In addition, the applicant represents that if an employer participating in the Fund and/or the Thrift Plan is considering retaining Pentegra to provide services and an officer of such employer is also a member of either the board of directors of the Fund, the Thrift Plan, or Pentegra, such individual shall refrain from any discussions or considerations by such board of directors with respect to the provision of services by Pentegra.

The applicant represents that in the event a situation arises which could lead to a conclusion that there may be a conflict of interest or the appearance of a conflict of interest in the context described above involving a person who is a member of the Board of the Fund, the Thrift Plan, or Pentegra, the following procedures will be followed:

(a) The person shall disclose the facts of the situation to the Chairperson of the Board of which the person is a member;

(b) The person shall not participate in any formal or informal discussion of, or participate in any decision, or vote on the specific contract, relationship, person, or organization with respect to which the conflict or appearance of conflict may arise. However, such person may be counted to establish a quorum for meetings:

(c) The person will leave the meeting to allow the remaining members to engage in a free and frank discussion regarding the contract, relationship, individual, or organization with respect to which the conflict or appearance of conflict may arise and not return to the meeting until called by the Chairperson

of the Board; and

(d) The minutes of the affected Board shall record the absence of the person from the discussions, deliberations, and decisions of the Board with respect to the contract, relationship, individual, or organization in question. If a vote is taken, the person affected will not vote, and the minutes of the meeting will

record that fact.

The applicant represents that the terms of any transactions between Pentegra and employers who participate in the Fund or Thrift Plan will be at least as favorable to Pentegra as the terms available in arm's-length transactions between Pentegra and employers who do not participate in the Fund or the Thrift Plan. It is represented by the applicant that all arrangements between Pentegra and a Fund or Thrift Plan employer, or its plan, for the provision of services, will be in writing and will be terminable by Pentegra without penalty to Pentegra upon not more than 90 days written notice to such an employer or its plan. Further, such plans and employers may

terminate their contracts with Pentegra without penalty upon not more than 90 days written notice to Pentegra.

The applicant represents that Pentegra will report not less than annually to the board of directors of the Fund a detailed description of the services it provided to employee benefit plans and/or to their sponsoring employers that participate in the Fund and the Thrift Plan. Also, the report by Pentegra will give a detailed account of the fees received for such services and will estimate the amount of fees it anticipates receiving in the following year from the such plans and/

or their sponsoring employers.

5. In summary, the applicant represent that the proposed transactions will satisfy the criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because (a) the terms for the proposed services between Pentegra and employers that participate in the Fund or the Thrift Plan will be as favorable to Pentegra as are the terms available in arm's-length transactions between Pentegra and employers which do not participate in the Fund or the Thrift Plan; (b) Pentegra will be able to terminate without penalty its services to plans sponsored by employers which participate in the Fund or the Thrift Plan on reasonably short notice under the particular circumstances; (c) an independent fiduciary will determine that Pentegra receives reasonable compensation for the provision of its services; and (d) the independent fiduciary has the authority to prohibit Pentegra from performing services that such fiduciary deems inappropriate and not in the best interests of the Fund.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

## Mellon Bank, N.A., Located in Pittsburgh, Pennsylvania

[Application No. D-09523]

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, August 10, 1990).

Section I—Exemption for In-Kind Transfer of CIF Assets

If the exemption is granted, 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 November 5, 1993, to the in-

kind transfer of assets of plans for which Mellon Bank, N.A. or any of its affiliates (Mellon) acts as a fiduciary (the Client Plans), other than plans established or maintained by Mellon, that are held in certain collective investment funds maintained by Mellon (CIFs), in exchange for shares of the Laurel Funds [a/k/a Dreyfus or Premier Funds] (the Funds),2 open-end investment companies registered under the Investment Company Act of 1940 (the 1940 Act), in situations where Mellon acts as investment advisor for the Fund as well as custodian, dividend disbursing agent, shareholder servicing agent, transfer agent, and/or Fund accountant, or provides some other "secondary service" to the Funds as defined in Section V(h), in connection with the termination or partial termination of such CIFs, provided that the following conditions and the general conditions of Section IV are met:

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

(b) Each Client Plan receives shares of a Fund which have a total net asset value that is equal to the value of the Client Plan's pro rata share of the assets of the CIF on the date of the in-kind 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 Rule 17a-7 of the Securities and Exchange Commission under the 1940 Act (see 17 CFR 270.17a-7) 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 (or, in the case of any weekday CIF transfers, the day of the transfer), determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of Mellon.

<sup>&</sup>lt;sup>2</sup> The applicant represents that effective October 1994, the Laurel Funds changed their name to either "Dreyfus" or "Premier" as a result of Mellon's acquisition of the Dreyfus Corporation, the sponsor of the Dreyfus Funds.