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**4510-29-P**

**DEPARTMENT OF LABOR**

Employee Benefits Security Administration

Exemptions from Certain Prohibited Transaction Restrictions

**AGENCY**: Employee Benefits Security 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 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: ***2014-01*, Bank of America Corporation, D-11729; *2014-02*, The ABB Inc. Cash Balance Pension Plan (the Cash Balance Plan); the Cash Balance Pension Plan for Certain Represented Employees of ABB Inc. (the Union Cash Balance Plan); the Pension Plan for Employees of the Process Analytics Division of ABB Inc. Represented by the Laborer's International Union of North America (AFL-CIO), Local No. 1304 (the Process Analytics Plan); the Pension Plan of Fischer & Porter Company (the Fischer & Porter Plan); and the ABB Inc. Pension Plan (UE 625 & 626) (the UE 625 & 626 Plan) (each a Plan, and collectively, the Plans), D-11742 thru D-11746 respectively; and *2014-03*, Intel Corporation (Intel), L-11760.**

**SUPPLEMENTARY INFORMATION:** A notice was published in the FEDERAL REGISTER of the pendency before the Department of proposals to grant such exemptions. Each notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), 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 (76 FR 66637, 66644, October 27, 2011)[1] and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Bank of America Corporation

Located in Charlotte, NC

**[Prohibited Transaction Exemption 2014-01;**

**Application No. D-11729]**

EXEMPTION

Section I: Covered Transactions

The restrictions of ERISA sections 406(a)(1)(D) and 406(b) and the sanctions resulting from the application of Code section 4975 (including the loss of exemption[2] by reason of Code sections 4975(c)(1)(D), (E) and (F)) shall not apply to the receipt of Relationship Benefits by an individual for whose benefit a Covered Plan is established or maintained, or by his or her Family Members, from BAC pursuant to an arrangement in which the Account Value of, or the Fees incurred for services provided to, the Covered Plan is taken into account for purposes of determining eligibility to receive such Relationship Benefits, provided that each condition of Section II of this exemption is

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[2] Pursuant to Code section 408(e)(2)(A)(for an individual retirement account or individual retirement annuity); Code section 530(e) (for a Coverdell education savings account); Code section 220(e)(2) (for an Archer medical savings account); or Code section 223(e)(2) (for a health savings account).

satisfied.

Section II: Conditions

(a) The Covered Plan whose Account Value, or whose Fees paid, are taken into account for purposes of determining eligibility to receive Relationship Benefits under the arrangement must be established and maintained for the exclusive benefit of the participant covered under the Covered Plan, his or her spouse, or their beneficiaries.

(b) The Relationship Benefits offered under the arrangement must be of a type that a Qualified Affiliate could offer consistent with all applicable federal and state banking laws and all applicable federal and state laws regulating Broker-Dealers.

(c) Where Account Values are taken into account for purposes of determining eligibility to receive benefits under the arrangement, the Account Values of Covered Plan accounts shall be treated as favorably, for purposes of satisfying such eligibility requirements, as the Account Values of other types of customer accounts.

(d) Where levels of Fees incurred are taken into account for purposes of determining eligibility to receive benefits under the arrangement, the levels of Fees incurred by Covered Plan accounts shall be treated as favorably, for purposes of satisfying such eligibility requirements, as the levels of Fees incurred by other types of customer accounts.

(e) The Relationship Benefits offered under the arrangement must be provided by a Qualified Affiliate in the ordinary course of its business as a Bank or Broker-Dealer to customers who qualify for such benefits, but who do not maintain Covered Plans with a Qualified Affiliate.

(f) The combined total of fees for the provision of services to a Covered Plan is not in excess of reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2).

(g) The investment performance of the investments made by the Covered Plan is no less favorable than the investment performance of identical investments that could have been made at the same time by a customer of BAC who is not eligible for (or who does not receive) Relationship Benefits.

(h) The Relationship Benefits offered under the arrangement to the Covered Plan customer must be the same as are offered to non-Covered Plan customers of Qualified Affiliates having the same aggregate Account Value or the same amount of Fees generated.

Section III: Definitions

The following definitions apply to this exemption:

(a) The term “Account Value” means investments in cash or securities held in the account for which market quotations are readily available. For purposes of the exemption, the term “cash” includes savings accounts that are insured by a federal deposit insurance agency and constitute deposits as that term is defined in 29 CFR 2550.408b-4(c)(3). The term “Account Value” does not include investments that are offered by BAC (or a Qualified Affiliate) exclusively to Covered Plans.

(b) The term “affiliate” includes any person directly or indirectly controlling, controlled by, or under common control with Bank of America Corporation.

(c) The term "Bank" means a bank described in Code section 408(n).

(d) The term “BAC” means Bank of America Corporation and any of its affiliates.

(e) The term "Broker-Dealer" means a broker-dealer registered under the Securities Exchange Act of 1934, as amended.

(f) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(g) The term “Covered Plan” means an IRA or other savings account described in section III(j) of this exemption or a Keogh

Plan described in section III(k) of this exemption that is established with BAC as trustee or custodian.

(h) The term "Family Members" means beneficiaries of the individual for whose benefit the Covered Plan is established or maintained, who would be members of the family as that term is defined in Code section 4975(e)(6), or a brother, a sister, or a spouse of a brother or sister.

(i) The term "Fees" means commissions and other fees received by a Broker-Dealer from the Covered Plan for the provision of services, including but not limited to: brokerage commissions, investment management fees, investment advisory fees, custodial fees, and administrative fees.

(j) The term "IRA" means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), a Coverdell education savings account described in Code section 530, an Archer MSA described in Code section 220(d), or a health savings account described in Code section 223(d). For purposes of this exemption, the term “IRA” does not include an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in Code section 408(k) and a Simple Retirement Account described in Code section 408(p) that provides participants with the unrestricted authority to transfer their balances to IRAs or Simple Retirement Accounts sponsored by different financial institutions.

(k) The term "Keogh Plan" means a pension, profit-sharing, or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in Code section 401(c). For purposes of this exemption, the term “Keogh Plan” does not include an employee benefit plan covered by Title I of ERISA.

(l) The term “Qualified Affiliate” means any person directly or indirectly controlling, controlled by, or under common control with BAC that is a Bank or Broker-Dealer.

(m) The term “Relationship Benefits” means reduced or no cost financial products and services, including premium rates of account or investment interest, discounted rates of interest on loans, reductions or waivers of otherwise applicable fees and charges, and/or differentiated servicing.

WRITTEN COMMENTS

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption, published on November 6, 2013, at 78 FR 66769. All comments and requests for hearing were due by December 21, 2013. During the comment period, the Department received no comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file (Application No. D-11729), including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 6, 2013, at 78 FR 66769.

FOR FURTHER INFORMATION CONTACT: Mr. Erin S. Hesse of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

The ABB Inc. Cash Balance Pension Plan (the Cash Balance Plan); the Cash Balance Pension Plan for Certain Represented Employees of ABB Inc. (the Union Cash Balance Plan); the Pension Plan for Employees of the Process Analytics Division of ABB Inc. Represented by the Laborer’s International Union of North America (AFL-CIO), Local No. 1304 (the Process Analytics Plan); the Pension Plan of Fischer & Porter Company (the Fischer & Porter Plan); and the ABB Inc. Pension Plan (UE 625 & 626) (the UE 625 & 626 Plan) (each a Plan, and collectively, the Plans)

Located in Cary, NC

**[Prohibited Transaction Exemption 2014-02;**

**Application Nos. D-11742 thru D-11746 respectively]**

EXEMPTION

The restrictions of sections 406(a)(1)(A) and 406(b)(1) and (b)(2) of ERISA and the sanctions resulting from the application of section 4975(c)(1)(A) and (E) of the Code,[3] shall not apply, to the in-kind contribution (the Contribution) of certain U.S. Treasury Bills (the Securities) to the Plans by ABB Inc., a party in interest with respect to the Plans, on September 14, 2012,

[3] For purposes of this exemption, references to the provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

provided that the following conditions are satisfied:

(a) The fair market value of the Securities was determined by ABB Inc. based on the closing price of the Securities on the date of Contribution (the Contribution Date) as quoted by Bloomberg L.P., an independent third party in the business of providing financial data;

(b) The Securities represented less than 12% of the assets of any Plan;

(c) The terms of the Contribution were no less favorable to the Plans than those negotiated at arm's length under similar circumstances between unrelated parties;

(d) The Plans paid no commissions, costs or fees with respect to the Contribution; and

(e) ABB Inc. reviewed the methodology used to value the Securities and ensured that the Plans received the fair market value of the Securities.

EFFECTIVE DATE: This exemption is effective as of September 14, 2012.

WRITTEN COMMENTS

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption (the Notice) on or before September 5, 2013. During the comment period, the Department received two written comments which generally involved matters outside the scope of the proposed exemption. The Department also received one written comment from ABB Inc. (the Applicant). The Applicant's comment and the Department's response thereto are described below.[4]

*Applicant's Comment*

The Applicant's comment generally provided clarifications and/or updates of the names of certain corporate entities of ABB Inc. and the Plans' actuary, the number of employees of ABB Inc., and the numbers of participants and beneficiaries of the Plans. In this regard, Paragraph 1 of the Facts and Representations section of the Notice (the F&R) describes ABB Inc. as the U.S. subsidiary of Asea Brown Boveri Ltd., and further describes ABB Inc. as employing approximately 20,000 employees in the U.S. The Applicant clarifies that ABB Inc. is the indirect U.S. subsidiary of *ABB Ltd.*, and that ABB Inc. employs approximately *8,000* individuals in the U.S. Paragraphs

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[4] Capitalized terms not defined herein have the meanings ascribed to them in the facts and representations of the proposed exemption.

2 and 7 of the F&R describe the risk management team that advises the ABB Inc. Pension Review Committee with respect to the investment of the assets in the ABB Inc. Master Trust as the Pension and Risk Management Committee.  The Applicant clarifies that this entity is called *Pension and Thrift Management*. Section 2 of the F&R describes the Plans' actuary as Towers Watson.  The Applicant clarifies that the actuary for each of the Plans is *Towers Watson Delaware Holdings, Inc.*  The Department takes note of the Applicant's clarifications to Paragraphs 1, 2, and 7 of the F&R.

Paragraph 1 of the F&R provides the participant counts for each of the Plans as of June 26, 2012, as that was the most recent audited information available at the time of the proposed exemption.  The Applicant's comment provides an updated participant count for the Plans as of December 31, 2012, as follows:  The Cash Balance Plan has 15,796 participants and beneficiaries; the Union Cash Balance Plan has 701 participants and beneficiaries; the Process Analytics Plan has 162 participants and beneficiaries; the Fischer & Porter Plan has 1,380 participants and beneficiaries; and the UE 625 & 626 Plan has 218 participants and beneficiaries.  The Department takes note of the Applicant's update to the numbers of participants and beneficiaries of the Plans in Paragraph 1 of the F&R.

The Applicant also provided a correction to the table in Paragraph 9 of the F&R that describes the increase in the estimated AFTAP for each Plan that occurred as a result of the Contribution. In this regard, the Applicant states that the table provided the correct AFTAP amounts but attributed such amounts to the incorrect Plans, and that the following table correctly reflects the AFTAP amounts for each Plan:

| Plan | Estimated AFTAP without Discounted Securities Contribution | AFTAP with Discounted Securities Contribution | Increase in AFTAP Due to Securities Contribution |
|---|---|---|---|
| Cash Balance Plan | 110.44% | 112.29% | 1.85% |
| Union Cash Balance Plan | 112.35% | 113.72% | 1.37% |
| Process Analytics Plan | 111.74% | 120.39% | 8.65% |
| UE 625 & 626 Plan | 109.09% | 121.70% | 12.61% |
| Fischer & Porter Plan | 112.78% | 114.16% | 1.38% |

The Department notes the changes to the table in Paragraph 9 of the F&R and a conforming change to Paragraph 12 as well.

Finally, the Applicant seeks to clarify that Paragraph 10 of the Summary of F&R, should read that the Contribution may have violated sections 406(b)(1) and (2) of the Act. The Department acknowledges this clarification.

After giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption, as described above. The complete application file is available for public inspection in the

Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department’s decision to grant this exemption, refer to the proposed exemption published in the FEDERAL REGISTER on July 22, 2013, at 78 FR 43935.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Erin Brown of the Department at (202) 693-8352. (This is not a toll-free number.)

Intel Corporation (Intel)

Located in Santa Clara, CA

**[Prohibited Transaction Exemption 2014-03;**

**Exemption Application No. L-11760]**

EXEMPTION

Section I. Transactions

The restrictions of sections 406(a)(1)(D) and 406(b) of the Act shall not apply, effective January 1, 2013, to:

(a) The reinsurance of risks and the receipt of premiums therefrom by Technology Assurance Limited (TAL), an affiliate of Intel, as the term "affiliate" is defined in Section III(a) below, in connection with basic and supplemental group term life insurance sold by the Minnesota Life Insurance Company (MN Life), or any successor insurance company which is unrelated to Intel (the Fronting Insurer), to the Intel Group Life Insurance Plan (the Life Plan); and

(b) The reinsurance of risks and the receipt of premiums therefrom by TAL, in connection with basic and supplemental accidental death and dismemberment (AD&D) insurance sold by the Fronting Insurer to the Intel Group Accidental Death and

Dismemberment Plan (the AD&D Plan);[5] provided the conditions set forth in Section II, below, are satisfied.

Section II. Conditions

(a) TAL—-

(1) Is a party in interest with respect to the Plans by reason of a stock or partnership affiliation with Intel that is described in section 3(14)(E) or 3(14)(G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one "State," as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Hawaii Department of Insurance, which has neither been revoked nor suspended;

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction covered by this exemption; or

(B) Has undergone a financial examination by the HIDOI within five (5) years prior to the end of the year preceding the year in which such reinsurance transaction has

[5] The AD&D Plan and the Life Plan are together referred to

occurred; and

(5) Is licensed to conduct reinsurance transactions by Hawaii, whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority.

(b) The Plans pay no more than adequate consideration for the insurance contracts.

(c) No commissions are paid by the Plans with respect to the direct sale of such contracts or the reinsurance thereof.

(d) In the initial year of every reinsurance contract involving TAL and a Fronting Insurer, there is an immediate and objectively determined benefit to participants and beneficiaries of the Plans in the form of increased benefits, and such benefits continue in all subsequent years of each such contract of reinsurance and in every renewal of each such contract, and will at least approximate the increase in benefits that will be effective as of January 1, 2013, as described in the Notice of Proposed Exemption (the Notice).

(e) In the initial year and in subsequent years of coverage provided by a Fronting Insurer, the formula used by the Fronting Insurer to calculate premiums will be similar to formulae used by other insurers providing comparable coverage under similar

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herein as the "Plans."

programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the Fronting Insurer and its competitors with the same or a better rating providing the same coverage under comparable programs.

(f) The Fronting Insurer has a financial strength rating of "A" or better from A. M. Best Company. The reinsurance arrangement between the Fronting Insurer and TAL will be indemnity insurance only, (**i.e.**, the Fronting Insurer will not be relieved of liability to the Plans should TAL be unable or unwilling to cover any liability arising from the reinsurance arrangement).

(g) The Plans retain an independent, qualified fiduciary (the I/F) or successor to such fiduciary, as defined in Section III(c), below, to analyze the transactions and to render an opinion that the requirements of Section II(a) through (f) and (h) of this exemption have been satisfied.

(h) Participants and beneficiaries in the Plans will receive in subsequent years of every contract of reinsurance involving TAL and the Fronting Insurer no less than the immediate and objectively determined increased benefits such participants and beneficiaries received in the initial year of each such contract involving TAL and the Fronting Insurer.

(i) The I/F will: monitor the transactions described herein on behalf of the Plans on a continuing basis to ensure such transactions remain in the interest of the Plans; take all appropriate actions to safeguard the interests of the Plans; and enforce compliance with all conditions and obligations imposed on any party dealing with the Plans.

(j) In connection with the provision to participants in the Plans of the insurance coverage provided by the Fronting Insurer which is reinsured by TAL, the I/F will review all contracts (and any renewal of such contracts) of the reinsurance of risks and the receipt of premiums therefrom by TAL and must determine that the requirements of this exemption, and the terms of the increased benefits continue to be satisfied.

Section III. <u>Definitions</u>

(a) The term “affiliate” of a person includes any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(b) The term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term “I/F” describes a person, or a successor to such person, who is not Intel or TAL or an affiliate of either entity; and:

(1) Does not have an ownership interest in Intel, in TAL, or in an affiliate of either;

(2) Is not a fiduciary with respect to the Plans prior to its appointment to serve as the I/F;

(3) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(4) Has appropriate training, experience, and facilities to act on behalf of the Plans regarding the subject transactions in accordance with the fiduciary duties and responsibilities prescribed by the Act.

For purposes of this definition of an "I/F," no organization or individual may serve as an I/F for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) for that fiscal year exceeds two percent (2%) of that organization's or individual's annual gross income from all sources for the prior fiscal year from Intel or from TAL, or from an affiliate of either (including amounts received for services as I/F under any prohibited transaction exemption granted by the Department).

In addition, no organization or individual who is an I/F, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from Intel or from TAL, or from any affiliate of either during the period that such organization or individual serves as an I/F, and continuing for a period of six (6) months after such organization or individual ceases to be the I/F, or negotiates any such transaction during the period that such organization or individual serves as the I/F.

In the event a successor I/F is appointed to represent the interests of the Plans with respect to the subject transactions, there may be no lapse in time between the resignation or termination of the former I/F and the appointment of the successor I/F.

EFFECTIVE DATE: This exemption is effective as of January 1, 2013.

WRITTEN COMMENTS

In the Notice, the Department invited all interested persons to submit written comments and requests for a hearing within 50 days of the date of the publication on November 6, 2013, of the Notice in the FEDERAL REGISTER. The Notice stated that all comments and requests for a hearing were due by December 26, 2013. In an email dated December 4, 2013, Intel's representative confirmed that the required notification was sent to all interested persons via email and/or first class mail no later than November 15, 2013.

During the comment period, the Department received no requests for a hearing. In addition, the Department did not receive any written comments.

After full consideration and review of the entire record, the Department has decided to grant the exemption. The complete application file (L-11760) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

FURTHER INFORMATION CONTACT: Blessed Chuksorji-Keefe of the Department, telephone (202) 693-8567. (This is not a toll-free number.)

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of an exemption is subject to the express condition that the material facts and representations

contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 27th day of _March_, 2014.

Lyssa E. Hall,
Acting Director of Exemption Determinations,
Employee Benefits Security Administration,
U.S. Department of Labor.

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