

new exemption request pertaining to this issue, the Department is willing to consider the merits of such a change in the conditions pertaining to the PTE 77-4 Fee Structures used by Mellon. Such request, when received, would be processed as an amendment to the final exemption for the subject transactions involving the Funds.

No other comments, and no requests for a hearing, were received by the Department during the comment period, as extended pursuant to the applicant's notification of interested persons as discussed herein.

Accordingly, 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.)

Norwest Bank Minnesota, N.A., Located in Minneapolis, MN

[Prohibited Transaction Exemption 95-48; Exemption Application No. D-09595]

Exemption

Section I. Exemption for the In-Kind Transfer of 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) of the Code, shall not apply, as of September 30, 1994, to the in-kind transfer of assets of plans for which Norwest Bank Minnesota, N.A. or any of its affiliates (collectively, the Bank) serves as a fiduciary (the Client Plans), including plans established or maintained by the Bank (the Bank Plans; collectively, the Plans), that are held in certain collective investment funds (the CIFs) maintained by the Bank, in exchange for shares of the Norwest Funds (the Funds), an open-end investment company registered under the Investment Company Act of 1940 (the '40 Act), as amended, for which the Bank acts as investment adviser, custodian, and shareholder servicing agent, in connection with the termination of such CIFs provided that the following conditions are met:

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

(b) All of the assets of a Bank Plan or a Client Plan that are held in the CIFs are transferred in-kind to the Funds in exchange for shares of such Funds. A Plan not electing to participate in the

Funds receives a cash payment representing a pro rata portion of the assets of the terminating CIF before the final liquidation takes place.

(c) Each Bank Plan and each Client Plan receives shares of the Funds which have a total net asset value that is equal to the value of such Plan's pro rata share of the assets of the CIF on the date of the 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 the procedures set forth in Rule 17a-7(b) (Rule 17a-7) under the '40 Act 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, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

(d) A second fiduciary who is independent of and unrelated to the Bank (the Second Fiduciary) receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure, which includes but is not limited to, the following information concerning the Funds:

(1) A current prospectus for each portfolio of the Funds in which a Bank Plan or a Client Plan is considering investing;

(2) A statement describing (i) the fees for investment advisory or similar services that are to be credited back to a Client Plan, (ii) the fees retained by the Bank for Secondary Services, as defined in paragraph (g) of Section III below, and (iii) all other fees to be charged to or paid by the Bank Plan or the Client Plan and by such Funds to the Bank or to unrelated third parties. Such statement also includes the nature and extent of any differential between the rates of the fees.

(3) The reasons why the Bank considers such investment to be appropriate for the Bank Plan or the Client Plan;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Bank Plan or a Client Plan may be

invested in the relevant Funds, and, if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption.

(e) On the basis of the foregoing information, the Second Fiduciary authorizes in writing the in-kind transfer of the Bank Plan's or the Client Plan's CIF assets to a Fund in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, the fees received by the Bank in connection with its services to the Funds and, in the case of a Client Plan only, the purchase by such Client Plan of additional shares of the corresponding Funds with the fees credited back to the Client Plan by the Bank. Such authorization by the Second Fiduciary will be consistent with the responsibilities, obligations and duties imposed on fiduciaries under Part 4 of Title I of the Act.

(f) For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank sends by regular mail to each affected Bank Plan and Client Plan a written confirmation, not later than 30 days after the completion of the transaction, containing the following information:

(1) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a-7(b)(4) of the '40 Act;

(2) The price of each such security involved in the transaction; and

(3) The identity of each pricing service or market maker consulted in determining the value of such securities.

(g) For all subsequent transfers of CIF assets to a Fund following the publication of the proposed exemption in the **Federal Register**, the Bank sends by regular mail, no later than 90 days after completion of each transfer, a written confirmation that contains the following information:

(1) The number of CIF units held by the Plan immediately before the transfer, the related per unit value and the total dollar amount of such CIF units;

(2) The number of shares in the Funds that are held by the Plan following the conversion, the related per share net asset value and the total dollar amount of such shares.

(h) The conditions set forth in paragraphs (c), (d), (e), (o) and (p) of Section II below as they would relate to all Plans are satisfied.