for instance, where: (a) The credit limit established for such borrower by BGA and/or the client-plan has already been satisfied; (b) the ''first in line'' borrower is not approved as a borrower by the particular client- plan whose securities are sought to be borrowed; or (c) the ''first in line'' borrower cannot be ascertained, as an operational matter, because several borrowers spoke to different BGA representatives at or about the same time with respect to the same security. In situations (a) and (b), loans would normally be effected with the ''second in line.'' In situation (c), securities would be allocated equitably among all eligible borrowers.'' The Department concurs with this comment.

The applicant further represents that, pursuant to discussions with the Department subsequent to the publication of the Proposal, it will make the following commitments with respect to the exempted transactions. BGA shall make and retain, for six (6) months, tape recordings evidencing all securities loan transactions with Paloma. Also, if requested by the lending customer, BGA shall provide daily confirmations of securities lending transactions; and BGA shall provide to lending customers monthly account reports, or if requested by the customer, weekly or daily reports, setting forth for each transaction made or outstanding during the relevant reporting period, the loaned securities, the related collateral, rebates and loan premiums and such other information in such format as shall be agreed to by the parties.

Accordingly, after giving full consideration to the entire record, including the written comment from the applicant, the Department has decided to grant the exemption, as described and concurred in above. In this regard, the comment letter submitted by the applicant to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 14, 1995, at 60 FR 19086.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

The First National Bank of Boston and Its Affiliates (Collectively, the Bank) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 95–50; Application No. D–09682]

Section I—Exemption for Receipt of Fees

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 April 1, 1994 to: (1) The receipt by the Bank of fees from the 1784 Funds (the Funds), investment companies registered under the Investment Company Act of 1940 (the 1940 Act), for acting as an investment adviser to the Funds in connection with the investment by plans for which the Bank serves as a fiduciary (the Client Plans) in shares of the Funds; and (2) the receipt and retention of fees by the Bank from the Funds for acting as custodian and accountant to the Funds as well as for any other services to the Funds which are not investment advisory services (i.e. ''secondary services'' as defined in Section III(h) below) in connection with the investment by the Client Plans in shares of the Funds, provided that the following conditions and the General Conditions of Section II below are met:

(a) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds and no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share at the time of the transaction, as defined in Section III(e), and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither the Bank nor an affiliate, including any officer or director of the Bank, purchases or sells shares of the Funds to any Client Plan.

(d) Each Client Plan receives a credit, through a cash rebate, of such Plan's proportionate share of all fees charged to the Funds by the Bank for investment advisory services, including any investment advisory fees paid by the Bank to third party sub-advisors, no later than one business day after the receipt of such fees by the Bank. The crediting of all investment advisory fees to the Client Plans by the Bank is audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Client Plan.

(e) The combined total of all fees received by the Bank for the provision of services to a Client Plan, and in connection with the provision of services to the Funds in which the Client Plan may invest, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.[7]

(f) The Bank does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(g) The Client Plans are not employee benefit plans sponsored or maintained by the Bank.

(h) A second fiduciary acting for the Client Plan which is independent of and unrelated to the Bank (the Second Fiduciary) receives, in advance of any initial investment by the Client Plan in a Fund, full and detailed written disclosure of information concerning the Funds, including but not limited to:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any secondary services as defined in Section III(h), and all other fees to be charged to or paid by the Client Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

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

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Client Plan may be invested in the 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, once such documents are published in the **Federal Register**.

(i) After consideration of the information described above in

[7] In addition, the Department notes that Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Thus, the Department believes that the Bank should ensure, prior to any investments made by a Client Plan for which it acts as a trustee or investment manager, that all fees paid by the Funds, including fees paid to parties unrelated to the Bank and its affiliates, are reasonable. In this regard, the Department is providing no opinion as to whether the total fees to be paid by a Client Plan to the Bank, its affiliates, and third parties under the arrangements described herein would be either reasonable or in the best interests of the participants and beneficiaries of the Client Plans.