



DEPARTMENT OF LABOR

**Employee Benefits Security Administration**

**[Prohibited Transaction Exemption 2023-19; Exemption  
Application No. D-12003]**

**Exemption from Certain Prohibited Transaction Restrictions  
Involving the Mitsubishi UFJ Trust and Banking Corporation  
Located in New York, NY**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of Exemption.

**SUMMARY:** This document contains a notice of an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). The exemption permits certain transactions arising from credit arrangements involving Mitsubishi UFJ Trust and Banking Corporation (the Applicant or MUTB) and investment funds in which employee benefit plans invest.

**DATES:** This exemption will be in effect on the date that this grant notice is published in the *Federal Register*.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Gonzalez of the Department at (202) 693-8553. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Applicant requested an exemption pursuant to ERISA Section 408(a) and supplemented the request with certain additional information (collectively, this information is referred to as "the

Initial Application").<sup>1</sup> On June 28, 2021, the Department published a notice of proposed exemption in the *Federal Register* at 86 FR 34048 (Proposed Exemption).

Based on the record, the Department has determined to grant the Proposed Exemption. This exemption provides only the relief specified herein. It provides no relief from violations of any law other than the prohibited transaction provisions of ERISA, as expressly stated herein.

The Department makes the requisite findings under ERISA Section 408(a) based on the Applicants' adherence to all the conditions of the exemption. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken individually and as a whole, necessary for the Department to grant the relief requested by the Applicants. Absent these conditions, the Department would not have granted this exemption.

### **Background**

The Applicant seeks to provide secured revolving lines of credit (a Credit Facility or Credit Facilities) for certain funds (Fund(s)). The Funds invest directly or indirectly in private equity investments, real estate investments, non-real estate operating company ventures, or

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<sup>1</sup> The procedures for requesting an exemption are set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under the Code Section 4975(c)(2) to the Secretary of Labor. Accordingly, the Department grants this exemption under its sole authority.

other investments. The Funds are formed and operated through the Funds' organizing and governing documents (Fund Agreements).

A Credit Facility provides a Fund with access to direct or indirect borrowing, letters of credit and similar forms of credit arrangements without the Fund having to seek permanent or interim financing before making an investment. The Credit Facility eliminates the delay that a Fund will encounter in obtaining capital if it makes capital calls to Investors. Covered plans may invest in the Funds, as may endowment funds, private or public persons, insurance companies, public or private corporations, trusts, and individuals (collectively, Investors).

The Credit Facility's collateral security includes the right to make capital calls on Investors, including in the event of a Fund's default, and apply the proceeds to the repayment of the Fund's obligations, a secured interest in an account (Collateral Account) the Fund maintains in a financial institution into which capital contributions can be made, and the Investor's acknowledgement of the Fund's assignment of rights to the Lender (Investor Consent). The Investor Consent may include an agreement between the Investor and MUTB in which the Investor: (1) acknowledges the Credit Facility, including, amongst others, that the Investor will make capital contributions only to the

Collateral Account (except in limited circumstances); and (2) will make Capital Contributions to the Fund without setoff, reduction, counterclaim, or defense of any kind or nature, for the purpose of repayment of the Credit Facility (Agreement to Fund). The Agreement to Fund does not limit the Investor's right to assert a claim or defense in a separate action against the Fund, and keeps the risk of the Fund mismanagement or fraud between the Investors and the Funds.

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the Proposed Exemption. On August 12, 2021, the Department received one written comment, which came from the Applicant, and raised a number of issues regarding the accuracy of the Proposed Exemption.<sup>2</sup> On March 10, 2022, the Department held a tentative denial conference with the Applicant to address these accuracy issues.

On April 1, 2022, the Applicant submitted additional information to the Department. The material issues that the Applicant raised and the material information it submitted to the Department are discussed below.<sup>3</sup>

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<sup>2</sup> Applicants and recipients of an exemption are strongly cautioned to immediately alert the Department regarding any material statement in an application or proposed exemption that may not be, or may no longer be, completely and factually accurate.

<sup>3</sup> All information submitted by the Applicant to the Department in connection with this exemption is available through the Department's Public Disclosure Office, by referencing D-12003.

## Written Comments

### Comments from the Applicant

As a general comment, the Applicant states that its primary goal is to obtain a credit facility exemption that is substantially similar (if not identical in all material respects) to the Prior Credit Facility Exemptions,<sup>4</sup> and thereby to have equal footing with other financial institutions that have received the Prior Credit Facility Exemptions. The Applicant maintains it is critical for the final exemption to be substantially similar to the Prior Credit Facility Exemptions.

The Department notes that the existence of previously issued administrative exemptions is not determinative of whether the Department will propose future exemption applications with the same or similar facts, or whether a proposed exemption will contain the same conditions as a similar previously issued administrative exemption. The Department has the sole authority to issue exemptions and is not bound by the facts or conditions of prior exemptions in making determinations with respect to an exemption application. This policy allows the Department to retain sufficient flexibility to grant exemptions that are appropriate in an ever-changing business, legislative, and regulatory policy environment.

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<sup>4</sup> The term Prior Credit Facility Exemptions refers to similar exemptions that the Department has either granted or authorized; see PTE 2004-02, FAN 2005-19E, FAN 2006-04E, FAN 2007-07E, and FAN 2008-01E.

**I. Section I(e) of the Proposed Exemption:** Section I(e) states that: "A Covered Plan's execution of an agreement (the Investor Consent) consenting to the assignment by the Fund and General Partner (or Manager) to Mitsubishi Bank, as sole Lender or Agent, of their right to make Capital Calls."

**Applicant's Request:** The Applicant seeks to add the following new language to Section I(e), as it relates to the Investor Consent. According to the Applicant, Covered Plans generally expect to see and take comfort in seeing the list of items that may be included in the Investor Consent, and it reduces ambiguity for the Covered Plan Investors and improves administrative efficiency and negotiation with the Covered Plan Investors:

"(e) The execution by a Covered Plan of an agreement ("Investor Consent") consenting to the assignment by the Fund and General Partner (or Manager) to Mitsubishi Bank, as sole Lender or the Agent, of their right to make Capital Calls, which may contain, among other things: (i) an acknowledgment of the Covered Plan's obligation to deliver the Covered Plan's financial information statements to Mitsubishi Bank, as sole Lender or the Agent; (ii) an acknowledgment of the Covered Plan's unpaid and owing capital commitment amount and the Covered Plan's obligation to make Capital Contributions (up to its unfunded Capital Commitment amount) to satisfy the indebtedness incurred by

the Fund under the Credit Facility; (iii) an acknowledgment by the Covered Plan of the Fund's assignment to Mitsubishi Bank, as sole Lender or the Agent, of the right to make Capital Calls upon the Covered Plan, enforce the Capital Calls, collect the Capital Contributions, and apply them to any amount due under the Credit Facility; (iv) a consent (as either part of the Fund Agreements or as a separate agreement) by the Covered Plan to make Capital Contributions to the Fund without setoff, reduction, counterclaim, or defense of any kind or nature, for the purpose of repayment of the Credit Facility; (v) a representation that the Covered Plan has no knowledge of claims, offsets or defenses that would adversely affect its obligation to fund Capital Contributions under the Fund Agreements, or events which, with the passage of time would constitute a default or would constitute a defense to, or right of offset against the Covered Plan's obligation to fund its Capital Commitment to the Fund; and (vi) an agreement that the Covered Plan will fund Capital Contributions only into the Collateral Account; provided that with respect to all transactions described above, the conditions set forth below in Section III are met."

**Department's Response:** The Department has revised the condition consistent with the Applicant's request.

**II. Section III(i) of the Proposed Exemption.**

Section III(i) of the Proposed Exemption states that: "The Funds will not hold 'plan assets' for purposes of ERISA or Code section 4975."

**Applicant's Request:** The Applicant objects to the inclusion of the condition in Section III(i). The Applicant states that no "Covered Transaction" is impacted by, or has any relationship to, the "plan asset" status of the Fund. Further, the Applicant states that it does not have any control over the "plan asset" status of the Fund.

According to the Applicant, to condition the availability of the exemption on a condition for which the Applicant has no control, and for which the condition has no impact on the relationship between the Covered Plan and the Applicant, would be arbitrary and lead to inequitable consequences to the Covered Plan and the Applicant.

Although the Prior Credit Facility Exemptions note that the Funds typically do not hold "plan assets," the operative language in those exemptions does not expressly make this status a condition. Requiring that the Funds will not hold "plan assets" for purposes of ERISA or Code section 4975 would place the Applicant at a significant competitive disadvantage because Fund Managers of Plan Asset Entities would seek to borrow from Agent/Lenders that have a less restrictive exemption that does not discriminate against them based on their "plan asset" status.

**Department's Response:** The Department notes that the Applicant made the following representation in its application: "... [i]n certain rare instances, a Fund's underlying assets may constitute plan assets for purposes of the [Department's] Plan Assets Regulation.<sup>5</sup> However, in such cases, the Applicant would not enter into a Credit Facility with such Fund unless the Fund was managed by a QPAM [qualified professional asset manager] and the extension of credit under the Credit Facility to the Fund and the Fund's pledge of collateral would be covered by the QPAM Exemption, or unless another exemption was applicable." The Department has revised Section III(i) of this exemption for consistency with that representation.

**III. Section III(j) of the Proposed Exemption.**

Section III(j) of the Proposed Exemption states that: "Any service covered by the exemption must be necessary for the establishment or operation of the plan, and no more than reasonable compensation may be paid."

**Applicant's Request:** The Applicant objects to this condition. The Applicant states that this condition improperly implies that there is some form of service relationship between the Applicant/Lenders and the Covered Plan Investors. The condition is therefore likely to

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<sup>5</sup> See the Department's Plan Assets Regulation, 29 CFR part 2510.3-101 (51 FR 41280, Nov. 13, 1986), as amended at 51 FR 47226, (Dec. 31, 1986).

confuse Covered Plan Investors and add additional costs and delays if the Covered Plan expends additional resources to evaluate this condition since it does not appear in the Prior Credit Facility Exemptions.

The Applicant states that while it is possible that a Covered Plan Investor may inquire about the status of, or request information from the Applicant or a Lender, with respect to a credit facility, including outstanding obligations thereunder, these communications would be relayed by the Covered Plan Investors through the Fund to the Applicant/Lenders, and not made directly.

The Applicant represents that these would be "incidental interactions" that would not cause the Applicant or a Lender, to be a "covered service provider" for purposes of ERISA Section 408(b)(2), particularly where no compensation is being paid for any services. The Applicant states that, to the extent there is any "service" relationship between the Applicant/Lenders and the Covered Plans, it would be appropriate for the Applicant to rely on ERISA Section 408(b)(2) and not the credit facility exemption.

**Department's Response:** In a letter to the Department dated August 7, 2020, the Applicant stated that "...from time to time, there may be interactions between [the Applicant/Lenders] and the Covered Plan Investors which may be construed as a service. For example, Covered Plan

Investors may inquire about the status and/or request information from [the Applicant/Lenders] with respect to the Credit Facility and the outstanding obligations thereunder, although, typically, such communication would be relayed by the Covered Plan Investors through the Fund to [the Applicant/Lenders], and not made directly."

Although the Department has not made any determination regarding whether any transaction permitted by this exemption falls within the scope of ERISA Section 408(b)(2), this exemption is not intended to provide exemptive relief for any transaction that is within the scope of ERISA Section 408(b)(2). Accordingly, the Department has decided not to delete the condition as requested. However, based on the Applicant's representations, the Department is revising the condition as follows: "The relief in this exemption does not extend to any transaction that is within the scope of ERISA Section 408(b)(2)."

#### **IV. Section III(k) of the Proposed Exemption.**

Section III(k) of the Proposed Exemption states that: "No Lender will have any influence, authority, or control over a Client Plan's investment in the Fund."

**Applicant's Request:** The Applicant requests that the Department delete this condition. The Applicant states that the relationship between a Covered Plan and the

Applicant/Lenders is set forth in Section III(a), which provides that: "The decision to invest in the Fund on behalf of each Covered Plan and to execute an Investor Consent in favor of Mitsubishi Bank, as sole Lender or Agent, is made by fiduciaries of the Covered Plan that are not included among and are independent of and unaffiliated with, the Lenders (including Mitsubishi Bank) and the Fund."

**Department's Response:** Given the similarity between Section III(k) and Section III(a), the Department is deleting Section III(k). The Department has also redesignated Section III(l) of the Proposed Exemption (further discussed below) as Section III(k) in the final exemption.

Department's Note: Recipients of any administrative exemption from the Department, including any Prior Credit Facility Exemption, are strongly cautioned to immediately alert the Department regarding any statement in an application or proposed exemption that may not be, or may no longer be, completely and factually accurate. The Department is granting this exemption with the expectation that all of the material representations that the Applicant made in its exemption application, including all factual information it submitted to the Department subsequent to the Proposed Exemption's publication and all of the statements set forth in the Proposed Exemption's Summary of

Facts and Representations, and in this exemption, are factually complete and accurate, and will be fully complied with and adhered to.

For greater consistency with the Department's most recent individual administrative exemptions, the Department has revised condition (k) of the Proposed Exemption as follows: "All of the material facts and representations set forth in the Summary of Facts and Representations are true and accurate. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described by the Applicant in the application, the exemption will cease to apply as of the date of the change."<sup>6</sup>

After considering the entire record developed in connection with the Applicant's exemption application, along with the Applicant's comment letter and the additional factual information it submitted subsequent to the Proposed Exemption, the Department has determined to grant the exemption described below.

The complete application file (D-12003) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. For a more complete statement of

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<sup>6</sup> In determining whether a specific fact or representation within the application is material, the Applicant is urged to contact the Department's Office of Exemption Determinations prior to such fact or representation being changed.

the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 28, 2021, at 86 FR 34048.

### **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 ERISA Section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA provisions, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA Section 404(a)(1)(B).

(2) As required by ERISA Section 408(a), the Department hereby finds that the exemption is (1) administratively feasible, (2) in the interests of affected plans and of their participants and beneficiaries, and (3) protective of the rights of participants and beneficiaries of such plans;

(3) The exemption is supplemental to, and not in

derogation of, any other ERISA provisions, 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 determining whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction that are the subject of the exemption.

Accordingly, the following exemption is granted under the authority of ERISA Section 408(a) and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011):

### **Exemption**

#### **Section I. Covered Transactions**

The restrictions of ERISA Sections 406(a)(1)(A)-(D), and the sanctions resulting from the application of Code Section 4975, by reason of Code Sections 4975(c)(1)(A)-(D), shall not apply to:

(a) The granting by the Funds to Mitsubishi UFJ Trust and Banking Corporation (Mitsubishi Bank), as an agent (Agent) for one or more financial institutions (Lender(s)), which may include, without limitation, Mitsubishi Bank) or

as sole Lender, that will fund a credit facility (Credit Facility) providing credit to certain investment funds (Fund(s)), of a security interest in and lien on the capital commitments (Capital Commitments), reserve amounts, and capital contributions (Capital Contributions) of certain investors (Investors) that are employee benefit plans (Covered Plan(s), as defined in Section II(a)), investing in the Fund;

(b) Any Fund's collateral assignment and pledge to Mitsubishi Bank, as sole Lender or Agent, of the Fund's security interest in an Investor Covered Plan's equity interest in such Fund;

(c) The Fund's grant to Mitsubishi Bank, as sole Lender or Agent, of a security interest in a collateral account (Collateral Account) to which all Capital Contributions in the Fund will be deposited when paid (except in certain limited circumstances that do not involve Covered Plans);

(d) The granting by the Fund and/or its general partner (General Partner) or manager (Manager) to Mitsubishi Bank, as sole Lender or Agent, of its right to make calls on Covered Plan Investors for Capital Contributions (the Capital Call), which shall be in cash, under the operative Fund Agreements (as defined in Section II(d)), enforce the Capital Calls, collect the Capital

Contributions, and apply them to any amount due under the Credit Facility; and

(e) The execution by a Covered Plan of an agreement ("Investor Consent") consenting to the assignment by the Fund and General Partner (or Manager) to Mitsubishi Bank, as sole Lender or the Agent, of their right to make Capital Calls, which may contain, among other things: (i) an acknowledgment of the Covered Plan's obligation to deliver the Covered Plan's financial information statements to Mitsubishi Bank, as sole Lender or the Agent; (ii) an acknowledgment of the Covered Plan's unpaid and owing capital commitment amount and the Covered Plan's obligation to make Capital Contributions (up to its unfunded Capital Commitment amount) to satisfy the indebtedness incurred by the Fund under the Credit Facility; (iii) an acknowledgment by the Covered Plan of the Fund's assignment to Mitsubishi Bank, as sole Lender or the Agent, of the right to make Capital Calls upon the Covered Plan, enforce the Capital Calls, collect the Capital Contributions, and apply them to any amount due under the Credit Facility; (iv) a consent (as either part of the Fund Agreements or as a separate agreement) by the Covered Plan to make Capital Contributions to the Fund without setoff, reduction, counterclaim, or defense of any kind or nature, for the purpose of repayment of the Credit Facility; (v) a representation that the Covered Plan has no knowledge of

claims, offsets or defenses that would adversely affect its obligation to fund Capital Contributions under the Fund Agreements, or events which, with the passage of time would constitute a default or would constitute a defense to, or right of offset against the Covered Plan's obligation to fund its Capital Commitment to the Fund; and (vi) an agreement that the Covered Plan will fund Capital Contributions only into the Collateral Account; provided that with respect to all transactions described above, the conditions set forth below in Section III are met.

## **Section II. Definitions**

(a) The terms "Covered Plan" or "Covered Plans" means an investor in a Fund (as defined below) that is an employee benefit plan, as defined in ERISA Section 3(3) and that is covered by Title I, Part 4 of ERISA, and/or a plan defined in Code Section 4975, that satisfies the conditions set forth herein in Section II.

(b) The terms "Covered Transaction" or "Covered Transactions" mean any combination of transactions described in Section I(a) through (d), in conjunction with the Investor Consent described in Section I(e).

(c) The terms "Fund" or "Funds" means an investment or venture capital fund (organized as a corporation, limited partnership, limited liability company, or another business entity authorized by applicable law) in which one or more

investors invest, including employee benefit plans or special purpose entities holding "plan assets" subject to ERISA, as described herein, by making capital contributions in cash to such Fund, pursuant to specific Capital Commitments as established by the Fund Agreement(s) and other operative documents executed by the parties, for purposes of making certain real estate investments (including real estate-related investments, such as venture capital investments) or non-real estate investments (including, without limitation, assets and/or interests relating to infrastructure, maritime, energy, etc.).

Each Covered Plan investing in such special purpose entity must satisfy the conditions set forth herein in Section III. The term "Fund" includes an entity created by the Fund that may borrow, or receive, funds from the Credit Facility, provided that such entity is considered an affiliate of the Fund as a subsidiary or other controlled entity.

(d) The terms "Fund Agreement" or "Fund Agreements" mean the written agreements under which a Fund (as defined above) is formed (such as a limited partnership agreement, a limited liability company agreement, trust agreement, or articles of incorporation, together with ancillary related agreements, such as subscription agreements) that obligate each Investor to make cash contributions of capital with respect to Capital Commitments, upon receipt of a call for

Capital Contributions.

(e) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(f) The term "Mitsubishi Bank" means Mitsubishi UFJ Trust and Banking Corporation, which is a foreign banking corporation organized under the laws of Japan, and its indirectly wholly-owned subsidiary named MUFG Alternative Fund Services (Cayman) Limited, an ordinary resident company incorporated and existing under the laws of the Cayman Islands. This exemption is intended to cover Mitsubishi Bank, and all of its current and future branches.

(g) For purposes of determining whether a fiduciary is not included among, is independent of, and unaffiliated with, a Fund, the term Fund shall be deemed, as appropriate, to include the governing entity of the Fund, or a member of the governing body of the Fund, as appropriate, e.g., a general partner of a partnership, a manager of a limited liability company, a member of a member-managed limited liability company, or a member of the board of directors of a corporation. For purposes of this exemption request, a fiduciary of a Covered Plan is not included among, is independent of, and unaffiliated

with, a Lender (including Mitsubishi Bank) or a Fund, as applicable, if:

(i) The fiduciary is not, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Lender or Fund;

(ii) The fiduciary is not an officer, director, employee or relative of, or partner in, such Lender or Fund; and

(iii) No officer, director, highly-compensated employee (within the meaning of Code Section 4975(e)(2)(H)), or partner of the Fund, or any officer, director or highly-compensated employee, or partner of the Lender who is involved in the transactions described in Section I of the exemption request, is also an officer, director, highly-compensated employee, or partner of the fiduciary. However, if such individual is a director of the Lender, and if they abstain from participation in, and is not otherwise involved with, the decision made by the Covered Plan to invest in the Fund, then this condition shall be deemed satisfied.

### **Section III. Conditions**

(a) The decision to invest in the Fund on behalf of each Covered Plan and to execute an Investor Consent in favor of Mitsubishi Bank, as sole Lender or Agent, is made by fiduciaries of the Covered Plan that are not included

among and are independent of and unaffiliated with, the Lenders (including Mitsubishi Bank) and the Fund;

(b) The transaction is on terms that are no less favorable to the Covered Plans than those which the Covered Plans could obtain in arm's-length transactions with unrelated parties;

(c) At the time of the execution of an Investor Consent, the Covered Plan has assets of not less than \$100 million. In the case of multiple plans maintained by the same employer, or by members of a controlled group of corporations (within the meaning of Code Section 414(b)), or members of a group of trades or businesses under common control (within the meaning of Code Section 414(c)) (hereafter, referred to as "members of a controlled group"), whose assets are invested on a commingled basis (e.g., through a master trust), this \$100 million threshold applies to the aggregate assets of the commingled entity;

(d) Not more than 5% of the assets of any Covered Plan, measured at the time of the execution of an Investor Consent, is invested in the Fund. In the case of multiple plans maintained by the same employer, or by members of a controlled group, whose assets are invested on a commingled basis (e.g., through a master trust), the 5% limit applies to the aggregate assets of the commingled entity;

(e) Neither Mitsubishi Bank, nor any Lender, has discretionary authority or control with respect to a

Covered Plan's investment in the Fund nor renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to such investment;

(f) Upon request, the Covered Plan fiduciaries must receive from Mitsubishi Bank, a copy of this notice of proposed exemption and a copy of the final exemption, as published in the *Federal Register*;

(g) Mitsubishi Bank receives from the Covered Plan fiduciaries a written representation, or a written authorization, that permits Mitsubishi Bank to rely on a written representation made to the Fund, that the conditions set forth above in Section III(a), (c), and (d) are satisfied for such transaction with respect to the Covered Plan for which they are fiduciaries;

(h) No Covered Transaction is part of an arrangement, agreement or understanding, designed to benefit a party in interest or disqualified person with respect to a Covered Plan;

(i) In the event that a Fund's underlying assets constitute plan assets for purposes of the Department's Plan Assets Regulation, Mitsubishi Bank or any Lender will not enter into a Credit Facility with such Fund unless the Fund is managed by a QPAM, and the extension of credit under the Credit Facility to the Fund and the Fund's pledge of collateral would be covered by the QPAM Exemption or

another applicable exemption;<sup>7</sup>

(j) The relief in this exemption does not extend to any transaction that is within the scope of ERISA Section 408(b) (2); and

(k) All of the material facts and representations set forth in the Summary of Facts and Representations are true and accurate. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described by the Applicant in the application, the exemption will cease to apply as of the date of the change.

**Effective Date:** This exemption will be in effect on the date that this grant notice is published in the *Federal Register*.

George Christopher Cosby,  
Director Office of Exemption  
Determinations,  
Employee Benefits Security  
Administration,  
U.S. Department of Labor.

[FR Doc. 2023-21731 Filed: 9/29/2023 8:45 am; Publication Date: 10/2/2023]

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<sup>7</sup> See the Department's Plan Assets Regulation. 29 CFR part 2510.3-101 (51 FR 41280, Nov. 13, 1986), as amended at 51 FR 47226, (Dec. 31, 1986).