days after completion of each transfer a written confirmation that contains the following information:

- (1) The number of CIF units held by the Client Plan immediately before the transfer, the related per unit value, and the total dollar amount of such CIF units; and
- (2) The number of shares in the Funds that are held by the Client Plan following the transfer, the related per share net asset value, and the total dollar amount of such shares.

The Bank believes that the interests of the Client Plans are better served by the collective investment of assets of the Client Plans in the Funds rather than in the CIFs. The Funds are valued on a daily basis, whereas the majority of the CIFs are valued monthly. The daily valuation permits (i) immediate investment of Client Plan contributions in various types of investments; (ii) greater flexibility in transferring assets from one type of investment to another; and (iii) daily redemption of investments for purposes of making distributions. In addition, information concerning the investment performance of the Funds will be available on a daily basis in newspapers of general circulation which will allow Client Plan fiduciaries to monitor the performance of investments on a daily basis and make more informed investment decisions.

7. For investments in the Funds on behalf of Client Plans, the Bank currently offsets its investment management or advisory fees for assets invested in the Funds in accordance with one of the methods for offsetting double investment advisory fees described in Prohibited Transaction Exemption 77–4 (PTE 77–4, 42 FR 18732, April 8, 1977). Consequently, the Bank represents that the fee structure for these investments complies with the fee structure under PTE 77–4,

and that the other conditions of PTE 77-4 are met. 19

The Bank charges its standard fees to all the Client Plans for serving as a trustee or investment manager for the Client Plans.²⁰ All fees are billed on a quarterly basis. The annual charges for a Client Plan account are based on fee schedules negotiated with the Bank. The Bank provides services to the Client Plans for which it has investment discretion, including sweep services for uninvested cash balances in such Plans, under a single fee arrangement which is calculated as a percentage of the market value of the Plan assets under management. There are no separate charges for the provision of sweep services to the Client Plans for which the Bank has investment discretion. However, for Client Plans where investment decisions are directed by an Independent Fiduciary, a separate charge is assessed for sweep services where the Independent Fiduciary specifically agrees to have the Bank provide such services to the Client Plan.²¹ The Bank states that in many cases fees charged by the Bank to a Client Plan are paid by the Client Plan sponsor rather than by the Client Plan.

The Bank charges the Funds for its services to the Funds as investment adviser, in accordance with the Agreements between the Bank and the Funds. Under the Agreements, the Bank charges fees at a different rate for each Fund, computed based on the average daily net assets for the respective Fund. The fee differentials among the Funds result from the particular level of services rendered by the Bank to the

The investment advisory fees paid by each of the existing Funds are accrued on a daily basis and billed by the Bank to the Funds at the beginning of the month following the month in which the fees accrued. The Bank states that any additional Funds will follow the same monthly billing arrangement.

Under the fee structure which would be covered by the proposed exemption, the Bank states that the Client Plans will not pay any plan-level investment management fees, investment advisory fees, or similar fees to the Bank with respect to any of the assets of such Client Plans which are invested in shares of any of the Funds. However, this fee structure does not preclude the payment of investment advisory fees or similar fees by the Funds to the Bank under the terms of the Agreements, provided that such Agreements are adopted in accordance with section 15 of the 1940 Act.

The Bank states that 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.

The Bank represents that the fee structure ensures that the Bank does not receive any additional investment management, advisory or similar fees from the Funds as a result of investments in the Funds by the Client Plans. Thus, the Bank represents that the fee structure is at least as advantageous to the Client Plans as an arrangement pursuant to the conditions of PTE 77-4 whereby investment advisory fees paid by the Funds to the Bank would be offset or credited against investment management fees charged directly by the Bank to the Client Plans. In this regard, the Bank states that the fee structure essentially has the same effect in offsetting the Bank's investment advisory fees as an arrangement under PTE 77-4, section II(c).

8. With respect to any transfer of a Client Plan's CIF assets to a Fund, the Bank states that an Independent Fiduciary for the Client Plan receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Fund. On the basis of such information, the Independent Fiduciary authorizes in writing the inkind transfer of the Client Plan's CIF assets to a Fund in exchange for shares of the Fund. With respect to the receipt of fees by the Bank from a Fund in connection with any Client Plan's investment in the Fund, the Bank states that an Independent Fiduciary receives full and detailed written disclosure of information concerning the Fund in

 $^{^{18}\,\}mbox{PTE}$ 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that, among other things, the plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77 4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the 1940 Act. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

¹⁹ The Department is expressing no opinion in this proposed exemption regarding whether any transactions with the Funds under the circumstances described herein would be covered by PTE 77–4.

²⁰The applicant represents that all fees paid by Client Plans directly to the Bank for services performed by the Bank are exempt from the prohibited transaction provisions of the Act by reason of section 408(b)(2) of the Act and the regulations thereunder (see 29 CFR 2550.408b–2). The Department notes that to the extent there are prohibited transactions under the Act as a result of services provided by the Bank directly to the Client Plans which are not covered by section 408(b)(2), no relief is being proposed herein for such transactions.

²¹ See DOL Letter dated August 1, 1986 to Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, stating the Department's views regarding the application of the prohibited transaction provisions of the Act to sweep services provided to plans by fiduciary banks and the potential applicability of certain statutory exemptions as described therein.