which has its headquarters in New York, New York. The firm has numerous offices in the United States as well as London, Paris and Tokyo. Dillon and its affiliates 28 engage in a variety of activities that facilitate the flow of capital from investors in the United States and abroad to corporations, governments and international agencies. Dillon provides a broad range of merger and acquisition services, engages in securities transactions as both principal and agent and provides underwriting, research and financial services to domestic and foreign financial institutions. The firm is actively involved in the issuance and trading of equity securities, high-yield corporate debt, investment grade fixed income securities, U.S. Government securities and municipal securities.

2. Dillon 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; <sup>29</sup> (2) motor vehicle receivables pool investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts <sup>30</sup>

investment trusts.<sup>30</sup>

3. Residential and 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 lease pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgage.<sup>31</sup>

## Trust Structure

4. Each trust is established under a pooling and servicing agreement or equivalent 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 or certificates 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. Dillon, or one or more broker-dealers (which may include Dillon), 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 Dillon on a firm commitment basis. In addition, Dillon anticipates privately placing certificates on both a firm commitment and an agency basis. Dillon may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive periodic installments of principal and/or interest, or other payments due on the trust assets.

5. Some of the certificates will be multi-class certificates. Dillon requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each

representing rights to disproportionate payments of principal and interest.<sup>32</sup>

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying trust assets are distributed first to the class of certificates having the earliest stated maturity of principal and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class passthrough arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying trust assets. In neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders will share in the amount distributed on a pro rata basis.33

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of trust assets by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an

<sup>&</sup>lt;sup>28</sup> As described herein, the term "Dillon" refers to Dillon, Read and Co. Inc. and its affiliates unless the context otherwise requires.

<sup>&</sup>lt;sup>29</sup>The Department notes that Prohibited Transaction Exemption (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. Dillon requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Dillon has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

<sup>&</sup>lt;sup>30</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 (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 ČFR 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>&</sup>lt;sup>31</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) at 23150.

<sup>&</sup>lt;sup>32</sup> It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(I)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

<sup>&</sup>lt;sup>33</sup> If a trust issues subordinate certificates, holders of such subordinate certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.