

[Prohibited Transaction Exemption 95-56; Exemption Application No. D-09724, et al.]

**Grant of Individual Exemptions; Mellon Bank, N.A., and Its Affiliates (Collectively, Mellon), et al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

**Mellon Bank, N.A., and Its Affiliates (Collectively, Mellon) Located in Pittsburgh, Pennsylvania**

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**Exemption**

*Section I—Exemption for Cross-Trading Between Certain Accounts*

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 (1) the purchase and sale of securities (including the stock of Mellon Bank Corporation (MBC)) between Indexed Accounts, as defined in Section IV(a); and (2) the purchase and sale of securities, including the common stock of MBC, between Indexed Accounts and various large accounts (the Large Accounts) pursuant to portfolio restructuring programs of the Large Accounts; provided that the following conditions and the General Conditions of Section III are met:

(a) The Indexed Account is based on an index which represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries. The organization creating and maintaining the index must be (1) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients, (2) a publisher of financial news or information, or (3) a public stock exchange or association of securities dealers. The index must be created and maintained by an organization independent of Mellon and its affiliates. The index must be a generally accepted standardized index of securities which is not specifically tailored for the use of Mellon or its affiliates.

(b) The price for the securities is set at the current market value for the securities on the date of the transactions. For equity securities, the price shall be the closing price for the security on the day of trading; unless the security was added to or deleted from an index underlying an Indexed Account after the close of trading, in which case the price shall be the opening price for that security on the next business day after the announcement of the addition or deletion. For debt securities, the price

shall be the fair market value determined as of the close of the day of trading pursuant to Rule 17a-7(b) issued by the Securities and Exchange Commission under the Investment Company Act of 1940.

(c) The transaction takes place within three business days of the "triggering event" giving rise to the cross-trade opportunity. A triggering event is defined as:

(1) A change in the composition or weighting of the index underlying an Indexed Account by the organization creating and maintaining the index;

(2) A change in the overall level of investment in an Indexed Account as a result of investments and withdrawals made on the Account's opening date, where the Indexed Account is a collective investment fund, or on any relevant date, where the Indexed Account is not a collective investment fund; provided, however, that Mellon does not change the level of investment in the Indexed Account through investments or withdrawals of assets of any employee benefit plan maintained by Mellon or its affiliates (the Mellon Plans) other than any Mellon Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options, including Indexed Accounts; or

(3) A declaration by Mellon (recorded on Mellon's records) that a "triggering event" has occurred, which will be made upon an accumulation of cash in an Indexed Account attributable to interest or dividends on, and/or tender offers for, portfolio securities equal to not more than .5 percent of the Indexed Account's total value.

(d) With respect to any Indexed Account that is model-driven, no cross-trades are engaged in by the Account for 10 business days subsequent to any change made by Mellon to the model underlying the Account.

(e) In the event that the amount of a particular security which all of the Indexed Accounts or Large Accounts propose to sell on a given day is less than the amount of such security which all of the Indexed Accounts or Large Accounts propose to buy, or vice versa, the direct cross-trade opportunity must be allocated by Mellon among potential buyers or sellers of the security on a pro rata basis.

(f) An Indexed Account does not participate in a cross-trade if more than 10 percent of the assets of the Indexed Account at the time of the proposed cross-trade are comprised of assets of Mellon Plans for which Mellon exercises investment discretion.