remaining in the Plan, and the appointment of one or more independent appraisers to determine fair market value, for purposes of establishing the Makewhole Amount.

In addition, the Department has amended the language of the previous condition (i) in the Proposal (which has been redesignated as condition (j) above) to reflect the fact that the duration of the $25 million credit balance provision, which is being used to ensure payment of the Makewhole Amount to the Plan, will be extended until the new Exercise Date under the Makewhole Agreement.

With respect to the role of Mellon as the independent fiduciary for the Plan and its obligations to enforce the terms of the Makewhole Agreement, WEC states that it was always WEC's understanding that Mellon, whether acting as a Plan trustee, an independent fiduciary or an investment manager, would be a Plan fiduciary fully subject to the fiduciary responsibility rules of the Act. In this regard, WEC notes that some commenters, including the IBEW, have questioned the provision in the Makewhole Agreement committing exercise of the Plan's rights under the Agreement to Mellon's discretion. WEC states that the sole purpose of this provision was to make clear that Mellon, not WEC, would be representing the Plan with regard to the operation of the Makewhole Agreement, including the calculation of the Makewhole Amount and the triggering of the necessary payment to the Plan.

In a separate letter submitted by Mellon in response to the concerns raised by the comment letters, Mellon represents that any actions taken by Mellon on behalf of the Plan in its role as independent fiduciary will be subject to the provisions of Part 4 of Title I of the Act. With respect to Mellon's authority under the Makewhole Agreement, as amended by WEC and Mellon in response to concerns raised by the IBEW and other commenters, the Agreement requires the following:

(i) that WEC shall contribute the Makewhole Amount to the Plan upon demand from Mellon in its role as ''the Independent Investment Manager'' for the Plan;

(ii) that Mellon shall make such a demand in the event that a Makewhole Amount is due to the Plan;

(iii) that the Makewhole Amount must be equal to the amount determined by Mellon; and

(iv) that Mellon, in its role as ''the Independent Investment Manager'' for the Plan, shall (rather than ''may'' as stated previously in the Agreement prior to the amendment) exercise the rights under this Agreement on behalf of the Plan by the delivery of a notice (the ''Notice of Exercise'') to WEC no later than the sixtieth (60th) day after the Exercise Date.

Mellon states that these provisions are intended to set forth a specific procedure for the determination and payment of the Makewhole Amount (if any), and to make it clear that Mellon, not WEC, would be acting on behalf of the Plan with regard to the Makewhole Agreement. Thus, Mellon represents that if a payment is due under the Makewhole Agreement, Mellon will, on behalf of the Plan, require WEC to make such payment.

Accordingly, upon consideration of the entire exemption application file and record, the Department has determined to grant the proposed exemption as modified.

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

Mellon Bank, N.A. Located in Pittsburgh, Pennsylvania

[Prohibited Transaction Exemption 95–47; Application No. D–9523]

Section I—Exemption for In-Kind Transfer of CIF Assets

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, as of November 5, 1993, to the in-kind transfer of assets of plans for which Mellon Bank, N.A. or any of its affiliates (Mellon) acts as a fiduciary (the Client Plans), other than plans established or maintained by Mellon for its own employees, that are held in certain collective investment funds maintained by Mellon (CIFs), in exchange for shares of the Laurel Funds [a/k/a Dreyfus or Premier Funds] (the Funds),[3] open-end investment companies registered under the Investment Company Act of 1940 (the 1940 Act), in situations where Mellon acts as investment advisor for the Fund as well as custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, and/or Fund accountant, or provides some other ''secondary service'' to the Funds as defined in Section V(h), in connection with the termination or partial termination of such CIFs, provided that the following conditions and the general conditions of Section IV are met:

(a) No sales commissions or other fees are paid by the Client Plans in connection with the purchase of Fund shares through the in-kind transfer of CIF assets and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the Funds.

(b) Each Client Plan receives shares of a Fund which have a total net asset value that is equal to the value of the Client Plan's pro rata share of the assets of the CIF on the date of the in-kind transfer, based on the current market value of the CIF's assets as determined in a single valuation performed in the same manner at the close of the same business day using independent sources in accordance with Rule 17a–7 of the Securities and Exchange Commission under the 1940 Act (see 17 CFR 270.17a–7) and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers (or, in the case of any weekday CIF transfers, the day of the transfer), determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of Mellon.

(c) All or a pro rata portion of the assets of a Client Plan held in a CIF are transferred in-kind to the Funds in exchange for shares of such Funds.

(d) A second fiduciary which is independent of and unrelated to Mellon (the Second Fiduciary) receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Funds (including a current prospectus for each of the Funds and a statement describing the fee structure) and, on the basis of such information, authorizes in writing the in-kind transfer of the Client Plan's assets to a corresponding Fund in exchange for shares of the Fund.

(e) For all transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register** (i.e. January 30, 1995), Mellon sends by regular mail to each affected Client Plan the following information:

(1) Within 30 days after completion of the transaction, a written confirmation containing:

[3] The applicant represents that effective October 1994, the Laurel Funds changed their name to either ''Dreyfus'' or ''Premier'' as a result of Mellon's acquisition of the Dreyfus Corporation, the sponsor of the Dreyfus Funds.