T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(1) Which is secured by equipment which is leased:

(2) Which is secured by the obligation of the lessee to pay rent under the

equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where: (1) The trust holds a security interest

in the lease:

(2) The trust holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. "Banc One" means Banc One Capital Corporation, an Ohio corporation, and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in Section V(h) of Prohibited Transaction Exemption (PTE) 95-60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, at 35932.

EFFECTIVE DATE: If granted, this proposed exemption will be effective for transactions occurring on or after June 2,

Summary of Facts and Representations

1. Banc One, formerly Meuse, Rinker, Chapman, Endres and Brooks, is the wholly owned, separately capitalized investment banking subsidiary of Banc One Corporation, a Columbus, Ohiobased holding company which had assets of \$88.9 billion as of December 31, 1994 and operates 69 affiliate banks with 1,418 offices in 12 states. Banc One Corporation also owns and operates subsidiaries that engage in data processing, trust, brokerage, investment management, equipment leasing, mortgage banking, consumer finance and insurance.

Banc One was established in 1981 and it maintains its principal place of business in Columbus, Ohio. Banc One has branch operations located in Dallas, Milwaukee, Chicago, Indianapolis, Los Angeles, Phoenix, Louisville and Washington, D.C. As a member of the National Association of Securities Dealers, Banc One maintains a fixed income securities brokerage for the initial placement and remarketing of offerings originated by the firm as well as other issues traded in the secondary market. As of December 31, 1994, Banc One had total assets of \$437,336,000.

Since 1988, Banc One has been securitizing assets ranging from mobile home loans to development lots. Its professional staff has a combined experience of working as an underwriter and financial advisor. Banc One's investment bankers have extensive experience in creating taxable and taxexempt obligations having a wide range of structural characteristics as well as

security arrangements.

Banc One represents that it has the legal authority to underwrite assetbacked securities. In an order dated July 16, 1990, the Federal Reserve Board granted Banc One the power to underwrite and deal in mortgage-backed securities and other asset-backed securities. This order is subject to the condition that Banc One does not derive more than 10 percent of its total gross revenues from such activities. In addition, Banc One's affiliates have the power to sell interests in their own assets in the form of asset-backed securities.

## Trust Assets

2. Banc One seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts; 14 (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.15

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages. 16

## Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated, in the ordinary course of business, by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets and the trustee issues certificates representing fractional undivided interests in the trust assets. Banc One, or one or more broker-dealers (which may include Banc One), acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated have been or are to be underwritten by Banc One on a firm commitment basis. In addition. Banc One anticipates privately placing certificates on both a firm commitment

<sup>&</sup>lt;sup>14</sup> The Department notes that PTE 83-1 (48 FR 895, January 7, 1983), a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. Banc One and its affiliates request relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Banc One has stated that it may still avail itself of the exemptive relief provided by PTE 83-

<sup>15</sup> Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage

Association, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association. The Department's regulation relating to the definition of plan assets (29 CFR 2510.3-101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

<sup>16</sup> Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90-32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990