of its total assets in all Accounts established by Fidelity;

(c) Prior to making an investment in any Account, an Independent Fiduciary for each Client Plan will receive offering materials disclosing all material facts concerning the purpose, structure and operation of the Account, including any fee arrangements;

(d) Fidelity will provide each Independent Fiduciary of a Client Plan with periodic written disclosures with respect to the financial condition of the Account, the fees paid to Fidelity, the balance of each Client Plan's interest in the Account, the fair market value of the Account's assets using market sources or independent appraisals approved by the Independent Fiduciary where the value of such assets was used to calculate Fidelity's compensation and, in the case of a Multiple Client Account, a list of other investors in the Account;

(e) The total fees paid to Fidelity will constitute no more than reasonable compensation; and

(f) The timing and formula for determining the Performance Fee will be established and agreed to by the Independent Fiduciary for each Client Plan prior to the Client Plan's investment in the Account and will be based on pre-specified percentages of the Client Plan's assets distributed (or deemed distributed) from the Account in excess of an agreed upon Threshold Amount.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Bankers Trust Company (Bankers Trust) Located in New York, NY; Proposed Exemption

[Application No. D–09869]

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) (1)(A) through (E) of the Code, shall not apply as of October 28, 1994, to the cash sale of certain structured notes (the Notes) for $432,131,250 by three collective investment funds for which Bankers Trust acts as trustee (the Funds) to Bankers Trust New York Corporation (BTNY), a party in interest with respect to employee benefit plans invested in the Funds, provided that the following conditions were met:

(a) Each sale was a one-time transaction for cash;

(b) Each Fund received an amount which was equal to the greater of either (i) the par value of the Notes owned by the Fund at the time of sale, (ii) the purchase price paid by the Fund for its interest in each of the Notes, or (iii) the fair market value of the Notes owned by the Fund, as determined by bid quotations for the Notes obtained from independent broker-dealers at the time of sale;

(c) The Funds did not pay any commissions or other expenses with respect to the sale;

(d) Bankers Trust, as trustee of the Funds, determined that the sale of the Notes was in the best interests of each Fund, and the employee benefit plans invested in the Fund, at the time of the transactions;

(e) Bankers Trust took all appropriate actions necessary to safeguard the interests of the Funds, and the employee benefit plans invested in the Funds, in connection with the transactions; and

(f) The Funds received a reasonable rate of return during the period of time that the Funds held the Notes.

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of October 28, 1994.

Summary of Facts and Representations

1. Bankers Trust, a New York banking corporation, is a leading commercial bank which provides a wide range of banking, fiduciary, recordkeeping, custodial and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors worldwide. Bankers Trust is wholly owned by BTNY, which is a bank holding company established in 1965 under the laws of the State of New York. As of December 31, 1993, BTNY and its affiliates had consolidated assets in excess of $92 billion and capital of approximately $4.5 billion.

2. Bankers Trust is one of the largest providers of trust and other services to employee benefit plans. Many of these plans also engage BTNY or an affiliate to provide investment advice or to be the plan's investment manager, within the meaning of the Act. Bankers Trust maintains more than 80 collective investment funds for employee benefit plan investment.

3. The Funds are the Bankers Trust Pyramid Aggressive Cash Fund (the BT Aggressive STIF), the Bankers Trust Pyramid Cash Plus Fund (the BT Cash Plus Fund), and the Bankers Trust Pyramid Super Cash Fund (the BT Super Cash Fund).

These three Funds are actively managed, market valued money market vehicles which endeavor to provide a rate of return in excess of traditional par valued short-term money market funds by extending eligible maturities, modifying credit restrictions, and taking advantage of trading opportunities in the money markets. The applicant represents that there are certain differences in the investment strategies used by each Fund, including the duration of average maturities and, in the case of the BT Aggressive STIF, the permitted use of equities and equity equivalents. Bankers Trust states that the Notes were permissible investments under the investment guidelines for each Fund and initially paid above market returns. However, unexpected increases in interest rates during 1994 adversely affected the market value of the Notes. Therefore, the Funds sold the Notes to BTNY on October 28, 1994, for an amount equal to the par value of the Notes owned by each Fund. The Funds had purchased the Notes for an amount which equalled the par value of the Notes, except for Note #2 which was purchased at a slight discount (see Paragraph 5 below).

4. The Notes consisted of U.S. Government Constant Maturity Treasury (CMT) Notes issued by various U.S. Government agencies, and Index Amortizing Notes (IANs) issued by various private sector corporations (as described in Paragraph 5 below). All of the issuers were parties unrelated to the Funds and employee benefit plans invested in the Funds (the Plans) as well as BTNY or any affiliate. In addition, the Notes were purchased by the Funds from broker-dealers that were independent of the Funds, the Plans, BTNY and its affiliates.

The CMT Notes were debt instruments which initially paid a premium rate of interest monthly based on changes in a specified index, such as the London Interbank Offered Rate (LIBOR), the U.S. Treasury Bill Rate or the U.S. Federal Reserve's Cost of Funds Index (COFI). However, under the terms of CMT Notes at the time of issuance, the formula for interest rate payments, and the index upon which such payments were based, was scheduled to change on a specified future date to a different formula based on the U.S. Treasury CMT Rate. Bankers Trust states that the formulas for the interest rate payments made the market value of CMT Notes particularly sensitive to certain changes in the U.S. Treasury CMT Rate. In this regard, Bankers Trust represents that the CMT Notes paid a