sales commissions or redemption fees in connection with the in-kind transfer of assets to the Funds in exchange for shares of the Funds or in connection with purchases or redemptions by the Plans of shares of the Funds, including purchases and redemptions handled through daily automated cash "sweep" arrangements.

(b) The Plans or the CIFs will receive shares of the Funds that are equal in value to the assets of the Plans or the CIFs exchanged for such shares, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures set forth in Rule 17a-7 under the '40 Act, as amended from time to time or any successor rule, regulation or similar pronouncement.

(c) Not later than 30 business days after completion of each in-kind transfer of assets in exchange for shares of the Funds, the Plans will receive written confirmation of the assets involved in the exchange which were valued in accordance with Rule 17a-7(b)(4), the price of such assets and the identity of the pricing service or market maker consulted.

(d) No later than 90 days after completion of each in-kind transfer of assets of the plans or the CIFs in exchange for shares of the Funds, the Bank will mail to the Second Fiduciary of each Plan, a written confirmation of the number of CIF units held by each affected Plan immediately before the conversion (and the related per unit value and the aggregate dollar value of the units transferred), and the number of shares in the Funds that are held by each affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

(e) The price that will be paid or received by the Plans for shares in the Funds is the net asset value per share at the time of the transaction and is the same price for the shares which would have been paid or received by any other investor for shares of the same class at that time.

(f) Neither the Bank nor an affiliate, including any officer or director will purchase from or sell to any of the Plans shares of any of the Funds.

(g) As to each individual Plan, the combined total of all fees received by the Bank for the provision of services to the Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(h) The Bank will not receive any 12b-1 Fees in connection with the proposed transactions.

(i) Prior to investment by a Plan in any of the Funds, in connection with transactions, the Second Fiduciary will receive a full and detailed written disclosure of information concerning such Fund.

(j) Subsequent to the investment by a Plan in any of the Funds, the Bank will provide the Plan, among other information, at least annually with an updated copy of the prospectus for each of the Funds in which the Plan invests.

(k) In the event such Fund places brokerage transactions with the Bank, the Bank will provide the Second Fiduciary of such Plan at least annually with a statement specifying the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to the Bank and to unrelated brokerage firms and the average brokerage commissions per share, expressed as cents per share, by each portfolio of a Fund paid to the Bank and to brokerage firms unrelated to the Bank.

(l) On the basis of the disclosures, the Second Fiduciary will authorize the transactions.

(m) The authorization by the Second Fiduciary will be terminable at will without penalty to such Plans, and any such termination will be effected by the close of the business day following the date of receipt by the Bank, either by mail, hand delivery, facsimile or other available means of written communication at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination, unless due to circumstances beyond the control of the Bank delay execution for no more than one additional business day.

(n) The Plans do not pay investment management, investment advisory or similar fees to the Bank with respect to any of the assets of such Plans which are invested in shares of any of the Funds.

(o) The Second Fiduciary will receive a written notice accompanied by the Termination Form with instructions regarding the use of such form, at least 30 days in advance of the implementation of any increase in the rate of any fees for investment

management, investment advisory or similar fees, any addition of a Secondary Service for which a fee is charged, or any increase in fees for Secondary Services that the Bank provides to the Funds.

(p) All dealings between the Plans and any of the Funds will be on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same shares of the same class as the Plans.

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

#### General Information

The attention of interested persons is directed to the following:

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

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, 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 is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, 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

section 408(b)(6) of the Act (fees for "ancillary services") and under section 408(b)(8) of the Act (investments in collective trust funds maintained by such bank) to such "sweep" service arrangements.