been found. Accordingly, LEGENT requests an administrative exemption from the Department in order to purchase the BPT Interest from the Plan.

6. Mellon Bank proposes to sell the BPT Interest to LEGENT for not less than the greater of: (a) The fair market value of the BPT Interest as determined by a qualified, independent appraiser, or (b) the total acquisition cost and opportunity costs attributable to the BPT Interest. The proposed sale will be a one-time transaction for cash. In addition, the Plan will not be required to pay any fees, commissions or expenses in connection with the sale. Mellon Bank represents that it will determine, prior to the sale, whether such transaction is appropriate for the Plan and is in the best interests of the Plan and its participants and beneficiaries.

7. In an appraisal report dated October 20, 1994, G. Dan Poag, President of Bright, Poag & Thompson, Inc., the general partner of BPT, states that the BPT Interest has no fair market value. Mr. Poag explains that the investor notes are subordinate to the first mortgage and have not been serviced in some time. In an addendum to his appraisal report of April 17, 1995, Mr. Poag again confirms that the BPT Interest has a current fair market value of zero as of that date.

8. Because the fair market value of the BPT Interest is less than its acquisition cost, LEGENT will purchase the BPT Interest from the Plan for the latter amount. In addition, LEGENT represents that because the Plan did not receive an adequate rate of return on the BPT Interest, it will pay $18,922 to make up for the Plan's lost opportunity costs.[12]

Accordingly, LEGENT will purchase the BPT Interest from the Plan for an aggregate purchase price of $111,777.[13]

9. In summary, it is represented that the transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) All terms and conditions of the sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (b) the sale will be a one-time transaction for cash; (c) the Plan will not be required to pay any commissions, costs or other expenses in connection with the sale; (d) the Plan will receive a sales price not less than the greater of: (1) The fair market value of the BPT Interest as determined by a qualified, independent appraiser, or (2) the total acquisition cost plus opportunity costs that are attributable to the BPT Interest; and (e) Mellon Bank will determine that the sale is appropriate transaction for the Plan and in the best interests of the Plan and its participants and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons by first-class mail within 30 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment on and/or to request a hearing. Comments with respect to the notice of proposed exemption are due within 60 days after the date of publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

KeyCorp 401(k) Savings Plan (the Plan) Located in Cleveland, Ohio

[Application No. D–10023]

Proposed Exemption

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) and 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 to the proposed loan of funds (the Loan) to the Plan by KeyCorp (the Employer), the sponsor of the Plan, with respect to Guaranteed Investment Contract No. 62149 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation), and the potential repayment by the Plan of the Loan upon receipt of payments under the GIC; provided the following conditions are satisfied: (a) No interest and/or other expenses are paid by the Plan in connection with the Loan; (b) All of the terms and conditions of the proposed Loan are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party; (c) The Loan will be no less than the amount described in this Notice of Proposed Exemption; (d) The repayment of the Loan will not exceed the total amount of the Loan; (e) The repayment of the Loan by the Plan will be restricted to funds paid to the Plan under the GIC by Confederation or other responsible third parties with respect to the GIC; and (f) The repayment of the Loan will be waived to the extent the amount of the Loan exceeds the proceeds the Plan receives from the GIC.

Summary of Facts and Representatives

1. The Employer is a financial service holding company headquartered in Cleveland, Ohio, and registered under the Federal Bank Holding Company Act of 1956. The Key Trust Company of Ohio (Key Bank) is a wholly owned subsidiary of the Employer. Society Corporation merged with and into KeyCorp effective March 1, 1994, with Society Corporation becoming the legal successor-in-interest. Also on March 1, 1994, Society Corporation changed its name to KeyCorp. The Society National Bank, formerly a subsidiary of Society Corporation, is now Key Bank.

2. The Plan is a defined contribution profit sharing plan with a cash or deferred arrangement as provided in section 401(k) of the Code, and an employee stock ownership plan as provided in section 4975(e)(7) of the Code. Participants are permitted to direct the investment of their individual accounts among five investment funds, the Equity Fund, the Money Market Fund, the Balanced Fund, the Bond Fund, and the Corporation Stock Fund. Key Bank is the trustee for four of the five investment funds, and Wachovia Bank of North Carolina is the Trustee of the Plan's Corporation Stock Fund. Approximately 21,000 employees of the

[12] LEGENT represents that the average rates of return for the remaining assets that were held each year by its predecessor Plans is a fair measure of the Plan's lost opportunity costs. Therefore, LEGENT has calculated interest on the amount invested in the BPT Interest for the Plan Years beginning after September 30, 1991 since BPT paid dividends to the Plan through 1991. Using this method of calculation, LEGENT represents that the BPT Interest would have earned aggregate opportunity costs of $18,922.

[13] The applicant represents that the amount by which the purchase price for the BPT Interest exceeds its fair market value, if treated as an employer contribution to the Plan, when added to the balance of the annual additions to such Plan, will not exceed the limitation prescribed by section 415 of the Code.