



DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions from Certain Prohibited Transaction

Restrictions

AGENCY: Employee Benefits Security Administration, Labor

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the

Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: **D-11506, UBS**

AG and Its Current and Future Affiliates and Subsidiaries

(collectively, UBS or the Applicant); **D-11742 thru D-11746, The**

ABB Inc. Cash Balance Pension Plan (the Cash Balance Plan); the

Cash Balance Pension Plan for Certain Represented Employees of

ABB Inc. (the Union Cash Balance Plan); the Pension Plan for

Employees of the Process Analytics Division of ABB Inc.

Represented by the Laborer's International Union of North America

(AFL-CIO), Local No. 1304 (the Process Analytics Plan); the

Pension Plan of Fischer & Porter Company (the Fisher & Porter

Plan); and the ABB Inc. Pension Plan (UE 625 & 626) (the UE 625 &

626 Plan) (each a Plan, and collectively, the Plans); and D-11767, D-11768 and D-11769, American International Group, Inc. Incentive Savings Plan (the Savings Plan), American General Agents' & Managers' Thrift Plan (the Thrift Plan), and Chartis Insurance Company—Puerto Rico Capital Growth Plan (the Chartis Plan) (collectively, the Plans).

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice.

ADDRESSES: Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room

N-5700, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: moffitt.betty@dol.gov, or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

WARNING: All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

SUPPLEMENTARY INFORMATION:

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and

the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).¹ Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the

¹ The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Department for a complete statement of the facts and representations.

UBS AG and Its Current and Future Affiliates and Subsidiaries
(collectively, UBS or the Applicant)

Located in New York, New York

[Application No. D-11506]

PROPOSED EXEMPTION

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).²

SECTION I. SALES OF AUCTION RATE SECURITIES FROM PLANS TO UBS:
UNRELATED TO A SETTLEMENT AGREEMENT

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not

² For purposes of this proposed exemption, references to section 406 of ERISA should be read, unless otherwise specified, to refer to the corresponding provisions of section 4975 of the Code.

apply, effective February 1, 2008, to the sale by a Plan (as defined in section V(e)) of an Auction Rate Security (as defined in section V(c)) to UBS, where such sale (an Unrelated Sale) is unrelated to, and not made in connection with, a Settlement Agreement (as defined in section V(f)), provided that the conditions set forth in Section II have been met.

SECTION II. CONDITIONS APPLICABLE TO TRANSACTIONS DESCRIBED IN SECTION I

(a) The Plan acquired the Auction Rate Security in connection with brokerage or advisory services provided by UBS;

(b) The last auction for the Auction Rate Security was unsuccessful;

(c) Except in the case of a Plan sponsored by UBS for its own employees (a UBS Plan), the Unrelated Sale is made pursuant to a written offer by UBS (the Unrelated Offer) containing all of the material terms of the Unrelated Sale, including, but not limited to, the most recent rate information for the Auction Rate Security (if reliable information is available). Either the Unrelated Offer or other materials available to the Plan provide the identity and par value of the Auction Rate Security.

Notwithstanding the foregoing, in the case of a pooled fund maintained or advised by UBS, this condition shall be deemed met

to the extent each Plan invested in the pooled fund (other than a UBS Plan) receives written notice regarding the Unrelated Sale, where such notice contains the material terms of the Unrelated Sale (including, but not limited to, the material terms described in the preceding sentence);

(d) The Unrelated Sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security;

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends;³

(f) The Plan does not waive any rights or claims in connection with the Unrelated Sale;

(g) The decision to accept the Unrelated Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or beneficial owner of an individual retirement

³ This proposed exemption does not address tax issues. The Department has been informed by the Internal Revenue Service and the Department of the Treasury that they are considering providing limited relief from the requirements of sections 72(t)(4), 401(a)(9), and 4974 of the Code with respect to retirement plans that hold Auction Rate Securities. The Department has also been informed by the Internal Revenue Service that if Auction Rate Securities are purchased from a Plan in a transaction described in sections I and III at a price that exceeds the fair market value of those securities, then the excess value would be treated as a contribution for purposes of applying applicable contribution and deduction limits under sections 219, 404, 408, and 415 of the Code.

account (an IRA, as described in section V(e) below) who is independent (as defined in section V(d)) of UBS. Notwithstanding the foregoing: (1) in the case of an IRA, which is beneficially owned by an employee, officer, director or partner of UBS, or a relative of any such persons, the decision to accept the Unrelated Offer or retain the Auction Rate Security may be made by such employee, officer, director or partner; or (2) in the case of a UBS Plan or a pooled fund maintained or advised by UBS, the decision to accept the Unrelated Offer may be made by UBS after UBS has determined that such purchase is in the best interest of the UBS Plan or pooled fund;⁴

(h) Except in the case of a UBS Plan or a pooled fund maintained or advised by UBS, neither UBS nor any affiliate exercises investment discretion or renders investment advice within the meaning of 29 CFR 2510.3-21(c) with respect to the

⁴ The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the Auction Rate Security to UBS for the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any of the proposed transactions, to fully understand the risks associated with this type of transaction following disclosure by UBS of all relevant

decision to accept the Unrelated Offer or retain the Auction Rate Security;

(i) The Plan does not pay any commissions or transaction costs with respect to the Unrelated Sale;

(j) The Unrelated Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(k) UBS and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (1)(1), to determine whether the conditions of this exemption, if granted, have been met, except that-

(1) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than UBS and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (1)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of UBS or its affiliates, as applicable, such records are

information.

lost or destroyed prior to the end of the six-year period;

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

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission; or

(B) Any fiduciary of any Plan, including any IRA owner, that engages in a Sale, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Unrelated Sale, or any authorized employee or representative of these entities;

(2) None of the persons described above in paragraph (1) (1) (B) - (C) shall be authorized to examine trade secrets of UBS, or commercial or financial information which is privileged or confidential; and

(3) Should UBS refuse to disclose information on the basis that such information is exempt from disclosure, UBS shall, by the close of the thirtieth (30th) day following the request,

provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

SECTION III. SALES OF AUCTION RATE SECURITIES FROM PLANS TO UBS: RELATED TO A SETTLEMENT AGREEMENT

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of ERISA and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(A), (D) and (E) of the Code, shall not apply, effective February 1, 2008, to the following transactions: (a) the acquisition by a Plan, as described in section V(e), of certain rights issued to owners of Auction Rate Securities by UBS AG (ARS Rights) in connection with a Settlement Agreement, (b) the sale of an Auction Rate Security to UBS pursuant to such ARS Rights, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement Agreement, and (c) the sale of an Auction Rate Security to UBS where such sale is made pursuant to Section 15 of the Texas Settlement Agreement (the Section 15 Texas Settlement Sale), provided that the conditions set forth in Section IV below are met.

SECTION IV. CONDITIONS APPLICABLE TO TRANSACTIONS DESCRIBED IN SECTION III

(a) The terms and delivery of the offer of ARS Rights (the ARS Rights Offer) are consistent with the requirements set forth in the Settlement Agreement;

(b) UBS sends notice of the ARS Rights Offer to the Plans, including an explanatory cover letter and prospectus for the ARS Rights under the Securities Act of 1933 (the Securities Act), as amended. Notwithstanding the above, notice is not required to be sent to the underlying investors in pooled funds maintained or advised by UBS (but shall be provided to the pooled funds);

(c) Under the terms of the ARS Rights Offer, over certain periods of time described below (the Exercise Periods), Eligible Customers who accept the ARS Rights Offer are entitled to put (i.e., sell), for par value (plus accrued but unpaid interest or dividends), any of their Auction Rate Securities to UBS at a time of their choosing, and UBS is entitled to call any of those Auction Rate Securities at any time, for par value (plus accrued but unpaid interest or dividends).

(d) Eligible Customers holding ARS Rights who validly accept the ARS Rights Offer will grant to UBS the sole discretion and right to sell or otherwise dispose of, and/or enter orders in the auction process with respect to, the

Eligible Customers' eligible Auction Rate Securities on their behalf until the expiration date of the related ARS Right, without prior notification, so long as the Eligible Customers receive a payment of par plus accrued but unpaid interest or dividends upon any sale or disposition;

(e) Plans pay no commissions or transaction costs in connection with the acquisition of ARS Rights;

(f) In the case of a UBS Plan or pooled fund advised by UBS, the decision to accept the ARS Rights Offer and any subsequent decision to put Auction Rate Securities to UBS or, under the Texas Settlement, sell the Auction Rate Securities to UBS, may be made by UBS after UBS has determined that such transaction is in the best interest of the UBS Plan or pooled fund.

(g) In the case of an IRA owned by an employee, officer, director or partner of UBS or a relative of any such persons, the IRA owner makes an independent determination whether to accept the ARS Rights Offer and any subsequent decision to put Auction Rate Securities to UBS or, under the Texas Settlement, sell the Auction Rate Securities to UBS;

(h) In the case of Plans not described in paragraph IV(f) or IV(g) above, a person independent of UBS makes the determination whether to accept the ARS Rights Offer and any

subsequent decision to put Auction Rate Securities to UBS during the applicable Exercise Period or, under the Texas Settlement, sell the Auction Rate Securities to UBS, except with respect to permitted calls under the ARS Rights, consistent with a registration statement under the Securities Act, as amended (the Registration Statement);

(i) The ARS Rights Offer, or other documents available to the Plan, specifically describe, among other things:

(1) How a Plan may determine: the Auction Rate Securities held by the Plan with UBS, the purchase dates for the Auction Rate Securities, and (if reliable information is available) the most recent rate information for the Auction Rate Securities;

(2) The number of shares and par value of the Auction Rate Securities available for purchase under the ARS Rights Offer;

(3) The background of the ARS Rights Offer;

(4) That participating in the ARS Rights Offer will not result in or constitute a waiver of any claim of the tendering Plan;

(5) The methods and timing by which Plans may accept the ARS Rights Offer;

(6) The purchase dates, or the manner of determining the purchase dates, for Auction Rate Securities tendered pursuant to the ARS Rights Offer;

(7) The timing for acceptance by UBS of tendered Auction Rate Securities;

(8) The timing of payment for Auction Rate Securities accepted by UBS for payment;

(9) The expiration date of the ARS Rights Offer;

(10) The fact that UBS may make purchases of Auction Rate Securities outside of the ARS Rights Offer and may otherwise buy, sell, hold or seek to restructure, redeem or otherwise dispose of the Auction Rate Securities;

(11) A description of the risk factors relating to the ARS Rights Offer as UBS deems appropriate;

(12) How to obtain additional information concerning the ARS Rights Offer; and

(13) The manner in which information concerning material amendments or changes to the ARS Rights Offer will be communicated to affected Plans;

(j) The terms of any Settlement Sale or Section 15 Texas Settlement Sale are consistent with the requirements set forth in the applicable Settlement Agreement and, where applicable, the terms set forth in the ARS Rights prospectus.

(k) All of the conditions in Section II have been met with respect to the ARS Rights Offer; and

(l) All of the conditions in Section 15 of the Texas

Settlement Agreement have been met with respect to any Section 15 Texas Settlement Sale.

SECTION V. DEFINITIONS

For purposes of this proposed exemption:

(a) The term affiliate means: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term control means: The power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term Auction Rate Security means a security that:

(1) Is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) Has an interest rate or dividend that is reset at specific intervals through a Dutch Auction process;

(d) A person is independent of UBS if the person is:

(1) Not UBS or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(e) The term Plan means: an individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section

3(3) of ERISA; or an entity holding plan assets within the meaning of 29 CFR 2510.3-101, as modified by ERISA section 3(42); and

(f) The term Settlement Agreement means: A written legal settlement agreement involving UBS and a U.S. state or federal authority (a Settlement) that provides for the purchase of an Auction Rate Security by UBS from a Plan and/or the issuance of ARS Rights.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of February 1, 2008.

SUMMARY OF FACTS AND REPRESENTATIONS

1. UBS AG (UBS or the Applicant) is a financial services corporation with headquarters located in Zurich, Switzerland. UBS has banking divisions and subsidiaries around the world, including in the United States, with its United States headquarters located in New York, New York and Stamford, Connecticut.

2. The Applicant describes Auction Rate Securities (or ARS) and the arrangement by which ARS are bought and sold as follows.

ARS are securities (issued as debt or preferred stock) with an interest rate or dividend that is reset at periodic intervals

pursuant to a process called a Dutch Auction. Investors submit orders to buy, hold, or sell a specific ARS to a broker-dealer selected by the entity that issued the ARS. The broker-dealers, in turn, submit all of these orders to an auction agent. The auction agent's functions include collecting orders from all participating broker-dealers by the auction deadline, determining the amount of securities available for sale, and organizing the bids to determine the winning bid. If there are any buy orders placed into the auction at a specific rate, the auction agent accepts bids with the lowest rate above any applicable minimum rate and then successively higher rates up to the maximum applicable rate, until all sell orders and orders that are treated as sell orders are filled. Bids below any applicable minimum rate or above the applicable maximum rate are rejected. After determining the clearing rate for all of the securities at auction, the auction agent allocates the ARS available for sale to the participating broker-dealers based on the orders they submitted. If there are multiple bids at the clearing rate, the auction agent will allocate securities among the bidders at such rate on a pro-rata basis.

3. The Applicant states that, under a typical Dutch Auction process, UBS is permitted, but not obligated, to submit orders in auctions for its own account either as a bidder or a seller and

routinely does so in the auction rate securities market in its sole discretion. UBS may place one or more bids in an auction for its own account to acquire ARS for its inventory, to prevent: (a) A failed auction (i.e., an event where there are insufficient clearing bids which would result in the auction rate being set at a specified rate, resulting in no ARS being sold through the auction process); or (b) an auction from clearing at a rate that UBS believes does not reflect the market for the particular ARS being auctioned.

4. The Applicant states that for many ARS, UBS has been appointed by the issuer of the securities to serve as a dealer in the auction and is paid by the issuer for its services. That agreement provides that UBS will receive from the issuer auction dealer fees based on the principal amount of the securities placed through UBS.

5. The Applicant states further that UBS may share a portion of the auction rate dealer fees it receives from the issuer with other broker-dealers that submit orders through UBS, for those orders that UBS successfully places in the auctions. Similarly, with respect to ARS for which broker-dealers other than UBS act as dealer, such other broker-dealers may share auction dealer fees with UBS for orders submitted by UBS.

6. Since February 2008, the Applicant represents that the

significant majority of auctions have been unsuccessful.

According to the Applicant, the current state of the ARS market remains illiquid. As a result, Plans holding ARS may not have sufficient liquidity to make benefit payments, mandatory payments and withdrawals and expense payments when due.⁵

7. The Applicant represents that, in certain instances, UBS may have previously advised or otherwise caused a Plan to acquire and hold an Auction Rate Security.⁶ In connection with UBS's role in the acquisition and holding of ARS by various UBS clients, including the Plans, UBS entered into Settlement Agreements with certain U.S. states and federal authorities (as described below), and UBS requests exemptive relief for three categories of ARS transactions: (a) Where UBS is required under a Settlement Agreement to send to Plans a written offer to

⁵ The Department notes that Prohibited Transaction Exemption 80-26 (45 FR 28545 (April 29, 1980), as most recently amended at 71 FR 17917 (April 7, 2006)) permits interest-free loans or other extensions of credit from a party in interest to a plan if, among other things, the proceeds of the loan or extension of credit are used only: (1) for the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract, or (2) for a purpose incidental to the ordinary operation of the plan.

⁶ The relief contained in this proposed exemption does not extend to the fiduciary provisions of section 404 of the Act.

acquire the ARS (i.e., a Settlement Sale); (b) where, under Section 15 of the Texas Settlement, UBS is required to purchase Auction Rate Securities from certain specified categories of holders who contact UBS (i.e., a Section 15 Texas Settlement Sale) and (c) where UBS initiates an ARS sale by sending to a Plan a written offer to acquire the ARS, notwithstanding that such offer is not required under a Settlement Agreement (i.e., an Unrelated Sale).

8. The Applicant states that, pursuant to the Settlements, UBS offered the ARS Rights to designated customers who bought certain ARS from UBS (i.e., the Eligible Customers).⁷ The ARS Rights were issued by UBS AG

⁷ Individual or charitable account holders with less than \$1 million in total in their UBS accounts on a marketing household basis as of August 8, 2008, received Series A-1 and/or A-2 ARS Rights. The Exercise Period for *Series A-1 and A-2* began October 31, 2008, and ended January 4, 2011.

Individual or charitable holders with \$1 million or more in total for their UBS accounts on a marketing household basis as of August 8, 2008; all government entity holders; and small business holders with less than \$10 million in total in their UBS accounts on a marketing household basis and total balance sheet assets of less than \$50 million as of August 8, 2008, received Series B-1 and/or B-2 ARS Rights. The Exercise Period for *Series B-1 and B-2* ARS Rights began January 2, 2009, and ended January 4, 2011.

Eligible Customers not eligible for Series A-1 and/or A-2 or Series B-1 and/or B-2 ARS Rights received Series C-1 and/or C-2 ARS Rights. The Exercise Period for *Series C-1 and C-2* ARS Rights began June 30, 2010, and ended July 2, 2012.

pursuant to the Registration Statement, and notice⁸ of the ARS Rights Offer, consisting of an explanatory cover letter and a prospectus, was sent to such Eligible Customers. However, notice was not required to be sent to the underlying investors of pooled funds maintained or advised by UBS (but was required to be provided to the pooled funds).⁹

9. The Applicant states that the Registration Statement described above complies with applicable securities laws, and the Registration Statement, including the Prospectus and the accompanying cover letter, included disclosure of, or a fair and adequate summary of, the ARS Rights. In addition, the Registration Statement and accompanying documents explained what Eligible Customers had to do to participate in the ARS Rights Offer and it informed them of the relevant terms of the Settlement Agreement and other material terms regarding their rights.

⁸ The Applicant confirms that with respect to the SEC, New York and Massachusetts Settlements, notices were sent during the weeks of October 8 and 13, 2008. The Applicant notes that the Texas Settlement has varying notification requirements, which were complied with.

⁹ The Applicant states that, as of this date, no pooled funds subject to ERISA and maintained by UBS have been involved in a Settlement.

10. The Applicant states that information concerning material amendments or changes to the ARS Rights or Registration Statement was promptly disseminated to Eligible Customers, and such information was also made available by means of a toll-free telephone number. In connection with determining whether an Eligible Customer wished to accept the ARS Rights during the Offer Period or put the ARS to UBS during the Exercise Period, there may have been communications from time to time between such customer and UBS in that regard. The Applicant states that in addition to the purchase of ARS pursuant to the ARS Rights Offer, UBS may have purchased ARS from its customers outside the ARS Rights Offer at times and on terms other than those provided in such offer.

11. The Applicant represents that Eligible Customers had from October 7, 2008 to November 14, 2008 (the Offer Period) to decide whether to accept the ARS Rights, unless the Offer Period was extended at the discretion of UBS.¹⁰ In the case of the Texas Settlement, eligible holders were entitled to sell their Auction Rate Securities to UBS until

¹⁰ The Applicant represents that UBS extended the Offer Period to December 19, 2008.

the agreed upon dollar amount in that settlement had been spent. In the case of any Eligible Customer that is a pooled fund advised by UBS or a Plan sponsored by UBS for its own employees, the decision to accept the ARS Rights Offer and any subsequent decision to put ARS to UBS during the Offer Period (or, under the Texas Settlement, sell the Auction Rate Securities to UBS) may have been made by UBS after UBS determined that such purchase was in the best interest of the UBS Plan or pooled fund. In the case of an IRA owned by an employee, officer, director or partner of UBS, or a relative of any such persons, the IRA owner was required to make an independent determination whether to accept the ARS Rights Offer and any subsequent decision to put ARS to UBS during the Offer Period (or, under the Texas Settlement, sell the Auction Rate Securities to UBS). Other than with respect to such IRAs, a pooled fund advised by UBS, or a Plan sponsored by UBS for its own employees, a person independent of UBS was required to make the determination whether to accept the ARS Rights Offer and any subsequent decision to put ARS to UBS during the applicable Exercise Period (or, under the Texas Settlement, sell the Auction Rate Securities to UBS), except with respect to permitted calls under the ARS Rights, consistent with the

Registration Statement.

12. The Applicant states that all Eligible Customers who accepted the ARS Rights Offer must have custodied their ARS with UBS. To the extent that an Eligible Customer had moved its accounts from UBS, the Eligible Customer was required to transfer its ARS to an account with UBS but such account did not bear a custody fee.

13. Under the terms of the ARS Rights, during the appropriate Exercise Period (as defined above), Eligible Customers who accepted the ARS Rights Offer were entitled to put, for par value (plus accrued but unpaid interest or dividends), any of their ARS to UBS, and UBS was entitled to call any of those ARS, for par value (plus accrued but unpaid interest or dividends).

14. Under Section 15 of the Texas Settlement, UBS was also required to purchase Auction Rate Securities from certain additional categories of Auction Rate Securities holders, if they contacted UBS. The Applicant represents that no written offer was required under that Settlement, although the Settlement offer was publicized by Texas.

15. The Applicant states that there were Settlements involving UBS and the following federal and state authorities: the SEC, New York, Massachusetts and Texas. The Applicant states

that since August 2008, UBS has purchased ARS in the amount of \$18,047,380,000 pursuant to the SEC Settlement (and the New York and Massachusetts Settlements, which tracked the SEC Settlement) and \$161,550,000 pursuant to the Texas Settlement.¹¹ The Applicant explains that while there should be no future purchases under the SEC settlement, UBS expects there will be such purchases under the Texas Settlement because it requires UBS to continue to buy from Eligible Customers under the Settlement until it has spent \$200 million, which it has not done yet. Accordingly, the Applicant is requesting prospective relief for such future Settlement Sales and Section 15 Settlement Sales and retroactive relief for Settlement Sales and Section 15 Settlement Sales that have already occurred.

¹¹ The Applicant notes that not every ARS holder who was eligible for the ARS Rights Offer accepted such offer. Additional ARS positions with a par value of approximately \$57 million were eligible for the ARS Rights Offer but the holders of the rights did not accept such offer. The Applicant states that UBS has no way of knowing how much of the foregoing \$57 million in ARS remains outstanding because the positions are not held at UBS. The Applicant believes that a majority of those positions were repurchased by other firms and/or redeemed by the issuer. Similarly, the Applicant states that it does not know the dollar value of outstanding ARS that are eligible for repurchase under the Texas Settlement. UBS is not obligated to repurchase any further ARS relating to the ARS Rights Offering. However, UBS is obligated to repurchase eligible ARS under the Texas Settlement up to a total of \$200 million of which \$161,550,000 has been spent to date.

16. With respect to Unrelated Sales, the Applicant states that to the best of its knowledge, as of December 10, 2012, no Unrelated Sale to a Plan has occurred.¹² However, the Applicant states that retroactive relief (and prospective relief) is necessary in the event that a sale of ARS by a Plan to UBS has occurred, or will occur, outside the Settlement process.

17. The Applicant states that the Settlement Sales, Section 15 Texas Settlement Sales and Unrelated Sales (hereinafter, each, a Covered Sale) are in the interests of Plans. In this regard, the Applicant states that the Covered Sales permit Plans to normalize Plan investments. The Applicant represents that each Covered Sale has been and will be for no consideration other than cash payment against prompt delivery of the ARS, and such cash has equaled, and will equal, the par value of the ARS, plus any accrued but unpaid interest or dividends. The Applicant represents further that Plans have not paid, and will not pay, any commissions or transaction costs with respect to any Covered Sale.

¹² The Applicant explains that a handful of unrelated sales have occurred with written offers to buy at par value and pursuant to a settlement agreement; however, none of these sales involved a Plan or an IRA. In addition, the Applicant states that UBS may facilitate sales of ARS in the market as agent for clients at their request.

18. The Applicant represents that the proposed exemption is protective of the Plans. The Applicant states that, except in the case of a Plan sponsored by UBS for its own employees (i.e., a UBS Plan), each Covered Sale has been made, and will be made, pursuant to a written offer (i.e., pursuant to an Unrelated Offer, an ARS Rights Offer, or a Settlement offer made under Section 15 of the Texas Settlement Agreement; together, an Offer). The Applicant states further that, with limited exceptions, the decision to accept the Offer or retain the ARS has been made, and will be made, by a Plan fiduciary or Plan participant or IRA owner who is independent of UBS. Additionally, each Offer has been delivered, and will be delivered, in a manner designed to alert a Plan fiduciary that UBS intends to purchase ARS from the Plan. Offers made in connection with an Unrelated Sale have described, and will describe, the material terms of the Unrelated Sale, including the most recent rate information for the ARS (if reliable information is available). Either the Offer or other materials available to the Plan have provided, and will provide, the identity and par value of the ARS. Offers made in connection with a Settlement Agreement specifically include, among other things: the background of the Offer; the method and timing by which a Plan may accept the Offer; the expiration date of the Offer; a

description of certain risk factors relating to the Offer; how to obtain additional information concerning the Offer; and the manner in which information concerning material amendments or changes to the Offer will be communicated to affected Plans. The Applicant states that, except in the case of a UBS Plan or a pooled fund advised by UBS, neither UBS nor any affiliate has exercised, or will exercise, investment discretion, or has rendered, or will render, investment advice with respect to a Plan's decision to accept the Offer or retain the ARS. In the case of a UBS Plan or a pooled fund maintained or advised by UBS, the decision to engage in a Covered Sale has been made, and may be made, by UBS after UBS has determined that such purchase is in the best interest of the UBS Plan or pooled fund. The Applicant represents further that Plans have not waived, and will not waive, any rights or claims in connection with any Covered Sale except where permitted under a Section 15 Texas Settlement Sale.**13**

19. The Applicant represents that the proposed exemption, if granted, would be administratively feasible. In this regard, the Applicant notes that each Covered Sale has occurred, and will

13 The Applicant states that while there may have been, or may be, communication between a Plan and UBS subsequent to an Offer, such communication has not involved, and will not involve, advice

occur, at the par value of the affected ARS, plus any accrued but unpaid interest or dividends, and such value is readily ascertainable. The Applicant represents further that UBS has maintained, and will maintain, the records necessary to enable the Department and Plan fiduciaries, among others, to determine whether the conditions of this exemption, if granted, have been met.

20. In summary, the Applicant represents that the transactions described herein satisfy the statutory criteria of section 408(a) of the Act because, among other things:

(a) Except in the case of a UBS Plan or a Section 15 Texas Settlement Sale, each Covered Sale has been made and shall be made pursuant to a written Offer;

(b) Each Covered Sale has been and shall be for no consideration other than cash payment against prompt delivery of the ARS;

(c) The amount of each Covered Sale has equaled and shall equal the par value of the ARS, plus any accrued but unpaid interest or dividends;

(d) No Plan has waived nor shall waive any rights or claims in connection with any Covered Sale except as permitted under a Section 15 Texas Settlement Sale;

regarding whether the Plan should accept the Offer.

(e) Except in the case of a UBS Plan or a pooled fund maintained or advised by UBS:

(1) The decision to accept an Offer or retain the ARS has been made and shall be made by a Plan fiduciary or Plan participant or IRA owner who is independent of UBS; and

(2) neither UBS nor any affiliate has exercised or shall exercise investment discretion or render investment advice within the meaning of 29 CFR 2510.3-21(c) with respect to the decision to accept the Offer or retain the ARS except with respect to permitted calls under the ARS Rights, consistent with the Registration Statement;

(f) Plans have not paid and shall not pay any commissions or transaction costs with respect to any Covered Sale;

(g) A Covered Sale has not been and shall not be part of an arrangement, agreement or understanding designed to benefit a party in interest to the affected Plan; and

(h) UBS has made available and shall make available in connection with an Unrelated Sale the material terms of the Unrelated Sale, including the most recent rate information for the ARS (if reliable information is available), and the identity and par value of the ARS.

NOTICE TO INTERESTED PERSONS

The Applicant represents that the potentially interested participants and beneficiaries cannot all be identified and therefore the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the Federal Register. Comments and requests for a hearing must be received by the Department no later than 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

All comments will be made available to the public.
Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Anna Mpras Vaughan of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

The ABB Inc. Cash Balance Pension Plan (the Cash Balance Plan); the Cash Balance Pension Plan for Certain Represented Employees of ABB Inc. (the Union Cash Balance Plan); the Pension Plan for Employees of the Process Analytics Division of ABB Inc.

Represented by the Laborer's International Union of North America (AFL-CIO), Local No. 1304 (the Process Analytics Plan); the Pension Plan of Fischer & Porter Company (the Fisher & Porter Plan); and the ABB Inc. Pension Plan (UE 625 & 626) (the UE 625 & 626 Plan) (each a Plan, and collectively, the Plans)

Located in Cary, NC

[Application Nos. D-11742 thru D-11746 respectively]

PROPOSED EXEMPTION

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).¹⁴

¹⁴ For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

If the exemption is granted, the restrictions of sections 406(a)(1)(A) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) and (E) of the Code, shall not apply, to the in-kind contribution (the Contribution) of certain U.S. Treasury Bills (the Securities) to the Plans by ABB Inc., a party in interest with respect to the Plans, on September 14, 2012, provided that the following conditions are satisfied:

(a) The fair market value of the Securities was determined by ABB Inc. based on the closing price of the Securities on the date of Contribution (the Contribution Date) as quoted by Bloomberg L.P., an independent third party in the business of providing financial data;

(b) The Securities represented less than 12% of the assets of any Plan;

(c) The terms of the Contribution were no less favorable to the Plans than those negotiated at arm's length under similar circumstances between unrelated parties;

(d) The Plans paid no commissions, costs or fees with respect to the Contribution; and

(e) ABB Inc. reviewed the methodology used to value the Securities and ensured that the Plans received the fair market value of the Securities.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of September 14, 2012.

SUMMARY OF FACTS AND REPRESENTATIONS

Parties to the Covered Transaction

1. ABB Inc. is the U.S. subsidiary of Asea Brown Boveri Ltd. (ABB), a multinational corporation operating primarily in robotics, power, and automation technologies, headquartered in Zurich, Switzerland.¹⁵ ABB Inc. is headquartered in Cary, North Carolina and employs approximately 20,000 individuals in the U.S.

ABB Inc.'s five main divisions include: power products, power systems, discrete automation and motion, low voltage products, and process automation. ABB Inc. provides or has provided a retirement benefit to its employees through the following defined benefit plans:

A. The Cash Balance Plan, which is ABB Inc.'s largest Plan, is a cash balance plan that was established on January 1, 1992. The Cash Balance Plan covers eligible employees of ABB Inc., ABB Treasury Center USA, and Kuhlman Electric Corporation. As of December 31, 2011, the Cash Balance Plan was frozen to new

¹⁵ The ABB group of related companies operates in approximately 100 countries and employs 145,000 worldwide.

participants and benefit accruals. ABB Inc. states that, for the plan year beginning January 1, 2012, the Cash Balance Plan had an Adjusted Funding Target Attainment Percentage (AFTAP) of 112.29%. Further, as of April 30, 2012, the Cash Balance Plan had assets of \$820,244,694, and, as of June 16, 2012, the Plan had 16,263 participants and beneficiaries.

B. The Union Cash Balance Plan, established on July 1, 1999, is a single-employer cash balance plan providing pension benefits for eligible collectively-bargained employees of ABB Jefferson City. ABB Inc. states that, for the plan year beginning January 1, 2012, the Union Balance Cash Plan had an AFTAP of 113.72%. Further, as of April 30, 2012, the Union Cash Balance Plan had assets of \$40,040,132, and, as of June 26, 2012, the Union Cash Balance Plan had 697 participants and beneficiaries.

C. The Process Analytics Plan is a defined benefit plan established on February 1, 1984. It covers eligible collectively-bargained employees who are employed at the ABB Inc. plant in Lewisburg, West Virginia. ABB Inc. states that, as of the plan year beginning January 1, 2012, the Process Analytics Plan had an AFTAP of 120.39%. Further, as of April 30, 2012, the Plan had assets of \$7,660,258 and, as of June 26, 2012, the Plan had 161 participants and beneficiaries.

D. The Fischer & Porter Plan is a defined benefit plan that was established on January 1, 1947. It covers certain collectively bargained employees working at the ABB Inc. location in Warminster, Pennsylvania. ABB Inc. states that, as of the plan year beginning January 1, 2012, the Fischer & Porter Plan had an AFTAP of 114.16%. Further, as of April 30, 2010, the Fischer & Porter Plan had assets of \$57,762,579, and, as of June 26, 2012, the Plan had 1,466 participants and beneficiaries.

E. The UE 625 & 626 Plan is a defined benefit plan that was established on September 15, 1984. It covers certain eligible employees represented under a collective bargaining agreement by the United Electrical, Radio and Machine Workers of America (UE). The UE 625 & 626 Plan had an AFTAP of 121.70% as of January 1, 2012. Further, as of April 30, 2012, the UE 625 & 626 Plan had assets of \$18,854,815, and, as of June 26, 2012, the Plan had 221 participants and beneficiaries.

2. The assets of the Plans are held in the ABB Inc. Master Trust (the Master Trust) for which the Bank of NY Mellon serves as the trustee. The ABB Inc. Pension Review Committee (PRC) has investment discretion over the assets of the Plans including those additional assets that would be covered by the proposed exemption, if granted. ABB Inc. maintains a risk management committee (the Pension and Risk Management Committee), comprised

of two to three employees, that advises the PRC regarding the investment of the assets in the Master Trust. However, the PRC is the entity responsible for implementing investment decisions on behalf of ABB Inc. Towers Watson (the Actuary), a Delaware corporation, serves as the actuary for each of the Plans.

Contribution of the Securities

3. ABB Inc. represents that each of the Plans has had an AFTAP equal to or in excess of 100% each year since 2010. In addition, ABB Inc. states that on June 1, 2012, the PRC increased the Master Trust's cash target allocation from 10% to 20% for a period of 6 months due to recent volatility in the equity markets. ABB Inc. notes that the PRC determined that it was prudent to increase the cash target allocation to provide flexibility in the event that changes in the Master Trust's investments needed to be made. Furthermore, ABB Inc. desired to contribute additional cash and cash equivalents to the Master Trust, as described below, which would affect the amount of plan assets allocated to cash.

4. ABB Inc. represents that it sought to make a contribution (the Contribution) of Treasury Bills (the Securities) to the Master Trust as part of its long-term approach to having well-funded pension plans. According to ABB Inc., no

additional contributions were required to be made to the Plans in 2012. ABB Inc. states that the decision regarding which Plans would be funded by the Contribution was based on a number of factors, including the Plans' funded status and projected normal costs. Furthermore, the Contributions would be well in excess of the minimum contribution requirements of the Plans.

5. ABB Inc. states that it determined to make the Contribution in the form of Treasury Bills, because a contribution of cash-equivalent securities will garner more favorable accounting treatment than cash when used to fund ABB Inc.'s pension liabilities. ABB Inc. explains that the contribution was reported on ABB Inc.'s financial statements under U.S. accounting standards as a use of cash from investing activities and was disclosed in the notes to the financial statements. According to ABB Inc., this will allow the company to avoid burdening current year gross cash flows that would occur if ABB Inc. contributed cash. ABB Inc. states that, consequentially, readers of their financial statements will be able to better distinguish between current operational performance of ABB Inc. from a significantly higher than normal Plan contribution event, and any potential negative impact of the Contribution on ABB Inc.'s cost of capital will be limited.

6. ABB Inc. states that, in order to effect the

Contribution, it purchased Treasury Bills in two separate acquisitions. On June 7, 2012, ABB Inc. acquired Treasury Bills in the maturity amount of \$14,100,000 with an effective yield of 0.086%. On June 19, 2012, ABB Inc. acquired additional Treasury Bills in the maturity amount of \$4,025,000 with an effective yield of 0.089%. Both purchases occurred over-the-counter and from unrelated parties. The purchased Treasury Bills were placed in an ABB Inc. account at Credit Suisse Securities (Credit Suisse). The total value of the Securities at their four-month maturity date on September 27, 2012 was \$18,125,000.

7. On September 14, 2012, based on the recommendation of the Pension and Risk Management Committee, the PRC voted to contribute the Securities to the Plans, and the Securities were contributed on the same date. Credit Suisse notified ABB Inc. that the September 14, 2012 closing price for Treasury Bills maturing as of September 27, 2012, as reported in Bloomberg L.P. pricing services, was 99.9978333. Based on this pricing information, ABB Inc. calculated the value of the Securities on the date of Contribution (the Contribution Date) as \$18,124,607 (\$18,125,000 maturity value x 99.9978333 closing price).**16**

16 According to ABB Inc., on December 12, 2012, Credit Suisse provided ABB Inc. with a computer screenshot of the closing price of the Securities on September 14, 2012, as reported by Bloomberg

8. Upon their receipt by the Master Trust, the Securities, valued at \$18,124,607, were allocated as follows:

Plan	Allocation of Face Value of Securities	Allocation of FMV of Securities	Percentage of Total Contribution	Total Plan Assets ¹⁷	Contribution as % of Plan Assets
Cash Balance Plan	\$14,100,000	\$14,099,695	77.79%	\$820,244,694	1.72%
Process Analytics Plan	\$600,000	\$599,987	3.31%	\$7,660,258	7.83%
UE 625 & 626 Plan	\$2,200,000	\$2,199,952	12.14%	\$18,854,815	11.67%
Fisher & Porter Plan	\$725,000	\$724,984	4.00%	\$57,762,579	1.26%
Union Cash Balance Plan	\$500,000	\$499,989	2.76%	\$40,040,132	1.25%
Totals	\$18,125,000	\$18,124,607	100%	\$944,562,478	1.92%

ABB Inc. states that it allocated the face value of the Securities among the Plans based on preliminary 2012 funding valuation projections prepared by the Actuary. ABB Inc. states that the amounts allocated to the Union Cash Balance, the Process Analytics Plan, the UE 625 & 626 Plan, and the Fischer & Porter

L.P., which displayed a closing price of 99.997563: 0.00027 less than what Credit Suisse previously reported. The resulting revised Contribution Date value was \$49 less than the amount originally calculated. To ensure that the Plans were adequately protected with respect to the Contribution, ABB Inc. contributed \$49, plus interest calculated at 8% from the date of contribution up to the date such interest was paid to the Plans.

The Department is not offering its view whether ABB Inc.'s use of the original closing price for the Securities in fulfillment of its funding, reporting and disclosure obligations comports with its duties under section 404(a) of the Act, which requires, among other things, that a fiduciary discharge its duties with respect to a plan solely in the interest of the Plans' participants and beneficiaries, and in a prudent fashion.

¹⁷ All asset values are based on fair market value data as of April 30, 2012.

Plan were the amounts needed to increase each Plan's projected 1/1/2012 AFTAP above 100%.¹⁸ The Securities matured two weeks later, on September 27, 2012, at \$18,125,000.

9. ABB Inc. represents that the Contribution did not produce a material change in the AFTAP for any Plan, as each Plan's AFTAP exceeded 100% irrespective of the Contribution. ABB Inc. states that following the Contribution the funding status of the Plans increased as follows:

Plan	Estimated AFTAP without Discounted Securities Contribution	AFTAP with Discounted Securities Contribution	Increase in AFTAP Due to Securities Contribution
Cash Balance Plan	110.44%	112.29%	1.85%
Process Analytics Plan	112.35%	113.72%	1.37%
UE 625 & 626 Plan	111.74%	120.39%	8.65%
Fisher & Porter Plan	109.09%	121.70%	12.61%
Union Cash Balance Plan	112.78%	114.16%	1.38%

Request for Exemptive Relief

10. ABB Inc. requests exemptive relief for the Contribution, which represents an in-kind contribution to the Plans from ABB Inc., a party in interest with respect to the

¹⁸ ABB Inc. notes that the projected funding valuation results prepared by the Actuary and ABB Inc.'s allocation decisions were made prior to the passage of the Moving Ahead for Progress in the 21st Century Act (MAP-21), legislation enacted on July 6, 2012, that, among other things, changed the interest rate that pension plans use to measure their liabilities thereby impacting the Plans' 2012 funding results. After the passage of MAP-21, the amounts allocated to the Plans were not needed to increase the AFTAP above 100%.

Plans. In this regard, ABB Inc. states that the PRC, which is a fiduciary with respect to the Plans, caused a sale or exchange between a party in interest and the Plans prohibited by section 406(a)(1)(A) of the Act. Furthermore, ABB Inc. states that the Contribution violated sections 406(b)(1) and (2) of the Act. In this regard, ABB Inc. explains that the PRC, as a fiduciary with respect to the Plans, dealt with the assets of the Plans in its own interest or its own account in violation of 406(b)(1) of the Act and acted in a capacity where its interests were adverse to the interests of the Plans and the interests of the participants and beneficiaries of the Plans in violation of 406(b)(2) of the Act.

Statutory Findings

11. ABB Inc. represents that the Contribution was administratively feasible because it was a one-time transaction that requires no further action by the Department.

12. ABB Inc. represents that the Contribution was in the interests of the Plans and their participants and beneficiaries because the Contribution, as allocated amongst the Plans, was in excess of the minimum required contribution for each of the Plans. In this regard, ABB Inc. notes that it was not required to make any contributions to the Plans for the 2012 Plan Year.

Furthermore, each of the Plans had higher AFTAPs as a result of the Contribution. As illustrated in the above table, the increases ranged from 1.37% for the Process Analytics Plan to 12.61% for the Fischer & Porter Plan. ABB Inc. emphasizes that, absent the Contribution, these increases would not have occurred.

13. ABB Inc. states that the Contribution was protective of the Plans and of their participants and beneficiaries because the Securities are cash equivalents with a readily ascertainable fair market value, which are guaranteed by the U.S. Treasury. According to ABB Inc., it determined the value of the Securities as of the date of the Contribution based on an independent, third party source in the business of providing financial data, and the PRC ensured that the Plans received the full fair market value of the Securities. Furthermore, ABB Inc. determined that the fair market value of the Securities was unlikely to fluctuate to any significant degree such that the Contribution posed little risk of abuse or loss that would affect the Plans' participants or beneficiaries.

Moreover, ABB Inc. states that the Securities were purchased from unrelated third parties and matured within two weeks of the Contribution Date. ABB Inc. states further that the Plans paid no fees, commissions or costs in connection with the Contribution. Finally, ABB Inc. represents that, had the Plans

needed to sell the Securities prior to their maturity, ABB Inc. would have covered all transaction costs associated with such sale.

Summary

14. In summary, ABB Inc. represents that the Contribution satisfied the statutory requirements for an exemption under section 408(a) of the Act because:

(a) The fair market value of the Securities was determined by ABB Inc. based on the closing price of the Securities on the Contribution Date as quoted by Bloomberg L.P., an independent third party in the business of providing financial data;

(b) The Securities represented less than 12% of the assets of any Plan;

(c) The terms of the Contribution were no less favorable to the Plans than those negotiated at arm's length under similar circumstances between unrelated parties;

(d) The Plans paid no commissions, costs or fees with respect to the Contribution; and

(e) The PRC reviewed the methodology used to value the Securities and ensured that the Plans received the fair market value of the Securities.

NOTICE TO INTERESTED PERSONS

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by ABB Inc. and the Department within 15 days of the date of publication in the Federal Register. Such notice will contain a copy of the notice of proposed exemption, as published in the Federal Register, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 45 days of the publication of the notice of proposed exemption in the Federal Register. All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Erin Brown of the Department at (202) 693-8352. (This is not a toll-free number.)

American International Group, Inc. Incentive Savings Plan
(the Savings Plan), American General Agents' & Managers' Thrift
Plan (the Thrift Plan), and Chartis Insurance Company—Puerto Rico
Capital Growth Plan (the Chartis Plan)
(collectively, the Plans)
Located in New York, NY and Puerto Rico
[Application Nos. D-11767, D-11768, and D-11769]

PROPOSED EXEMPTION

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 (76 FR 46637, 66644, October 27, 2011).

SECTION I. TRANSACTIONS

If the proposed exemption is granted:

(a) The restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the

Code, by reason of section 4975(c)(1)(A) and (E) of the Code,**19** shall not apply for the ten-year period, effective January 19, 2011 through January 19, 2021, to:

(1) The acquisition by the Savings Plan and the Thrift Plan of certain warrant rights (the Warrants) from American International Group, Inc. (AIG), a party in interest with respect to the Savings Plan and the Thrift Plan; and

(2) The holding of the Warrants by the Savings Plan and the Thrift Plan.

(b) The restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2) and 407(a) of the Act**20** shall not apply to:

19 For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

20 It is represented that the fiduciaries of the Chartis Plan have not made an election, under section 1022(i)(2) of the Act, whereby such plan would be treated as a trust created and organized in the United States for purposes of tax qualification under section 401(a) of the Code. Further, it is represented that jurisdiction under Title II of the Act does not apply to the Chartis Plan. Accordingly, the Department, herein, is not providing any relief from the prohibitions, as set forth in Title II of the Act, in connection with the acquisition and holding of the Warrants by the Chartis Plan.

(1) The acquisition by the Chartis Plan of the Warrants from AIG, a party in interest with respect to the Chartis Plan; and

(2) The holding of the Warrants by the Plans.

SECTION II. CONDITIONS

The relief provided in this proposed exemption is conditioned upon adherence to the material facts and representations set forth in the application file, and upon compliance with the conditions, as set forth herein.

(a) All decisions regarding the holding and sale of the Warrants have been and will be made by the Plans' participants;

(b) The Plans' acquisition of the Warrants resulted from an independent act of AIG as a corporate entity, and without any participation on the part of the Plans;

(c) The acquisition of the Warrants by the Plans occurred in connection with a recapitalization plan approved by the Board of Directors of AIG, in which all holders of AIG common stock, including the Plans, were treated exactly the same;

(d) All holders of AIG common stock, including the Plans, were issued the same proportionate number of Warrants based on the number of shares of AIG common stock held by such shareholder;

(e) The acquisition of the Warrants by the Plans was made in a manner that was consistent with provisions of each such Plan for the individually-directed investment of participant accounts;

(f) The Plans did not pay any fees or commissions in connection with the acquisition of the Warrants;

(g) The Plans did not pay, nor will the Plans pay, any fees or commissions in connection with the holding of the Warrants;

(h) The Plans did not pay, nor will the Plans pay, any brokerage fees or commissions to any broker affiliated with AIG, Chartis, or the Trustees in connection with the sale of the Warrants; and

(i) AIG will provide annual written notices to all participants in the Plans holding Warrants to remind them to sell their Warrants before such Warrants expire on January 19, 2021.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective for the period commencing January 19, 2011 through January 19, 2021.

SUMMARY OF FACTS AND REPRESENTATIONS

1. AIG, a Delaware corporation with its headquarters in New York, NY, operates in over 90 countries across the world, including Puerto Rico and the Virgin Islands. As a holding

company with subsidiaries, AIG engages primarily in a broad range of insurance and insurance-related activities. Among the wholly owned subsidiaries of AIG is Chartis Insurance Company (Chartis), which is headquartered in San Juan, Puerto Rico.

2. AIG sponsors the Savings Plan and the Thrift Plan, which are individually-directed, defined contribution plans that are intended to satisfy the requirements of section 401(a) of the Code and section 404(c) of the Act. As of December 31, 2011, the Savings Plan had 39,192 participants and \$2,783,237,363 in assets, of which \$8,177,958.39 were invested in AIG common stock, representing 0.29% of such Plan's total assets. As of December 31, 2011, the Thrift Plan had 2,462 participants and \$74,443,107 in assets, of which \$483,035.01 were invested in AIG common stock, representing 0.65% of the assets of such Plan. The directed trustee of the Savings Plan and the Thrift Plan is Mercer Trust Company (Mercer), a New Hampshire limited purpose bank.

3. The Chartis Plan, which is sponsored by Chartis, is an individually-directed, defined contribution plan that is intended to satisfy the requirements of Code section 401(a), although it has not elected to be subject to the qualification requirements of the Code and section 404(c) of the Act. The Chartis Plan is also intended to comply with the requirements of sections 1165(a)

and (e) of the Puerto Rico Internal Revenue Code of 1994, as amended. As of December 31, 2011, the Chartis Plan had 234 participants and held \$8,269,051 in total assets, of which \$13,283.74 were invested in AIG common stock, representing 0.16% of the assets of such Plan. The directed trustee of the Chartis Plan is Banco Popular De Puerto Rico²¹ (Banco Popular), which is organized and exists under the laws of the Commonwealth of Puerto Rico.

4. In 2008, the U.S. Government provided significant financial assistance to AIG. In connection with this assistance, AIG issued preferred stock to a trust which held such stock for the sole benefit of the U.S. Department of the Treasury (Treasury). The preferred stock entitled Treasury to approximately 79.8% of the voting power in AIG.

On September 30, 2010, a blueprint was announced for the eventual exit of the U.S. Government from its investment in AIG. In this regard, on December 8, 2010, AIG announced that it had entered into a recapitalization agreement with Treasury. On January 14, 2011, the recapitalization plan was completed. As part of the plan, the preferred stock previously held by Treasury

²¹ Mercer and Banco Popular are together referred to herein as the "Trustees."

in the trust was exchanged for approximately 1.655 billion shares of AIG common stock. This resulted in Treasury holding approximately 92% of AIG's common stock.

5. In addition, AIG declared a "warrant dividend" on shares of AIG common stock outstanding on January 13, 2011 (the Record Date). Holders of AIG common stock on the Record Date received .533933 Warrants for each share of common stock. Each Warrant entitles the holder to purchase one share of AIG common stock at a strike price of \$45 per share. The Warrants, like AIG common stock, are tradable on the New York Stock Exchange (NYSE) under the ticker symbol "AIGWS." The Warrants expire on January 21, 2021, if not sold or exercised.

The AIG Warrants were distributed at the close of business on January 19, 2011 to AIG common shareholders of record, including the Plans, as of the Record Date. The participants in the Plans were notified by AIG of the Warrant distribution through several written communications. The Warrants were distributed to 12,384 participants in the Savings Plan, 902 participants in the Thrift Plan, and to 39 participants in the Chartis Plan. The Plans did not incur any fees or commissions in connection with the acquisition of the Warrants, nor are the Plans incurring any fees or commissions in connection with the holding of such Warrants.

6. Until May 4, 2009, the Plans permitted participants to invest in the AIG Stock Fund, which held primarily AIG common stock. The AIG Stock Fund was closed to new investors as of May 4, 2009, with existing investors able to transfer out at any time. In other words, participants of the Plans were no longer able to purchase shares of AIG common stock as part of their investment options. As of the Record Date, the AIG Stock Fund held 424,787 shares of AIG common stock or 0.026% of shares of outstanding AIG common stock. As a result of such stock holdings, the AIG Stock Fund was issued approximately 226,808 Warrants on January 19, 2011.

7. Between January 19, 2011 and February 13, 2011, the Warrants were held on behalf of the Plans in the AIG Stock Fund. During this period, a unit in the AIG Stock Fund consisted of: (a) an interest in AIG common stock held by the AIG Stock Fund; (b) an interest in the Warrants held by such Fund; and (c) an interest in the cash vehicle held by such Fund. The AIG Stock Fund units were indivisible, therefore, any redemption by a participant in the Plans of an AIG Stock Fund unit during this period resulted in the receipt of cash by the participant representing the participant's interest in the Warrants and the cash vehicle, in addition to either AIG common stock or cash in lieu thereof, at the participant's election.

8. On February 15, 2011, all the Warrants remaining in the AIG Stock Fund (222,226.901) were moved into a newly-created fund (the AIG Warrant Fund). The AIG Warrant Fund, like the AIG Stock Fund, is a frozen fund. As of March 6, 2013, the AIG Warrant Fund held Warrants on behalf of 9,179 Savings Plan participants, 689 Thrift Plan participants, and 25 Chartis Plan participants. While participants in the Plans may sell the Warrants held on their behalf in the AIG Warrant Fund, they may not exercise such Warrants, unlike other Warrant holders. According to AIG, the costs and administrative complexities required to allow participants to exercise the Warrants would be extraordinary. For instance, AIG represents that the exercise could have violated an amendment in each Plan preventing participants from investing their future contributions in AIG common stock. In addition, AIG states that such an exercise could be problematic to implement within a 401(k) account. In this regard, AIG explains that it would be required to receive cash in an exchange for AIG common stock. Because the Plans do not offer cash-only holding accounts, if such accounts were created, participants would need to be counseled and guided, as to how to generate sufficient fund balances to affect the Warrant exercise. Further, AIG explains that participants in the Plans would be paying cash to their sponsors, which concerned AIG's counsel.

Finally, AIG notes that a system would have to be established with the Plans in order for AIG to send shares of AIG common stock to the Plans' Trustees. This system, according to AIG and Mercer, would have cost "several hundred thousand dollars" over the life of the Warrants. Thus, in light of the fact that only approximately one-third of the participants would be affected and the cost and difficulty in making such a system work, AIG decided that it was not an appropriate use of the Plans' assets for participants in the Plans to have the ability to exercise the Warrants.

10. To remind participants in the Plans to sell their Warrants before the ten year holding period which expires on January 19, 2021, AIG will provide annual written notices to all participants in the Plans who hold Warrants. Such sales are being conducted on the open market in blind transactions. In connection with the sales of the Warrants, no commissions or fees will be paid to brokers who are affiliated with AIG, Chartis or the Plans' Trustees.**22**

11. AIG notes that the Plans' acquisition and holding of

22 The applicant represents that a \$0.023 commission per Warrant traded is paid to State Street Global Markets (State Street). State Street is the executed broker for both of the Trustees, Mercer and Banco Popular.

the Warrants constitute prohibited transactions in violation of the Act. In this regard, section 406(a)(1)(A) of the Act prohibits the sale or exchange of property between a plan and a party in interest. AIG is a party in interest with respect to each of the Savings Plan and Thrift Plan as an employer any of whose employees are covered by such Plans, as described under section 3(14)(C) of the Act. AIG is also a party in interest with respect to the Chartis Plan as an owner of 50% or more of the voting stock of Chartis, as described under section 3(14)(E) of the Act. Therefore, the acquisition of the Warrants by the Plans resulted in a prohibited sale or an exchange of property between the Plans and AIG.

The Warrants are also "employer securities" within the meaning of section 407(d)(1) of the Act because they are securities issued by an employer of employees covered by the Plans, or by an affiliate of such employer. Section 407(a)(1)(A) of the Act prohibits a plan from acquiring or holding "any employer security" which is not a "qualifying employer security." The Warrants are not qualifying employer securities, as defined under section 407(d)(5) of the Act, because they are not (a) stock, (b) marketable obligations, or (c) interests in a publicly traded partnership. Therefore, the Plans' acquisition and holding of the Warrants violate section 407(a)(1)(A) of the Act.

Further, section 406(a)(2) of the Act prohibits a fiduciary with investment discretion from permitting a plan to hold employer securities in violation of section 407(a) of the Act. The Trustees, which are fiduciaries, accepted the Warrants on behalf of the Plans in violation of section 406(a)(2) of the Act.

Section 406(b)(1) of the Act prohibits a plan fiduciary from dealing with the assets of a plan in his own interest or own account. Section 406(b)(2) of the Act prohibits a fiduciary from acting in any transaction involving the plan on behalf of a party whose interests are adverse to interests of the plan or the interests of the plan's participants or beneficiaries. Accordingly, the Trustees' decision to have the Plans acquire and hold the Warrants violated section 406(b)(1) and (b)(2) of the Act.

12. Accordingly, AIG is requesting a retroactive individual exemption from the prohibited transaction provisions described above for the acquisition and holding of the Warrants by the Plans. AIG represents that such an exemption would be administratively feasible because participants in the Plans would be able to dispose of their Warrants at their discretion and as such, no oversight would be required by the Department. Additionally, AIG explains that the exemption would be protective of the participants in the Plans because the issuance of the

Warrants was the result of an independent act of AIG acting as a corporate entity, without any participation on the part of the Plans. Moreover, the issuance of the Warrants was part of a recapitalization that was negotiated by AIG and Treasury.

Finally, AIG represents that the proposed exemption would be in the interest of the Plans because it permits the acquisition and holding of the Warrants.

13. In summary, AIG represents that the transactions satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act, because: (a) all decisions regarding the holding and sale of the Warrants have been and will be made by the Plans' participants; (b) the Plan's acquisition of the Warrants resulted from an independent act of AIG as a corporate entity, and without any participation of the Plans; (c) the acquisition of the Warrants by the Plans occurred in connection with a recapitalization plan approved by the Board of Directors of AIG, in which all holders of AIG common stock, including the Plans, were treated exactly the same; (d) all holders of AIG common stock, including the Plans, were issued the same proportionate number of Warrants based on the number of shares of AIG common stock held by such shareholders; (e) the acquisition of the Warrants by the Plans was made in a manner that was consistent with the provisions of each such Plan for

individually-directed investment of participant accounts; (f) the Plans did not pay any fees or commissions in connection with the acquisition of the Warrants; (g) the Plans did not pay, nor will the Plans pay, any fees or commissions in connection with the holding of the Warrants; (h) the Plans did not pay, nor will the Plans pay, any brokerage fees or commissions to any broker affiliated with AIG, Chartis or the Trustees in connection with the sale of the Warrants; and (i) AIG will provide annual written notices to all participants in the Plans holding Warrants to remind them to sell their Warrants before such Warrants expire on January 19, 2021.

NOTICE TO INTERESTED PERSONS

The persons who may be interested in the publication in the Federal Register of the Notice of Proposed Exemption (the Notice) include all individuals who are participants in the Plans who received the Warrants. It is represented that all such interested persons will be notified of the publication of the Notice by first class mail, to each such interested person's last known address within fifteen (15) days of publication of the Notice in the Federal Register. Such mailing will contain a copy of the Notice, as it appears in the Federal Register on the date of publication, plus a copy of the

Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all interested persons of their right to comment and to request a hearing. All written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the Federal Register.

All comments will be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Mr. Asrar Ahmed of the Department at (202) 693-8557. (This is not a toll-free number.)

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions 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 that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of July, 2013.

Lyssa E. Hall
Director
Office of Exemption Determinations
Employee Benefits Security
Administration
U.S. DEPARTMENT OF LABOR

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