respect to frozen account balances. Loans and interfund transfers under the Savings Plan would also resume with respect to amounts that had been frozen.

11. In summary, the applicant represents that the proposed transactions satisfy the criteria contained in section 408(a) of the Act because: (a) All terms of the transactions will be no less favorable to the Plans than those obtainable in arm's-length transactions with unrelated parties; (b) the Loans will enable the Plans to resume normal operations with respect to distributions, withdrawals, loans, interfund transfers and fund investments; (c) the Plans will pay no interest or other expenses in connection with the Loans; (d) Repayments will be made only out of any cash proceeds of any amounts received by the Plans as GIC Proceeds after the date of the Loans; (e) the Repayments will not exceed the principal amount of the Loans; and (f) the Repayments will be waived to the extent the Loan Amounts exceed the GIC Proceeds.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Warburg Investment Management International Ltd. (Warburg International) Located in London, England; Proposed Exemption

[Application No. D–09998]

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)(1)(A) 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) of the Code, shall not apply to the proposed cross-trading of securities between various accounts managed by Warburg International or its Affiliates (the Accounts) where at least one Account involved in any cross-trade is an employee benefit plan account (Plan Account) for which Warburg International acts as a fiduciary; provided that both the General Conditions of Section I and the Specific Conditions of Section II below are met.

Section I—General Conditions

(a) Each employee benefit plan comprising a Plan Account participating in Warburg International's cross-trading program has total assets equal to at least $25 million. In the case of multiple employee benefit plans maintained by a single employer or controlled group of employers, the $25 million requirement may be met by aggregating the assets of such plans if the assets are commingled for investment purposes in a single master trust.

(b) A Plan's participation in the cross-trade program is subject to a written authorization executed in advance by a qualified Plan Fiduciary which is independent of Warburg International and its Affiliates (the Independent Fiduciary).

(c) The authorization referred to in paragraph (b) above is terminable at will without penalty to the Plan Account, upon receipt by Warburg International of written notice of termination.

(d) Before an authorization is made for any Plan Account, the Independent Fiduciary is furnished with any reasonably available information necessary for the Independent Fiduciary to determine whether the authorization should be made, including (but not limited to) a copy of the final exemption (if granted), an explanation of how the authorization may be terminated, a description of Warburg International's cross-trade practices, and any other reasonably available information regarding the matter that the Independent Fiduciary requests.

(e) Each cross-trade transaction involves only equity or debt securities for which there is a generally recognized market. With respect to any non-U.S. securities, only those securities traded on a recognized foreign securities exchange for which market quotations are readily available shall be covered by the exemption.[21]

(f) Each cross-trade transaction is effected at the current market value for the security on the date of the transactions. For equity securities, this shall be the closing price for the security on the date of the transaction. The ''closing price'' shall be the last trade price on exchanges where dealing is order-driven and the closing mid-market price (i.e. the average of the closing bid and offer prices) where dealing is quote-driven. For debt securities, the current market value shall be the fair market value determined in accordance with paragraph (b) of Rule 17a-7 issued by the Securities and Exchange Commission (SEC) under the Investment Company Act of 1940.

(g) Neither Warburg International nor its Affiliates charges a Plan Account affected by a cross-trade transaction any fee or commission for such transaction.

(h) At least every three months, and not later than 45 days following the period to which it relates, Warburg International furnishes the Independent Fiduciary with a report disclosing: (1) a list of all cross-trade transactions engaged in on behalf of the Plan Account, and (2) with respect to each cross-trade transaction, the prices at which the securities involved in the transaction were traded on the date of such transaction.

(i) The Independent Fiduciary is furnished with a summary of certain additional information at least once per year. The summary must be furnished within 45 days after the end of the period to which it relates, and must contain the following: (1) A description of the total amount of the Plan Account's assets involved in cross-trade transactions during the period, (2) a description of Warburg International's cross-trade practices, if such practices have changed materially during the period covered by the summary, (3) a statement that the Independent Fiduciary's authorization of cross-trade transactions may be terminated upon receipt by Warburg International of written notice to that effect, and (4) a statement that the Independent Fiduciary's authorization of the Plan Account's participation in the cross-trade program will continue in effect unless it is terminated.

(j) For all Accounts participating in the cross-trading program, if the number of shares of a particular security which any Accounts need to sell on a given day is less than the number of shares of such security which any Accounts need to buy, or vice versa, the direct cross-trade opportunity is allocated among the buying or selling Accounts on a pro rata basis.

(k) The Accounts involved in cross-trade transactions do not include assets of any Plan established or maintained by Warburg International or its Affiliates.

Section II—Specific Conditions

(a) An Independent Fiduciary of each Plan specifically authorizes each cross-trade transaction in accordance with the following procedure:

(1) No more than three business days prior to the execution of any cross-trade transaction, Warburg International shall inform an Independent Fiduciary of each Plan Account involved in the

[21] With respect to all non-U.S. securities that are ''plan assets'' managed by Warburg or an Affiliate, the applicant represents that the requirements of section 404(b) of the Act and the regulations thereunder will be met (see 29 CFR 2550.404b-1). In this regard, section 404(b) of the Act states that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, except as authorized by regulation by the Secretary of Labor. The Department is providing no opinion herein as to whether such requirements will be met.